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Netherlands - Consultation document on Dutch draft bill on Redress of Mass Damages in a Collective Action.

On 7 July 2014, the Dutch Minister of Security and Justice started a consultation on a draft bill on a Collective Damages Action. Current Dutch law does not provide for a collective damages action. It provides for a collective damages action in which a legal entity can ask the court to give a judgement on the liability of a person. In such collective action the court cannot decide on the damage incurred by the persons on whose behalf the collective action is brought.

If, in case of a mass claim, a collective settlement is reached between a legal entity acting on behalf of the victims and the person held liable, the Amsterdam Court of Appeal can make that settlement binding in relation to the entire group of victims under the Dutch Act on Collective Settlement of Mass Damages Claims. However, at the moment it is not possible under Dutch law to claim damages in a collective action.

The question of whether and to what extent a party suffered damage must be answered on an individual basis. The legal entity acting on behalf of the victims will ask the Dutch court for a declaratory judgment regarding the liability of the responsible person. If the liability of the responsible person is established in a judgment between the responsible person and the legal entity, each injured party must then bring its own claim for compensation.

The draft bill aims to enhance the efficient and effective redress of mass damages claims and to strike a balance between better access to justice in a mass damages claim and the protection of the justified interests of persons held liable. It contains a five-step procedure for a collective damages action before the Dutch district court.

Legal entities which fulfil certain specific requirements (expertise regarding the claim, adequate representation, safeguarding of the interests of the persons on whose behalf the action is brought) can start a collective damages action on behalf of a group of persons. The group of persons on whose behalf the entity brings the action must be of a size that justifies the use of the collective damages action. Those persons must not have other efficient and effective means to obtain redress. The entity must have tried to obtain redress from the person held liable amicably.

The consultation has led to divergent reactions. Collective interest organisations such as the *Vereniging van Effectenbezitters* and the *Verbond van Verzekeraars* have reacted positively to the draft bill, whereas certain other parties have voiced their concern about the proposed collective damages action, mostly due to a fear of an “American claims culture” with parties bringing unfounded collective claims against (listed) companies.

The consultation period was closed on 1 October 2014. The reactions received will now be studied and the proposed draft bill possibly amended on the basis thereof. After the Minister has decided on the definitive draft bill, the most important results of the consultation will be summarised in a report.

The public consultation documentation and the reactions thereto can be seen [here](#) (in Dutch).

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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