

## **Will the new legislation on legal protection insurance improve access to justice in Belgium?**

***In September 2019 a new law will enter into force allowing Belgian citizens to deduct part of their legal protection insurance premium from tax.***

In order to be tax deductible, the insurance contract must meet certain minimum conditions (please see below). If these conditions are met, a 40% tax reduction is granted on insurance premiums up to 310 euros which amounts to a reduction of ca. 124 euros per year. Only premiums paid after the law comes into force will be tax deductible.

After introducing in 2007 the so-called *Onkelinx policy* this is the second attempt of the Belgium government to use tax incentives for increasing the take up of legal protection insurance among Belgians with the goal of making justice accessible to more citizens. The project of 2007 was, however, short-lived and is replaced by the present law because tax incentives of around 13 euros per year were too little, ceilings relatively low and materials covered not enough to make the product attractive.

Currently, only 10% of Belgians (approx. 80% of Germans) have an extended, stand-alone legal protection insurance cover and the thresholds for obtaining full legal aid are relatively low. Consequently, people with "middle" incomes are unable to benefit from legal aid, do not have sufficient funds to pay legal costs and often face a problem of access to justice. It is therefore crucial for the success of the government's initiative that the conclusion of legal protection insurance contracts increases significantly within this middle-income segment of the population. This, however, will only be the case if Belgians find the insurance policy attractive enough to buy and if the new legislation gives insurers enough freedom to construct an insurance policy that is economically viable.

To monitor the application and possibly improve the law, the law obliges Belgian Bar Associations and the Insurance Association (Assuralia) to evaluate the situation and send every two years (for the first time in 2021) a joint report to the Government. This report must contain proposals for improving the law and enhancing access to justice for citizens, as well as a detailed and quantified overview of contracts concluded under the new law. It must also quantify the cases in which lawyers agree to fix their fees and expenses at the amounts established by a tariff (Article 11 of the law). N.b. in these cases the insureds must bear the excess amounts (Article 8 § 2 of the law).

At present, it is too early to judge whether the law will be effective and actually improve access to justice since insurers are only now developing the products which will have to transform the legislation into reality. It appears, however, that some of the prescribed conditions could raise issues for insurers or that some effects might be unfavourable for policy holders. Below are some of the minimum cumulative key features that a legal protection insurance contract must satisfy in order to benefit from the tax reduction; the full text of the new law can be found here:

[http://www.etaamb.be/fr/loi-du-22-avril-2019\\_n2019041139.html](http://www.etaamb.be/fr/loi-du-22-avril-2019_n2019041139.html)

- The insurance contract must be taken out on an individual basis;
- The insurance contract must comply with a minimum coverage specified in the law (damages actions, criminal defences, tax law disputes, disputes in family matters etc.);
- The guarantee must cover a certain number of specific costs (lawyers' fees and expenses, bailiffs' fees and expenses, enforcement costs, etc.);
- When a lawyer handles a legal dispute under this new legal protection insurance scheme, the lawyer's fee is capped;
- The waiting period may not exceed five years for construction disputes, three years for divorce/legal cohabitation disputes and one year for disputes relating to certain specific matters

(family law, administrative law, tax law, etc.). Apart from these limited cases, the principle is the absence of a waiting period;

- The insurer must cover its clients up to a minimum of 13,000 euros in civil cases, 13,500 euros in criminal cases and 6,750 euros in construction or divorce disputes.

It should be noted that these conditions do not apply to all legal protection insurance contracts, but only to those that potentially offer a tax reduction.