

# **Act of 20 March 2019 amending the Civil Code and the Code of Civil Procedure on the disposition of collective compensation claims in a collective action (Act on the disposition of collective compensation claims in a collective action)**

**This Act entered into force on 1 January 2020**

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## Civil Code

Book 3

### Article 305a [Admissibility]

1. A foundation or association with full legal capacity may initiate an action seeking to protect similar interests of other persons, provided that it advances those interests in accordance with its articles of association and that those interests are adequately safeguarded.
2. The interests of the persons which the action seeks to protect are adequately safeguarded where the legal entity as meant in Article 305a(1) is sufficiently representative, given its constituency and the size of the claims represented, and where it has:
  - a. supervisory body, unless Article 2:9a(1) of the Civil Code has been implemented;
  - b. appropriate and effective mechanisms for participation or representation in decision-making by persons whose interests are the subject of the action;
  - c. sufficient resources to bear the costs of bringing an action, and sufficient control over the action;
  - d. a publicly accessible internet page, where the following information is available:
    - 1°. the articles of association of the legal entity;
    - 2°. the management structure of the legal entity;
    - 3°. the most recently adopted annual outline report of the supervisory body on its supervision;
    - 4°. the most recently adopted report of the board of directors;
    - 5°. the remuneration of directors and members of the supervisory body;
    - 6°. the objectives and methods of the legal entity;
    - 7°. an overview of the state of affairs in pending actions;|
    - 8°. where applicable, information on the calculation of the contribution sought from the persons whose interests are protected by the action;
    - 9°. an overview of how these persons may join or exit the legal entity;
  - e. sufficient experience and expertise with regard to initiating the action and moving it forward.
3. A legal entity as referred to in Article 305a(1) is admissible only if:
  - a. the directors involved in the formation of the legal entity, and their successors, are not directly or indirectly motivated by profit which is realised through the legal entity;
  - b. the legal action has a sufficiently close connection with the Dutch legal system. There is a sufficiently close connection with the Dutch legal system where:
    - 1°. the legal entity sufficiently shows that it is likely that the majority of the

persons whose interests are protected by the action have their habitual residence in the Netherlands;

or

2°. the person against whom the action is brought is domiciled in the Netherlands and additional circumstances indicate a sufficient connection with the Dutch legal system;

or

3°. the event or events to which the action relates took place in the Netherlands;

- c. in the circumstances, the legal entity has made sufficient efforts to achieve the claim's object in negotiations with the defendant. A period of two weeks after the defendant has received a request for consultation stating the object of the claim is in any event sufficient for this purpose.
4. An action as meant in Article 305a(1) may seek an order that the defendant publish the judgment, or cause it to be published, in a manner to be determined by the court and at the expense of the party or parties designated by the court.
  5. A legal entity as meant in Article 305a(1) prepares a management report and annual accounts in accordance with the provisions for associations and foundations in Book 2 of the Civil Code, Title 9 and Articles 49 and 300. Without prejudice to the provisions of Book 2, Title 9 of the Civil Code, the management report is published on the publicly accessible internet page of the legal entity within eight days of its adoption.
  6. The court may declare a legal entity as referred to in Article 305a(1) admissible, without the requirements of Article 305a(2)(a) to (e) and Article 305a(5) being satisfied, where the action is brought for an idealistic purpose and a very limited financial interest or where the nature of the claim by the legal entity referred to in Article 305a(1) or the nature of the persons whose interests are protected by the action so warrants.
  7. Where Article 305a(6) is applied, the claim may not be for monetary damages. There is a central register of collective actions as referred to in this Article. This register is kept by an authority to be designated by executive decree.

#### **Article 305b [Domestic public body]**

1. A legal entity as meant in Article 2:1 may initiate an action seeking the protection of similar interests of other persons, insofar as it has been entrusted with the task of advancing these interests.
2. Article 3:305a (3), introductory words and parts c, and (4) apply mutatis mutandis.

#### **Article 305c [Foreign organisation or public body]**

1. An organisation or public body established outside the Netherlands and included on the list as meant in Article 4(3) of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ 2009 L 110) may initiate an action for the protection of similar interests

of other persons habitually resident in the country in which the organisation or public body has its registered office, insofar as the organisation advances those interests in accordance with its objective or the public body has been entrusted with advancing those interests.

2. Article 305a(2) to (7) apply mutatis mutandis.

A foundation or association with full legal capacity that has its registered office in the Netherlands and, in accordance with its articles of association, advances the interests of end-users of goods or services not intended for a profession or business, may, in order to be included on the list referred to in Article 305c(1), request the Minister of Justice to inform the Commission of the European Communities that it may initiate an action to protect these interests. In that event, the Minister of Justice also informs the Commission of the name and objective of the foundation or association.

## **Code of Civil Procedure**

Title 14A Procedure in collective actions and collective compensation schemes

### **Article 1018b [Scope]**

1. This Title applies to collective actions as meant in Articles 3:305a and 3:305c of the Civil Code. With the exception of Article 1018c(1), this Title does not apply to cases as meant in Article 254.
2. Book 1, Title 2 applies, unless provided otherwise in this Title.
3. Article 93 does not apply.

### **Article 1018c [Initiating a collective action and next steps]**

1. Without prejudice to Article 111(2), the writ of summons initiating the collective action, as meant in Article 3:305a of the Civil Code, states:
  - a. a description of the event or events to which the collective action pertains;
  - b. a description of the persons whose interests the collective action is intended to protect;
  - c. a description of the degree of commonality of the questions of fact and law to be answered;
  - d. a description of how the admissibility requirements of Article 3:305a(1) to (3) of the Civil Code or how the grounds for Article 305a(6) applicability are met;
  - e. the information enabling the court to appoint an exclusive representative for this collective action, in the event that other collective actions for the same event are initiated under Article 1018d;
  - f. the obligation of the claimant to enter a note of the case in the register, as meant in Article 1018c(2), and to state what the consequences are of that note under this Article.
2. In derogation from Article 125(2), the writ of summons is filed with the court office within two days of the date of the writ of summons and entered in the central register for collective actions as meant in Article 3:305a(7) of the Civil Code. Failure to do so results in inadmissibility. A copy of the writ of summons is attached to the register entry.
3. Except where the court forthwith declares the claimant inadmissible in accordance with Article 1018c(2), it stays the case until a period of three months has elapsed following the entry in the register referred to in Article 1018c(2). Except where, under Article 1018d(2), this period has been extended or another collective action has been initiated in respect of the same event or events, the case moves forward in its present state after expiry of the period.

4. The court calendar date for submission of the statement of defence as meant in Article 128(2) is set at six weeks after expiry of the period as meant in Article 128(3).
5. The collective claim is only dealt with on the merits if and after the court has decided that:
  - a. the claimant meets the admissibility requirements of Article 3:305a(1) to (3) of the Civil Code, or that on the basis of Article 1018c(6) these requirements need not be met;
  - b. the claimant sufficiently shows that it is likely that bringing such a collective action is more efficient and effective than bringing an individual action, on account of a sufficient commonality of the factual and legal questions at issue, a sufficient number of persons whose interests the action seeks to protect and, if the claim is for damages, these persons' having a sufficiently large financial interest, individually or jointly;
  - c. the collective claim is not, after summary enquiry, without merit at the time the proceedings are initiated.
6. In derogation from Article 128(3), the defendant may elect to raise only the defences that relate to the items meant in Article 1018c(5)(a) to (c) until the court decides on these defences.
7. If a collective action is initiated for the same event or events after the collective action referred to in Article 1018c(1) has become pending, but before the time limit referred to in Article 1018d has started running, the case is, if necessary after referral, joined with the collective action already pending.

#### **Article 1018d [Multiple collective actions]**

1. Within three months of the entry in the register as meant in Article 1018c(2), a legal entity as meant in Article 3:305a of the Civil Code may file a collective action for the same event or events to which the collective action as meant in Article 1018c(1) relates, regarding similar questions of law and fact, and referencing the entry. The collective action is initiated before the same court as the court in which the collective action previously entered in the register was initiated. Article 1018c(1) applies.
2. The court may extend the period as meant in Article 1018d(1) up to three months if, within one month of the making of the entry, a legal entity as meant in Article 3:305a of the Civil Code declares that the period of three months is not sufficient and, at the court office, referencing the entry in the register, enters a note of its intention to initiate a collective action for the same event or events as those to which the collective action as meant in Article 1018c(1) relates.
3. For the purposes of Book 1, collective actions initiated in accordance with this Article are treated jointly as one case after entry on the court calendar. The court calendar date stated in the writ of summons is four weeks after expiry of the time limit under Article 1019d(1) and (2).

**Article 1018e [Exclusive representative]**

1. The court designates the most suitable claimant as the exclusive representative from among the claimants who have brought a collective action in accordance with Article 1018c or Article 1018d and who meet the admissibility requirements in Article 3:305a(1) to (3) of the Civil Code, taking the following circumstances into account:
  - a. the size of the group of persons on whose behalf the claimant acts;
  - b. the size of the financial interest represented by this group;
  - c. other work that the claimant performs for the persons that it represents in or out of court;
  - d. previous work carried out by the claimant or collective actions brought by the claimant.
2. This decision is not subject to any remedy.
3. The court also assesses the precise substance of the collective action, the precisely defined group of persons whose interests the exclusive representative represents in that collective action, and whether the site-specific nature of the collective claim justifies the case being heard by another court.
4. In these proceedings the claimant appointed as exclusive representative acts in the interests of all persons in the precisely defined group as meant in Article 1018e(2) and of the claimants that have not been appointed as exclusive representatives.
5. Claimants that are not appointed as exclusive representative remain parties to the proceedings.
6. The exclusive representative carries out the acts of process. The court may direct that non-designated claimants may carry out acts of process.
7. If the nature of the collective claim or the claimants or the interests of the persons they are representing so warrant, the court may decide to designate multiple exclusive representatives in a collective action.
8. The exclusive representative enters the judgment under this Article in the register as meant in Article 1018c(2).

**Article 1018f [Opting out and opting in]**

1. Proceedings on a collective claim do not affect and cannot cause binding obligations upon persons belonging to the precisely defined group of persons whose interests are represented in this collective action if, within a period to be determined by the court of at least one month after the announcement as meant in Article 1018f(3) of the decision as meant in Article 1018e(1) and (2), they have notified the court office in writing that they wish to opt out of their interests being represented in this collective action. A previous collective interruption of the limitation period of the claim interrupts the limitation period only with respect to these persons when they perform an individual act of interruption within six months after they have opted out of the

collective action under this Article. If the number of persons who, under this Article, have opted out of the collective action is too large to justify further proceedings, the court may decide not to move forward with the proceedings.

2. The judgment designating the exclusive representative and defining the collective action and the precisely defined group of persons in whose interests the exclusive representative acts is available at the court office for inspection by these persons. A note to this effect is also entered in the register as meant in Article 1018c(2). The court may order that the judgment and, if necessary, a translation into one or more languages other than Dutch, be published on one or more websites as designated by the court, including the internet page of the exclusive representative as meant in Article 3:305a(2) of the Civil Code, in such a way that these can be stored by the persons referred to for purpose of later access.
3. The known persons in whose interests the exclusive representative acts are notified of the designation of the exclusive representative, of the collective action, and of the precisely defined group of persons in whose interests the exclusive representative acts. This notification is done as soon as possible and by regular mail, unless the court decides otherwise. An announcement is also made as soon as possible in one or more newspapers designated by the court. In any event, the court directs how these persons may opt out in accordance with Article 1018f(1), or agree to the representation of their interests in this collective action in accordance with Article 1018f(5). The court also directs how the judgment may be inspected or a copy may be obtained. The court may order that information other than that referred to in this paragraph be noted. Except where the court decides otherwise, the exclusive representative ensures that the notification and announcement as meant in this paragraph are made. The court may order that the information as meant in this paragraph may also be published in another way. If there are persons belonging to the precisely defined group of persons in whose interests the exclusive representative acts, who do not have a domicile or abode in the Netherlands and do not fall within the scope of binding international or EU rules prescribing a method of announcement, the court orders an announcement for the benefit of these persons be made in a manner the court directs. If necessary this announcement may be done in one or more languages other than Dutch.
4. No action as referred to in Article 3:305a of the Civil Code may be initiated for persons who, under this Article, have opted out, where that action is based on similar factual and legal questions regarding the same event or events.
5. The proceedings on the collective claim affect, and may bind, persons belonging to the precisely defined group of persons whose interests are represented for purposes of the collective action and who do not have domicile or abode in the Netherlands, if they have informed the court office in writing that they opted in to this collective action within a period, to be determined by the court, of at least one month after the announcement as meant in Article 1018f(3) of the judgment as meant in Article 1018e(1) and (2).
6. At any party's request, the court may direct that, in derogation from Article 1018f(5), Article 1018f(1) applies to persons belonging to the precisely defined group of



persons whose interests are represented for purposes of this collective action and who do not have a domicile or abode in the Netherlands.

#### **Article 1018g [Settlement agreement]**

After designating an exclusive representative as meant in Article 1018e, the court sets a time limit for negotiations on a settlement agreement, which must in any case satisfy the provisions of Article 7:907(2)(a) to (f) of the Civil Code and, if no agreement as meant in this provision is reached, for expanding the grounds of the claim and for expanding the defence, provided the defendant previously presented a limited defence under Article 1018c(5).

#### **Article 1018h [Approval of settlement agreement]**

1. If the parties conclude a settlement agreement as meant in Article 7:907(2) of the Civil Code, this agreement is submitted to the court for approval.
2. Articles 1013(1) and (2) and (4) to (8), 1014, 1016 and Article 7:907 of the Civil Code apply mutatis mutandis to approval of the agreement.
3. Article 1017(2) to (4) and Articles 7:908(1), (3) and (5), 7:909 and 7:910 of the Civil Code apply mutatis mutandis to an approved agreement.
4. The court may give further directions for the notifications and announcements referred to in Article 1017. The exclusive representative ensures that the approved agreement is announced on the internet page as meant in Article 3:305a(2)(d) of the Civil Code and that it is noted in the register referred to in Article 1018c(2).
5. Article 1018f(1) to (4) apply mutatis mutandis to the approved agreement.
6. A Supreme Court appeal may be initiated only where approval is denied and may only be initiated jointly by the parties. Article 1018(2) applies mutatis mutandis.

#### **Article 1018i [Collective compensation scheme]**

1. If the collective claim is a claim for monetary damages, the court may, before deciding on a collective compensation scheme, order the exclusive representative and the defendant to submit a proposal for such scheme. This proposal must in any event satisfy the provisions of Article 7:907(2)(a) to (f) of the Civil Code for:
  - the persons belonging to the precisely defined group of persons whose interests are represented for purposes of this collective action who have not opted out in accordance with Article 1018f; and
  - the persons belonging to the precisely defined group of persons whose interests are represented for purposes of this collective action and who do not have a domicile or abode in the Netherlands and who, in accordance with Article 1018f, have opted in.
2. The court sets the time limit for submitting a proposal.

3. If a party fails to comply, the court may draw such adverse inferences as it considers appropriate.
4. Using the proposals referred to in Article 1018i(1), the court determines a collective compensation scheme which compensates the damage suffered by the persons referred to in Articles 1018i(1)(a) and (b).
5. For the purposes of Book 6, Section 10, Title 1 of the Civil Code, the court ensures that:
  - it determines the compensation for these persons in classes where possible,
  - the compensation scheme in any event satisfies the provisions of Article 7:907(2)(a) to (f) of the Civil Code,
  - the amount of the compensation awarded is reasonable, and
  - the interests of the persons involved are adequately safeguarded in any other relevant respects.
6. Article 7:907(1), last sentence, and Article 7:907(6) of the Civil Code apply *mutatis mutandis*.
7. Before determining a compensation scheme as meant in Article 1018i(2), the court may order that one or more experts submit a report on the issues relevant to the substance of the scheme.

#### **Article 1018j [Judgment]**

1. Known persons for whose benefit the compensation scheme is determined are notified of the judgment determining the compensation scheme as soon as possible and by regular mail, unless the court decides otherwise. The judgment is announced as soon as possible in one or more newspapers designated by the court. The announcement states a brief description of the compensation scheme as directed by the court, in particular how compensation may be obtained from the defendant or how the compensation scheme may otherwise be invoked and, if the compensation scheme so determines, the time limit within which a claim must be made. The announcement states how the judgment determining the compensation scheme may be inspected or a copy may be obtained. The court may also order other information be notified.

Unless the court decides otherwise, the defendant arranges for the notification and announcement referred to in Article 1018j(1). The court may order that the information referred to in Article 1018j(1) be published in another manner. If there are persons for whose benefit the compensation scheme has been determined who do not have a domicile or abode in the Netherlands and who do not fall within the scope of binding international or EU rules prescribing a method of announcement, the court directs how the announcement for these persons be made. If necessary, this is done in one or more languages other than Dutch.

2. The exclusive representative ensures that the judgment referred to in the preceding paragraph is announced on the internet page referred to in Article 3:305a(2)(d) of the Civil Code and that it is entered in the register referred to in Article 1018c(2).

#### **Article 1018k [Enforcement]**

1. As soon as a judgment under this Title is no longer subject to ordinary remedies, it is binding on each of the parties and on the persons referred to in Article 1018i(1)(a) and (b). Except where the judgment has been declared enforceable notwithstanding any remedy, these persons may, from the time the judgment is no longer subject to ordinary remedies, claim compensation in the manner and under the conditions specified in the judgment determining the collective compensation scheme.
2. A judgment under this Title has no effect in respect of a person as referred to in Article 1018i(1)(a) who could not have been aware of its harm at the time of the announcement referred to in Article 1018f(3), where such a person notified the defendant in writing after becoming aware of its harm, or, where a compensation scheme is in place, notified the person referred to in Article 7:907(2)(g) of the Civil Code, that it did not wish to be bound.  
The defendant may, by written notice to a person as referred to in Article 1018k(1), set a time limit of at least six months within which that person may declare that it does not wish to be bound. When under this Title a judgment is given determining a compensation scheme in accordance with Article 1018i, the defendant must also notify the person referred to in Article 907(2)(g).

#### **Article 1018l [Costs]**

1. If the claim, after summary enquiry, is shown to be without merit, the court may in its judgment, for the purposes of Book 1, Section 12, § 2, increase the lawyer's fees awarded to the adverse party by up to 500%, at the expense of the unsuccessful party, except where this would cause injustice.
2. A judgment under Article 1018i contains an order for costs, whereby the court may, insofar as necessary and in derogation from Book 1, Section 12, § 2, order the unsuccessful party to pay reasonable and proportionate legal costs and other costs incurred by the successful party, except where this would cause injustice.

#### **Article 1018m [Related actions]**

1. Proceedings concerning similar questions of fact and law relating to the same event or events between the defendant or defendants in respect of the collective action initiated under this Title and a person in whose interests the collective action is initiated and who, in accordance with Article 1018f, has opted out, may be stayed at the request of the first party to take action, even if the date for judgment has been set.
2. The stayed proceedings move forward in accordance with Article 227(1):

- a. if the stay has lasted longer than one year and the first party to take action has requested that the stay be lifted;
- b. if a judgment has been given on the collective action and is no longer subject to ordinary remedies.