

# DSW Sixth International Investors Conference

## 2 December 2008



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2 December 2008**

**THE DUTCH SYSTEM  
A GOOD EXAMPLE FOR EUROPE**

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VERENIGING VAN EFFECTENBEZITTERS

*veb*

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## THE DUTCH SYSTEM A GOOD EXAMPLE FOR EUROPE

### FROM A SHAREHOLDERS ORGANISATION PERSPECTIVE



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## Dutch Shareholders Organisation VEB

- 43.000 members
- Private as well as institutional members
- Leading and representative

## Successful in collective actions

- Philips, Ahold, Unilever, Shell, Vedior

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## REPRESENTATION

**Key to settlement of mass claim actions**



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### CONCLUSIONS

#### 1. Collective actions

- **Limited possibilities before 1994:**

- **Bundling of known claims by powers of attorney or transfer of claims to associations and foundations**
- **Disadvantages: limited group, variety of claims, no effects for similar claims**

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- **Since 1994:**
  - **Introduction of collective action ex 3:305a DCC**
  - **Only for foundation or association**
  - **Representation requirement**
  - **Similar claims**
  - **Only declaratory judgment**
  - **Disadvantage: no compensation for damages, long proceedings**

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### 2. Dutch Collective Financial Settlement Act (WCAM)

- **Since 2005**
- **Requires out-of-court settlement**
- **Can be declared binding by Amsterdam Court of Appeal for entire group of claimants**
- **Very successful: DES, Dexia, Shell and Vedior**
- **Disadvantages: out-of-court settlement not enforceable, international scope?, opt-out system**
- **Amendments required**

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### 3. European perspective

- Harmonisation required
- Different options (White and Green Paper on Consumer Collective Redress)
- Procedures
- Does the Dutch system fit in?
- Alternatives?



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### More into detail

#### 1. Collective actions ex article 3:305a DCC

##### A. Requirements

- By foundation or association
- Claim to protect similar interests
- Of other persons
- Statutory requirement
- Previous consultation. Term: 2 weeks



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### B. Group actions vs public interest actions

- Can claimants be individualised?

Yes: group action

No: public interest action

### C. Kind of claims

- Compliance of agreement, dissolution, annulment, rectification, court order or banning order, claims regarding undue payment etc.

Every claim possible, except compensation *veb*

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→ **At present main instrument for legal actions of VEB in case of non-settlement**

### **2. Other types of collective actions**

- **For public law legal persons**

**Requirement: responsible and representative**

**Article 3:305b DCC**

- **For non-Dutch consumer organisations**

**Implementation of Directive 98/27 EC**

**Article 3:305c DCC**

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## 2. Dutch Collective Financial Settlement Act (WCAM)

**Example: Shell case**

**(re-categorisation of proven oil reserves 2004)**

- **Class actions in US**
- **No legal actions taken in Europe**
- **Dutch pension funds opt-out in US class action and start separate proceedings in US**
- **Threat for Shell: definition of class: worldwide**



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### Article 7:907 par 1 DCC (2005)

**‘An agreement concerning the payment of compensation for damage caused by an event or similar events concluded between a foundation or association with full legal competence and one or more other parties who have committed themselves by this agreement to pay compensation for this damage may, at the joint request of the parties that concluded the agreement, be declared binding by the court on persons to whom the damage was caused so long as the foundation or association represents the interests of these persons pursuant to its articles of association...’.**

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### Procedure

1. **Collective settlement**
2. **Assessment and approval by court**
3. **Enforcement: compensation or opt-out**

- **Open to all sort of claims (compensation for injuries as well as pecuniary damage)**

### Notification

- **Categories of claims (allocation plan)**

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### Requirements of settlement agreement

- Representation of the parties
- Compensation
- Indication of the group of claimants
- Conditions and procedure for compensation
- Opt-out arrangement



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## Criterion Amsterdam Court of Appeal

### Article 7:907 par 2 DCC

**‘The court shall reject the request if... the compensation awarded is not reasonable...’.**

**VEB party to 3 of 4 cases**

**Dexia, Shell, Vedior**

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### Advantages:

- Facilitates parties in collective settlements
- Fits into Dutch 'polder model'
- Very successful: 1.5 billion Euros paid out
- 'Low cost' proceedings

### Disadvantages:

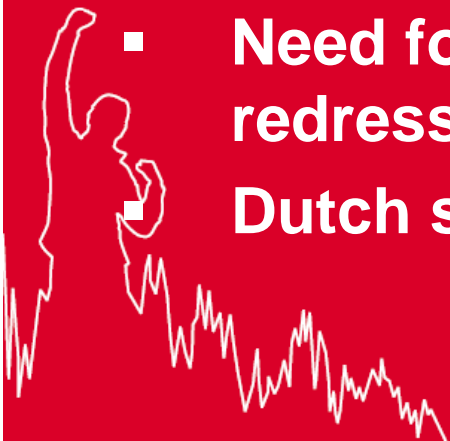
- No class action according US model
- Lack of preliminary rulings: future amendments

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### 3. European perspective

- Various systems of member states
- Need for harmonisation
- Requires to make choices
- Private international law aspects
- Need for facilitating instruments on collective redress
- Dutch system: a good example to bear in mind



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