

# International Comparative Legal Guides



Practical cross-border insights into class & group actions

## Class & Group Actions 2023

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# Expert Analysis Chapters

- 1** **Collective Actions in the UK and EU Two Years On: The Groundswell Continues**  
Chris Warren-Smith, Louise Skinner, Paul Mesquitta & Keir Baker, Morgan, Lewis & Bockius UK LLP
- 7** **International Class Action Settlements in the Netherlands**  
Dennis Horeman & Machteld de Monchy, De Brauw Blackstone Westbroek N.V.
- 15** **Developments and Trends in Collective Actions**  
Charles Balmain, Matthew Devine, Sonja Hoffmann & Sheldon Philp, White & Case LLP
- 22** **Economic Evidence in Recent Competition Class Actions in the UK**  
Liam Colley, Vikram Kumar, Sinan Corus & Kaushik Krishnan, Cornerstone Research
- 28** **Emerging Areas of Group and Class Actions Related to ESG Disclosures**  
David Abshier, Neal Brody, Robin Cantor & Dubravka Tosic, BRG
- 34** **The First Cut is the Deepest: Reflections on Efficiency Considerations in the Certification of Class Actions**  
Joost Edixhoven, Ianika Tzankova & Quirijn Bongaerts, Birkway
- 41** **Legal Modelling for Collective Actions**  
Joachim Häcker & Tanja Pfitzner, PFITZNER LEGAL
- 46** **As Collective Actions Take Root in Europe, Some Pointers on What Not to Emulate from the US**  
Will Fritz, Top Class Actions LLC
- 50** **Class Action Risks in Products**  
Sarah-Jane Dobson, Samantha Silver & Paula Margolis, Kennedys
- 57** **The Changing Face of European Class Actions: The Impact of the Representative Actions Directive**  
Johanna Weißbach & Emilie Jones, Pinsent Masons
- 63** **Laying the Foundation for an Effective Class Action Redress Scheme**  
Nicholas DeLuca, John Hays, Robert Jones & Janette Potgieter, Ankura Consulting Group, LLC
- 66** **Global Trends in ESG Disputes**  
Dr. Martin Eimer, Tim West, Tom Cummins & James Clarke, Ashurst LLP
- 73** **Through a Glass, Darkly: Collective Actions before the Competition Appeal Tribunal in the Last 12 Months**  
Boris Bronfentrinker, Elaine Whiteford, Michelle Clark & Adele Behles, Wilkie Farr & Gallagher (UK) LLP
- 78** **A Practical Approach to Developing a Plausible and Credible Expert Methodology for Collective Actions**  
Aastha Mantri, Economic Insight

## Q&A Chapters

- 82** **Australia**  
Clayton Utz: Colin Loveday & Andrew Morrison
- 91** **Brazil**  
Pogust Goodhead: Bruna Ficklscherer, Filipe Carvalho, Caroline Narvaez & Thaís Ferreira
- 98** **Denmark**  
Kennedys: Heidi Bloch & Karoline Ulits
- 106** **France**  
Delcade Avocats & Solicitors: Jérémy Bernard  
Mermoz Avocats: Jean-Louis Fourgoux & Leyla Djavadi
- 116** **Germany**  
Clifford Chance Partnerschaft mbB: Tim Schreiber & Burkhard Schneider
- 128** **India**  
Cyril Amarchand Mangaldas: Shaneen Parikh & Namita Shetty
- 137** **Japan**  
Mori Hamada & Matsumoto: Masahiro Ueda, Kenta Minamitani, Toshiki Hitaka & Tetsushi Kamimura
- 147** **Netherlands**  
De Brauw Blackstone Westbroek N.V.: Dennis Horeman & Machteld de Monchy
- 155** **New Zealand**  
Meredith Connell: Fionnghuala Cuncannon & Kate Muirhead
- 163** **Scotland**  
Pogust Goodhead: Alison Webb, Megan Lafferty, Eilidh Beveridge & Grace Smith
- 172** **Switzerland**  
Eversheds Sutherland Ltd.: Peter Haas
- 180** **Ukraine**  
GRECO Law Company: Pavlo Kuftyryev & Artemii Vorobiov
- 189** **United Kingdom**  
Pinsent Masons LLP: David Barker & Emilie Jones
- 199** **USA**  
Norton Rose Fulbright: Daniel M. McClure & Matthew A. Dekovich

# Netherlands



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## 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 achieving 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 Resolution of Mass Damage in Collective Action Act (the “WAMCA”), to no longer exclude the possibility of awarding monetary damages collectively. The temporal effect of abandoning that limitation is restricted to cases brought on or after 1 January 2020 and concerning events on or after 15 November 2016.

From 25 June 2023, an amended version of the WAMCA will apply in which the European Union’s Collective Redress Directive (the “CRD”, also known as the Representative Actions Directive or RAD) has been transposed.

### 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 WCAM is incorporated in articles 7:907–7:910 DCC and articles 1013–1018 of the Dutch Code of Civil Procedure (the “DCCP”).

Court proceedings pursuant to the WCAM provide representative organisations, jointly with the party paying the compensation, the possibility of requesting the court to declare a settlement binding on all parties entitled to compensation (the “beneficiaries”). 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, beneficiaries 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. Other ways of claim bundling include the use of a mandate agreement (article 7:414 DCC) or power of attorney (article 3:60 DCC).

**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 opt-out. This is different for potential claimants who are not resident or domiciled in the Netherlands, 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). This possibility will be restricted once the statutory amendments following the transposition of the CRD come into effect on 25 June 2023. If the Collective Action results in court approval of a settlement, a second opt-out opportunity arises.

Under the law as it stood until 2020 – and this continues to apply to cases in which the Collective Action commenced before that date or when it relates to events that took place prior to 15 November 2016 – 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.

#### 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, but the number of persons whose interests the action seeks to protect should be "sufficient" (article 1018c (5) (b) and 1018f (1) DCCP).

Under the WCAM, the Amsterdam Court of Appeal 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.

Furthermore, following article 1018c (5) DCCP, the claimant in a Collective Action must establish that: (a) certain requirements with regard to governance, representativeness, connection to the Dutch legal order and the mandatory consultation attempt, are met; (b) bringing a Collective Action is more efficient and effective than instituting individual proceedings; and (c) its claim is not manifestly unfounded.

#### 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 – for more information, please refer to the answer to question 2.2.

#### 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 to which the WAMCA applies, there is a procedure in which the representative organisation must register the case in the central register for Collective Actions

within two days after service of the summons on the defendant. Entering the case triggers a three-month period during which other representative organisations can file alternative competing Collective Actions that relate to the same event. This period can be extended by the court upon request. The extension will only apply to the claim organisation that requested it.

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 claimants based outside of the Netherlands 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. From June 2023 onwards, this will need to be within the boundaries set by the CRD. The minimum period for opting in or 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. Excluding interim relief proceedings, over 30 Collective Actions have been brought in the first two years since the introduction of the amended Collective Action regime on 1 January 2020. These cases are brought in various areas of law (securities, privacy, competition, consumer, employment, environmental and ESG more broadly, pension claims, etc.).

Since 2005, the Amsterdam Court of Appeal 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 may be sought, provided that the interests are sufficiently similar. Relief may include an award for damages, a declaration on liability, rescission or specific performance of a contract and injunctive relief. Monetary damages cannot be claimed in a Collective Action to which the pre-amended statute applies.

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 such as consumer organisations or interest groups.

**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 representative of the potential claimants, can initiate a Collective Action or a WCAM procedure. These can be *ad hoc* organisations. In WCAM proceedings, the Amsterdam Court of Appeal 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 interests stated in 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). To this end, various governance requirements apply.

Once the statutory amendments following the transposition of the CRD come into effect, certain organisations based outside the Netherlands may now also bring a claim for damages.

Furthermore, public bodies may bring an action to protect the similar interests of other persons, insofar as the public body has been entrusted with the protection of those interests (article 3:305b DCC). Under the WCAM procedure, the Netherlands Authority for Consumers & Markets can take a position similar to that of a representative organisation (article 2.6 (2) Consumer Protection Enforcement Act).

**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 answers to questions 1.1 and 1.10.

## 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. However, a significant number of Collective Actions are brought before the Amsterdam District Court and there appears to be some degree of specialisation among the judges in that court.

The Amsterdam Court of Appeal 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 whose 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 may determine that opt-out applies for foreign potential claimants as well; article 1018f (5) DCCP). There will be a second opt-out opportunity if the Collective Action concludes with a court-approved settlement.

In a WCAM procedure, the persons to whom the settlement applies are determined in the settlement agreement and reviewed by the court. All persons determined in the approved settlement agreement are bound to its terms, subject to opt-out.

**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 the 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 proceedings 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 the 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. Dutch law of evidence in civil matters will, however, likely be amended in the near future in an attempt to encourage evidence gathering before the initiation of proceedings. It is too early to tell what the effects of these intended amendments will be.

### 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?

The final judgment and most interim judgments 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 has been 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 e.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 that 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 that on which 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.

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.

Since the introduction of the WAMCA, the costs rules in Collective Actions deviate in two respects from the general costs rules in Dutch civil procedure. First, if the court finds the



claim manifestly unfounded during the admissibility phase of the collective proceedings, it may multiply the defendant's statutorily fixed lawyers' fees by up to five times at the expense of the claim organisation, unless this would be unreasonable (article 1018l (1) DCCP). Second, if the court establishes a collective compensation scheme, it may, on the request of the claim organisation, order the defendant to pay reasonable and proportionate legal costs and other expenses incurred by the claim organisation, again unless this would be unreasonable (article 1018l (2) DCCP).

Furthermore, 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.

If the court approves a settlement under either the WCAM or the WAMCA, there is of course no obvious winner or loser. The court can, however, determine that one or more parties must bear the cost relating to the settlement approval proceedings (article 1016 (2) DCCP).

**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?**

As mentioned in the answer to question 6.1, costs awards are based and capped on the basis of the interest at stake, the complexity of the litigation and the number of procedural actions; only in exceptional cases may courts award the actual costs.

## 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. This might, however, change in the future, as the Dutch Ministry of Justice and Security has commissioned research into the potential establishment of a revolving litigation fund.

**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 the 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 being 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.

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

There are no statutory compensation schemes specifically 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'?

Claims may be brought on behalf of persons who are not Dutch residents. However, as of 2020, Collective Actions must be sufficiently closely connected to the Dutch jurisdiction (the so-called "scope rule"). This is the case if: the majority of the potential claimants are domiciled in the Netherlands; the defendant is domiciled in the Netherlands and additional circumstances show a sufficiently close link to the Dutch jurisdiction; or the event from which the damage resulted took place in the Netherlands. In literature and case law, questions have arisen as to the compatibility of this requirement with the Brussels I Regulation (recast).

Additionally, the transposition of the CRD into Dutch law will increase the opportunities for foreign organisations to file Collective Actions in the Netherlands.

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

The WAMCA will be amended following the transposition of the CRD, which is generally supposed to promote group actions. The amendments are scheduled to come into effect on 25 June 2023.



**Dennis Horeman** is a member of De Brauw's 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.

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