The Netherlands Amends and Broadens its Legal Framework on Collective Claims

On 19 March 2019, the Dutch Parliament adopted the act aimed at facilitating the litigation of collective damages claims (the ***Act***).

Under the previous regime (see previous post), Dutch courts could only render a declaratory judgment establishing that the defendant acted unlawfully. As a claim for damages could not be brought in collective actions, claimants had to resort to the *Dutch Collective Settlement of Mass Claims Act* (***WCAM***) in order to settle the case with the defendant, after which the Amsterdam Court of Appeal declared that settlement generally binding.

This situation has now changed with the adoption of the Act as it introduces the possibility to claim damages in a collective action before Dutch courts.

In addition, the Act also adds stricter requirements regarding the standing of representative organisations. While individual plaintiffs taking a role in class actions are inadmissible under Dutch law, the Act contains some key provisions

regarding the qualification and characteristics of "*representative organisations*" (*i.e.*, claim vehicles that take a role in the litigation and settlement negotiations with the defendant). The Act also contains specific provisions on the conduct of the proceedings.

First, the Act makes explicitly clear that, in order for a class action to be admissible before Dutch courts, collective claims will need to have a sufficiently strong connection with the Netherlands. This will be the case when the majority of the injured persons, or the defendant, is based in the Netherlands. Alternatively, collective claims will be deemed admissible when the injurious event(s) took place in the Netherlands.

Secondly, the Act also provides that Dutch courts will only substantively examine collective claims if the claimants sufficiently demonstrate that a collective claim will be more effective and efficient than the lodging of individual claims. In addition, collective claims may be deemed inadmissible when a court determines on a *prima facie* basis that such claims are (clearly) frivolous or unfounded.

A third significant element of the Act is the fact that, when multiple representative organisations bring different class actions relating to the same event or similar facts, the claims will be consolidated and the court will appoint one of the representative organisations as a "*exclusive representative*" whose role will be similar to a "*lead plaintiff*" in the U.S. system. That exclusive representative will litigate the case on behalf of the class.

Fourth, once a judgment will be rendered by the Dutch court, that judgment will be binding upon all Dutch residents belonging to the class, with the exception of those who had opted-out. With respect to non-Dutch citizens, such persons will need to join the class (*i.e.*, opt-in) in order to benefit from the Court's judgment.

Finally, the Act also explicitly provides that courts will preliminarily request the parties to try to settle their case before moving forward to the litigation phase. If the parties are able to settle their dispute, then the settlement agreement will be authorised by the court.

The Act was published in the Dutch Official Journal on 1 April 2019. The exact date of its entry into force remains to be decided. Once in force, the amendment will apply to collective claims that are based on (allegedly) injurious events which took place after 15 November 2016.
