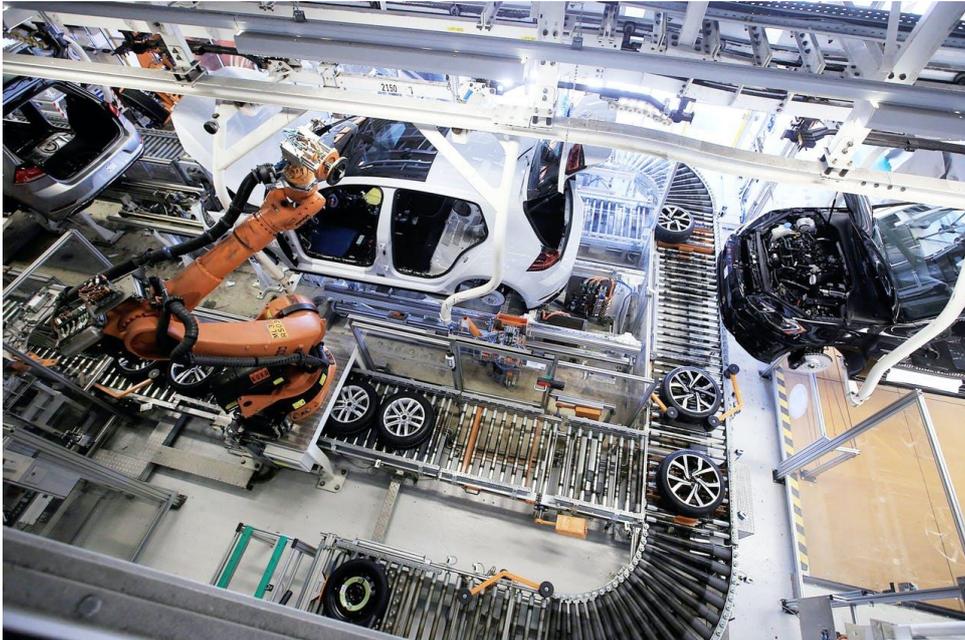


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Martijn Pols (reporter), Amsterdam

Isabella Wijnberg, Senior Associate at Houthoff, was interviewed about the new European class action rules by the Financieele Dagblad, the leading Dutch Financial Newspaper (November 2020)

Brussels' new class action rules: companies under pressure



Volkswagen factory in Wolfsburg in Germany. Following Dieselgate, the car manufacturer faced a series of class actions. Photograph: Krisztian Bocsi/Bloomberg.

Summary

- New European rules for class action lawsuits impose minimum requirements on Member States to expand the possibilities for consumers to collectively enforce their rights.
- The rules will change very little in the Netherlands, which was already ahead of the curve.
- However, Dutch companies may face a wave of new claims from abroad.

New European rules for class action lawsuits will put Dutch companies under greater pressure to treat consumers properly. Although the new Directive will not trigger any major changes in Dutch law, it could potentially make the Netherlands more attractive to angry consumers.

Last Tuesday, the European Parliament voted to adopt the new Directive on representative actions. Under this new Directive, Member States have two years to update their domestic laws to give

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consumers the possibility to bring collective claims for damages. While the Netherlands is ahead of the curve in Europe, and already offers various possibilities for class action lawsuits, this is a new concept in many other parts of Europe.

Widely publicised cases

In a class action lawsuit, large groups of consumers or companies collectively bring legal action to claim damages – for example if a price cartel has been dismantled, if investors have lost money as a result of embezzlement at a publicly traded company or if a bank has mis-sold products on a large scale. The scope of the European Directive is explicitly limited to consumer grievances only.

Some recent cases that have been widely publicised include the claims against the truck cartel for overpricing their trucks and against Volkswagen in connection with the emissions scandal. After Fortis failed, investors in the bank collectively brought legal action. Class actions against Salesforce, Oracle and Facebook are still pending in the Netherlands.

What this will mean for the Netherlands

For many European countries, the new Directive represents the first introduction of class action rules. As a result, Isabella Wijnberg, a legal expert specialising in class actions at law firm Houthoff, expects that foreign customers will look for reasons to bring strong cases in the Netherlands. “The Netherlands was already a popular country for this kind of litigation, and that popularity is likely to increase. One reason is that commercial operators will see an investment opportunity in financing claims.”

Consumer representatives are pleased with the news of the Directive. “This is a big step forward for European consumers, particularly in countries where it’s currently impossible, or very difficult at least, to bring a class action,” explains Rob Okhuijsen of law firm Hausfeld, which specialises in class action lawsuits. “It’s bizarre, after all, that you can bring a claim for damages against Volkswagen in the Netherlands, but not in other European countries, isn’t it?”

He disagrees that the Netherlands is a ‘claims paradise’, or that the new rules will amplify that trend. “The best remedy for class actions is to prevent any reason to bring a claim. That’s the best cure, if your company is worried about groups of consumers.”

Houthoff’s Wijnberg also warns companies to be prepared for possible collective claims. She provides legal assistance to companies that draw the ire of large groups of consumers. “What many companies fail to realise is that these claims can have an enormous impact on their business, particularly in terms of their reputation.” She recommends putting more effort into properly handling consumer complaints and appointing an ombudsman to avoid consumers taking their grievances to court.

Law professor Ianika Tzankova of Tilburg University, who specialises in class actions, does not expect an immediate flood of new claims coming into the Netherlands. Although many countries will need to decide what party may handle class actions, she explains, this does not mean that anyone can simply set up a foundation, as Dutch law currently allows.

Logically, it seems inevitable that companies will come under greater pressure. “It’s difficult to prove, but anecdotally some companies have indicated that they’ll modify their behaviour in response to this type of legislation.”