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## Class actions regime broadened in the Netherlands

**Within the last decade, the Netherlands has become an important venue for class action suits being brought against corporations operating in Europe, before the Dutch courts. There are several reasons for this, such as the limited requirements an organisation must satisfy to have standing as a claimant, the relative ease of initiating class actions, and the wide-ranging possibilities of having settlements declared binding.**

**On 19 March 2019, new legislation was approved which will broaden the class action regime further. This new legislation enables the courts to award damages (where previously they could only rule on liability); it introduces rules aimed at limiting the scope of monetary damages; and allows the court to appoint a principal claimant, and tightens the eligibility requirements for claimant organisations in respect of governance, representativeness and funding. The new legislation is expected to come into force in July or September 2019, but does not affect the possibility of having collective settlements declared binding on the basis of the Class Action (Final Settlement) Act (WCAM).**

### **Introduction of claims for damages**

The most prominent feature of the new legislation is that it introduces the possibility for the Dutch court to award damages in class action cases. Until now, claimant organisations could only obtain a declaratory judgment to establish basis for liability. This type of judgment could be an incentive to reach a class action settlement, which could be declared binding on the class on an opt-out basis (using the WCAM). However, in lieu of a settlement on compensation, an injured party would have to initiate new proceedings on an individual basis. In some cases, this led to thousands of individual cases being brought before the Dutch courts, followed by many years of litigation.

While awarding damages will become an option in class actions, all future class actions are not expected to result in final judgments awarding compensation. The new legislation encourages parties to explore the options of a collective settlement and, therefore, may well lead to an increase in collective settlements. As determining fair compensation will not be straightforward for the courts, the relevant court and the parties are likely to be even more active in exploring settlement options.

### **Stricter criteria for representative organisations**

The new legislation also introduces an important improvement: statutory criteria for representative organisations. Representative organisations must have sufficient expertise

on the matter brought before the court, and their governance must meet certain threshold criteria. Similarly, the organisations must be sufficiently funded, transparent concerning their funding and, (in order to avoid a conflict of interest), must operate on a non-profit basis. The organisation can only bring a claim before the court if all of these requirements are met.

### **Introduction of an exclusive representative**

The new legislation introduces the concept of a principal claimant for the class action. If multiple class actions regarding the same subject matter exist, they will be consolidated and the court will appoint a representative organisation as the principal claimant to act as the exclusive representative, in the interests of all injured parties involved. This appointment is expected to have a positive effect on plaintiffs' professionalism and the efficiency of their case management.

### **Higher thresholds for class actions**

In order for a collective claim to be admissible, the new legislation requires that the case be suitable for class action proceedings, and that it not be, on the surface, unfounded. Furthermore, the representative organisation must explain why submitting a collective claim will be more effective and efficient than submitting individual claims for damages.

The new legislation also contains stricter rules with regard to the jurisdiction of the Dutch courts. A class action will only be admissible if it has a sufficiently substantive connection with the Netherlands. This will be the case if the majority of the claimants are based in the Netherlands, the defendant is domiciled in the Netherlands or where the unlawful event took place in the Netherlands.

### **Opt-in / Opt-out**

Finally, class actions will, as a rule, only apply to Dutch injured parties that have not chosen to opt-out of the class action. Foreign plaintiffs will, in principle, only be bound by the outcome of the class action proceedings if they explicitly opt-in. This will further limit the scope of the class action. If a settlement is reached during the proceedings, there is an additional possibility for an injured party to opt-out. This is slightly different than under the WCAM, which does not feature an opt-in for foreign injured parties. Under the WCAM, all intended beneficiaries are bound by the settlement unless they opt-out.

### **The future**

The new legislation broadens the scope of a Dutch class action claim by including the possibility of awarding damages. It also contains several safeguards to prevent abuse of class action proceedings and to improve representation. The new legislation is likely to improve the quality and efficiency of class actions filed by representative organisations. Given the legislation's strong focus on exploring class action settlements, it may be that a greater number of class actions will be settled, rather than conclude in an award of damages, which may ultimately lead to fewer judgments in class action cases.

