

## Collective Redress in Europe: Developments in Key Jurisdictions—The Netherlands

### IN SHORT

**The Situation:** The Netherlands has a comprehensive system for collective actions and the collective settlement of claims but currently, there is no possibility to seek monetary damages in collective actions.

**The Developments:** A proposed bill introducing a collective damages action was adopted this week by the lower house of the Dutch Parliament. In addition, the European Commission proposed a directive on representative actions for the protection of the collective interests of consumers (COM(2018) 184 final), which [aims to introduce a European collective redress right for consumers](#).

**The Result:** While the introduction of the possibility to claim monetary damages in a collective action poses a risk for defendants, the (proposed) Dutch system, which ensures a high level of finality, strikes a balance between the interests of defendants and aggrieved parties alike.

The Netherlands has a regime for collective actions and collective settlements, but currently there is no possibility to seek monetary damages in a collective action. This is about to change: [a bill introducing a collective damages action is under discussion in the Dutch Parliament](#) ("Bill"). The lower half of the Dutch Parliament adopted the Bill which now awaits discussion in the senate.

The main goal of the Bill is to facilitate an efficient and effective collective resolution of mass claims. The Bill aims to strike a balance between the interests of aggrieved parties to realize their rights and the interests of defendants to be protected against unfounded or frivolous mass claims. A key element of the Bill therefore is that the current restriction to claim monetary damages in a collective action will be lifted, enabling a collective action for monetary damages, while at the same time raising standards for representative entities.



Given the comprehensive system for collective actions and collective settlements already in place and the proposed addition of the possibility to claim monetary damages in collective actions, the Netherlands might prove to be at the forefront of collective redress in Europe.



Under current Dutch law, a representative entity can ask the court for a declaratory judgment regarding the liability of the defendant. The declaratory judgment can then be used as a basis for claiming damages in individual proceedings or for a collective settlement. This is comparable to [the situation in Germany since November 2018](#). Collective settlement proceedings enable the parties to a settlement agreement to jointly ask the Dutch court to declare the settlement binding on all aggrieved persons on an opt-out basis. These proceedings have proven useful in cases involving multiple jurisdictions, as the Dutch court has in the past declared settlement agreements binding on aggrieved parties not residing in the Netherlands, notably in the [Shell](#) and [Converium](#) cases.

If the Bill is also adopted by the senate, it will be possible to also claim monetary damages in the collective action. After the court has established that the defendant is liable, both the representative entity and the defendant must submit a proposal to the court for the settlement of claims. The court will then determine a settlement plan, which marks the end of the proceedings in the first instance. The aggrieved parties may claim compensation pursuant to the settlement plan once the judgment has become irrevocable, or as of the date the judgment is rendered if the judgment is declared provisionally enforceable.

The Bill further sets certain standards for representative entities, which must be met in order for the representative entity to have standing. The requirements mainly concern transparency and governance of representative entities. While third-party funding is allowed, the representative entity should have the final word in any decisions concerning the collective action and a possible settlement. The representative entity will only have standing if the claim to be instigated has a sufficient connection to the Netherlands, which is true if the majority of the aggrieved parties and/or the defendant reside(s) in the Netherlands or if the event(s) giving rise to the damage occurred in the Netherlands and there are additional circumstances that point towards a sufficient connection to the Netherlands. Furthermore, the representative entity does not have standing if it has not made sufficient efforts to reach a settlement with the defendant before starting the class action. There are additional requirements for the courts to accept jurisdiction, such as plausibility that the collective action will be more efficient and more effective than instigating individual proceedings.

If there is more than one representative entity bringing a collective action in relation to the same subject matter, the different actions will be joined and the court will appoint an Exclusive Representative to represent the interests of all the aggrieved parties in the action.

The "New Deal for Consumers" introduced by the European Commission, which includes a proposed directive on a European collective redress right for consumers ("Directive"), also provides for [a system to obtain collective redress in mass consumer harm situations](#). However, the Directive differs from the (proposed) Dutch system under the Bill. In particular—and contrary to the (proposed) Dutch system—the Directive does not yet include a mechanism to coordinate multiple legal proceedings. The Bill furthermore introduces stricter requirements than the Directive for the admissibility of representative entities. The Bill also provides for more possibilities to conclude a collective action definitively because aggrieved parties are bound by the court's judgment unless they explicitly opt-out of the proceedings. In contrast, the Directive leaves it up to the Member States to choose between an opt-out or an opt-in procedure.

Given the comprehensive system for collective actions and collective settlements already in place and the proposed addition of the possibility to claim monetary damages in collective actions, the Netherlands might, if the Bill is adopted, prove to be at the forefront of collective redress in Europe and might well be an example for the European Commission and the Member States in adjusting the Directive.

## TWO KEY TAKEAWAYS

1. The Netherlands is consolidating its status as a venue for collective actions and collective settlements.
2. While the introduction of the possibility to claim monetary damages in a collective action poses a risk for defendants, the (proposed) Dutch system strikes a balance between the interests of defendants and aggrieved parties alike and could well be an example for the European Commission and the Member States for the proposed Directive as the legislative process progresses.



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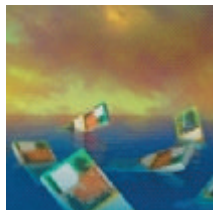


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