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### Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union - country report The Netherlands

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## IX. Country-report The Netherlands

### Document Control

<i>Document</i>	<i>Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union – country report The Netherlands</i>
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## 1.1 Overview of collective redress mechanisms<sup>1</sup>

### 1.1.1 *Collective redress mechanism 1: Act on Collective Settlement of Mass Damage*

#### Summary description

On 27 July 2005 the Act on Collective Settlement of Mass Damage (*Wet collectieve afwikkeling massaschade*; WCAM) took effect in the Netherlands. Until then, it was only possible to initiate a collective action on the basis of Article 3:305a of the Dutch Civil Code. In the latter procedure, the foundation or association representing the consumers can only obtain a declaratory judgment. Damages cannot be awarded in this procedure.

The Act on Collective Settlement of Mass damages (hereafter: the Act) introduces a procedure to have a collective settlement declared binding for both the liable party (or parties) and all injured parties with consideration to whom the settlement is concluded. If the Court thus declares the established settlement agreement binding, this has consequences for all entitled parties: all of them become a party to the agreement, unless they opt out.

The idea behind the Act is to settle cases of mass damages in a smooth manner by enabling liable and injured parties to reach a collective settlement. The main advantage for the liable party is that the settlement is binding for all injured parties, including those who have not participated in the settlement negotiations. The main advantage for the injured parties is that the liable party will be more willing to reach a collective settlement. However, the Act does not deal with the stage of reaching a settlement. The settlement must be reached out of court and is a prerequisite for the parties to apply to the court (cp. Article 7:907 par. (1) Civil Code). The court cannot hear a case under the WCAM without a settlement having been reached, as the settlement must be attached to the petition starting the procedure, and the petition itself must include a short description of the settlement agreement (cp. Article 1013 par. (2) and par. (1)(d) Code of Civil Procedure. The settlement need not establish that the 'liable party' is indeed liable (in contract or tort), but only that the 'liable party' and the organisation representing the injured parties have agreed that the 'liable party' will pay compensation to the injured parties.

Thus, contrary to the American damages class actions, a settlement must be reached before a request to the Court can be made.

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<sup>1</sup> This is an update of a previous study commissioned by DG SANCO. See: Centre for Consumer Law of the Katholieke Universiteit Leuven 2007, An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings.

## Details

### **A. LEGAL BASIS**

The Act implemented Articles 7:907-910 in Title 15 of Book 7 of the Dutch Civil Code (CC), which Title concerns agreements determining the legal relationship between parties (*vaststellingsovereenkomst*). Furthermore, Articles 1013-1018 were added to the Code of Civil Procedure (CCP).

### **B. COMPETENT AUTHORITY**

The Amsterdam Court of Appeal is designated to deal with the procedure in the first and factual instance (Article 1013(3) CCP). An advantage of this exclusive competence for the Amsterdam Court of Appeal is that the Court can develop case management expertise. An advantage of assigning the Amsterdam Court of Appeal was thought to be its broad financial expertise due to its Enterprise Section (*Ondernemingskamer*). However, this Section does not deal with the WCAM proceedings. Any *other* representative organisation with full legal competence claiming to defend the interests of the injured persons may oppose the settlement (Article 1014 CCP).

Generally, civil cases in the Netherlands can be judged in three instances: by a district court, by a court of appeal and in cassation by the Supreme Court. Since the WCAM petition is filed at the Amsterdam Court of Appeal in first instance, only appeal in cassation is possible. The Act stipulates that this option is open to the petitioners only (in case the declaration is denied), on the condition that they appeal jointly (Article 1018 CCP). If, on the other hand, the settlement is declared binding, appeal is not open to the representative organisation opposing the settlement.

### **C. WHO CAN INITIATE THE PROCEDURE – RULES OF STANDING**

The petition initiating the procedure must be filed by all parties to the settlement agreement. These must include a foundation or association with full legal competence that, pursuant to its articles of association, represents the interests of parties on whose behalf the agreement was concluded, and one or more parties agreeing to pay compensation (Article 7:907(1) CC).

Other foundations or associations that meet the description in the previous sentence may file a defence (Article 1014 CCP).

### **D. TYPES OF DISPUTES**

The settlement agreement must pertain to damage of several parties caused by one event or multiple similar events (Article 7:907(1) CC).

### **E. MAIN PROCEDURAL RULES**

First of all, parties on whose behalf the agreement was concluded have to be notified. Normally in proceedings commenced by a petition, interested parties must be notified by registered post (Article 272 CCP). Because mass damages cases involve a large number of interested parties, duly notifying all parties could be a time-consuming and costly affair. In the Dexia case, for example, there were almost 395 000 interested

parties. For that reason, the Act provides that the parties may be notified by means of a normal letter, unless the Court decides differently (Article 1013(5) CCP). In addition, the notification must be published in newspapers as determined by the Court, and, if the Court so decides, elsewhere (e.g. on websites). The notification must make clear that a foundation or association representing consumers may file a defence opposing the settlement (Article 1014 CCP), e.g. because it regards the settlement as not satisfying the consumers' interests properly.<sup>2</sup>

If a liable party is involved in other procedures concerning the damages which are compensated in the settlement agreement, these procedures will be stayed on request of the liable party (Article 1015 CCP). The suspension is terminated in the instances mentioned in Article 1015(2) CCP. These instances include, i.a., the case where in the other procedure damages are claimed, which are not included in the collective settlement (Article 1015(2)(a) CCP), and the case where a consumer has opted out of the collective settlement in accordance with Article 7:908(2) CC (Article 1015(2)(b) CCP).

The settlement agreement must at least contain the following information (Article 7:907(2)(a)-(f)): a description of the group of persons on whose behalf the agreement was concluded (a); an indication – as precise as possible – of their number (b); the compensation to be provided (c); the criteria for eligibility for compensation (d); the methods of assessing the amount of compensation and of obtaining payment (e); and, lastly, the names and hometowns of the persons eligible for compensation (f). If the settlement does not meet these criteria, the Court must dismiss the petition (Article 7:907(3)(a) CC).

Apart from these formal criteria, the Court must dismiss the petition if it is insufficient in one of the following respects (Article 7:907(3)(b)-(h) CC): the provided amount of compensation is unreasonable (b); payment of the compensation is not sufficiently guaranteed (c); the agreement does not provide for an objective determination of the amount of compensation in individual cases (d); the interests of the compensated parties are otherwise insufficiently safeguarded (e); the foundation or association that is a party to the agreement and that acted on behalf of the consumers is not sufficiently representative of the class of consumers affected by the collective settlement (f); the group of compensated parties is too small to justify the requested declaration; or, lastly, a legal person is to award the damages and this legal person is not a party to the agreement (h).

With regard to assessing the reasonableness of the awarded compensation, the Court must consider to what extent damage has been suffered, the flexibility and speed of the method of payment of the compensation and the possible causes of the damage (Article 7:907(3)(b) CC). These examples are not meant to be exhaustive. It should be noted here that the Court can make use of a legal expert (Article 1016(1) CCP). The

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<sup>2</sup> The possibility to oppose the settlement being declared binding may be seen as an attempt to limit the consequences of a possible 'sell-out'- settlement.

DES and Dexia cases make clear that the Court applies a marginal test to the settlement agreement, because, according to the Court, the parties to the agreement have already bargained about the content of the settlement. Some legal writers encourage the Court to make a more thorough assessment of the proportionality of the awarded compensation, as not all parties entitled to compensation have been part of the negotiations.

The Court may, before deciding whether or not to approve the settlement agreement, enable the parties to supplement or change it (Article 7:907(4) CC). Thus, if the Court concludes that the agreement does not meet one of the mentioned criteria, it may give parties the chance to change the agreement in order to make it meet the criteria.

One of the consequences of filing a WCAM petition is that the period of limitation of a legal claim for damages is interrupted if these damages are provided for in the settlement agreement (Article 7:907(5) CC). If the agreement is irrevocably declared binding, a new period of limitation will start after the definitive amount of damages has been decided. If a party opts out, the new limitation period will begin after the party has opted out. If the Court dismisses the petition, a new period of limitation will begin after the dismissal.

If the settlement agreement is declared binding, the entitled parties are allowed to opt out within a certain period (Article 7:908(2) CC). The agreement is automatically binding for parties who do not opt out. If a party chooses to opt out, the agreement will have no consequences for that party; he/she can take a chance on achieving a higher compensation and start proceedings on his/her own. The Court decision must state the manner and time period for opting out (Article 1017(3) CCP). The period should be at least three months (Article 7:908(2) CC). In the Dexia case, the Court extended the period to six months.

Notification of the decision is arranged for in Article 1017 CCP. The petitioners must be provided a copy of the decision. For the parties entitled to compensation, the decision and the settlement agreement must be filed at the court registry and the parties have the right to inspect and receive a copy of the documents. A copy of the decision should also be sent to entitled parties of whom the address is known and to parties who have filed a defence. Additionally, the decision should be announced in newspapers and, if the Court so decides, elsewhere. If the petition is dismissed, the petitioners must inform the entitled parties thereof.

As stated above, appeal in cassation is open to the petitioners only, on the condition that they appeal jointly (Article 1018 CCP). This means that appeal is only possible if the petition is dismissed. Furthermore, in some cases of fraud during the procedure, the decision can be revoked (Articles 1018(2) and 382 CCP).

A clause in the collective settlement which exempts a liable party from liability to the detriment of a party entitled to damages under the collective settlement is deemed to be void once the collective settlement is pronounced binding, unless it allows the parties that have bound themselves to pay compensation to jointly terminate the collective settlement within six months after the opt out-period has elapsed because it

has consequences for too few parties entitled to compensation under the collective settlement (Article 7:908(4) CC). The collective settlement may be terminated for non-performance, but only by a court decision (Article 9:905 CC). Alternatively, the representative organisation that is a party to the settlement may claim specific performance under Article 3:296 Civil Code (i.e. compliance with the settlement) in case the liable party does not comply with the settlement.<sup>3</sup> Such a claim may be reinforced with a *dwangsom* ('astreinte') under Article 611a CCP, which implies the liable party would forfeit an amount for each period that it does not comply with the court order to perform its obligations.

Once the collective settlement has been declared binding, it cannot be avoided for reason of fraud or fundamental mistake; neither can a party entitled to compensation escape from the agreement on the ground that holding that party to the agreement would be contrary to reasonableness and equity (Article 7:908(5) CC). According to the parliamentary proceedings to Article 7:908 CC it is, however, possible to have the agreement changed or terminated by court order on the basis of unforeseen circumstances.

#### **F. REMEDIES THAT CAN BE OBTAINED**

The only possible remedy is a Court declaration that the collective settlement agreement is binding (Article 7:907(1) CC). The settlement itself will indicate that the injured parties are entitled to compensation. The WCAM does not indicate whether such compensation must be in money or may be in other form. Under the law of obligations in general, compensation is normally to be awarded in money, but upon request of the injured party, the court *may* (but does not have to) award compensation in another form (Article 6:103 CC). It is uncertain whether such alternative form of compensation could be awarded under a collective settlement, as the request for such other form of compensation would not be made by the individually injured party but by the representative organisation.

As a result, all parties falling under the collective settlement (and that have not opted out) are entitled to payment of damages as indicated in the collective settlement.

#### **G. COSTS INVOLVED FOR THE PARTIES**

The costs related to the procedure at least include the costs of notifying interested parties, the costs of professional support, and the costs of publishing the Court declaration. The individual consumers that are represented by a consumer organisation bear no costs for the procedure as such.<sup>4</sup>

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<sup>3</sup> As this is a remedy under general contract law, this applies also if the settlement is not declared binding on all injured parties who have not opted out, unless the parties to the collective settlement have agreed otherwise.

<sup>4</sup> However, in practice the consumer organisation negotiating the settlement is created *ad hoc* to represent the interests of its members and is financed by a (relatively modest) membership fee. Consumers who are not a member of the consumer organisation and benefit from the settlement being declared binding on all consumers, bear no costs indeed.

The Court can order one of the petitioners to pay the costs related to the procedure (Article 1016(2) CC). For example, in the Dexia case the Court charged Dexia with the costs of notifying interested parties and of the appointed expert.

The phases before and after the legal proceedings may also bring about substantial costs. The Act does not mention the costs which are made in the stage before the procedure in Court starts. It is likely that the parties to the settlement agreement will also make agreements concerning these costs. As to the costs of the phase after the Court declaration, the Act requires that the agreement establishes the way in which the execution will take place and that it is guaranteed that the damages will be awarded (Article 7:907(2)(e) and (3)(b) and (c)). This presumes that the parties have made arrangements concerning these costs. It is likely that the liable party will be charged with these costs.

The risk of an individual consumer if the collective settlement is not declared binding is minimal. His/her rights to claim compensation are unaffected and the period of limitation of these rights is interrupted during the WCAM proceedings. However, it may prove difficult to have an individual claim honoured if the collective WCAM procedure fails.

#### **H. AVERAGE DURATION OF THE PROCEDURE**

The two WCAM procedures that so far have ended in a Court decision have taken 7 and 14 months respectively. This makes the average duration 10-11 months. However, settlement negotiations may take years. Moreover, the WCAM does not contain any incentives for the parties to the negotiations to actually reach a settlement.



## 1.2 Overview of relevant literature

### Books

- *Tzankova, I.N., (2007): Toegang tot het recht bij massaschade, Kluwer, The Netherlands*

Tzankova argues that in mass claims a more active and facilitating judge with case management skills is needed. In her view, opting out of a mass claim settlement should be motivated. The motivation would enable the judge to learn from the reasons why individuals might opt out and take these reasons into account in future cases, thus improving the effectiveness and the efficiency of the mechanism. In the Dexia case, for example, this approach could have had the consequence that the problems and wishes of those who opted out would be 'solved' collectively by a proactive judge. Finally she argues that the way of financing the costs of proceedings (public legal aid, private insurance) is not optimum, in particular not customized to the mechanism.

### Articles

- *Barendrecht, M. & van Doorn, C., Richtpunten voor massale geschillen: het schikkingsspel in de aandelenleaseaffaire, Nederlands Juristenblad, 2007/41, pp. 2605-2613.*

In this article it is concluded that parties should agree at an earlier stage on the fundamentals of a settlement. The Duisenberg settlement (of the Dexia-case) for example does not leave space for individual nuances and details. Not all of the interested parties were heard at the negotiations. The categorical approach of the District Court of Amsterdam, which dealt with many individual claims in first instance, is more satisfying because this approach does leave room for detailed solutions. It is argued that the WCAM-procedure should provide for an approach with an open eye for individuals. This would improve both the effectiveness of the WCAM-procedure and the efficiency of the mechanism.

- *Doorn, C.J.M. van, De tweede WCAM-beschikking is een feit: tijd voor een terugblik en een blik vooruit, Aansprakelijkheid, verzekering en schade 2007/3, pp. 105-114*

There are many interested parties who are not always involved in the proceedings. Therefore, a more active judge is needed, according to the author. The judge should apply a material test to the case. We can, for example, confer to the judge a role within the negotiating process, so that he/she can better judge the merits of the settlement.

- *Frenk, N., Massaschade: de Nederlandse benadering, AV& S, 2007/5, pp. 214-222*

The WCAM-mechanism ensures that the interested parties do not become involved in separate proceedings and it provides for certainty about financial

obligations towards the victims. However, Frenk argues that we should consider how to enlarge the scope of the mechanism in such a way that it can be applied to the widest possible range of cases. Moreover, it is necessary that a manner is found in which parties may somewhat be forced to negotiate with each other. A compulsory preprocedural appearance of parties could be an option, Frenk concludes.

- *Frenk, N., In der minne geschikt, Nederlands Juristenblad, 2007/41, pp. 2615-2625*

Before a mass settlement is reached, often individual procedures are instigated. Article 1015 (1) CCP already allows the party from whom damages are being claimed to request suspension of the proceedings in order to await the outcome of the WCAM-procedure. Frenk urges the adoption of the possibility of suspension also for the party *claiming* damages, i.e. the victim. Frenk further considers the obstacles for the court to award compensation for the pre-settlement costs, as nothing is mentioned about these costs in the WCAM-mechanism.

- *Krans, H.B., DES en DEXIA: de eerste ervaringen met collectieve afwikkeling van massaschade, Nederlands Juristenblad, 2007/41, pp. 2598-2605.*

The Act stipulates that appeal is open to the petitioners only, on the condition that they appeal jointly (Article 1018 CCP). If the settlement is declared binding, parties do not have an interest in appeal anymore, which is a requirement for appeal (Article 3:303 CC). Krans argues that it should be considered whether it would be more proper if the mechanism would provide a second factual instance. Krans is of the opinion that the argument of the Ministry of Justice (to prevent long lasting proceedings or delay), is not convincing.

- *Leijten, A.F.J.A., De betekenis van de Wet collectieve afwikkeling massaschade voor corporate litigation, Ondernemingsrecht, 2005/15, pp. 498-506.*

Leijten regrets that the Supreme Court cannot fulfil its function because the WCAM-mechanism does not provide for appeal in cassation. On the other hand, it is proper that the Amsterdam Court of Appeal is the appointed court, because this court can make use of its Commercial Chamber.

- *Martius, R.M.L.A., Collectieve afwikkeling van massaschade volgens de Wet collectieve afwikkeling massaschade: daadwerkelijk collectieve afwikkeling van massaschade?, Praktisch procederen 2005/6, pp. 190-199*

The author argues that a proactive judge is needed. There should also be a fund in favour of the entitled parties. Further, she defends an opt-in system. Within an opt-out system, parties who already at an early stage think that the settlement is insufficient have to wait until the settlement is declared binding. This is burdensome for parties who have an interest in a speedy compensation.

- *Tzankova, I.N., Enkele overpeinzingen naar aanleiding van de Dexia-(be)schikking, Ondernemingsrecht 2007/7, pp. 282-287*

Tzankova considers why we do not have to fear for a 'sweetheart settlement' in the case of the WCAM-procedure. She argues that there are enough powerful and professional 'lead-plaintiffs' involved, who can criticize the representatives and evaluate the settlement. Further, other respectable parties are involved in the realization of the settlement. As a consequence, the procedure may in this respect be considered effective.

**1.3 Difficulties to obtain redress for mass claims**

This issue is subject of a complementary study<sup>5</sup> and results from the country studies are integrated therein.

**1.4 Collective actions filed so far**

The collective actions filed so far are presented in the table on the following page. For more details, please refer to part III of this study.

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<sup>5</sup> CPEC 2008, Study regarding the problems faced by consumers in obtaining redress for infringements of consumer protection legislation, and the economic consequences of such problems, Final Report (study prepared for DG SANCO).

**Table 1: Overview of cases collected – mechanism 1: Act on Collective Settlement of Mass Damage**

<b>Case number</b>	<b>Name of case</b>	<b>Brief description of case</b>	<b>Year of filing of original case</b>	<b>Year of final court decision / settlement</b>	<b>Cross-border element</b>
LJN: AX 6440	DES WCAM decision	<p>The DES affair, which concerns product liability for medicines, is the first case in which the WCAM-procedure was applied. In fact, the lingering DES affair has been the main incentive for the creation of a legal framework like the WCAM.</p> <p>DES, short for diethylstilbestrol, is a hormonal medicine that was prescribed to pregnant women from 1947 until 1976. Women who had used this medicine and their offspring suffered disabilities of different natures. In 1981, the DES centre was set up to promote the interests of the DES victims, such as the pursuit for recognition and compensation. In 1986, with the help of the DES centre, six daughters of women who had used DES (“DES daughters”) instituted proceedings for damages against ten pharmaceutical companies. In final instance, the Dutch Supreme Court issued a decision that was largely in favour of the DES daughters. The proceedings were discontinued because of settlement negotiations between the pharmaceutical companies and their insurers on the one hand and the DES Centre on the other. In 2000, these parties reached an agreement and set up a DES Fund. In the action, they requested the Amsterdam Court of Appeals to declare their settlement agreement binding upon all parties mentioned in the agreement.</p>	8 November 2005	1 June 2006	None.

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
LJN: AZ 7033	No official name (can be referred to as "Dexia WCAM decision")	<p>From 1992 to 2003, Dexia (and its legal predecessors) offered share-lease contracts of different types, specifically to consumers. A common feature of these share-lease contracts is that Dexia would loan a sum of money which Dexia would invest in shares, on behalf of the consumer (investor). During the given period, a total of 713,540 share-lease contracts were concluded with almost 395,000 investors.</p> <p>At the end of the nineties, when the share market fell, many investors not only saw their profits go up in smoke, but also ended up with residual debts because the remaining value of the shares was insufficient to cover their loan. Since 2002, Dexia has been confronted with numerous complaints regarding the share-lease contracts, based on a multitude of legal grounds. The company is or has been involved in legal proceedings concerning over 12,000 contracts, and several non-judicial procedures, e.g. before the Complaints Committee of the Dutch Securities Institute.</p> <p>In 2003, Dexia tried to effect an amicable settlement with regard to the residual debts. Almost 70,000 investors accepted the offer, but some found it insufficient. Another settlement attempt by a commission established at the initiative of the Minister of Finance stranded in 2004. Because the Dexia affair also had an increasing negative effect on the reputation of the Dutch financial markets, the Dutch Central Bank (DCB) assumed a new attempt at a collective settlement. This attempt was more successful: under the guidance of former DCB president Wim Duisenberg, the petitioners reached a settlement agreement in June 2005. After a large majority of the members of petitioners 2 and 3 had consented, the parties to the settlement filed this WCAM petition to have the settlement agreement declared binding.</p>	18 November 2005	25 January 2007	None.

Case number	Name of case	Brief description of case	Year of filing of original case	Year of final court decision / settlement	Cross-border element
Petition number R07/396, Amsterdam Court of Appeals (pending)	No official name (can be referred to as "Shell WCAM petition")	<p>In 2004, Shell announced that it would re-categorize a large number of its oil and gas reserves. The re-categorizations reduced the estimated value of future revenue by more than \$100 billion, leading to a fall in the price of Shell's shares. Several government authorities, among which the United States Security and Exchange Commission (SEC), launched investigations into circumstances surrounding the re-categorizations, which – among other things – led to a \$120 million penalty imposed on Shell by the SEC. Apart from the government investigations, fourteen securities class actions were filed in the United States. These actions were consolidated before a single US federal judge. Additionally, a number of European-based institutional investors filed two securities actions in the United States, which have been stayed in anticipation of the proceedings in the consolidated class action. Outside the United States, no actions have been filed against Shell in connection with the re-categorizations.</p> <p>With regards to compensation of non-US shareholders, Shell entered into negotiations, resulting in the establishment of a settlement agreement and the incorporation of the Shell Reserves Compensation Foundation (representing the interests of affected shareholders) in April 2007. In brief, the settlement agreement provides compensation to all shareholders who resided or were domiciled outside of the United States, and who purchased certain shares between April 1999 and March 2004. In return for such compensation, the shareholders participating in the agreement ("participating shareholders") will release all claims against Shell and its affiliates regarding the re-categorizations.</p> <p>In the WCAM petition in hand, the parties to the settlement agreement request the Amsterdam Court of Appeals to declare the agreement binding upon all participating shareholders.</p>	11 April 2007		The settlement applies to all stakeholders; apart from those who reside or have their domicile in the US and who purchased the relevant shares in the relevant period of time.

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## 1.5 Hypothetical example cases

*The following section contains data concerning the costs of 3 “hypothetical example cases”. A “hypothetical example case” is hereby understood as being an action proceeding which is “invented” on basis of existing cases, and defined through the type of individual damage suffered by a number of consumers, the sector, the category of law, the value of the case, the affected number of consumers, etc. For each case are analysed:*

- a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).*
- b) The effects on consumers who do not bring the collective action.*
- c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).*
- d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer’s fee).*
- e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.*
- f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?*

*In all cases it is assumed that claims are brought at the same court. The consumers are not in a state of poverty and are not eligible for legal aid targeted exclusively at the poor. All cases are decided after appeal.*

### 1.5.1 Case 1 - telecommunication

*Due to a technical defect, the telecommunications services provider T has miscalculated the duration of all telephone calls made by customers as being 2-3 percent longer than they were in reality, resulting in extra profits of 1 million Euro. 100,000 customers suffered damages; with certain differences as to the individual case. The consumer organisation or other intermediary preparing the claim estimates the average damage per consumer to be 1 Euro per month. The service provider claims to have repaired the defect after 10 months. Therefore the average damage per consumer could be estimated at 10 Euro.*

- If the relevant mechanism is an opt-out system: consumer organisation or other intermediary represents all consumers (combined value of claims 1 million Euro)*
- If the relevant mechanism is an opt-in system: consumer organisation or other intermediary could mobilise 1,000 consumers (combined value of claims 10,000 Euro)*



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**a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).**

As a collective action to obtain damages is not available in The Netherlands (cf. Article 3:305a paragraph 3 Civil Code), the only option is to try to negotiate a settlement with T and – if such settlement may be reached – to have the settlement approved by court order under the WCAM-procedure.

The problem in this case is that the individual damage is so low, that no individual consumer will actually go to court over this amount. This seriously hinders the consumer organisation that tries to reach a settlement, as T would be aware of this. Apart from possible damage to its reputation, there is no risk for T involved in not agreeing to a settlement. This means that the position of the consumer organisation in the settlement negotiations is rather weak.

**b) The effects on consumers who do not bring the collective action.**

If the settlement is approved by the court, all consumers who have not opted out from the collective settlement will be bound by it, whereas individual consumers who have opted out, have retained their freedom to claim their individual damage. As was indicated above, given the fact that the individual damage is so low, it is unlikely that individual consumers would in this case opt out.

**c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).**

**d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer's fee).**

**e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.**

**f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?**

In Dutch procedural law, the main rule is that the party who is put in the wrong, is required to pay the costs of the procedure (Article 237 Code of Civil Procedure). However, this main rule is to be downplayed in many respects. Firstly, only the costs of the procedure are to be reimbursed. These are calculated in an abstract way, which almost always means that they do not cover the complete costs incurred. This implies that even if he/she is put in the right completely the ‘winner’ of the case still has to bear some of the costs himself. Secondly, the party that ‘is put in the wrong’ need not be the party who has lost the case: it is possible that the primary claim is awarded to the claimant – who can then be said to have won the case – but the claimant is nevertheless required to pay for the costs of the procedure as he/she may have lost on

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other points, or the court may 'compensate' the costs in such manner that each party bears its own costs.

However, in the collective action procedure pursuant to the WCAM, this is all rather irrelevant, given the nature of the procedure. Firstly, there are no rules pertaining to the pre-settlement costs. The costs of negotiations therefore are to be borne by the parties themselves, unless a settlement is reached. In that case, the parties usually also agree that the liable party compensates the consumer organisation for (part of) its costs in negotiating the settlement.

When a settlement is reached and the parties apply for a court order to have the settlement recognised for the collective of consumers not initially involved, the settlement may be opposed by other consumer organisations. Only in that case – which entails a procedure between on the one hand the liable party and the consumer organisation that has agreed to the settlement and, on the other hand, other consumer organisations opposing the settlement – the above mentioned rules apply.

Given the fact that individual consumers are involved neither at the settlement procedure nor at the procedure in which the settlement is declared binding, consumers incur no costs if either the settlement is not reached or the settlement is not declared binding for all consumers.

If the consumer opts for ADR, the principle of Article 237 Code of Civil Procedure does not apply. In practice, this means that each party bears its own costs, whether it wins or loses the case.

**Table 2: Estimates regarding hypothetical example case 1 - telecommunications**

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support that is available</b> [national currency]	<b>Estimated time involved</b>	<b>Comments</b>
<b>Collective redress: WCAM-procedure</b>						
<i>For each individual consumer</i>	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	The WCAM-procedure does not allow for individual consumers to participate in either the settlement negotiations or the petition to have the settlement declared binding for all individual consumers.

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<i>For intermediary filing the action</i>	Court fees depend on the combined financial interest (art. 2, para. 3, of the Act on tariffs in civil cases ( <i>Wet tarieven in burgerlijke zaken</i> )). As the combined financial interest is here Euro 1 m, court fees amount to the maximum fee of 5 916 Euro (cf. art. 2, para. 3, limb d).	Not available because of lack of experience and lack of transparency. These costs depend on the time invested by lawyers and are normally not made public. In any case, these costs are most likely high, given the Consumentenbond's estimate that the legionella case (a relatively simple case as regards to the applicable rules once the facts were properly established) cost the Consumentenbond more than 300,000 Euro in lawyer's fees.	Not available. The pre-settlement costs are kept confidential, but it is thought that these are substantial and consist in the need to invest in obtaining the necessary knowledge to negotiate the specific settlement. These costs are unpredictable and vary from one claim to the next. If a settlement is reached, these costs are often (in part) compensated by the liable party, but no general information is available.	The Act on legal support ( <i>Wet op de rechtsbijstand</i> ) only allows for public support for consumer organisations if that consumer organisation cannot be expected to bear the costs of the procedure from its own resources or income (cf. art. 12 para. 1). The main consumer organisation – the Consumentenbond – most likely has too high resources to qualify for public support, whereas special interest groups founded to act in a specific case are excluded from public support (cf. art. 12 para. 2 limb d). Moreover, support is excluded where the consumer organisation may be expected to act itself or together with other organisations (art. 12 para. 2 limb g).	Not available because of lack of experience and lack of transparency. The time spent by consumer organisations is generally not registered and in any case is not made public.	Because of the lack of experience with procedures on the basis of the WCAM, it is not possible to make an actual estimate of the costs and efforts made in order to settle a collective claim and to obtain the needed court order. Data are not kept by consumer organisations and costs are not made public.

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<b>Individual redress (through ordinary court procedure)</b>						
<i>For each individual consumer</i>	Court fees depend on the combined financial interest (art. 2, para. 2, of the Act on tariffs in civil cases ( <i>Wet tarieven in burgerlijke zaken</i> )). As the combined financial interest for an individual consumer is only 10 Euro, the court fees would amount to 61 Euro (para. 2 limb 1 <sup>o</sup> sublimb b).	Consumers may claim without legal support for claims of this amount. If a consumer does seek professional legal support, the following applies. Parties may negotiate about the lawyer's fees. Tariffs per hour and fixed amounts are possible and common, contingency fee is not allowed. Hourly rates of at least 150 Euro or more are normal; this implies that even in the simplest and fastest procedure, the costs incurred would be at least 450 Euro.	The costs for starting the procedure amount to 71,80 Euro (cf. art. 2 limb a <i>Decree tariffs professional acts bailiffs, Besluit tarieven ambtshandelingen gerechts-deurwaarders</i> )	As the consumer is not eligible for support on the basis of the Act on legal support ( <i>Wet op de rechtsbijstand</i> ) (see the assumption applicable to all hypothetical cases), no public support is available.	At least 3 hours (estimating that preparing the case will cost at least 2 hours and that actually being present in court would cost at least 1 hour). This is provided that the facts of the case are known to the consumer or his/her lawyer before the preparation of the case has started, otherwise the estimation of hours needed will rise accordingly.	Given the relatively low individual damage and the high costs of going to court, it is economically sound for the individual consumer not to claim compensation in court.

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<b>Individual ADR: Geschillencommissie Telecommunicatie</b>						
<i>For each individual consumer</i>	50 Euro <sup>6</sup> .	Consumers may claim without legal support for claims in front of the <i>Geschillencommissie</i> and usually do so. Normally, the costs therefore are 0 Euro.	0 Euro.	No public support is available.	Given the informal proceedings (the claim may be filed on line), preparation need not take more than 1-1.5 hours. The procedure in front of the <i>Geschillencommissie</i> takes no more than 30 minutes.	

<sup>6</sup> The *geschillencommissie* operates only upon a voluntary agreement between the parties. Fees for appealing to such a *geschillencommissie* are always low (for some *geschillencommissies* even lower fees apply, for some somewhat higher fees may apply, depending on the value of the claim).

If the parties decide to submit the case to the *Geschillencommissie*, a subsequent procedure before a civil court is only possible in extreme cases, i.e. when fundamental provisions of procedure have been infringed by the *geschillencommissie*. The professional party may be bound to accept the competence of the *geschillencommissie* already prior to an actual dispute, normally on the basis of it being a member of an organisation of professionals. The consumer, however, need only decide to submit its case to the *geschillencommissie* or to the ordinary courts once the dispute has arisen; any standard contract term requiring him to submit the case to a *geschillencommissie* is deemed to be unfair, cp. Article 6:236 (n) CC.

## 1.5.2 Case 2 - financial services

*Enterprise E released a third tranche of shares (230 million shares, 60 Euro per share). Following this, the value of the shares decreased rapidly during the next three years (to 10 Euro per share), leading to a loss in shareholder value of 11.5 billion Euro. Shareholders claimed that they had been victims of false information (considerably overestimated property; concealment of the burdensome acquisition of a foreign competitor) contained in the company's prospectus when the shares were put on the market. 15,000 investors bring their claims to the court, with an average value of the claim being 7,000 Euro each. The combined value of the claims is therefore 105 million Euro.*

### **a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).**

As a collective action to obtain damages is not available in The Netherlands (cf. Article 3:305a paragraph 3 Civil Code), the only option is to try to negotiate a settlement with E and – if such settlement may be reached – to have the settlement approved by court order under the WCAM-procedure.

The problem in this case is that the individual damage is so low, that hardly any individual consumer will actually go to court over this amount. In this respect, it must be mentioned that the area of financial services is notoriously complicated and therefore the preparation of the case by a lawyer takes a lot of time. Consumers nor lawyers operating on their behalf typically have much experience in this field – those lawyers that do, charge over 250 Euro, usually over 350 Euro per hour. Because of the system of 'liquidated costs', only a fraction of these costs are reimbursed if the consumer wins the case (the flipside of this medal is that if the consumer loses, he/she only has to reimburse a fraction of the other party's costs). A claim of 7000 Euro is therefore simply too small to go to court for in this area.

This lack of individuals willing to go to court to claim reimbursement individually seriously hinders the consumer organisation that tries to reach a settlement, as E would be aware of this. Apart from possible damage to its reputation, there is no risk for E involved in not agreeing to a settlement. This means that the position of the consumer organisation in the settlement negotiations is rather weak.

### **b) The effects on consumers who do not bring the collective action.**

If the settlement is approved by the court, all consumers who have not opted out from the collective settlement will be bound by it, whereas individual consumers who have opted out, have retained their freedom to claim their individual damage. It is rather uncertain how many consumers would opt out of this settlement, in particular because the costs of ADR are relatively low. Given the amount of the claim, it is not impossible that individual consumers may believe that their interests are better served by an individual claim. However, as qualified legal (and financial) expertise seems needed, most consumers will refrain from doing so.

- c) **The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).**
- d) **The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer's fee).**
- e) **The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.**
- f) **Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?**

In Dutch procedural law, the main rule is that the party who is put in the wrong, is required to pay the costs of the procedure (Article 237 Code of Civil Procedure). However, this main rule is to be downplayed in many respects. Firstly, only the costs of the procedure are to be reimbursed. These are calculated in an abstract way, which almost always means that they do not cover the complete costs incurred. This implies that even if he/she is put in the right completely the ‘winner’ of the case still has to bear some of the costs himself. Secondly, the party that ‘is put in the wrong’ needs not be the party who has lost the case: it is possible that the primary claim is awarded to the claimant – who can then be said to have won the case – but the claimant is nevertheless required to pay for the costs of the procedure as he/she may have lost on other points, or the court may ‘compensate’ the costs in such manner that each party bears its own costs.

However, in the collective action procedure pursuant to the WCAM, this is all rather irrelevant, given the nature of the procedure. Firstly, there are no rules pertaining to the presettlement costs. The costs of negotiations therefore are to be borne by the parties themselves, unless a settlement is reached. In that case, the parties usually also agree that the liable party compensates the consumer organisation for (part of) its costs in negotiating the settlement.

When a settlement is reached and the parties apply for a court order to have the settlement recognised for the collective of consumers not initially involved, the settlement may be opposed by other consumer organisations. Only in that case – which entails a procedure between on the one hand the liable party and the consumer organisation that has agreed to the settlement and, on the other hand, other consumer organisations opposing the settlement – the above mentioned rules apply.

Given the fact that individual consumers are involved neither at the settlement procedure nor at the procedure in which the settlement is declared binding, consumers incur no costs if either the settlement is not reached or the settlement is not declared binding for all consumers.



If the consumer opts for ADR, the principle of Article 237 Code of Civil Procedure does not apply. In practice, this means that each party bears its own costs, whether it wins or loses the case.

**Table 3: Estimates regarding hypothetical example case 2 – financial services**

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer’s fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<b>Collective redress: WCAM-procedure</b>						
<i>For each individual consumer</i>	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	The WCAM-procedure does not allow for individual consumers to participate in either the settlement negotiations or the attempt to have the settlement declared binding for all individual consumers.

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<i>For intermediary filing the action</i>	Court fees depend on the combined financial interest (art. 2, para. 3, of the Act on tariffs in civil cases ( <i>Wet tarieven in burgerlijke zaken</i> )). As the combined financial interest is here 105 Euro mln. court fees amount to the maximum fee of 5 916 Euro (cf. art. 2, para. 3, limb d).	Not available because of lack of experience and lack of transparency. These costs depend on the time invested by lawyers and are normally not made public. In any case, these costs are most likely high, given the Consumentenbond's estimate that the legionella case (a relatively simple case as regards to the applicable rules once the facts were properly established) costed the Consumentenbond more than 300,000 Euro in lawyer's fees.	Not available. The pre-settlement costs are kept confidential, but it is thought that these are substantial and consist in the need to invest in obtaining the necessary knowledge to negotiate the specific settlement. These costs are unpredictable and vary from one claim to the next. If a settlement is reached, these costs are often (in part) compensated by the liable party, but no general information is available.	The Act on legal support ( <i>Wet op de rechtsbijstand</i> ) only allows for public support for consumer organisations if that consumer organisation cannot be expected to bear the costs of the procedure from its own resources or income (cf. art. 12 para. 1). The main consumer organisation – the Consumentenbond – most likely has too high resources to qualify for public support, whereas special interest groups founded to act in a specific case are excluded from public support (cf. art. 12 para. 2 limb d). Moreover, support is excluded where the consumer organisation may be expected to act itself or together with other organisations (art. 12 para. 2 limb g).	Not available because of lack of experience and lack of transparency. The time spent by consumer organisations is generally not registered and in any case is not made public.	Because of the lack of experience with procedures on the basis of the WCAM, it is not possible to make an actual estimate of the costs and efforts made in order to settle a collective claim and to obtain the needed court order. Data are not kept by consumer organisations and costs are not made public.

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<b>Individual redress (through ordinary court procedure)</b>						
<i>For each individual consumer</i>	Court fees depend on the combined financial interest (art. 2, para. 2, of the Act on tariffs in civil cases ( <i>Wet tarieven in burgerlijke zaken</i> )). As the combined financial interest for an individual consumer is 7,000 Euro, the court fees would amount to 303 Euro (para. 2 limb 2 <sup>o</sup> sublimb c).	For claims of this amount consumers must invoke the help of a lawyer. Parties may negotiate about the lawyer's fees. Tariffs per hour and fixed amounts are possible and common, contingency fee is not allowed. Hourly rates of at least 150 Euro or more are normal. Given the estimated time for this case, the costs incurred would be at least 1,500 Euro, but more likely 2,700 Euro. Given the nature of the claim, the procedure in reality is most likely lengthier and therefore costs may be considerably higher.	The costs for starting the procedure amount to 71,80 Euro (cf. art. 2 limb a <i>Decree tariffs professional acts bailiffs, Besluit tarieven ambtshandelingen gerechtsdeurwaarders</i> )	As the consumer is not eligible for support on the basis of the Act on legal support ( <i>Wet op de rechtsbijstand</i> ) (see the assumption applicable to all hypothetical cases), no public support is available.	At least 10 hours (estimating that preparing the case will cost at least 9 hours and that actually being present in court would cost at least 1 hour). However, it is very difficult to predict how long the preparation of the case will take and how much time the court proceedings will take.	Given the relatively low individual damage, the risk of the consumer losing his/her case because of lack of proof and the high costs of going to court, it is economically hardly sound for the individual consumer not to claim compensation in court.

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<b>Individual ADR: Geschillencommissie KiFid</b>						
<i>For each individual consumer</i>	50 Euro.	Consumers may claim without legal support for claims in front of the <i>Geschillencommissie</i> . However, given the specialised nature of the claim, this does not seem wise. If a consumer does seek professional legal support, the following applies:  Parties may negotiate about the lawyer's fees. Tariffs per hour and fixed amounts are possible and common, contingency fee is not allowed. Hourly rates of at least 150 Euro or more are normal; this implies that even in the simplest and fastest procedure, the costs incurred would be at least 450 Euro.	0 Euro.	No public support is available.	Given the informal proceedings (the claim may be filed on line), preparation need not take more than 1-1.5 hours. The procedure in front of the <i>Geschillencommissie</i> takes no more than 30 minutes.	

### 1.5.3 Case 3 - tourism

*The tour operator T advertised on its website a “last-minute package” called “4-star” in which the consumers were supposed to be offered services in various hotels on various locations (Greece, Tunisia, etc.) in the 4-star category. However, the hotels were in very bad shape and in spite of the request of consumers no other accommodation was provided. The tour operator also categorically rejected all written claims of consumers for compensation. The only argument of the trader for rejection was that last-minute arrangements meant lower quality of services. About 500 travellers are affected, of which 200 claim a refund of 250 Euro each (which is 10% of the total price of the package). The combined value of the claims is therefore 50,000 Euro.*

**a) The availability of group actions, representative actions, test case procedures and procedures for skimming-off profits (brought by an intermediary).**

As a collective action to obtain damages is not available in The Netherlands (cf. Article 3:305a paragraph 3 Civil Code), the only option is to try to negotiate a settlement with T and – if such settlement may be reached – to have the settlement approved by court order under the WCAM-procedure.

The problem in this case is that the individual damage is so low, that no individual consumer will actually go to court over this amount. This seriously hinders the consumer organisation that tries to reach a settlement, as T would be aware of this. Apart from possible damage to its reputation, there is no risk for T involved in not agreeing to a settlement. This means that the position of the consumer organisation in the settlement negotiations is rather weak.

**b) The effects on consumers who do not bring the collective action.**

If the settlement is approved by the court, all consumers who have not opted out from the collective settlement will be bound by it, whereas individual consumers who have opted out, have retained their freedom to claim their individual damage. Given the relative simple nature of the claim and the relatively low cost involved in the available ADR mechanism, it is far from unrealistic to expect individual consumers from opting out of the settlement reached.

**c) The expected costs of the action (court fees, costs of paying the lawyer, other costs, if applicable).**

**d) The estimated time involved to get information on the case, for preparation of file, coordination, court hearings etc. required from consumers and the intermediary (please do not consider time effort involved of any lawyer paid by the intermediary, as this is covered by the lawyer’s fee).**

**e) The existence and relevance of public support, third party financing, contingency fees etc. for bringing the action.**

**f) Is there a “loser pays principle”? Which percentage of the costs of the winning side would be covered by the losing side? In the case of collective**

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**redress: Which amount would have to be paid by consumers participating in the action, if the case is lost?**

In Dutch procedural law, the main rule is that the party who is put in the wrong, is required to pay the costs of the procedure (Article 237 Code of Civil Procedure). However, this main rule is to be downplayed in many respects. Firstly, only the costs of the procedure are to be reimbursed. These are calculated in an abstract way, which almost always means that they do not cover the complete costs incurred. This implies that even if he/she is put in the right completely the 'winner' of the case still has to bear some of the costs himself. Secondly, the party that 'is put in the wrong' needs not be the party who has lost the case: it is possible that the primary claim is awarded to the claimant – who can then be said to have won the case – but the claimant is nevertheless required to pay for the costs of the procedure as he/she may have lost on other points, or the court may 'compensate' the costs in such manner that each party bears its own costs.

However, in the collective action procedure pursuant to the WCAM, this is all rather irrelevant, give the nature of the procedure. Firstly, there are no rules pertaining to the presettlement costs. The costs of negotiations therefore are to be borne by the parties themselves, unless a settlement is reached. In that case, the parties usually also agree that the liable party compensates the consumer organisation for (part of) its costs in negotiating the settlement.

When a settlement is reached and the parties apply for a court order to have the settlement recognised for the collective of consumers not initially involved, the settlement may be opposed by other consumer organisations. Only in that case – which entails a procedure between on the one hand the liable party and the consumer organisation that has agreed to the settlement and, on the other hand, other consumer organisations opposing the settlement – the above mentioned rules apply.

**Table 4: Estimates regarding hypothetical example case 3 - tourism**

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<b>Collective redress: WCAM-procedure</b>						
<i>For each individual consumer</i>	Not applicable.	Not applicable	Not applicable.	Not applicable.	Not applicable.	The WCAM-procedure does not allow for individual consumers to participate in either the settlement negotiations or the attempt to have the settlement declared binding for all individual consumers.



	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<i>For intermediary filing the action</i>	Court fees depend on the combined financial interest (art. 2, para. 3, of the Act on tariffs in civil cases ( <i>Wet tarieven in burgerlijke zaken</i> )). As the combined financial interest is here 50,000 Euro, court fees amount to 1,500 Euro (cf. art. 2, para. 3, limb d).	Not available because of lack of experience and lack of transparency. These costs depend on the time invested by lawyers and are not made public. In this particular case, the 'in-house'-lawyer of the Consumentenbond would probably be able to deal with this case himself, implying that the lawyer's fees are in fact a fraction of that staff members wages.	Not available. The pre-settlement costs are kept confidential, but it is thought that these are substantial and consist in the need to invest in obtaining the necessary knowledge to negotiate the specific settlement. These costs are unpredictable and vary from one claim to the next. If a settlement is reached, these costs are often (in part) compensated by the liable party, but no general information is available.	The Act on legal support ( <i>Wet op de rechtsbijstand</i> ) only allows for public support for consumer organisations if that consumer organisation cannot be expected to bear the costs of the procedure from its own resources or income (cf. art. 12 para. 1). The main consumer organisation – the Consumentenbond – most likely has too high resources to qualify for public support, whereas special interest groups founded to act in a specific case are excluded from public support (cf. art. 12 para. 2 limb d). Moreover, support is excluded where the consumer organisation may be expected to act itself or together with other organisations (art. 12 para. 2 limb g).	Not available because of lack of experience and lack of transparency. The time spent by consumer organisations is generally not registered and in any case is not made public. In this particular case, if the rejection by the tour operator is so categorical and so blatantly wrong, the time expenditure may not be as much as would normally be the case.	Because of the lack of experience with procedures on the basis of the WCAM, it is not possible to make an actual estimate of the costs and efforts made in order to settle a collective claim and to obtain the needed court order. Data are not kept by consumer organisations and costs are not made public.

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<b>Individual redress (through ordinary court procedure)</b>						
<i>For each individual consumer</i>	Court fees depend on the combined financial interest (art. 2, para. 2, of the Act on tariffs in civil cases ( <i>Wet tarieven in burgerlijke zaken</i> )). As the combined financial interest for an individual consumer is only 250 Euro, the court fees would amount to 90 Euro (para. 2 limb 1 <sup>o</sup> sublimb c).	Consumers may claim without legal support for claims of this amount. If a consumer does seek professional legal support, the following applies. Parties may negotiate about the lawyer's fees. Tariffs per hour and fixed amounts are possible and common, contingency fee is not allowed. Hourly rates of at least 150 Euro or more are normal; this implies that even in the simplest and fastest procedure, the costs incurred would be at least 450 Euro.	The costs for starting the procedure amount to 71,80 Euro (cf. art. 2 limb a Decree tariffs professional acts bailiffs, <i>Besluit tarieven ambtshandelingen gerechts-deurwaarders</i> )	As the consumer is not eligible for support on the basis of the Act on legal support ( <i>Wet op de rechtsbijstand</i> ) (see the assumption applicable to all hypothetical cases), no public support is available.	At least 3 hours (estimating that preparing the case will cost at least 2 hours and that actually being present in court would cost at least 1 hour). This is provided that the facts of the case are known to the consumer or his/her lawyer before the preparation of the case has started, otherwise the estimation of hours needed will rise accordingly.	Given the relatively low individual damage and the high costs of going to court, it is economically hardly sound for the individual consumer not to claim compensation in court.

	<b>Estimated court fees</b> [national currency]	<b>Estimated lawyer's fees</b> [national currency]	<b>Other costs, if any</b> [national currency]	<b>Public support</b> that is available [national currency]	<b>Estimated time</b> involved	<b>Comments</b>
<b>Individual ADR: Geschillencommissie Reizen</b>						
<i>For each individual consumer</i>	The ADR fees do not depend on the claim, but on package price. In this case, this implies a fee of 100 Euro.	Consumers may claim without legal support for claims in front of the Geschillencommissie and usually do so. Normally, the costs therefore are 0 Euro.	0 Euro.	No public support is available.	Given the informal proceedings (the claim may be filed on line), preparation need not take more than 1-1.5 hours. The procedure in front of the <i>Geschillencommissie</i> takes no more than 30 minutes.	

## 1.6 Effectiveness and efficiency of collective redress mechanism

### 1.6.1 *Effectiveness of current collective redress mechanism*

#### Objectives

#### **1. Does the collective redress mechanism fulfil the objectives of the national law which introduced it?**

The Dutch Ministry of Justice enacted the legislation (the WCAM-procedure) because it was expected that mass tort claims would occur more often in the future; legislation was deemed to be necessary. In this sense, the collective redress mechanism fulfils the objectives; indeed huge mass tort claims have been brought forward: Dexia and Shell. Consequently, most interview partners considered the WCAM to be a success or even a "great act". However, the main Dutch consumer organisation, the Consumentenbond is of a different opinion. It points out that only two consumer cases have been concluded under the WCAM so far, and the organisation is quite pessimistic on the practical value and usefulness of this mechanism, if it is not accompanied by other mechanisms like a real collective action which may lead to financial compensation.

This statement points to the weakness of the Act: When a settlement cannot be reached, the procedure is not available, which means that consumers can only obtain damages if they initiate a proceeding individually. The WCAM relies exclusively on two parties reaching a settlement. If the liable party ignores the risk of damage to its business reputation (and is not so overburdened with mass claims that it runs the risk of not being able to continue doing business), there are not too many incentives for that liable party to actually reach a settlement. Especially in cases of trifle damage (many individual consumers losing only a small amount of money) the chances of consumers actually going to court is minimal.

A second major problem is that consumer organisations initially lack the knowledge and resources to properly investigate and negotiate the claim. Public support for the consumer organisation is absent (only at the stage where a court order is being obtained this is theoretically possible). Given the time and money the consumer organisation needs to invest it can only up to a certain point initiate negotiations. When a settlement is reached, the consumer organisation will often be compensated (in whole or in part) by the liable party, but when such a settlement is not reached, the consumer organisation bears the burden all by itself.

From this it follows that the WCAM-procedure could be improved upon in two different ways to better reach its objectives. Firstly, when a settlement cannot be reached, the consumer organisation could be allowed to claim for collective damages. In the case of trifle damage, the court could then be called upon to determine – if the seller or service provider is indeed liable – how individual consumers are to be compensated or how the collective of consumers is better served (e.g. by setting up mechanisms allowing for future claims). Secondly, consumer organisations could be allowed to claim for public support to finance the investments in staff and knowledge needed to properly negotiate a settlement. In this respect, it should be mentioned that the consumer organisations in reality are serving the public interest in negotiating such settlements, which may

considerably restrict the number of individual court cases and therefore prevent the courts from being overloaded by these cases.

**2. Has the mechanism enabled consumers to obtain satisfactory redress in cases which they would not otherwise have been able to adequately pursue on an individual basis?**

The mechanism (WCAM) was helpful in the DES case. This case was pending for a long time. When the WCAM took effect, the interested parties had a chance to settle the case in an efficient way.

Also in the Dexia case the WCAM facilitated a somewhat smooth completion (victims were paid out all or part of their residual claims). However, some of the consumers who have opted out from the settlement are most likely to obtain better compensation, a recent advice from the Advocate-General to the Supreme Court (published on 25 January 2008) indicates.

However, according to the Consumentenbond, there are other cases<sup>7</sup> in which consumer organisations were not able to achieve a settlement – either because negotiation failed, or because negotiations did not even take place as the liable party was not willing to negotiate – and, consequentially, consumers did not obtain any redress at all. This points back to the weakness of the Act: when a settlement cannot be reached, the procedure is not available, which means that consumers can only obtain damages if they initiate a proceeding individually. In practice, given the relatively low value of their claim in view of the costs involved in taking legal action, such individual claims are scarce.

**Incentives provided**

**3. a) Does the mechanism ensure a change in the behaviour of the defendant, which results in the reduction of future harm to all consumers?**

The WCAM-procedure does not aim at the reduction of future harm to consumers, but it might indirectly contribute thereto. The weak point in the WCAM-procedure – the negotiations with the liable party – may in this respect prove to be helpful, as the liable party may learn from these negotiations how to prevent future harm. Moreover, part of the negotiating procedure may be that the liable party is required to warn consumers of the possibility of harm.

**3 b) Does the mechanism have a preventive effect and deter potential offenders, for instance by skimming off the profit gained from the incriminated conduct?**

Given the fact that the WCAM requires a settlement, it can hardly be considered to have a preventive or deterrent effect.

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<sup>7</sup> According to the Consumentenbond “many cases”.

**3 c) Does the mechanism provide incentives and sufficient opportunity for out-of-court settlement?**

The WCAM-procedure is built upon out-of-court settlement. As such a settlement may be declared binding on all consumers affected, unless they opt out, this may prove to be an incentive for the liable party. However, there are problems attached to this procedure as well. Firstly, the consumer organisation may settle for too low a compensation – the Dexia case may serve as proof thereof for a specific category of consumers –, perhaps in order to obtain at least some compensation (and possibly even the reimbursement of the consumer organisation’s costs). The liable party may in fact be tempted to try to reach a settlement and to have it declared binding in order to prevent more extreme measures abroad – the Shell case may also be interpreted as an attempt to prevent an American class action from becoming effective.

However, as was indicated above, apart from these incentives, the WCAM does not provide all that many incentives to obtain a settlement. The main problem is that there is no possibility to act against the liable party if that is not willing to settle (or even negotiate a settlement) as the consumer organisation cannot claim damages in a collective case. Especially where the liable party has nothing to lose – e.g. no reputation to protect – the WCAM-procedure provides insufficient incentives to out-of-court settlements.

**4. Does the mechanism discourage the introduction of unmeritorious claims? Is there a “gatekeeper procedure” to certify whether a collective action is admissible to the court or not. If yes, how does it work?**

The settlement itself is subject to contractual freedom between the negotiating parties. When a settlement is reached and the parties to it wish it to be declared binding upon all consumers affected, the court is required to ascertain, *inter alia*, whether the consumer organisation(s) involved are representative for the class of consumers affected, whether the interests of these consumers were taken into account sufficiently and whether the amount of compensation is reasonable, given the amount of damage sustained, the simplicity and speed with which the compensation may be obtained and the cause of the damage (Article 7:907 para. 3 Civil Code).

**Accessibility**

**5. Is the mechanism easily accessible to consumers?** [Costs, rules of standing, length of proceedings and other factors hindering or facilitating access for consumers to the mechanism should be considered]

The procedure is not accessible for individual consumers, but only for consumer organisations that may be considered to be representative for the class of consumers affected. The settlement negotiations are not public. Once the parties request the settlement to be declared binding, this is made public. The court is then required to ascertain whether the consumer organisation can in fact be considered to be representative for the class of consumers affected.

The costs of the procedure may pose a problem. As indicated above, consumer organisations often lack the knowledge and resources to properly investigate and negotiate the claim. Consequently, they need to invest time and money to obtain that knowledge. Moreover, they need to invest staff capacity to actually conduct the negotiations, without any certainty that these costs will be somehow compensated. Public support for the consumer organisation is absent in practice (see below).

**6. What are the litigation costs of collective redress for consumers compared to individual redress? What is the risk of the consumer if case is lost?**

Individual consumers do not have to pay costs if a settlement is reached under the WCAM. However, a consumer can be ordered to pay costs if he/she or she takes part in the proceedings objecting to the settlement. Moreover, where the costs of the consumer organisation in the settlement negotiations are ultimately not compensated by the liable party, they have to be borne by the members of the consumer organisation by way of their membership fees. In this respect, the risks entailed by the consumer organisation may be rather high. In the legionella case – a relatively simple case as regards to the applicable rules once the facts were properly established – the Consumentenbond reportedly incurred more than 300,000 Euro in lawyer’s fees.

**Financing and distribution of proceeds**

**7. Are actions under the mechanism financed in a way which ensures that consumers are able to obtain effective legal representation? Are there mechanisms of public support for the party that brings forward a collective action (the intermediary<sup>8</sup>), are contingency fees/conditional fees<sup>9</sup> allowed? What is the risk of the intermediary if a case is lost?**

The Act on legal support (*Wet op de rechtsbijstand*) only allows for public support for consumer organisations if that consumer organisation cannot be expected to bear the costs of the procedure from its own resources or income (cf. Article 12 para. 1). The main consumer organisation – the Consumentenbond – most likely has too high resources to qualify for public support, whereas special interest groups founded to act in a specific case are excluded from public support (cf. Article 12 para. 2 limb d). Moreover, support is excluded where the consumer organisation may be expected to act itself or together with other organisations (Article 12 para. 2 limb g). In literature the near absence of (financial) public support for consumer organisations is criticised. It is remarked that supporting the settlement negotiations and WCAM-procedure would enable consumer organisations to make more use of the procedure and, as a result, limit individual claims. It is expected that this would ultimately save costs and prevent

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<sup>8</sup> A collective action is usually brought forward by an intermediary, that organises the action on behalf of consumers. This can be a public intermediary (e.g. an ombudsman), a representative organisation as intermediary (e.g. a consumer organisation) or private intermediaries (e.g. a private law firm/an individual consumer taking the lead in an action). Intermediaries may also engage a private lawyer, who is not considered to be an intermediary in this context, as long as he/she is not responsible for organising the action.

<sup>9</sup> Contingency fees are lawyer’s fees that consist of a percentage of the damages awarded. Conditional fees are (possibly additional) fees that are paid in case of success, but not related to the damages awarded.

courts from being overloaded in the case of mass claims – as happened in the Dexia-case.

Contingency fees are not allowed in The Netherlands – an experiment the Bar Association was willing to undertake was even forbidden by the Ministry of Justice. Conditional fees are possible (e.g. in case of success the fee rises to 500 Euro per hour). In the case of individual claimants, poor individuals may obtain legal aid (with a contribution by the claimant, varying pursuant to that individual's income and other resources), while some have an insurance.

**8. Are proceeds of collective redress actions distributed in an appropriate manner amongst plaintiffs and their representatives?**

Article 7:907 paragraph 3, limb h CC provides that a legal entity must distribute the awarded damages. This legal entity may not be a party to the settlement. Thus, some objectivity concerning the distribution is realised. The court controls the fairness of the settlement. The court's evaluation includes the distribution of the proceeds, cf. Article 7:907 paragraph 3, limb c CC.

**1.6.2 Efficiency of available mechanisms**

**Length of proceedings**

**9. Is the length of the proceedings under the mechanism reasonable for consumers, consumer organisations, public bodies, and the defendants?**

As mentioned, the length of the proceedings in the DES-case was 14 months, and the length of the proceedings in the Dexia-case was 7 months. That is quite reasonable, considering the average duration of cases in the Netherlands. However, this period does not include the period needed for the negotiations prior to the settlement. These negotiations are lengthy and it is difficult to predict how long these will take and whether or not they will be successful. If they are not successful, the mechanism does not lead to any result for consumers.

**Costs for consumers, consumer organisations and public bodies**

**10. Are the costs related to bringing an action under the mechanism for consumers, consumer organisations and public bodies proportionate to the amount in dispute?**

The costs involved in the actual WCAM-procedure are limited, in particular when the settlement is not opposed by other consumer organisations. However, as indicated before, the pre-settlement costs can be very high and up to the moment that a settlement is reached it is uncertain for the consumer organisation whether (and to what extent) these costs will be compensated. It can be concluded that this uncertainty compromises to a large extent the possibility for consumer organisations to make sufficient use of the mechanism.



**11. Does the mechanism minimise litigation costs for consumers?**

See the case collection sheets. In the DES case consumers who registered with the DES Centre did not have to contribute to the costs of the legal proceedings in order to be eligible for a grant from the DES fund. In the Dexia case, Dexia was condemned to pay the costs of notifying the interested parties and of the appointed expert.

**Costs for businesses**

**12. *Information costs*: Does the mechanism impose requirements on businesses (in terms of being informed about the existing collective redress mechanisms and providing related information to public authorities) that lead to additional costs? Do these costs weigh in heavily on Small and Medium Enterprises (SMEs)?**

There is no indication that there are any relevant costs in this respect.

**13. *Litigation costs and related insurance costs*: Are cost for businesses for (legal) insurance (for litigation and for damages) and the litigation costs under the existing collective redress mechanisms unreasonable?**

There is no indication that the costs of the WCAM-procedure are unreasonable for businesses. It is rather likely that a settlement saves costs for businesses as they need no longer invest in numerous individual court cases. This is true in particular in cases where liability is not or no longer disputed, as was true for the DES-case, where the Supreme Court had found liability in individual cases.

**14. Is the economic impact on traders against whom actions have been brought under the mechanism proportionate to the alleged harm caused by the trader's conduct?**

There is no indication that the economic impact on traders, in so far as there is any, could be considered inappropriate.

**15. Does the mechanism lead to the closing down of businesses?**

It is possible that in some cases businesses might be tempted to flee into bankruptcy in order to avoid to comply with their financial obligations, but this would not be a result of the WCAM-procedure itself but the fact that such companies are faced with mass claims for which they may be held liable.

While it is true that Dexia is closing down its business in the Netherlands because of the loss of business reputation, it is certain that this is not caused by the WCAM-procedure but rather by Dexia's initial refusal to cooperate in finding any acceptable solution to the detriment consumers sustained. A fair settlement may rather prevent businesses from becoming insolvent and thus having to close down their business.

**Competitiveness and investment flows**

**16. Does the mechanism have an impact on the competitive position of EU firms in comparison with their non-EU rivals?**

No. The WCAM-procedure is open to both EU firms and non-EU firms.

**17. Does the mechanism provoke cross-border investment flows (including relocation of economic activity in Member States which do not have any collective redress mechanisms?)**

It is very unlikely that the mechanism provokes cross-border investment flows, a view that was also shared by the stakeholders interviewed for this study. It is, however, likely that the WCAM-procedure is being used to prevent or limit an American class action in the Shell case.

**1.6.3 Added value of available mechanisms**

**18. What is the added value of the collective redress mechanism(s) compared to individual judicial redress and ADR schemes, i.e. what is achieved by the mechanism(s) that is not achieved by individual redress?**

A WCAM settlement that is declared binding has effect to all interested parties, unless they opt out. Moreover, the whole procedure – once a settlement is reached – is much speedier than an individual court claim would be. Claims before a *geschillencommissie* often are settled within 6 months after a claim is filed; such claims therefore may be settled even be speedier than a WCAM settlement, but burdens the *geschillencommissies* much in case of mass claims.

**19. Please estimate, what percentage of consumers who were represented in the collective redress cases would likely have undertaken individual redress through ordinary court procedures if no collective redress system was in place (e.g. none, 10%, 50%)?**

It depends on the type of claim and the amount involved whether consumers would claim individually. It is certain that in cases of trifling damage, no consumer would claim individually, as the costs would outweigh the benefits. Unless ADR is available, the same would apply in cases where the amount to be claimed is below 500 Euro. Above this amount, the number of consumers going to court individually will gradually rise, depending on the complexity of the case (and therefore the chances of losing the case). Altogether, it can be estimated that no more than 10 % of consumers would go to court individually.

## 1.7 Overview of alternative procedures for consumers

### 1.7.1 *Individual court action*

**Is there any data available on the number of consumers seeking individual redress through ordinary court procedures?**

No. Consumer claims are not registered separately and are 'hidden' in the statistics of the courts.

**Please estimate the threshold for claims (in Euro) under which a rational consumer would refrain from seeking individual redress through ordinary court procedures?**

A rational consumer would refrain from seeking individual redress through ordinary court procedures in any case where the amount of costs would outweigh the possible benefits. For low value claims (below 5,000 Euro), consumers do not have to invoke the help of lawyers, provided that the case is simple. For them, the only costs (apart from the consumer's investment in time and effort) would be the court fee and, if they lose the case, the costs of the opposite counsel. For such cases, it would seem that the consumer would refrain from his/her claim when the claim is below 200 Euro. In more complex cases, the consumer would be required to invoke the help of a lawyer. In practice, this would make it irrational to go to court for a claim of less than 10,000-20,000 Euro.

### 1.7.2 *Individual action – ADR scheme(s)*

**Is there an ADR scheme(s) for consumer cases?**

The main ADR scheme is the De Geschillencommissie, which facilitates the Stichting Geschillensommissies voor Consumentenzaken (SGC). The SGC currently operates approximately 40 sectoral ADR-institutions. Apart from these ADR-institutions, many more (most of them not officially recognised) ADR-institutions operate in practice.

**Is there any data or an evaluation report available on the consumer relevant use of the ADR scheme(s)?**

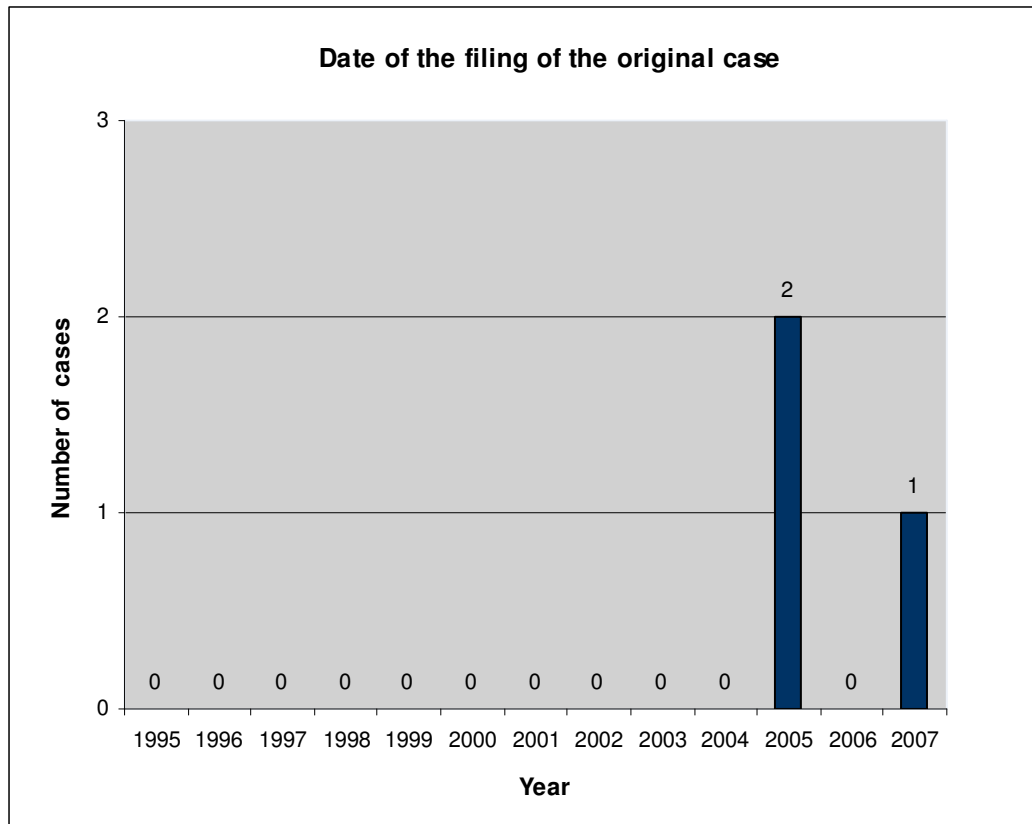
According to the last published annual report of the SGC, in 2006 11,793 cases were brought before the ADR-institutions of the SGC (in 2005 the number was 12,990).

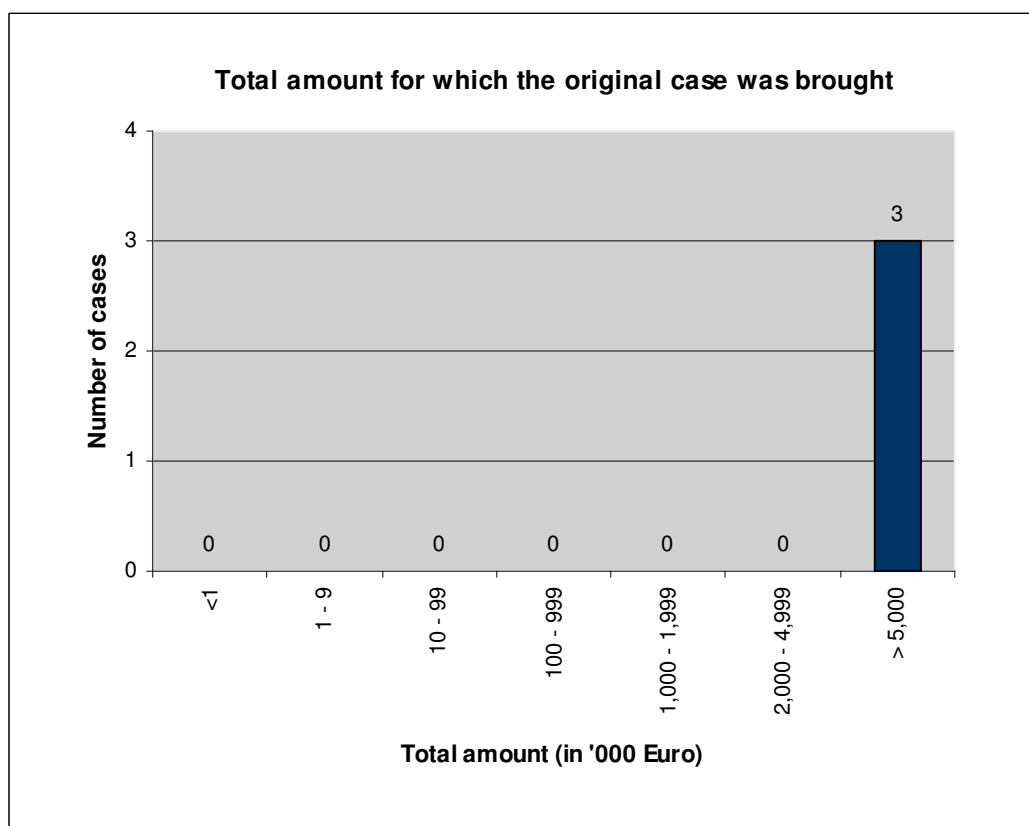
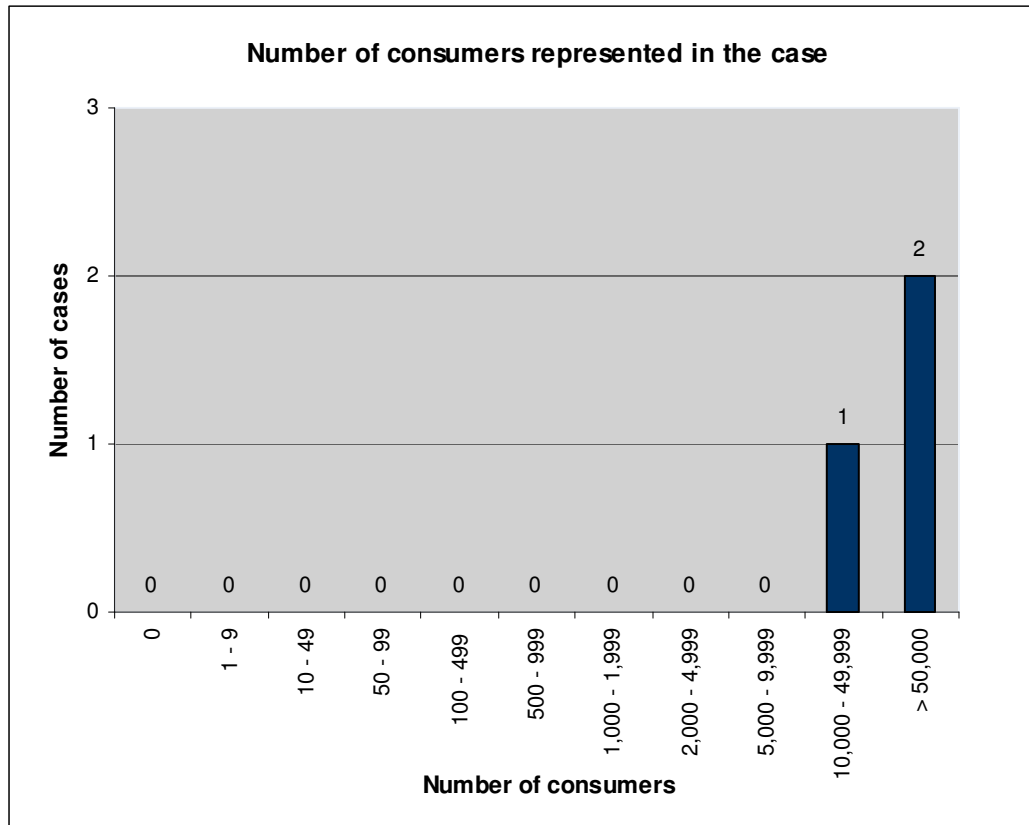
**Please estimate the threshold for claims (in Euro) under which a rational consumer would refrain from seeking redress through an ADR scheme?**

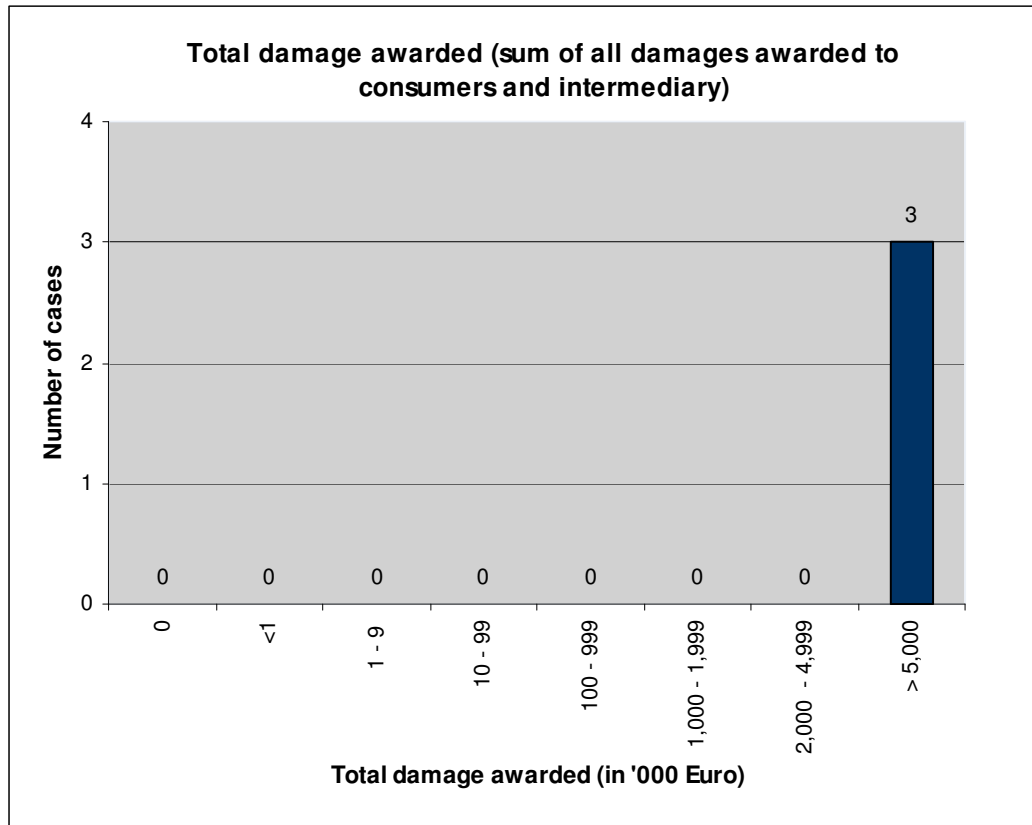
The threshold for ADR is much lower as consumers do not (necessarily) need the assistance of a lawyer and normally do not run the risk of being burdened with the costs from their counterpart if they lose their case. Consequently, a rational consumer would refrain from seeking individual redress through these ADR institutions only if the claim is below 100-200 Euro (depending on the applicable admission fee). If the consumer wins the case, the admission fee will be reimbursed by the professional party.

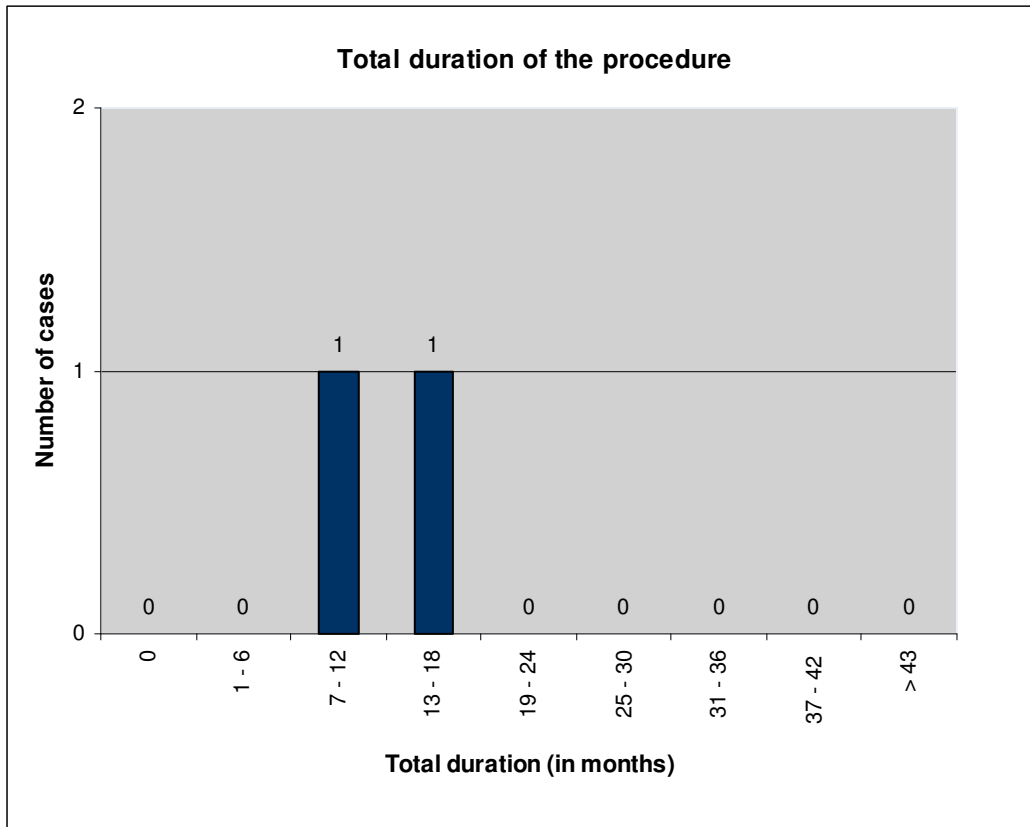
**1.8 ANNEX**

***Annex 1: Case statistics***

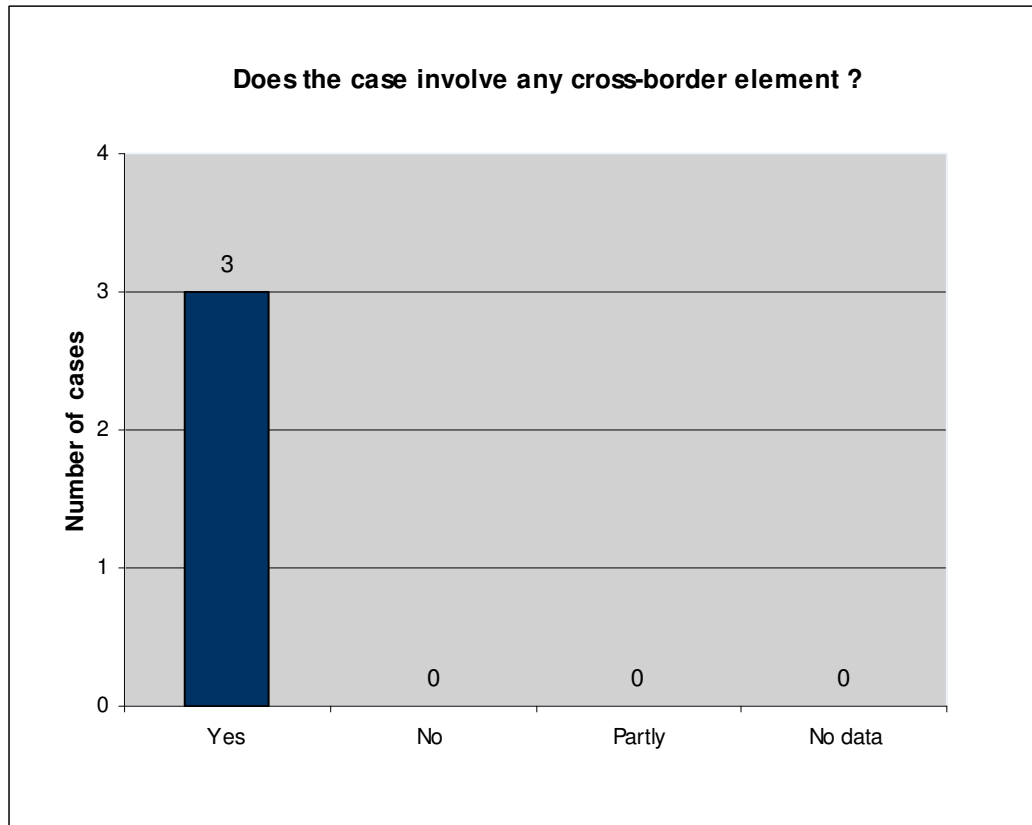








Note: No data available for one case





**Annex 2: Country literature on collective redress**

**Books:**

- ❑ Akkermans, A., Brans, E. (eds.), Aansprakelijkheid en schadeverhaal bij rampen (2002): Ars Aequi Libri, The Netherlands
- ❑ Berg, N. van den, Henkemans, R., Timmer, A. (eds.) (2007), Massaclaims, class actions op zijn Nederlands, Ars Aequi Libri, The Netherlands
- ❑ Muller, E.R., Stolker, C.J.J.M. (eds.) (2001): Ramp en recht. Beschouwing over rampen, verantwoordelijkheid en aansprakelijkheid., Boom Juridische uitgevers, The Netherlands
- ❑ Tzankova, I.N., (2007): Toegang tot het recht bij massaschade, Kluwer, The Netherlands

**Articles:**

**Mass damages general:**

- ❑ Barendrecht, J.M., Verdeling van verantwoordelijkheid als het fout gaat. Volendam en Aandelenlease als voorbeelden, in; Nederlands Juristenblad 2004/42, pp. 2180-2191
- ❑ Biggelaar, P.J.M. van den, Loos, M.B.M., Concentratie rechtsbijstand in massaschade loont, Nederlands Juristenblad 2007/41, pp. 2625-2632
- ❑ Drion, C.E., De gerechtelijke afwikkeling van massazaken, Nederlands Juristenblad 2005/18, p. 937
- ❑ Frenk, N. (2007): Massaschade: de Nederlandse benadering, Aansprakelijkheid, verzekering en schade 2007/5, pp. 214-222
- ❑ Giesen, I. De rol van de rechter bij massaschade: maatwerk of partijautonomie?, Nederlands Juristenblad 2007/41, pp. 2613-2614
- ❑ Hengeveld, W.J., Afwikkeling van 'voorbije' rampen, Aansprakelijkheid, verzekering en schade 2007/5, pp. 236-241.
- ❑ Krans, H.B., Een nieuwe aanpak van massazaken, Nederlands tijdschrift voor Burgerlijk Recht 2005/1, pp. 2-13
- ❑ Meijer, R.S., Massaschade, Ars Aequi 2007/10, pp. 748-754
- ❑ Polak, M.V., Iedereen en overal? Internationaal privaatrecht rond massaclaims, Nederlands Juristenblad 2006/41, pp. 2346-2355

***Mass damages within the context of the WCAM***

- ❑ Croiset van Uchelen, A.R.J., De verbindendverklaring volgens de WCAM als procesvorm, *Aansprakelijkheid, verzekering en schade* 2007/5, pp. 222-228
- ❑ Doorn, C.J.M. van, De tweede WCAM-beschikking is een feit: tijd voor een terugblik en een blik vooruit, *Aansprakelijkheid, verzekering en schade* 2007/3, pp. 105-114
- ❑ Doorn, C.J.M. van, De “Amsterdamse oplossing”: het einde van de Dexia-affaire in zicht?, in: *Tijdschrift voor Consumentenrecht en handelspraktijken* 2007/5, pp. 141-147
- ❑ Frenk, N., Definitieve afwikkeling van de DES-zaak in zicht, *Aansprakelijkheid, verzekering en schade* 2006/5, pp. 149-153
- ❑ Huls, N.J.H., Is de Duisenberg-regeling royaal genoeg voor alle legitieme Dexia-claims?, *Nederlands Juristenblad* 2005/27, pp. 1386-1390
- ❑ Huls, N.J.H., De constructie van een massaclaim. Een rechtssociologische analyse van de eerste fase van de Dexia-affaire, *RMThemis* 2007/2, pp. 51-60
- ❑ Jong, B.J., Schikking Shell met Europese beleggers, *Ondernemingsrecht* 2007/8, pp. 311-316
- ❑ Krans, H.B., Collectieve afwikkeling van massaschade door de Consumentenautoriteit: vragen over de bevoegdheid en representativiteit, *Weekblad voor Privaatrecht, Notariaat en Registratie* 2006/6673, pp. 521-525
- ❑ Leijten, A.F.J.A., Actualiteiten: twee WCAM-zwaluwen aan het begin van de zomer, *Ondernemingsrecht* 2006/10-11, pp. 390-392
- ❑ Martius, R.M.L.A., Collectieve afwikkeling van massaschade volgens de Wet collectieve afwikkeling massaschade: daadwerkelijk collectieve afwikkeling van massaschade?, *Praktisch procederen* 2005/6, pp. 190-199
- ❑ Tzankova, I.N., Enkele overpeinzingen naar aanleiding van de Dexia-(be)schikking, *Ondernemingsrecht* 2007/7, pp. 282-287
- ❑ Veenstra, H.M., Uitleg van een collectieve regeling tot vergoeding van massaschade, *Nederlands tijdschrift voor Burgerlijk Recht* 2007/1, pp. 2-8
- ❑ Verweij, J.H.A., Hof Amsterdam gaat verder dan Duisenberg-regeling, *Vennootschap & Onderneming* 2007/3, pp. 42-46

***Annex 3: Organisations interviewed***

- Ministry of Justice
- Consumentenbond (consumer organisation)
- Confederation of Netherlands Industry and Employers
- 1 Lawyer involved in collective redress
- 1 Judge of a Court of Appeal involved in collective redress

Date of interviews: December 2007 and January 2008