

# International **Comparative** Legal Guides



Practical cross-border insights into class & group actions

## Class & Group Actions **2022**

**14<sup>th</sup> Edition**

Contributing Editors:

**Chris Warren-Smith, Frances Murphy & Alexandre Bailly**  
Morgan, Lewis & Bockius LLP



**ICLG.com**

## Expert Analysis Chapters

- 1** **Collective Actions in the UK and EU One Year On – Has the Dam Burst Yet?**  
Chris Warren-Smith, Scott Schutte, Peter Sharp & Joanna Christoforou, Morgan, Lewis & Bockius LLP
- 8** **International Class Action Settlements in the Netherlands**  
Daan Beenders, Dennis Horeman & Machteld de Monchy, De Brauw Blackstone Westbroek N.V.
- 16** **Developments and Trends in Collective Actions**  
Charles Balmain, Matthew Devine, Sonja Hoffmann & Sheldon Philp, White & Case LLP
- 23** **Estimating Harm in Invasion of Privacy and Data Breach Disputes**  
Vildan Altuglu, Vikram Kumar, Vivek Mani & Sinan Corus, Cornerstone Research
- 29** **Monitoring and the Status of Uninjured Plaintiffs in Class Actions**  
Robin Cantor, Andreas Groehn, Shireen Meer & Kelly Lear Nordby, Berkeley Research Group
- 34** **Payment Trends in Class or Collective Claims**  
Loree Kovach & Lauren McGeever, Epiq
- 37** **Uncharted Waters: A Dutch Perspective on the Funding of Mass Claims**  
Quirijn Bongaerts & Joost Edixhoven, Birkway
- 44** **European Class Actions: The Funder's Dilemma**  
Jeremy Marshall, Anna-Maria Quinke & Maarten van Luyn, Omni Bridgeway

## Q&A Chapters

- 51** **Australia**  
Clayton Utz: Colin Loveday & Andrew Morrison
- 60** **Belgium**  
Linklaters LLP: Xavier Taton & Gert-Jan Hendrix
- 71** **China**  
Fangda Partners: Frank Li & Rebecca Lu
- 80** **France**  
Delcade Avocats & Solicitors: Jérémy Bernard  
Fidal: Jean-Louis Fourgoux & Leyla Djavadi
- 89** **Germany**  
Clifford Chance Partnerschaft mbB: Tim Schreiber & Burkhard Schneider
- 100** **India**  
Cyril Amarchand Mangaldas: Shaneen Parikh & Namita Shetty
- 109** **Japan**  
Mori Hamada & Matsumoto: Masahiro Ueda, Kenta Minamitani, Toshiki Hitaka & Tetsushi Kamimura
- 118** **Netherlands**  
De Brauw Blackstone Westbroek N.V.: Daan Beenders, Dennis Horeman & Machteld de Monchy
- 126** **Switzerland**  
Eversheds Sutherland Ltd.: Peter Haas
- 134** **United Kingdom**  
Pinsent Masons LLP: David Barker & Emilie Jones
- 143** **USA**  
Norton Rose Fulbright: Daniel McClure & Matthew Dekovich

# Netherlands

De Brauw Blackstone Westbroek N.V.



Daan Beenders



Dennis Horeman



Machteld de Monchy

## 1 Class/Group Actions

**1.1 Do you have a specific procedure or set of rules for bringing, handling, and/or legally resolving a series or group of related claims? If so, please outline this.**

### Collective Action

Article 3:305a of the Dutch Civil Code (the “DCC”) provides the possibility for a representative organisation to file a claim to defend the similar interests of other persons against a defendant (the “**Collective Action**”). The Collective Action is covered by the regular rules of Dutch civil procedural law. In past cases, the claim was generally aimed at a declaration of law that the defendant had acted unlawfully (e.g. tort or breach of contract). However, in 2020, the law was changed with the introduction of the Act on Collective Damages Claims (the “**WAMCA**”) to no longer exclude the possibility of awarding monetary damages collectively. The temporal effect of abandoning that limitation is limited to cases concerning events on or after 15 November 2016.

### WCAM Procedure

The Dutch Act on the Collective Settlement of Mass Claims (the “**WCAM**”) facilitates the implementation of collective settlements through a binding declaration by the Amsterdam Court of Appeal (the “**Court**”). The WCAM is incorporated in articles 7:907–7:910 DCC and articles 1013–1018 of the Dutch Code of Civil Procedure (“**DCCP**”).

A court proceeding pursuant to the WCAM provides representative organisations, jointly with the party paying the compensation, the possibility of jointly requesting the Court to declare the settlement binding on all parties entitled to compensation. The Netherlands Authority for Consumers & Markets can also initiate WCAM proceedings by taking a position similar to that of a representative organisation (article 2.6 (2) Consumer Protection Enforcement Act). If the Court declares the settlement binding, parties entitled to compensation must opt out within the period specified by the Court (of at least three months) if they prefer not to be bound by the settlement.

### Claim Bundling

Dutch law does not provide for any particular mechanism for group claims. However, it is possible for multiple damaged

parties to assign their claims to another party, pursuant to article 3:94 DCC. Claims can, for instance, be assigned to a claims vehicle, which can then commence proceedings in its own name. This practice of bundling claims is common, for instance in the context of cartel damages claims in the Netherlands.

**1.2 Do these rules apply to all areas of law or to certain sectors only, e.g., competition law, security/financial services? Please outline any rules relating to specific areas of law.**

The rules of the aforementioned procedures apply to all areas of civil law, including claims relating to competition law, securities and financial services.

**1.3 Does the procedure provide for the management of claims by means of class action (where the determination of one claim determines the claims of the class), or by means of a group action where related claims are managed together, but the decision in one claim does not automatically create a binding precedent for the others in the group, or by some other process?**

From 2020, the law allows for a more or less “traditional” class action: judgments in the Collective Action are binding on the potential claimants, subject to an opt-out. This is different for foreign potential claimants, who are bound through opt-in, unless a party applies to the court to allow an opt-out mechanism for them as well and the court allows that (article 1018f (1) and (5) DCCP).

Under the law as it stood until 2020 – and this continues to apply to cases in which the Collective Action commenced before that date – the judgment in a Collective Action only binds the parties to the proceedings, i.e. the representative organisation and the defendant. The potential claimants are not bound by that judgment, nor is the defendant bound *vis-à-vis* the potential claimants. However, one or more of the potential claimants may claim damages in individual proceedings on the basis of a declaratory judgment in the Collective Action, which judgment will then serve as a starting point in such individual proceedings. Therefore, a declaratory judgment can serve as a stepping stone to claiming damages in separate individual proceedings, or to collectively seeking a settlement.

Since the potential claimants were not bound by the judgment in a Collective Action, there was less need for an “opt-in” or “opt-out” mechanism. Nevertheless, an interested party may “opt out” from the effect of the judgment by contesting that effect (article 3:305a (5) DCC as it stood until 2020), unless the nature of the judgment implies that its effect cannot be excluded only for this particular party. This is relevant when, for example, the Collective Action aims to obtain an injunction regarding an act of which the opting-out party approves.

#### 1.4 Is the procedure ‘opt-in’ or ‘opt-out’?

For Collective Actions, see the answer to question 1.3.

A WCAM procedure contains an opt-out mechanism. If the Court declares the settlement agreement binding, the agreement then binds all persons entitled to compensation, unless such person decides to opt out in writing within the opt-out period (article 7:908 (2) DCC). The opt-out period is determined by the Court but is at least three months.

#### 1.5 Is there a minimum threshold/number of claims that can be managed under the procedure?

There is no specific minimum provided for in the Collective Action.

Under the WCAM, the Court will not declare a settlement agreement binding if the group of persons entitled to compensation is too small (article 7:907 (3)(g) DCC). The WCAM does not provide for any specific guidelines as to what should be considered “too small”. However, the size of the group of persons entitled to compensation must justify the binding declaration of the settlement agreement; it must result in a more efficient settlement of the damages.

#### 1.6 How similar must the claims be and what are the legal requirements for proceeding on a class or group basis? For example, in what circumstances will a class action be certified or a group litigation order made?

Representative organisations can only initiate a Collective Action to protect “similar interests” of potential claimants (article 3:305a (1) DCC). The requirement of similarity means that the interests to be protected are suitable to be bundled together in order to obtain efficient and effective legal protection for the benefit of the potential claimants, as compared to individual legal actions.

In a WCAM procedure, the settlement agreement must aim to compensate damage suffered as a result of one single event or similar events (article 7:907 (1) DCC).

#### 1.7 Who can bring the class/group proceedings, e.g., individuals, group(s) and/or representative bodies?

Representative organisations can initiate Collective Actions and a WCAM procedure. These organisations must be foundations or associations, although the Court has also allowed a for-profit Belgian company (in *Ageas*) and the State of the Netherlands (in *Vie d’Or*) to be co-petitioners. In a Collective Action, the representative organisation must have the objective of protecting such interests according to the objective clause in its articles of association. In addition, the association or foundation must show that it is able to sufficiently protect the interests of the parties for whose benefit the action is instituted (article 3:305a (1) DCC).

#### 1.8 Where a class/group action is initiated/approved by the court, must potential claimants be informed of the action? If so, how are they notified? Is advertising of the class/group action – before or after court approval – permitted or required? Are there any restrictions on such advertising?

For a Collective Action from 2020 onwards, there is a procedure in which the representative organisation must register the case in a central register for Collective Actions within two days after service of the summons on the defendant. Entering the register triggers a three-month period during which other representative organisations can file alternative competing Collective Actions that are based on the same event; such period can be extended by the court upon request.

If more than one representative organisation files a claim for the same event, the Court will appoint an “exclusive representative” to represent the interests of the whole class. The Court’s decision regarding the appointment of an exclusive representative, the definition of the class and the scope of the claim must be notified to all members of the class. This notification will also indicate that Dutch claimants may opt out of the Collective Action, and that foreign claimants may opt in. However, at the request of a party to the Collective Action, the Court can rule that the opt-in mechanism will also apply to foreign claimants. The minimum period for opting in or opting out is one month.

The WCAM requires individual notification of persons known to the representative organisation who are entitled to compensation, and public notification of persons whose identity is unknown to the representative body who are entitled to compensation. Insofar as foreign, unknown potential claimants are concerned, the Court may order announcements in relevant foreign newspapers, and by other means, as demonstrated in the *Shell* and *Converium* cases.

#### 1.9 How many group/class actions are commonly brought each year and in what areas of law, e.g., have group/class action procedures been used in the fields of: Product liability; Securities/financial services/shareholder claims; Competition; Consumer fraud; Privacy; Mass tort claims, e.g., disaster litigation; Environmental; Intellectual property; or Employment law?

A significant number of Collective Action cases are brought every year. These cases are brought in various areas of civil law (securities, privacy, competition, consumer, employment, environmental and ESG more broadly, pension claims, etc.). In the period from January 2021 up to and including August 2021, 19 new Collective Actions were listed in the registry, leading to a total of 30 Collective Actions since the introduction of the WAMCA.

Since 2005, the Court has rendered nine final decisions within the framework of the WCAM. There have been two WCAM requests in the field of personal injury (*DES* and *DES II*) and seven WCAM requests in the field of securities and financial services (*Dexia*, *Vie d’Or*, *Vedior*, *Shell*, *Converium*, *DSB Bank* and *Ageas*).

#### 1.10 What remedies are available where such claims are brought, e.g., monetary compensation and/or injunctive/declaratory relief, and what are the limitations on remedies, if any?

In a Collective Action, any form of relief except for a claim for damages may be sought, provided that the interests are sufficiently similar, and may include a declaration on liability,



rescission or specific performance of a contract and injunctive relief. As of 2020, limitations are lifted and a claim for payment of monetary damages is now allowed (for cases concerning events on or after 15 November 2016).

The WCAM procedure provides for monetary compensation (article 7:907 (2)(d)) and other forms of compensation, such as annulment or rescission of an agreement (article 7:907 (7)).

**1.11 Are there any limitations in your jurisdiction on global/cross-border class or group actions, including any limitation on the ability of international claimants to participate in such actions?**

There is no specific limitation on Dutch proceedings being used for cross-border actions generally, provided of course that there is jurisdiction. In particular, there is no limitation on international claimants participating. However, an opt-in mechanism generally applies to international claimants (see the answer to question 1.3) and there is a scope rule that requires a sufficient link with the Dutch jurisdiction for the action in general (not for a particular claimant; see the answer to question 9.1).

## 2 Actions by Representative Bodies

**2.1 Do you have a procedure permitting collective actions by representative bodies, e.g., consumer organisations or interest groups?**

Both a Collective Action and a WCAM procedure can be initiated by representative organisations and, in the case of the WCAM, the Netherlands Authority for Consumers & Markets.

**2.2 Who is permitted to bring such claims, e.g., public authorities, state-appointed ombudsmen or consumer associations? Must the organisation be approved by the state?**

One or more associations or foundations that, pursuant to their articles of association, promote the interests and are representatives of the beneficiaries, can initiate a Collective Action or a WCAM procedure. There are various governance requirements that apply to such an organisation to determine whether it is sufficiently representative for the interests of the class to be safeguarded (article 3:305a (2) and (3.a) DCC). The court will, for example, look at the claimants' prior experience. In selecting an exclusive representative, the court will also consider, for example, the other activities of the organisation and the size of its constituency (article 1018e DCCP).

**2.3 In what circumstances may representative actions be brought? Is the procedure only available in respect of certain areas of law, e.g., consumer disputes?**

Please see the answer to question 1.1. A Collective Action and WCAM procedure can be initiated in all areas of civil law.

**2.4 What remedies are available where such claims are brought, e.g., injunctive/declaratory relief and/or monetary compensation, and what are the limitations on remedies, if any?**

Please see the answer to question 1.1.

## 3 Court Procedures

**3.1 Is the trial by a judge or a jury?**

There is no jury system in the Netherlands. Civil court cases are decided by professional judges only.

**3.2 How are the proceedings managed, e.g., are they dealt with by specialist courts/judges? Is a specialist judge appointed to manage the procedural aspects and/or hear the case?**

There are no specialist courts to hear Collective Actions. The Court has exclusive jurisdiction to decide on WCAM requests.

**3.3 How is the group or class of claims defined, e.g., by certification of a class? Can the court impose a 'cut-off' date by which claimants must join the litigation?**

At the start of a Collective Action, the court appoints an exclusive representative and determines the precise scope of the collective claim and for whom the interests are represented in the action. The Court's decision regarding the appointment of an exclusive representative, the definition of the class and the scope of the claim must be notified to all members of the class. This triggers an opt-out period for national potential claimants, determined by the court, of at least one month (article 1018f DCCP). For foreign potential claimants, it triggers an opt-in period, determined by the court, of at least one month (unless the court determines that opt-out applies for foreign potential claimants as well; article 1018f (5) DCCP).

In a WCAM procedure, interested parties may join the proceedings until the hearing, but all are bound subject to opt-out after the final judgment.

**3.4 Do the courts commonly select 'test' or 'model' cases and try all issues of law and fact in those cases, or do they determine generic or preliminary issues of law or fact, or are both approaches available? If the court can determine preliminary issues, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided? If a judge determines certain preliminary factual issues, are those factual determinations binding on a later jury?**

Both approaches are available; preliminary issues will, in most cases, relate to matters of law. There is no jury system in the Netherlands.

**3.5 Are any other case management procedures typically used in the context of class/group litigation?**

In a Collective Action, case management hearings are often used (sometimes upon request of one of the parties) to discuss the course of the proceedings.

The courts are generally willing to work out a feasible timetable for the procedure with the parties.

### 3.6 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

In a Collective Action, the Court may appoint an expert either upon request of one of the parties or on its own motion, pursuant to article 194 DCCP. There are no restrictions on the nature or extent of this expert evidence. Parties may also present expert evidence on their own motion.

In a WCAM procedure, the Court may appoint an expert to report on a subject relevant to the WCAM request, pursuant to article 1016 DCCP.

### 3.7 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

The Netherlands does not have a trial system similar to US and UK litigation. Instead, the parties' positions are generally debated at length in written submissions, although oral argument does generally follow such submissions.

Witness statements and expert reports are frequently part of the written submissions. However, preliminary witness hearings by a court (*voorlopig getuigenverhoor*) or a provisional expert's report (*voorlopig deskundigenbericht*) can be requested before or during proceedings by the parties. Also, a court may order the hearing of further witnesses or experts in the course of proceedings.

### 3.8 If discovery is permitted, do courts typically phase such discovery, such as bifurcating discovery between class discovery and merits discovery?

There is no discovery in the Netherlands, except for the more limited process described in the next question. At the request of a party, and if the Court allows, a claim for documents can be decided before continuation on the merits.

### 3.9 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

A party which has a legitimate interest may request from another party a copy of certain documents with respect to a legal relationship to which it or a predecessor is a party (article 843a DCCP). The Court will decide on such request and may refuse to grant it if there are compelling grounds for the other party not to disclose the contents of the documents (among other possible reasons for refusal).

Parties are obliged to represent all relevant facts truthfully and in full. The Court may, at any time, request parties to further substantiate their statements (articles 21–22 DCCP).

### 3.10 Can the parties challenge the admissibility of expert testimony prior to or after a determination as to whether a claim can proceed on a class or group basis?

There is no specific procedural step for challenging expert evidence prior to deciding whether the case can proceed on a class or group basis.

### 3.11 How long does it normally take to get to trial?

The Netherlands does not have a trial system similar to US and UK litigation. Depending on the workload of the Court and the availability of parties, a first hearing may be scheduled up to one year after the claim is submitted.

### 3.12 What appeal options are available, including whether an appeal can be taken immediately of a decision certifying a class or entering a group litigation order?

A judgment in a Collective Action can be appealed to a court of appeal, which can review the case in its entirety. The judgment in appeal can subsequently be appealed to the Supreme Court, in which case the review is more limited.

In a WCAM procedure, a decision to declare the settlement binding cannot be appealed. A decision refusing the petition can be appealed to the Supreme Court only by all petitioners jointly. A limited review would apply. Such review has not occurred in practice because the court of appeal has allowed the petition in all cases so far (sometimes after the settlement agreement was amended following guidance from the Court).

## 4 Time Limits

### 4.1 Are there any time limits on bringing or issuing court proceedings?

In a Collective Action, the regular rules of limitation of claims apply. The filing of a claim under a Collective Action will interrupt the limitation period (article 3:316 DCC). The Dutch Supreme Court has determined that a representative organisation can interrupt the limitation period with a written notice, pursuant to article 3:317 (1) DCC (Dutch Supreme Court 28 March 2014, ECLI:NL:HR:2014:766 (*VEB NCVB/Deloitte Accountants c.s.*)).

In order to prevent the individual legal claims from becoming time-barred pending the WCAM request, article 7:907 (5) DCC provides that the request to declare the agreement binding interrupts the limitation period of the legal claim for compensation of damage. A new limitation period of two years commences on the day following the day on which the opt-out period expires (article 7:907 (5)(b) DCC).

### 4.2 If so, please explain what these are. Does the age or condition of the claimant affect the calculation of any time limits and does the court have discretion to disapply time limits?

Dutch law provides for several limitation periods. In general, a claim expires after 20 years unless the law prescribes otherwise (article 3:306 DCC). A claim for compensation or to pay a penalty must be made within five years of the day following the day the claimant becomes aware of the damages and the identity of the liable party (article 3:310 DCC). The Court may extend the limitation period on the grounds of reasonableness and fairness (article 6:2 DCC). However, the Dutch Supreme Court has determined that the Court may only apply this discretion in exceptional circumstances (Dutch Supreme Court 3 November 1995, NJ 1998, 380 and Dutch Supreme Court 28 April 2000, ECLI:NL:PHR:2000:AA5635).

#### 4.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

Please see the answer to question 4.1.

#### 4.4 Does the filing of a class or group lawsuit toll the limitation period by which any individual who falls within that class or group would have to bring his, her, or its own individual claims?

Yes, see the answer to question 4.1. However, for the persons opting out, the time bar is set to an additional six months after opt-out (article 1018f (1) DCCP).

## 5 Remedies

#### 5.1 What types of damage are recoverable, e.g., bodily injury, mental damage, damage to property, economic loss?

If there is a basis for liability, the damage and lost profits caused by the action resulting in liability are generally recoverable under Dutch law. Some limitations apply. As a general rule, damage is only compensated if there is sufficient connection between the loss and the act that gave rise to liability, to find that the loss can be attributed to the tortfeasor (article 6:98 DCC). Furthermore, a tort only results in a claim for damages to the extent the breached norm is intended to protect against the loss suffered (article 6:163 DCC). Non-monetary damages (such as mental damage) can be compensated in specific circumstances only; in particular, when the tortfeasor acted with the intent to cause such damage, and when there was bodily injury, slander or another personal injury (article 6:106 DCC).

#### 5.2 Can damages be recovered in respect of the cost of medical monitoring (e.g., covering the cost of investigations or tests) in circumstances where a product has not yet malfunctioned and caused injury, but it may do so in future?

Medical monitoring costs can be recovered in principle, but only if the specific circumstances of the case warrant such recovery.

#### 5.3 Are punitive damages recoverable? If so, are there any restrictions?

Dutch law does not allow for the recovery of punitive damages.

#### 5.4 Is there a maximum limit on the damages recoverable from one defendant, e.g., for a series of claims arising from one product/incident or accident?

Dutch law generally provides that all compensatory damages are recoverable, without a specific limit. Some exceptions apply, such as statutory limitations of liability in transport matters.

#### 5.5 How are damages quantified? Are they divided amongst the members of the class/group and, if so, on what basis?

As a general rule, damages under Dutch law are assessed by comparing the actual situation with the claimant's probable

situation had the tort not occurred, taking into account all circumstances of the case. In a Collective Action, the law does not only refer to the general rules on the quantification of damages (section 6.1.10 DCC) but also gives the court additional guidance (article 1018i (2) DCCP). In particular, the court can distinguish categories of compensation where possible; it has to ensure that the amount of compensation awarded is reasonable and that the interests of injured parties are also safeguarded otherwise. In the context of the WCAM, although there are no precise rules on dividing the damages, the Court will analyse whether the proposed recovery is reasonable for all group members. If their circumstances differ, damage scheduling is considered appropriate.

#### 5.6 Do special rules apply to the settlement of claims/proceedings, e.g., is court approval required? If so, what are those rules?

Usually, no court approval is required for settlements. However, to declare a settlement binding on all affected parties under the WCAM regime, approval by the Court is required. The same applies if a collective settlement is proposed in a Collective Action.

## 6 Costs

#### 6.1 Can the successful party recover: (a) court fees or other incidental expenses; and/or (b) their own legal costs of bringing the proceedings, from the losing party? Does the 'loser pays' rule apply?

In the Netherlands, the general rule applies that the losing party pays the court costs and legal fees (article 237 (1) DCCP). However, the recovery of legal fees is usually a very limited amount in practice. This rule also applies in Collective Actions. In a WCAM procedure, there is of course no obvious winner or loser. The WCAM does, however, provide that a judge can determine that one or more parties must bear the cost relating to a WCAM procedure (article 1016 (2) DCCP).

In its 2006 ruling on the Collective Action in the *Vie d'Or* case, the Supreme Court held that representative organisations can also – besides procedural costs – recover extrajudicial costs for determining the liability and damages of the defendant pursuant to article 6:96 (2)(b) DCC. The Supreme Court ruled that the damages of the potential claimants are relocated to the representative body: the costs made by the representative bodies are therefore costs that potential claimants otherwise would have made and could have recovered from the defendant.

#### 6.2 How are the costs of litigation shared amongst the members of the group/class? How are the costs common to all claims involved in the action ('common costs') and the costs attributable to each individual claim ('individual costs') allocated?

There are no strict rules on this matter under Dutch law. In practice, claimant organisations frequently agree on a fee in a contract between them and the claimants. Also, in the context of WCAM proceedings, the costs of executing the settlement are typically covered by a payment from the party paying damages, pursuant to the settlement agreement.

### 6.3 What are the costs consequences, if any, where a member of the group/class discontinues their claim before the conclusion of the group/class action?

Only representative bodies are a party to the Collective Action; therefore, the potential claimants are not part of the litigation.

Participants in a WCAM procedure are free to make arrangements on how to share the costs of litigation, and the same applies if a member discontinues his claim.

### 6.4 Do the courts manage the costs incurred by the parties, e.g., by limiting the amount of costs recoverable or by imposing a 'cap' on costs? Are costs assessed by the court during and/or at the end of the proceedings?

In awarding procedural costs, Dutch courts use what is called a liquidation rate with fixed fees, dependent only on the interest at stake, the complexity of the litigation and the number of procedural actions that were required from the party incurring the costs. As a result of that system, the costs award is usually a small percentage compared to the actual costs incurred by the winning party. Actual costs can be awarded in exceptional cases, and are specifically provided for in cases concerning intellectual property rights.

## 7 Funding

### 7.1 Is public funding, e.g., legal aid, available?

Individuals in need of professional legal assistance, but unable to fully or partly bear the costs, are entitled to legal aid compensation pursuant to the Dutch Legal Aid Act. Legal aid is not granted to representative bodies and, therefore, is not directly relevant to Collective Actions or a WCAM procedure.

### 7.2 If so, are there any restrictions on the availability of public funding?

The granting of legal aid to individuals is subject to, in particular, the income and assets of the client.

### 7.3 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

Pursuant to the general rules of professional conduct, lawyers are in principle not allowed to enter into conditional or contingency fee arrangements with their clients.

This rule does not apply to representative organisations. It is common practice for representative bodies to agree on a fee with potential claimants, including conditional or contingency fees. In the WCAM proceedings concerning *Ageas*, the Court accepted that some level of compensation for such fees is acceptable in the settlement, although it will scrutinise the reasonableness of such compensation.

### 7.4 Is third-party funding of claims permitted and, if so, on what basis may funding be provided?

Third-party litigation funding is allowed in the Netherlands and is becoming more common, especially in collective litigation.

There are no specific legislative provisions applicable in the Netherlands to third-party litigation funding, except that the law specifies that control over the collective claim must be with the representative organisation to a sufficient extent (article 3:305a (2.c) DCC). Also, certain limitations may be found in the general law of contracts, e.g. where the agreed-upon fees and interests would contravene the rules of public policy, good morals or reasonableness and fairness. Thus, the independence of the representative organisation can be scrutinised by the Court, e.g. in the context of admissibility, to ensure that it actually represents the clients' interests. This is an area of recent attention and revisions to a soft-law instrument known as the "claim code" have been made.

## 8 Other Mechanisms

### 8.1 Can consumers' claims be assigned to a consumer association or representative body and brought by that body? If so, please outline the procedure.

Consumers' claims can be assigned to a representative consumer association or representative body and brought by that body.

### 8.2 Can consumers' claims be brought by a professional commercial claimant which purchases the rights to individual claims in return for a share of the proceeds of the action? If so, please outline the procedure.

Claims can be brought by a professional commercial claimant. Please see under "Claim Bundling" in our answer to question 1.1.

### 8.3 Can criminal proceedings be used as a means of pursuing civil damages claims on behalf of a group or class?

Under Dutch law, a claim for civil damages can be joined to criminal proceedings. However, there are no precedents of a claim for mass damages joined to criminal proceedings.

### 8.4 Are alternative methods of dispute resolution available, e.g., can the matter be referred to an Ombudsperson? Is mediation or arbitration available?

There are several alternative methods of dispute resolution, such as mediation or arbitration. The Ombudsperson can also mediate or eventually initiate a Collective Action or WCAM procedure.

### 8.5 Are statutory compensation schemes available, e.g., for small claims?

There are no statutory compensation schemes available for small claims.

### 8.6 What remedies are available where such alternative mechanisms are pursued, e.g., injunctive/declaratory relief and/or monetary compensation?

All remedies are available in these alternative mechanisms.



9 Other Matters

9.1 Can claims be brought by residents from other jurisdictions? Are there rules to restrict ‘forum shopping’?

As of 2020, the Collective Action has a scope rule. The scope rule entails that a claim is only admissible if it has a sufficiently close link to the Dutch jurisdiction. This is the case if the majority of the potential claimants are domiciled in the Netherlands, if the defendant is domiciled in the Netherlands

and additional circumstances show a sufficiently close link to the Dutch jurisdiction, or if the event from which the damage resulted took place in the Netherlands.

9.2 Are there any changes in the law proposed to promote or limit class/group actions in your jurisdiction?

Since the 2020 amendment, no new amendments are currently envisaged.



**Daan Beenders** specialises in commercial litigation and mass claims. He has represented leading corporations in both jurisdictional and multi-jurisdictional complex litigation and alternative dispute resolution, and has advised a broad spectrum of international clients on all kinds of liability issues. He also serves as a deputy judge in the District Court of Noord-Holland. Daan won *ILO's* Client Choice Award for 'Best Litigation Lawyer in the Netherlands, 2017'.

**De Brauw Blackstone Westbroek N.V.**

Claude Debussylaan 80  
1082 MD Amsterdam  
The Netherlands

Tel: +31 20 577 1656  
Mob: +31 6 5333 1147  
Email: [daan.beenders@debrauw.com](mailto:daan.beenders@debrauw.com)  
URL: [www.debrauw.com](http://www.debrauw.com)



**Dennis Horeman** is a member of the dispute resolution practice and the financial markets regulation practice. He has wide experience in litigation and arbitration in the financial sector. He represents banks and insurers in a broad range of disputes, including defence against claims for alleged duty of care breaches and misselling. Dennis leads the defence in a wide variety of collective litigation issues, from financial services to consumer products, environmental cases and ESG more broadly. Dennis represented Ageas before the Amsterdam Court of Appeal in a 2018 €1.3 billion settlement.

**De Brauw Blackstone Westbroek N.V.**

Claude Debussylaan 80  
1082 MD Amsterdam  
The Netherlands

Tel: +31 20 577 1747  
Mob: +31 6 5326 8448  
Email: [dennis.horeman@debrauw.com](mailto:dennis.horeman@debrauw.com)  
URL: [www.debrauw.com](http://www.debrauw.com)



**Machteld de Monchy** is a partner in the litigation group, specialising in litigation, and has particular expertise in mass claims and follow-on damages litigation. Acting on behalf of national and international companies in all types of litigation, Machteld has broad experience at all levels of the judiciary in the Netherlands, including the Supreme Court.

Machteld was awarded the accolade 'Legal Woman of the Year, 2018' by *Legal Women* and is noted for her 'competition litigation expertise' by *The Legal 500* (2020).

Machteld heads De Brauw's *pro bono* practice. In recognition of her *pro bono* commitment and achievements, Machteld has recently been shortlisted in the category of 'Outstanding Contribution Award' for *Chambers' Europe Awards*, 2021. In 2019, De Brauw's *pro bono* practice was awarded the 'European Pro Bono Program of the Year' Award in *Chambers' Diversity & Inclusion Awards*. In 2014 – after being seconded to the New York law firm Paul, Weiss – Machteld was also awarded The Legal Aid Society's (US) Pro Bono Publico Award.

**De Brauw Blackstone Westbroek N.V.**

Claude Debussylaan 80  
1082 MD Amsterdam  
The Netherlands

Tel: +31 20 577 1720  
Mob: +31 6 5378 1957  
Email: [machteld.demonchy@debrauw.com](mailto:machteld.demonchy@debrauw.com)  
URL: [www.debrauw.com](http://www.debrauw.com)

We stand beside our clients wherever they operate globally. This is the keystone of our focus. Whether in the Netherlands or abroad, we deliver a powerful corporate and finance practice, a centre of excellence in litigation and arbitration, and an unparalleled team of regulatory experts.

Our role of trusted advisor is rooted in our history as a firm, and is integral to who we are today. From our head office in Amsterdam, we advise more than 70% of the largest companies headquartered in the Netherlands. We also stand beside our clients in their international transactions, litigation and compliance work. This is why we have offices in strategic locations like Beijing, Brussels, London and Singapore, and why we work closely together with top-tier local counsel in all jurisdictions.

[www.debrauw.com](http://www.debrauw.com)

**DE BRAUW  
BLACKSTONE  
WESTBROEK**

# ICLG.com



## Current titles in the ICLG series

Alternative Investment Funds	Franchise
Anti-Money Laundering	Gambling
Aviation Finance & Leasing	Insurance & Reinsurance
Aviation Law	International Arbitration
Business Crime	Investor-State Arbitration
Cartels & Leniency	Lending & Secured Finance
Class & Group Actions	Litigation & Dispute Resolution
Competition Litigation	Merger Control
Construction & Engineering Law	Mergers & Acquisitions
Consumer Protection	Mining Law
Copyright	Oil & Gas Regulation
Corporate Governance	Patents
Corporate Immigration	Pharmaceutical Advertising
Corporate Investigations	Private Client
Corporate Tax	Private Equity
Cybersecurity	Product Liability
Data Protection	Project Finance
Derivatives	Public Investment Funds
Designs	Public Procurement
Digital Business	Real Estate
Digital Health	Renewable Energy
Drug & Medical Device Litigation	Restructuring & Insolvency
Employment & Labour Law	Sanctions
Enforcement of Foreign Judgments	Securitisation
Environment & Climate Change Law	Shipping Law
Environmental, Social & Governance Law	Technology Sourcing
Family Law	Telecoms, Media & Internet
Fintech	Trade Marks
Foreign Direct Investment Regimes	Vertical Agreements and Dominant Firms