

# NEWSFLASH: Key Development 2020

## New Dutch Act on Class Actions

Earlier this year, the bill 'Class Action Financial Settlement Act' (Wet afwikkeling massaschade in collectieve actie (WAMCA)) was adopted in the Netherlands. This Act will enter into force on 1 January 2020 and makes it possible, among other things, to claim damages in a class action. Something that was not possible before, because only a declaratory judgment stating that the party sued is liable could be claimed, or a binding declaration of a settlement reached between the interest group and the party sued. The WAMCA will now allow the courts to award damages as well. At the same time, this Act aims to make a settlement more attractive by improving the quality of interest groups, a better coordination of class action proceedings and more finality.

The WAMCA applies to all class actions instituted on or after 1 January 2020 that relate to events that occurred on or after 15 November 2016. The Act can therefore have practical relevance for existing claims as well.

It is difficult to say whether the WAMCA will result in an increase of class actions in the Netherlands. The initial fear for 'American excesses' seems to be largely taken away with the present scope rule. It is clear however that the WAMCA will enable interest groups to claim damages in a wide range of situations, varying from misleading financial products to defective or unsafe consumer products.

The WAMCA can also have consequences for insurance coverage. Many liability insurance policies include a so-called 'serial damage clause', in which it is stipulated that a range of relating circumstances can be seen as one circumstance. This will have consequences for both the deductive (this will be due only once) as well as the insured sum (the coverage will in that case be limited to one time the insured sum). Especially when the value of a collective claim supersedes the insured sum, this can have a great financial impact on the insured. Insurers therefore may want to offer liability insurances with a special (higher) sublimit for collective claims.

For more information on the WAMCA and/or its consequences, please contact Peter van den Broek or Maurits Oudenaarden.



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