

The Collective Redress Mechanism in The Netherlands

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Overview

Present-day mechanism

Tomorrow's mechanism

Features of the new legislation

Present-day mechanisms

I Collective claims and Public Interest claims (injunction and declaratory judgments; no damages)

II Collective Settlements of Mass Claims

III “Power of Attorney”-model

Tomorrow's mechanisms

I Collective claims and Public Interest claims

and

II Collective Settlements of Mass Claims

are merged into one new mechanism, that includes damages

III "Power of Attorney"-model remains the same

Tomorrow's – merged - mechanism

Wet afwikkeling massaschade in collectieve actie

(Published: Stbl. 2019, 130, 1 April 2019)

Law on redress of mass damages in a collective action

Substantially changed or modified Articles 3:305a-3:305 BW (Dutch Civil Code); entirely new Title 14 A, Rv (Dutch Civil Procedural Law)

in force: probably 1 January 2020 or 1 July 2020

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Jurisdiction and general admissibility:

- all cases go to Amsterdam District Court;
- a few minor exceptions are possible;
- A sufficiently direct connection to the Dutch legal order needs to be demonstrated:
 - *either* a majority of the individual claimants represented live in The Netherlands (NL), *or*
 - the defendant has business in the Neth. and is based in NL, *or*
 - the acts committed occurred in NL

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Defendants:

Either Local outfit of defendant (seller/dealer/national Headquarters)
and/or Main Headquarters abroad

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Features:

- One single regime;
- Detailed standing-requirements;
- Transparency;
- Efficiency;
- “Exclusive Representative” (“lead plaintiff”);
- Inclusiveness/opt-out;

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Features - One single regime :

- Declaratory judgment/injunction/material and immaterial damages/reimbursement;
- Tort and/or Breach of contract

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Features - Detailed standing-requirements:

- Plaintiff: Legal entity: Foundation or Association
- Directors plus separate Supervisory Board;
- Mechanism required to sufficiently include the represented individuals in decision-making of legal entity;
- Publicly accessible internet page on website of legal entity, holding information re by-laws, structure of legal entity, update on litigation, etc.

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Features - Efficiency :

- Requirement for plaintiff to publicly Register new case within two days after Summons is handed to defendant party;
- Case will be put on hold to enable other parties to file a similar case;
- After these three months the Court rules on all standing and admissibility issues;
- Only if admissibility is established the case continues to the merits;

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Features - “Exclusive Representative” (“lead plaintiff”) (art 1018e Rv):

- before moving to the merits the Court also appoints an Exclusive Representative (ER), in case more than one plaintiff has submitted the same or a similar case;
- The ER will be the party that seems best equipped to take responsibility for the conducting of the case; criteria: proven expertise and experience; relative amount of individuals represented (the more the better); other previous representative activities for same sort of claimants;
- Other plaintiff remain seized of the matter also, but not as active participant;
- Opt-out need to be announced by individual claimants after the Court has decided to move on to the merits;

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Finances:

- Maximum transparency on remuneration of Directors of ER;
- Directors receive salary, but cannot have any other financial stake in ER;
- Same for year reports of ER;
- Same for calculation of €€ that the individual claimants represented need to pay;
- Third Party Financing is possible but strictly regulated;

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