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Responses submitted by:
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1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Belgium is a civil law jurisdiction.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

In civil litigation, the adversarial method is mainly used but suffers from a number of exceptions.

In criminal litigation, the inquisitorial method is used during the pre-hearing phase of the criminal prosecution although the adversarial method is still used during the hearing.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

Judges before the ordinary courts are appointed by the King (in fact the Minister of Justice), on the recommendation of the Superior Council of Justice. Depending on the case, candidates will either have completed a judicial internship or passed an examination of professional competence or oral examination.

Before specialized courts, the composition of the chambers of these courts is often mixed. For instance, employments courts ("*tribunal du travail*"/"*arbeidsrechtbank*") are composed of professional judges and non-professional judges. These latter judges are appointed based on applications presented by representative organizations of employers, workers, employees and of self-employed.

Commercial courts ("t*ribunal de commerce*"/"*rechtbank van koophandel*") are composed of a professional judge and two consular judges appointed by the King (in fact the Minister of Justice) for a renewable period of five years. Their appointment is submitted to a certain number of conditions determined by the law. For instance, they must have engaged in an economic activity or either participated in the management of a commercial company established in Belgium, either be in the governing body of a trade or intertrade representative organization from industry or commerce or have gained experience in company management and accounting.

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4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

There are several specialized courts: commercial courts, employment courts and since September 2014, youth and family courts ("*tribunal de la famille et de la jeunnesse*"/ "*familie- en jeugdrechtbank*").

The procedural rules before these specialized courts are, in essence, the same as before the non-specialized courts.

5. Is arbitration an option and when? If so, what rules are typically used?

Arbitration is regulated by the Belgian Judicial Code since 1972, which incorporates the provisions of the uniform law annexed to the International Strasbourg Convention of 20 January 1966.

This regulation was modified by the Law of 24 June 2013 in order to incorporate the rules provided by the UNCITRAL model law of 21 June 1985 (but only applies to arbitrations that were started after 1st September 2013).

The major changes are the following:

- introduction of a new criterion of arbitrability referring to the proprietary nature of the dispute;
- a number of general principles such as the principle of equality of the parties and of due process are now explicitly mentioned;
- the annulment possibilities of an arbitral award have further been restricted: they can only take place based on a limited number of grounds and, in case of a violation of the rights of defense or in case of an arbitration which did not proceed in accordance with the parties' agreement, only if it is determined that the invoked ground for annulment had an influence on the arbitral award;
- a party may, on condition that it obtains the consent of the tribunal, request the national court to order measures concerning the taking of evidence;
- introduction of explicit rules on provisional and interim measures ordered by an arbitral tribunal;
- party-autonomy has been widely recognized;
- all enforcement and annulment procedures are centralized in the five courts of First Instance (Antwerp, Mons, Brussels, Ghent and Liège).

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Yes, they will.

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7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

The Belgian Law defines two types of mediation: voluntary mediation (independent of any judicial proceedings, the initiative comes from the parties and can later be approved by the judge) and judicial mediation (takes place in existing proceedings, during which it is ordered by the judge, either at the request of the parties, either on the judge's own initiative but with consent of the parties).

8. What is the process for pre-hearing fact discovery (if any)?

There is no fact discovery procedure in civil and commercial matters in Belgium.

Before the hearing, parties have to exchange written pleadings and documentary evidence. This obligation to communicate evidence to the other party concerns all the evidence that is to be used during the course of the proceedings. If the evidence is submitted too late, it will automatically be disregarded and will not be taken into account in the discussions.

a) Are there provisions for mandatory document disclosures?

If a party refuses to cooperate in turning in decisive means of evidence in its possession, the court can give out such an order (Judicial Code, art. 877 *et seq*). Such order can only be made if there are "*serious, specific and concurring suspicions*" that the party has a document containing proof of a "*relevant fact*". This possibility also exists *vis-à-vis* a third party.

b) Is there provision for oral examinations of the parties or others?

As noted above, there is no provision for fact discovery. At a hearing, the Belgian Judicial Code provides that the judge can take the decision to hear the parties without taking an oath (Judicial Code, art. 992 and 996). This decision is not subject to appeal. It is seldom exercised.

c) Are there limits on the length of oral examinations?

No.

d) Are witness statements or summaries to be provided before the hearing?

The judge can order that witness statements be provided, and those will be automatically put into the judge's file.

Recently, the Judicial Code offers the possibility for the parties to submit written 'witness statements'. Those are subject to a number of conditions set forth by the Judicial Code and must be submitted together with the written submissions of the parties and their other evidence in the course of the proceedings.

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9. What is the process for pre-hearing expert disclosure (if any)?

Not applicable.

a) Are export reports or written summaries required to be exchanged? - NA

b) Are the parties entitled to conduct a pre-hearing oral examination of opposing experts? - NA

c) Are there provisions requiring experts to meet and narrow issues before the hearing? – NA

10. Are there other notable discovery rules?

No.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

The initial hearing is the first hearing of the proceedings before the judge. It takes place some time after the introduction of the case (the filing of the petition to the court registry, or sending of the writ of summons).

Several things can happen depending on whether the summoned party is absent, represented by a lawyer, and challenges the application or not. If the party does challenge the application, there are two options: summary proceedings (if the case is not complicated) ("*débats succints"/"korte debatten"*) or a "normal" procedure (if the case has to be further examined). In this last case, a procedural timetable will be endorsed by the judge.

If, on the contrary, both parties are absent on the introductory hearing, the judge will himself set up a procedural timetable (number of written pleadings, deadline to file these to the court registry, day and hour of the hearing of the pleadings, as well as their length) at the latest six weeks after the prehearing conference.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

Urgency proceedings ("*référé*"/"*kort geding*") are available provided that it is established that there is a *prima facie* right and urgency for the judge to order (a) provisional measure(s) in order to protect that right pending the procedure on the merits.

Proceedings "*as if in urgency proceedings*" ("*comme en référé*"/"*zoals in kort geding*") are also possible but in this case, the case is heard on its merits.

Other pre-trial remedies concern attachment or garnishment orders, which are available if the claimant can demonstrate the *prima facie* claim against the debtor as well as the risk that the debtor might become insolvent.

Summary proceedings ("*débats succints"/"korte debatten"*) are only possible for straightforward cases concerning simple questions (not challenged invoices, an accepted check or bill of exchange). Contrary to urgency proceedings those lead to a judgment on the merits.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

The question of the admissibility of evidence takes place during the trial.

The appointment of a receiver or of an expert can, *inter alia*, be ordered by the presiding chair of a court in urgency proceedings in order to gather evidence before or pending the trial if there exists an immediate danger that such evidence would otherwise disappear awaiting the judge sitting on the merits to decide.

A certain number of measures can even be obtained *ex parte*, in case of extreme urgency or need to take the adverse party by surprise.

14. What is the standard for admissibility of expert evidence?

Each party can request the court to appoint a court expert but the court is not obliged to do so.

The judge is never bound by an expert's opinion if his conviction opposes it, even if the expert has been appointed by the judge (judiciary expertise). The findings of an expert are indeed deprived of any legal evidentiary weight, but this does not prevent them from having any factual evidentiary weight that can be used by the court. However, in practice, courts generally follow the court appointed expert's conclusions.

There are no rules akin to the US Daubert criteria.

The judiciary expert's report will be declared void in three cases: if there is a violation of the Law of 15 June 1935 on the use of languages in judicial matters, no oath at the bottom of the report, or a failure to sign the report. The report will further be unenforceable *vis-à-vis* the party whose defense rights have not been respected.

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15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

The decision to appoint an expert can be taken by the court, *ex officio*, or on demand of one party or of both parties. This is called a judiciary expertise.

The court order appointing an expert will accurately confine the scope of its mission (Judicial Code, art. 972), which the expert will have to comply with.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

Belgium protects professional secrecy. Some occupations are subject to professional secrecy. Therefore, people in these occupations cannot disclose any information that is provided to them as part of their function (even with the approval of their client). The privilege applies primarily to the health and wellness professions: doctors, pharmacists and social workers. Police officers and teachers are also subject to professional secrecy.

The professional secrecy extends to any information that the lawyer obtains, in that capacity, in the handling of his client's case. It primarily concerns the correspondence between the lawyer and his client but also the given consultations, personal notes of the client given to his adviser and notes of the latter. Statements of fees and expenses and timesheets that the lawyer addressed to his client are also protected.

However, given the evolution of the case law, the client seems now to be allowed to instruct his lawyer to break the secrecy and submit correspondence or other secret elements as part of his defense.

17. If privilege is not protected, are there other protections from disclosure (*i.e.* privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

No.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

Should a privilege dispute arise, the normal competent Belgian Court has jurisdiction to determine the dispute.

However, if ethical rules would have been breached, the president of the Bar can force an external counsel to withdraw evidence.

19. Briefly describe the trial process?

The trial process can be described through its main steps: introduction of a claim by the service of a writ of summons on the defendant; introductory hearing before the court; submission to the court and between parties of written pleadings and documentary evidence; oral pleadings; and judgment.

a) Are there opening submissions, in what form and of what length?

No.

b) What is the order of presentation of witnesses?

There is no order.

c) Who conducts examination and in what order?

The judge conducts the debates and the witness examination.

d) What is the process for closing submissions?

No.

20. Please identify any other notable trial procedures.

A specific procedure exists concerning the plea of forgery ("*procédure en faux civil"/"valsheidsprocedure*"). Such proceedings can be preventive: a person may prefer to argue a private deed as being false rather than waiting for it to be used against them and have to deny the writing.

Another notable trial procedure is the inspection of the site of the incident ("*descente sur les lieux*"/"*plaatsbezoek*"). The court or one of the judges goes to the scene and the clerk draws up a report relating the accomplished operations and on-the-spot observations which is then communicated to the parties.

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21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

The rules provided by the Belgian Judicial Code concerning the burden of proof are the same both for contractual and non-contractual damages. Each party has the burden of proof of the allegations or statements made by it.

In tort law, this general rule implies that the plaintiff has to prove the fault, damage, and causal link between fault and damage.

The standard of proof in civil litigation only concerns the proof of the "legal truth", which can diverge from the "real truth". Belgian courts analyze the submitted evidence on a case-by-case basis and have to be convinced that the allegations are proven on the basis of consistent elements which point in the same direction.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

Under tort law, the plaintiff needs to be placed in the situation he would have been in if the infringement had not occurred.

Under contract law, the recoverable damage is evaluated by comparing the situation in which the damaged party would have been had the contract been properly performed and the actual situation.

The recoverable damage includes suffered losses and lost profits, material and moral damages, as well as the loss of a chance.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Punitive damages are not available and are against public order.

Nevertheless, the Belgian Judicial Code does provide that penalties can be awarded as a measure ancillary to the primary conviction (*"astreinte"/"dwangsom"*). These penalties are only due if the court order is not complied with.

24. Are there time limits for bringing claims? Responding to claims? Please describe.

The right to bring contractual claims becomes time barred after ten years, except when the matter is subject to a specific statute.

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The right to bring a claim for damages under tort law must be brought within the five years after the damaged party became aware of the damage or its aggravation (i) and the identity of the person who is responsible for the damage (ii). In any case, the right will be time barred on the expiry of twenty years after the occurrence of the fact causing the damage.

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

As a member of the European Union, all European regulations on international jurisdiction apply.

The Belgian Code of Private International Law Code includes a rule of general jurisdiction for cases with an international component which is the domicile or usual residence of the defendant in Belgium. However, when the defendant is domiciled in Belgium (or in another Member State of the European Union), the jurisdiction of Belgian courts is determined according to the uniform rules of jurisdiction of the E.U. regime, and not to domestic law.

Belgian law does not provide for a rule allowing a court having jurisdiction to hear a claim to decline the exercise of such jurisdiction for reasons of convenience or inappropriateness of the jurisdiction. The doctrine of *forum non conveniens* is unknown in Belgian law, with a few scarce exceptions but has expressly been rejected by the Court of Justice of the European Union.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceedings? Briefly describe.

Belgian courts cannot *ex officio* order a third party into the proceedings. The procedure to bring a third party into the proceeding is described at articles 812 and 813 of the Judicial Code: the third party can be summoned by one or more parties at the proceeding ("*intervention forcée"/"gedwongen tussenkomst*").

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

In theory, legal costs are recovered by the losing party but there are some exceptions.

These legal costs are enumerated in section 1018 of the Belgian Judicial Code, they are the following: registration rights, stamp duties, enrolment rights, costs and fees related to legal documents, cost of authenticated copies of the judgment, cost of investigative measures, travel costs of magistrates, registrars and parties if ordered by the court, and the procedural indemnity.

The lawyers' fees are not included in this list and are thus not to be recovered by the losing party, but the procedural indemnity covers a tariffed compensation for part of the lawyers' services.

Concerning the costs of execution of a judgment, they have to be recovered by the party against whom execution is sought.

28. Are contingency fees allowed?

The only restriction in Belgian Law is that while taking into account the outcome of the proceedings, it is prohibited to use the formula "*no win, no fee*". But it is, on the other hand, allowed to determine the amount of the fees depending on the value of the case and it is also allowed to ask an additional fee in case of success.

29. Is third party funding of claims permitted? Under what circumstances?

Third party funding of claims is not prohibited under Belgian law but is, however, not yet market practice. The limitation provided for in the Civil Code in the assignment of litigious claims might prove an obstacle to such practice.

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

The recent law of 28 March 2014 (entry into force on 1st September 2014) introduces a new section in the Economic Law Code entitled "actions for collective redress" which are in fact class actions.

However, this law does not introduce a generally applicable mechanism but only applies to claims brought by consumers against companies on the basis of the violation of contractual obligations, certain European regulations or domestic laws in the field of consumer protection.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Claims cannot be commenced in the name of the "*general interest*" because the Judicial Code only allows the filing of a claim if there is a personal interest. For example, pursuing an objective set out in the articles association is not automatically considered as a personal interest for the representative body. The law provides however for a few exceptions, knowingly, amongst others, associations which defend the professional interests of members of a specific profession (such as lawyers, doctors, etc.) and associations for the protection of consumers' interests with legal personality which can request a cease and desist order with regard to unfair trade practices. There are some further exceptions in favour of environmental associations and in case of discrimination.

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32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

Belgian courts are generally speaking slow because they are overloaded with cases. A simple case takes about a year for each instance. But, on average, the duration varies between 18 months and two years (excluding appeal). Appeal proceedings have an average duration of two to four years.

The duration of the proceedings depends of course on the specificity of each case, on its complexity, the court's workload and parties' activeness.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

Almost all decisions of a lower court can be appealed. Except in matters such as labour law or taxation law, decisions of a lower court can only be appealed if the amount at stake is higher than 1.860 € (concerning decisions of the civil magistrate ("*juge de paix"/"vrederechter"*)) or than 2.500 € (concerning decisions of the first instance (*"tribunal de première instance"/"rechtbank van eerste aanleg"*) and commercial courts (*"tribunal de commerce"/"rechtbank van koophandel"*)).

The appellant may appeal both on factual issues and on issues of law. If the court sitting in appeal finds merit in one or more of the grounds of appeal, it must re- decide the case in its entirety.

Such an appeal is generally dealt by a full-bench chamber composed of three judges, and exceptionally, by a single-judge chamber.

A further appeal to the Supreme Court ("*Cour de cassation"/"Hof van Cassatie"*) is also possible. Appeals to the Supreme Court are however limited to issues of law.

The appeal to the Supreme Court is normally dealt with five judges and in more simple cases, by three judges. Moreover, special procedures are in certain conditions available to anyone who was not a party to a case, but whose rights have been adversely affected by the judgment (third party opposition), and to a defendant that was absent when the case was heard and judgment was rendered (appeal by way of a rehearing).

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

No.

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35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

Not applicable.

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor/barrister distinction?

No such distinctions.

In civil and commercial matters, one must call upon a lawyer at the Supreme Court. Only a very limited number of specialized lawyers (20) can represent a party before the Supreme Court.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

There is no such statute, but a case law established by the Supreme Court deciding that for the damage to have a causal link with the fault, it is necessary but sufficient that without the fault, the damage would not have occurred the way it occurred *in concreto*. The judge can only rule out the existence of the causal link if it is established that without the fault, the damage would nevertheless have happened the way it did.

There is joint and several liability among tortfeasors.

The plaintiff has to take all the appropriate measures to limit the damage that it suffers, at the risk of losing the right to be wholly compensated for the suffered damage. In that case, the part of the damage which would have been avoided by any reasonable and careful person will not be compensated. This rule is applicable in contractual matters as well as extracontractual matters.

However, the plaintiff is not under a statutory obligation to do so. It is more a question of a norm of good behaviour. If the plaintiff does indeed fulfill this duty, the incurred costs can be recovered from the defendant.

Moreover, in case the plaintiff contributes to the damage through a fault or negligence of his own, the compensated damage will be reduced to the extent that this fault or negligence has contributed to the damage.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

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Belgium is a Member of the Hague Conference on Private International Law and has adopted the Hague Convention.

As a Member of the European Union, the Regulation n°1393/2007 must also be followed when Member States are involved.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

No.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

Not applicable.

41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

No.

42. Are there legislative efforts under way that address any of the litigation practices in your country?

No.