

The Dutch Lead the Way in Europe

Dutch Legislation Allows
American-Style Class Action
Claims for Monetary Relief

By Anatoli van der Krans, Director of European Client Development

New legislation allows litigants in Dutch courts to band together, like litigants in US courts, to claim monetary damages in a class action lawsuit.

On March 19, 2019, after years of debate and significant opposition from corporate lobbyists and trade organizations, the Dutch Senate approved legislation introducing collective damages actions in the Netherlands. The legislation, which grew out of numerous drafts and iterations, allows litigants in Dutch courts to band together, like litigants in American courts, to claim monetary damages in a class action lawsuit.

While not having previously offered a formal class action option to seek monetary damages, the Netherlands has always been at the forefront of collective redress in Europe. Since the early nineties, claims organizations representing groups of investors have had the option of using class action claims to obtain declaratory (but not monetary) relief. With this declaratory relief in hand, investors could then commence a separate procedure to sue for monetary damages or negotiate a settlement. After reaching agreement, the

parties could jointly petition the Amsterdam Court of Appeal to declare the settlement binding on the class of investors as defined in the settlement agreement. Under the previous system, shareholders successfully settled disputes against, among others, Royal Dutch Shell (2009, \$350 million), Vedior (2009, \$5.7 million), Converium (2010, \$58.4 million), and Fortis (2018, \$1.3 billion).

Under the new law, however, which will likely become effective next year, a class of plaintiffs may for the first time seek monetary damages directly. Because the European Commission has been pressuring member countries to improve access to justice for claimants who suffered relatively small monetary damages — particularly in the antitrust context — this development in the Netherlands will likely have ripple effects on other legal systems throughout Europe. The Dutch law shows that European justice systems, consistent with their own local laws and



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legal cultures, may offer litigants the ability to seek redress for monetary claims.

Key Features Of The New Legislation

The new legislation has several key features. First, the legislation introduces an option to claim monetary damages in a collective action or on an opt-out basis, lifting the current prohibition on representative organizations seeking monetary damages in a collective action. Similar to the American system of class action litigation, however, the proposed action may result either in a judgment, upon which the presiding court will award damages, or in a settlement, which the court must approve, that is then binding upon the class.

Second, the new legislation utilizes an opt-out mechanism, which creates closure for defendants by preventing subsequent collective actions — based on the same facts and legal issues — to be filed once the collective action has concluded. Initially, the Dutch legislature intended to not limit the size or nationality of the class, so the class could, conceivably, have contained international class members if a majority of the individuals on behalf of whom the collective action is initiated resided in the Netherlands. After heavy criticism, however, the legislature amended the draft law to limit the class to Dutch class members only, while still allowing foreign class members the ability to opt-in. However, in cases in which foreign class members are relatively “easily identifiable,” the presiding court may order that the class automatically extends to those members.

Finally, the legislation provides for the appointment of an Exclusive Representative — similar to the role of a lead plaintiff in a US class action suit — if more than one collective action organization wishes to file an action based on the same facts or legal issues. The Exclusive Representative will litigate the case on behalf of the organizations involved in the collective action. The law is still unsettled, however, as to what criteria the court will utilize to select an appropriate Exclusive Representative. After the appointment of the Exclusive Representative, class members may opt-out to pursue individual actions.

The Legal Process And Proceedings Under The New Legislation

After appointment of the Exclusive Representative, the court immediately sets a schedule, during which the parties attempt to negotiate a settlement. If the parties reach a settlement agreement that the court declares binding, class members have a second opportunity to opt-out of the class-wide settlement. If the parties do not reach a settlement agreement, the litigation proceedings continue. Throughout the proceedings, however, the court has discretion to order the parties to file a settlement proposal when it deems appropriate, and based on the parties’ proposal, the court can determine the amount of compensation that the defendant owes to the class. The law remains unsettled as to whether a court may issue an order that departs from — or ignores altogether — the parties’ proposal.

Similar to the motion to dismiss stage in American litigation, the collective action organizations also must overcome an

assessment, at an early stage of the proceedings, into their standing and admissibility. One of the significant admissibility requirements under the new law is the “scope rule” — which states that the action must have a sufficiently close connection to the Dutch jurisdiction. The scope rule is satisfied if either: a majority of the individuals on behalf of whom the collective action is initiated reside in the Netherlands; the defendant resides in the Netherlands; or the circumstances on which the collective action is based took place in the Netherlands.

The standards for the collective action organizations’ governance, funding, and representation are enhanced under the new Dutch law. The collective action organization must, among other requirements, appoint various boards and an accountant. It must also have a website and the ability to communicate with its stakeholders.

Similar to Rule 23 of the American Federal Rules of Civil Procedure — which sets forth the criteria a lawsuit must meet in order to proceed as a class action — the Dutch legislation also imposes requirements governing the collective action. For instance, echoing Rule 23, the proponents of the Dutch class action must show that collective action is more efficient and effective than initiating individual claims, because the factual and legal questions to be answered are sufficiently common; the number of persons whose interests are protected by the claim is sufficiently numerous; and the class members’ financial interest in the matter is sufficiently large.



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The collective action for monetary damages is a significant and welcome piece of legislation. Together with the mechanisms already available to litigants in the Netherlands, the new Dutch law will put the country at the forefront of collective redress in Europe, and it may serve as a model for similarly innovative legislation across Europe. Do not hesitate to contact BLB&G should you wish to obtain further information on the introduction of the collective damages action in the Netherlands. ■

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