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Update: Mass claims & class actions

Collective actions have become a global trend over the past two decades, particularly in areas related to environmental, social and governance (ESG) issues. This update provides an overview of recent developments in the Netherlands and the EU. If you are interested in a more elaborate overview of these developments, please [click here](#).

Litigation

Expansion of mass claims in the Netherlands: the WAMCA as a game changer

The Act on Collective Damages Claims (WAMCA) has been a game changer in Dutch mass claims proceedings. It allows the channelling of claims of different parties via one claim organisation acting on their behalf. The WAMCA has international appeal for several reasons, such as the existence of multiple jurisdiction grounds. Another advantage is that the Dutch courts approach WAMCA-proceedings rather flexible and collaborative.

Litigation

Competition Law

Jurisdiction of the Dutch courts for claims based on competition law infringements: ECJ guidance

The Netherlands is recognised as one of the premier European jurisdictions for damages claims arising from competition law infringements. The popularity of the Dutch jurisdiction has various reasons, including experience, costs, and certain aspects of Dutch procedural law. Another benefit is that claims can often be initiated against non-Dutch co-defendants with the use of Dutch co-defendants as anchor defendants to help establish jurisdiction for the Dutch courts. Several judgments by the European Court of Justice offer clear guidance on this practice, which help to determine strategy.

Litigation

EU product liability reform: new PLD streamlines process for claimants

The new Product Liability Directive introduces fresh criteria to guide courts in assessing product defects, including compliance with safety standards and adaptability post-deployment. This directive aims to simplify legal processes for claimants acting individually or collectively. It includes mechanisms like disclosure and rebuttable presumptions to aid consumers who struggle with proving their claims independently.

Litigation

ESG

Judicial intervention on the 'E' in ESG may become more frequent

EU ESG legislation resonates outside of the EU, as several ESG laws will apply directly to non-EU companies with turnover in the EU. Rulings by both the Dutch Supreme Court in the Urgenda case and the European Court of Human Rights in the Verein KlimaSeniorinnen v. Switzerland case have set precedents that NGOs may leverage to argue for corporate human rights responsibility. We believe that judicial intervention may become more prevalent if political action fails to adequately address legislative ambitions. There is also a trend to bring cases against foreign companies in Dutch courts, using on a Dutch anchor defendant, as Dutch courts show a certain willingness to accept jurisdiction for such claims.

Litigation

Information & Communication Technology

Privacy & Data Protection

Looking ahead: rules for the use, protection and liability of artificial intelligence

The General Data Protection Regulation (GDPR) has enabled collective redress for data protection breaches in the EU, but legal uncertainties remain, particularly with regard to claims without individual mandates. Recent decisions by the Dutch courts may provide further guidance in this regard. In addition, forthcoming regulations such as the AI Act and the AI Liability Directive aim to address liability in the use of AI, potentially leading to more collective actions and a new era of accountability for AI-related harms in the European market.

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