

Houthoff Class Action Survey: the Netherlands

The Houthoff Class Action Survey 2024 provides an eye-opening journey into the future of class actions. It includes around 40 interviews with thought leaders from 12 different countries, preceded by an overview of the current class action regime in each jurisdiction. This is the overview for the Netherlands.

The Dutch legal system has two different collective redress mechanisms: class actions and class settlements. These differ from mass proceedings where claims are bundled based on assignment or representation by mandate.

Class actions are governed by Articles 3:305a to 3:305e of the Dutch Civil Code. They allow a representative organisation to initiate proceedings to protect the similar interests of an unnamed group (the class). The representative organisation is either a foundation (*stichting*) or an association (*vereniging*) with full legal capacity. A representative organisation can submit a claim for a declaratory judgment, injunctive relief, specific performance or damages. The Act on redress of mass damages in a collective action (*Wet afwikkeling massaschade in collectieve actie*, WAMCA) that entered into force on 1 January 2020 allowed the possibility of claiming monetary damages. This applies to class actions brought from that date for events that took place on or after 15 November 2016.

The WAMCA also has stricter requirements for the standing of a representative organisation and the scope of class actions. Furthermore, it introduced procedural changes to make proceedings more efficient and effective (Articles 1018b to 1018n of the Code of Civil Procedure). These included the appointment of an exclusive representative, the consolidation of class actions brought for the same events and on similar questions of fact and law, and the obligation for the parties to try and negotiate a settlement agreement after an exclusive representative has been appointed.

Those who do not want to be represented in a class action can opt out after the certification stage of the proceedings in which the exclusive representative is appointed. Beneficiaries residing outside the Netherlands can opt in, unless the court decides an opt-out regime applies. If a settlement agreement is reached and declared binding, there is a second opportunity to opt out. If no agreement is reached, the proceedings will continue on the merits. The court can order the parties to submit a proposal for settling the claim if it is for money. A judgment will bind the parties and all class members. A judgment in class actions to which the WAMCA does not apply only has *res judicata* authority between the parties involved in the proceedings. However, it is likely to be followed in individual follow-on proceedings unless the individual claimant objects.

The Representative Actions Directive (RAD) was transposed into Dutch law by the Implementation Act (*Implementatiewet richtlijn representatieve vorderingen voor consumenten*), which was published in *Staatsblad* 2022, 459. The Implementation Act entered into force on 25 June 2023. Most of the RAD's requirements were already included in the WAMCA. The implementing provisions only changed the WAMCA as far as necessary to comply with the RAD. Specifically, these changes applied primarily to representative actions falling under its scope, with a few exceptions.

The Act on Class Settlement of Mass Damages (*Wet collectieve afwikkeling massaschade*, WCAM) allows the parties in a settlement agreement to jointly ask the Amsterdam Court of Appeal to declare the settlement binding on all beneficiaries under the settlement (the class). The Court assesses factors like the reasonableness of the agreed compensation. Class members who do not want to be bound can opt out. The class settlement proceedings are independent proceedings, separate from class action proceedings. So far, nine class settlement agreements have been declared binding since the WCAM entered into force in July 2005.

Class actions | Collectieve acties (including RAD)

Scope	General.
Access granted to	Foundation or association with full legal capacity.
Opt-in or opt-out	Since WAMCA: opt-out, but opt-in for beneficiaries residing outside NL unless the court decides that an opt-out regime applies. This exception does not apply to collective actions under the RAD. Prior to WAMCA, neither opt-in nor opt-out mechanisms were in place.
Declaratory relief or damages	Since WAMCA: both. Prior to this, no damages could be claimed.
Frequently used	Yes.
Regulatory framework	Articles 3:305a-3:305e Dutch Civil Code; Articles 1018b-1018n Code of Civil Procedure.
Alternatives used in practice	Assignment of claims and representation by mandate.

Class settlements

Binding class members after court approval	Yes, WCAM and WAMCA settlements.
Opt-in or opt-out	WCAM: opt-out. WAMCA: opt-out.
Regulatory framework	WCAM: Articles 7:907-7:910 Dutch Civil Code, Articles 1013-1018a Code of Civil Procedure. WAMCA: Articles 1018g-1018h Code of Civil Procedure.

Third party funding

Regulated by law	Article 3:305a (2)(c) (indirectly) and (2)(f) (for collective actions under the RAD) Dutch Civil Code; Claim Code 2019 (a body of soft law).
Frequently used	Yes, in damages class actions.

Good to know

On 22 July 2024, there were 28 damages cases on the public register for collective actions, dating back to 1 January 2020. In some of these cases, more than one representative organisation had brought a writ. Most of these cases involve third party litigation funding, often provided by investors or law firms from the US or UK. The court has not yet ruled on the merits in any of these cases.

In October we organise an interactive seminar where the main results of this research will be presented.

[Read more](#) on our website about this event and [pre-order the Houthoff Class Action Survey 2024](#).

CONTACT

If you have any questions about class actions or the survey, please feel free to contact Albert Knigge or Isabella Wijnberg.



ALBERT KNIGGE
ADVOCaat | PARTNER
T +31 20 605 65 62
M +31 6 5184 5323
a.knigge@houthoff.com



ISABELLA WIJNBERG
ADVOCaat | ADVISER
T +31 20 605 65 09
M +31 6 5316 8462
i.wijnberg@houthoff.com