# ECLI:NL:GHAMS:2024:2238

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| Authority | Amsterdam Court of Appeal |
| Date of decision | 13-08-2024 |
| Date of publication | 13-08-2024 |
| Case number | 200. 312.819/01 |
| Areas of law | Civil law |
| Special features | Appeals<br>Interim ruling |
| Content indication | Collective action SDEJ v Stellantis c.s. relating to vehicles with diesel engines which, according to SDEJ, did not and still do not comply with Euro 5 and Euro 6 emission standards due to a prohibited manipulation device. This judgment answers two questions, namely:<br>1) Does the Dutch court have jurisdiction over the claims against the Car Manufacturers? and<br>2) Which collective action regime applies, Article 3:305a (old) of the Civil Code or the Act on Settlement of Mass Damages in a Collective Action (WAMCA)? |
| Findings | Rechtspraak.nl<br>JOR 2024/277 with annotation by mr. M.H.J. van Maanen |

# Excerpt

**AMSTERDAM COURT OF APPEAL**

civil and tax law department, Team I

case number : 200.312.819/01

Case and role number District Court of Amsterdam : C/13/688861 / HA ZA 20-881

**judgment of the plural civil chamber of 13 August 2024**

regarding

**DIESEL EMISSIONS JUSTICE FOUNDATION**,

based in Amsterdam,

Appellant, also respondent in the cross-appeal, lawyer:

Q.L.C.M. Bongaerts, Amsterdam,

at

**1 STELLANTIS S.A. formerly FIAT CHRYSLER AUTOMOBILES S.A.,**

based in Amsterdam,

the legal entities under foreign law (2 to 4) and **[the remaining 71 respondents]**

The appellant shall be referred to as SDEJ. Respondents 1 to 5 are collectively referred to as Stellantis c.s. and each individually as Stellantis, Stellantis Europe, Alfa Romeo, FCA US and (respondent 5) the Importer. Interested parties 2 to 4 are collectively referred to as the Car Manufacturers.
Respondents 6 to 10 and 12 to 72 together are referred to as the Dealers. Respondent 11 is referred to as AutoPalace.

## 1 The case in brief

SDEJ brought collective claims against Stellantis, the Automobile Manufacturers, the Importer and the Dealers in relation to vehicles with diesel engines that SDEJ claimed failed and continue to fail to meet Euro 5 and Euro 6 emissions standards due to a prohibited manipulation device.

This judgment answers two questions, namely:

1. Does the Dutch court have jurisdiction over the claims against the Car Manufacturers? and
2. Which collective action regime applies, Article 3:305a (old) of the Civil Code or the Act on Settlement of Mass Damages in a Collective Action (WAMCA)?

## 2 The case on appeal

By summons dated 12 July 2022, SDEJ appealed against a judgment of the District Court of Amsterdam, delivered under the above case and role number, between SDEJ as plaintiff and the defendants as defendants.

The parties subsequently submitted the following documents:

- statement of objections, with exhibits;
- statement of reply also statement of grievances in cross-appeal by Stellantis et al, with supporting documents;
- memorandum of reply from Dealers;
- AutoPalace's reply memorandum;
- response in cross-appeal, with exhibits.

Prior to the oral hearing, SDEJ submitted productions and FCA Italy (now Stellantis Europe) submitted a deed of name change.

At the oral hearing on 18 January 2024, the parties had the case explained on the basis of speaking notes which they submitted, SDEJ by Mr Bongaerts aforementioned and mrs.
J.D. Edixhoven and W. Vader, lawyers of Amsterdam, Stellantis c.s. by the aforementioned Mr Knigge, and Mr P. Sluijter, lawyer of Rotterdam and Mr D. van der Linden and Mr J. Luitwieler, lawyers of Amsterdam, the Dealers by the aforementioned Mr Van Joolingen and AutoPalace by the aforementioned Mr De Jong.

Finally, judgment was sought.

SDEJ moved that the court of appeal set aside the judgment under appeal insofar as it relates to paragraph 5.34 and the operative part of paragraph 6.2 with a stipulation that art.
3:305a (new) BW and Title 14A Rv as amended and introduced with the WAMCA apply, with decision, provisionally enforceable, on legal costs.

In the cross-appeal, Stellantis et al. moved that the Court of Appeal set aside the judgment under appeal and declare that the District Court of Amsterdam had no jurisdiction to hear the claims of SDEJ against the Car Manufacturers, except with regard to the possible claims, as yet insufficiently specified by SDEJ, for a

Stellantis c.s. lodged claims against a group of Amsterdam buyers. On the main appeal, Stellantis et al. moved that the court of appeal uphold the contested judgment, with a provisional decision on costs.

Dealers' and AutoPalace's claims are that the court should uphold the contested judgment with, enforceably, a decision on the costs of the proceedings.

In the cross-appeal, SDEJ moved that the court of appeal uphold the judgment under appeal insofar as the court had assumed jurisdiction therein, with a decision, enforceable by operation of law, on the costs in the cross-appeal.

## 3 Facts

Under 2. of the judgment under appeal, the court established the facts which it took as its starting point. In summary, and supplemented where necessary by other facts, the facts amount to the following.

3.1. SDEJ was incorporated on 1 July 2019. Article 2(1) of its articles of association reads, in so far as relevant, as follows:

*"The purpose of the foundation is to promote and pursue the interests of the Victims (...), including but not limited to:*

*a. representing the interests of Victims worldwide in connection with the Claim;*

*b. Promoting the interests of Defendants and representing Defendants in legal proceedings within the Netherlands ();*

*c. obtaining and distributing financial compensation for (part of) the damage the Victims (...) claim to have suffered;*

*d. representing the collective interests of Victims in () legal proceedings within the Netherlands () such as civil () proceedings, ();*

*e. anything related or conducive to the above, all in the broadest sense;*

*all to the extent deemed appropriate by the board."*

In the articles of association, the following definitions shall apply:

Victims: *"all natural persons, or legal persons under private or public law, or their legal successors, who have been directly or indirectly harmed or injured in any way whatsoever by the acts or omissions of the Entities and Policies () on which the Claims are based, in the broadest sense of the word".*

Claim: *"complaints, demands and claims by the Complainants and/or the Foundation in the interest of the Complainants, on any legal basis whatsoever, against one or more Entities and/or their Policy Makers in respect of any form of detriment, loss or damage which the Complainants claim to have suffered or to be suffering, individually or collectively as a result of fraudulent manipulation of vehicle emissions in certain test situations and the misrepresentations by the Entities as to the actual levels of such emissions, commonly known as the diesel emissions scandal, which expressly includes, but is not limited to, claims by any of the Complainants in connection with the purchase, ownership or lease of vehicles manufactured by one or more of the Entities, and claims in connection with emissions of environmentally hazardous substances."*

3.2. Stellantis is the top holding company of the Fiat Chrysler group which came into existence on 12 October 2014 as a result of the merger between the Fiat group and the Chrysler group. Until the merger, Fiat SpA was top holding company of the Fiat group and FCA US was top holding company of the Chrysler group. Fiat SpA now called Stellantis Europe merged with the merger into Stellantis which has held 100% of the shares in FCA US since the merger.

The Importer is a subsidiary of Stellantis Europe. It is the importer for the Dutch market of new vehicles produced by the Car Manufacturers.

The Dealers have a contractual relationship with the Importer and deal (inter alia) in the vehicles obtained from the Importer.

## 4 Review

4.1. SDEJ's collective claims relate to vehicles manufactured by the Automobile Manufacturers in the period 2009-2019, vehicles imported into the Netherlands by the Importer and vehicles sold and delivered by the Dealers or issued for lease that were acquired or leased by Defendants in the period from 1 January 2009 to the date of judgment. These are vehicles of the Fiat, Jeep and Alfa Romeo brands with the following diesel engines approved under Euro 5 or Euro 6 emissions regulations (hereinafter: the Vehicles):

1. The 1.3-litre four-cylinder engine (1.3 Multi Jet (Fiat) or 1.3 JTDm (Alfa Romeo));
2. The 1.6-litre four-cylinder engine (1.6 MultiJet (Fiat and Jeep) or 1.6 JTDm engine (Alfa Romeo));
3. The 2.0-litre four-cylinder engine (2.0 MultiJet (II) (Fiat), 2.0 JTDm (Alfa Romeo) or 2.0 MultiJet (II)/2.0 CRD (Jeep));
4. The 3.0-litre four-cylinder engine (3.0 MultiJet);
5. The 3.0-litre six-cylinder engine (3.0 MultiJet (Fiat) or 3.0 CRD (Jeep)).

SDEJ claims that the Vehicles were provided with a prohibited manipulation device as a result of which they did not and still do not comply with the European emission regulations (Euro 5 and Euro 6). The Victims on behalf of SDEJ in these collective claims are all persons and/or legal entities who, within the European Union and, in the alternative, within the Netherlands, have been supplied with one or more Vehicles (hereinafter: the Victims).

SDEJ has divided the Debtors into different categories (Consumers, Business Buyers, Lessees and Lessees Buyers) and, with respect to these categories, distinguishes between Debtors according to whether they still own a Vehicle and between Consumers and Business Buyers who bought their Vehicle from a Dealer or not. Debtors also include Lessees who own a Vehicle under financial lease and have not yet become legal owners.

For Victims who still own a Vehicle, the claims extend to destruction, matter substitution, repossession of the Vehicles and rescission or at least joint and several liability for damages. These claims are based on tort (including unfair commercial practices and product liability), (mutual) mistake and breach of contract. On behalf of the other Defendants, the claims are based on joint and several liability for damages (decrease in the value of the Vehicle, additional costs and other disadvantages).

4.2. The court assumed jurisdiction over SDEJ's collective claims and found the WAMCA inapplicable. Stellantis et al. challenge the jurisdiction of the Dutch court in relation to the claims brought against the Auto Manufacturers. SDEJ argues that the WAMCA does apply.

*Jurisdiction*

4.3. The rules of international jurisdiction are of public policy. Jurisdiction must be established before it can be given to further (substantive) assessment of the collective action. The court must therefore (also) assess ex officio whether the Amsterdam court has jurisdiction to hear SDEJ's claims. This must be done in the cases against the Italian-based Stellantis Europe and Alfa Romeo on the basis of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (OJEU 2012, L 351/1, Regulation Brussels I-bis). In the absence of applicable regulations or treaties, this question in the case against US-based FCA US must be answered on the basis of the Dutch rules of common jurisdiction set out in Articles 1 to 14 of the Code of Civil Procedure (Rv).

In introducing and subsequently amending Articles 1-14 Rv, the legislator explicitly sought a connection with, among others, the predecessors of the current Brussels I-bis Regulation (see Parl. Gesch. Rev. Rv, p. 80; Parliamentary Papers II 2002/03, 28863, no. 3, p. 1). Therefore, when interpreting the common rules on jurisdiction, the case law of the CJEU on (the predecessors of) Regulation Brussels I-bis should in principle be followed. This is, of course, different if it is plausible that the Dutch legislator intended to deviate from EU law instruments or their interpretation by the CJEU when designing a common rule (see HR 29 March 2019, ECLI:NL:HR:2019:443, para 4.1.3).

The provisions of Regulation Brussels I-bis are to be interpreted autonomously according to its system and objectives, the starting point being that the rules of jurisdiction should be highly predictable.

In assessing jurisdiction, the court will take into account not only SDEJ's contentions, but also the available data on the legal relationship actually existing between the parties and the contentions of Stellantis et al, the Dealers and AutoPlaza (see HR 23 March 2019, ECLI:NL:HR:2019:443, para 4.1.4). However, there is no need to take evidence at the jurisdictional determination stage in relation to disputed facts (see CJEU 16 June 2016, ECLI:EU:C:2016:449 (Universal Music), paragraphs 44-45).

4.4. Neither Regulation Brussels I-bis nor the Dutch rules of jurisdiction have any specific grounds of jurisdiction or applications of the (special) rules of jurisdiction in relation to collective actions. The parties rightly assume that Articles 7(2) and 8(1) Brussels I-bis Regulation and Articles 6 opening words and under g and 7(2) Rv respectively are the only possible grounds of jurisdiction for the claims against the Car Manufacturers.

*Article 8(1) Regulation Brussels I-bis and art. 7(1) Rv*

4.5. Art. 8(1) Brussels I-bis Regulation contains a special rule of jurisdiction for cases where a plaintiff has claims against several defendants in different Member States, according to which a defendant domiciled in the territory of a Member State may, if there is more than one defendant, be sued in the court of the domicile of one of the d e f e n d a n t s , provided that the claims in question are so closely connected that the proper administration of justice requires their simultaneous handling and trial in order to avoid the risk of irreconcilable j u d g m e n t s resulting from separate proceedings. Art. 7(1) Rv contains a similar rule requiring that there be such a connection between the claims against the various defendants that reasons of efficiency justify their being heard together.

4.6. Art. 7(1) Rv is based on (the predecessor of) art. 8(1) Brussels Regulation

I-bis (see Parl. Gesch. Herz. Rv, p. 108). The legislative history of art. 7 (1) Rv does not contain any clues on the basis of which it should be assumed that it is plausible that the legislator intended with the standard in art. 7 (1) Rv to deviate from the interpretation of (the predecessors of the current) art. 8 (1) Regulation Brussels I-bis by the ECJ/HJ EU. On the contrary, when drafting art. 7(1) Rv, the legislator took into account the Kalfelis judgment of the (then) ECJ of 27 September 1988, no 189/87, ECLI:EU:C:1988:459 (see Parl. Gesch. Herz. Rv, p. 108). It follows from this judgment that for the then applicable predecessor of Article 8(1) Regulation Brussels I-bis (Article 6(1) EEX Convention (OJ 1979, C 59)) to apply, there must be such a close connection between the various actions brought by the same applicant against different defendants that it is important to try them together in order to avoid incompatible judgments when the cases are tried separately. This condition of a close connection, which was not included in Article 6(1) EEX Convention (which then stipulated: *This defendant may also be sued: 1. where there is more than one defendant: in the court of the domicile of one of them;*), is now included in Article 8(1) Brussels I-bis Regulation and has been further elaborated in ECJ/CJEU case-law.

4.7. In view of the above, when interpreting and applying Article 7(1) Rv, the case law of the ECJ/HJ EU on the interpretation and application of (the predecessors of) Article 8(1) Regulation Brussels I-bis should be taken as a guideline. The very limited textual difference between the two provisions, the difference in scope of application and the difference in scope of both regulations Regulation Brussels I- bis regulates not only international jurisdiction but also recognition do not stand in the way of this. Nor does legal certainty, which is of particular importance in rules on jurisdiction; on the contrary, it is served by it. Moreover, the ECJ also summarises the yardstick of (the predecessors of) Article 8(1) Brussels I bis Regulation as appropriate and sufficient coherence (see ECJ Freeport judgment of 11 October 2007, ECLI:EU:C:2007:595, para 29).

In answering the question whether the close connection referred to in Article 8(1) Regulation Brussels I-bis exists or whether there is coherence within the meaning of Article 7(1) of the Dutch Code of Civil Procedure, the court will follow the case law of the CJEU with regard to Article 8(1) Regulation Brussels I-bis and its predecessors, Article 6 opening words and under 1 of the EEX Convention (OJ 1979, C 59) and Article 6(1) Regulation 44/2001 (Regulation Brussels I).

4.8. The court sees no reason to stay the case pending the answers to the preliminary questions put by this court on 19 September 2023 (ECLI:NL:GHAMS:2023:2570) on the interpretation of Article 8(1) Regulation Brussels I-bis. Among other things, it was asked whether this provision directly, setting aside Articles 99 to 110 Rv, designates both the internationally and relatively competent court and whether, when applying this provision, only one defendant can act as an anchor defendant. At this state of affairs, where the questions have not yet been answered, the court assumes the most limited interpretation of Article 8(1) Brussels I-bis Regulation with regard to the issues at stake. The court of appeal assumes that this provision, setting aside Articles 99 to 110 of the Dutch Code of Civil Procedure, directly designates both the internationally and relatively competent court and that, when applying this provision, only one defendant can act as anchor defendant. The court sees no reason to ask further preliminary questions on Art. 8(1) Brussels I-bis Regulation. Art. 7 (1) Rv only relates to jurisdiction of the Dutch court. Relative jurisdiction is governed by arts. 99 to 110 Rv.

4.9. Article 8(1) Brussels I-bis Regulation and Article 7(1) Rv aim at facilitating the proper administration of justice, limiting parallel proceedings as much as possible and thus avoiding incompatible judgments in separate proceedings. Since these special rules of jurisdiction derogate from the main rule that the court of the defendant's domicile has jurisdiction, they must be interpreted narrowly. Judgments cannot already be deemed irreconcilable on the basis of a divergence in the resolution of the dispute; to that end, moreover, it is required that that divergence occurs in the context of the same situation, in fact and in law (see, inter alia, CJEU 20 April 2016, ECLI:EU:C:2016:282 (Profit Investments SIM), paragraph 65).

4.10. The claims against the Car Manufacturers are each closely related or connected within the meaning of Article 8(1) Regulation Brussels I-bis and Article 7(1) Rv to the claims against the Importer. The accusation made against the Car Manufacturers of unlawful manipulation of the Vehicles is not directed against the Importer, but the merits of the claims against the Importer depend (in part) on the merits of this accusation. The merits of the claims against the Car Manufacturers and the Importer further require answering common questions of fact and law, for example the question of the Vehicles' (continued) failure to comply with the emissions regulations, the effects thereof and whether those effects have been adequately remedied. Furthermore, in connection with a number of allegations made jointly or severally against them, the Importer is held jointly and severally liable with the Car Manufacturers for the entire damages of all the Victims for which SDEJ is defending in these proceedings.

It follows that the same situation, in fact and law, is sufficiently involved. Joint consideration of the claims against the Car Manufacturers and the Importer avoids the need for different courts to answer the same questions in that regard and

conflicting decisions (may) give.

To the extent that the admissibility of the claims against the anchor defendant would be relevant to the determination of jurisdiction under Art. 8(1) Brussels Regulation

I-bis this court has referred a question on this to the CJEU (see ECLI:NL:GHAMS:2023:2570) and should it be held that this article cannot be applied in the event of insufficient substantiation of the claim against the anchor defendant, there is no obstacle therein to the assumption of jurisdiction in the present case in view of the substantiation of its claims given by SDEJ.

4.11. Finally, for the Car Manufacturers, it was foreseeable that they could be sued in Dutch courts, including the Amsterdam District Court, to the extent that SDEJ was acting on behalf of Victims who bought or leased a Vehicle in the Netherlands. The Car Manufacturers had to take into account that they could be sued before a court of a Member State in which the Vehicles they manufactured were marketed.

To the extent that SDEJ represents Victims who bought a Vehicle outside the Netherlands, elsewhere in the European Union, that is different; the Car Manufacturers did not have to take into account that they would (could) be sued before a Dutch court in connection with Vehicles marketed elsewhere in the European Union. To that extent, the foreseeability requirement has not been met and the Dutch courts do not have jurisdiction over SDEJ's collective claims. This also applies to jurisdiction under Article 7(1) Rv; it is not plausible that the Dutch legislature intended to depart, where foreseeability is concerned, from EU law instruments or their interpretation by the CJEU.

4.12. With Stellantis as anchor defendant, this lack of foreseeability also precludes jurisdiction of the Dutch courts to the extent that SDEJ, with its collective claims, stands up for Victims who bought or leased Vehicles elsewhere in the European Union, outside the Netherlands. Whether Stellantis can also act as an anchor defendant, as SDEJ argues, can remain uncontested.

4.13. In conclusion, in the case against the Car Manufacturers, the district court erred in assuming jurisdiction under Article 8(1) Regulation Brussels I-bis and Article 7(1) Rv, respectively, to the extent that SDEJ is defending on behalf of Victims who bought or leased a Vehicle outside the Netherlands, elsewhere in the European Union. In the case against the Car Manufacturers, the court correctly assumed jurisdiction to hear SDEJ's claims to the extent that SDEJ thereby acts on behalf of Victims who bought or leased a Vehicle in the Netherlands.

4.14. Art. 7(2) Regulation Brussels I-bis and art. 6 opening words and g Rv, respectively, provide no basis for wider jurisdiction. Both the Handlungsort and Erfolgsort of the claims against the Car Manufacturers in relation to Vehicles purchased or leased outside the Netherlands are outside the Netherlands.

*Applicable collective action regime*

4.15. With the introduction of the WAMCA, Art. 3:305a of the Civil Code, which regulates the bringing of collective claims, was amended and new procedural provisions for such claims were added in Title 14A Rv. The relevant transitional law for Art 3:305a DCC is laid down in Art 119a paragraph 2 ONBW. This provision contains an exception to the main rule of immediate effect (Art. 68a ONBW) according to which Art. 3:305a (old) Civil Code remains applicable for collective claims brought after 1 January 2020 "insofar as the legal action relates to an event or events that took place before 15 November 2016." The transitional law applicable to Title 14A Rv introduced by the WAMCA means that this title applies to lawsuits brought on or after 1 January 2020 and relating to an event or events that took place on or after 15 November 2016 (art. III under 2 WAMCA).

The amendments to the BW and the Rv introduced by the WAMCA are inseparable. In view of this, and because the WAMCA transitional law makes an exception to the principle of immediate effect of amendments to the BW and the CoC, the WAMCA does not apply to claims that relate (exclusively) to an event or events that took place before 15 November 2016 (cf. HR 11 March 2022, ECLI:NL:HR:2022:347, para 3.1.4). This is consistent with the legal certainty sought by the WAMCA transitional law and the prevention of proceedings concerning the same event(s) under different collective action regimes.

In order to determine whether there was an event or events that took place (exclusively) before or from 15 November 2016, SDEJ's statements and the defendants' disputes must be taken into account. Evidence is therefore not at issue; an indication based on the parties' contentions is sufficient (cf. HR 11 March 2022, ECLI:NL:HR:2022:347, para 3.1.4).

4.16. The common denominator of SDEJ's collective claims is that all of SDEJ's allegations, based on different legal bases, against Stellantis, the Car Manufacturers, the Importer and the Dealers relate to Vehicles put into circulation in the Netherlands that were allegedly equipped with emission control software (an alleged manipulation device) as a result of which they did not and still do not comply with the applicable emission regulations. The court therefore identifies the entry into circulation in the Netherlands of Vehicles equipped with an alleged manipulation device as the event(s) to which SDEJ's collective claims relate. The court therefore does not endorse the event determined by the court, namely the development of the emission control software. The event(s) advocated by SDEJ, including the reprogramming of said software, concern the continuation or failure to remove the alleged damage resulting from the putting into circulation in the Netherlands of Vehicles that do not comply with the emission regulations. To designate this (also) as the event(s) relevant for application of the transitional law would lead to a conflict with the legal certainty intended by the transitional law.

4.17. When applying Section 119a(2) ONBW to SDEJ's collective claims, a distinction should be made between Vehicles subject to the Euro 5 and Euro 6 emission standard, respectively. The Euro 5 standard applied until September 2015, after which the Euro 6 standard applied. Given the partisan discussion, there is no indication that on or after 15 November 2016, Euro 5 Vehicles covered by SDEJ's collective claims were put into circulation in the Netherlands. SEC's collective claims in respect of the Euro 5 Vehicles therefore relate exclusively to events that occurred before 15 November 2016 and are governed by Article 3:305a (old) of the Civil Code. SDEJ's choice to bring collective claims in one proceeding relating to Vehicles that were put into circulation (in the Netherlands) during a long period in which different emission regulations (Euro 5/Euro 6) applied, cannot lead to collective claims relating to Vehicles that were no longer put into circulation (in the Netherlands) on and after 15 November 2016 being brought under the WAMCA regime. This is not consistent with the legal certainty intended by the legislator with Art. 119a(2) ONBW.

4.18. The party discussion provides sufficient indications that the Euro 6 Vehicles to which SDEJ's collective claims relate were (also) put into circulation (in the Netherlands) on and after 15 November 2016. Therefore, the collective claims relating to these Vehicles do not (exclusively) relate to event(s) prior to 15 November 2016. The WAMCA applies to them. This is in line with the premise of the WAMCA that all claims relating to the same event(s) are concentrated in one collective action proceeding, the legislator's intention to prevent simultaneous application of different regimes to collective actions concerning the same event(s) and the legal certainty pursued by the legislator, which implies, inter alia, that (potential) defendants can expect to be confronted with a collective action to which the WAMCA applies in relation to events that did not or did not exclusively take place before 15 November 2016.

4.19. In conclusion, SDEJ's collective claims insofar as they relate to Euro 5 Vehicles are governed by Article 3:305a (old) of the Civil Code. To the extent the claims relate to Euro 6 Vehicles, they are governed by the WAMCA. This can undeniably lead to litigation complications. However, this is the consequence of SDEJ combining claims relating to distinguishable events that did and did not take place (exclusively) before 15 November 2016 into one collective action procedure.

*Final sum*

4.20. The judgment under appeal cannot stand. There is no interest in separate consideration of the grievances and the defences. The parties have not yet given their (sufficient) opinion on the continuation of the proceedings, including the question whether referral back to court is appropriate. The parties will be given the opportunity to express their views on this at a pre-trial hearing, which will be held on 4 October 2024 for the sake of smooth progress. If they so wish, the parties may set out their views in a short document (of up to five pages) no later than 10 working days before that hearing.

4.21. The court reserved any further decision.

## 5 Decision

The court:

5.1 orders a pre-trial hearing to be held on 4 October 2024, at 10 a.m., for the purpose described in paragraph 4.20;

5.2. reserves any further decision.

This judgment was delivered by Messrs L. Alwin, J.W.M. Tromp and M.C. Bosch and pronounced in public by the presiding judge on 13 August 2024.