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Amsterdam District Court
Case number: 766933 / HA ZA 25-896
Date of hearing: 27 May 2026

STATEMENT ON ADMISSIBILITY

concerning:

the association
Milieudefensie
with its registered office in Amsterdam

hereinafter referred to as: "Milieudefensie"

the claimant,
solicitors: R.H.J. Cox, P. Heemskerk

against:

1. the public limited company
   ING Groep N.V.
   with its registered office in Amsterdam

and:

2. the public limited company
   ING Bank N.V.
   with its registered office in Amsterdam

hereinafter jointly referred to as: "ING"

Defendants
solicitor: D.C. Roessingh, LL.M.

PAULUSSEN ADVOCATEN

Contents

1. Introduction

1. By order of 21 April 2026, the court granted Milieudefensie the opportunity to submit written observations on the admissibility of Milieudefensie's claim pursuant to Article 1018c(5) of the Code of Civil Procedure and the applicability of Articles 1018e, 1018f and 1018g of the Code of Civil Procedure to the present proceedings. In this regard, the parties have confirmed to the court that they will refrain from an oral hearing on these matters.
2. First and foremost, Milieudefensie has, in its writ of summons dated 28 March 2025 ("**Summons**"), provided extensive grounds demonstrating that it meets all relevant admissibility requirements.[1]
3. In its statement of defence of 18 February 2026 (**"Statement of Defence**"), ING raised a number of defences regarding Milieudefensie's admissibility. ING acknowledges that Milieudefensie has been committed to the public interest of protecting the environment in many different ways for over 50 years and that it also possesses the necessary experience, expertise and resources.[2] Nor is it disputed between the parties that the climate interests for which Milieudefensie advocates are sufficiently similar. In light of the Urgenda case and the earlier rulings in the Shell case, this cannot reasonably be disputed either.[3]
4. ING's defences regarding admissibility largely boil down to the argument that Milieudefensie does not meet the guarantee requirement, or at least the representativeness requirement, because Milieudefensie's supporters would not benefit from the claims being upheld and because it cannot be established that Milieudefensie enjoys sufficient support from its supporters for the specific (partial) claims in these proceedings.[4]
5. In the following, Milieudefensie demonstrates that ING's defences cannot succeed. It will become clear that ING fails to recognise the background and substance of the guarantee requirement (sections3.2 and3.3 of this document). Furthermore, ING bases its plea of inadmissibility against Milieudefensie primarily on public communications by Milieudefensie via its website and the alleged incompleteness and inaccuracy thereof. Milieudefensie disputes that the information cited by ING is incomplete and/or inaccurate. This far-fetched defence is based on a few isolated sentences on Milieudefensie's website, whilst the broader context thereof and the extensive information provided by Milieudefensie on this matter are disregarded. Irrespective of this, the alleged deficiency in the provision of information cannot, in any event, lead to Milieudefensie's claim being dismissed as inadmissible (section3.4 of this document).
6. In section4 of this document, Milieudefensie reiterates that it meets all the requirements of Article 1018c(5) of the Code of Civil Procedure.
7. In Chapter5 of this document, Milieudefensie will briefly explain, in addition to the Writ of Summons, why Articles 1018e, 1018f and 1018g of the Code of Civil Procedure do not apply.
8. Finally, in Chapter6 of this document, Milieudefensie will briefly address ING's specific contention that Milieudefensie's claims for a declaratory judgment are inadmissible.
9. Bearing in mind ING's far-reaching defences of inadmissibility, Milieudefensie begins with a brief introduction on the importance of public interest actions. This background is relevant to

[1] Milieudefensie's writ of summons, Chapter III.
[2] Statement of Defence, paras. 734–735 and para. 747.
[3] Statement of claim, Chapter III.2.2.
[4] Statement of defence, paras. 739, 744, 745 and 748.

the assessment of ING's defences, as ING repeatedly loses sight of the distinction between class actions and public interest actions.

2. Background: the importance of public interest actions

10. As early as the 1980s, the ability of environmental organisations to bring legal proceedings to protect public interests was recognised.[5] The Supreme Court ruled at that time that, in the absence of such a possibility, effective legal protection against an imminent infringement of these interests — which, as a rule, affect large groups of citizens collectively, whilst the consequences of any infringement for each of those citizens are often difficult to foresee — could be made considerably more difficult.[6]

11. The legislature also recognised as early as the early 1990s that it is precisely in the case of actions based on public interest that the interests at stake are often difficult to protect within the framework of individual dispute resolution.[7] In 1994, the legislature codified the possibility of collective legal protection in Section 3:305a of the Dutch Civil Code. In line with the case law of the time, an explicit decision was taken at the time to also allow for non-profit collective actions. Associations and foundations could bring a collective action on behalf of the similar interests of other persons if this was provided for in their articles of association. There was no explicit requirement of representativeness. However, it had to be apparent from activities before or after the organisation's establishment that it actually represented the interests of its members, so that the 'flag matched the cargo'.[8]

12. Article 3:305a of the Dutch Civil Code provided a basis for both 'group actions' and 'public interest actions'. Class actions involve the representation of the collective interests of a specific or determinable number of individuals. Public interest actions involve the representation by a legal entity of general interests that cannot be individualised because they pertain to a much larger group of persons, which is diffuse and indeterminate.

13. The present action brought by Milieudefensie is an action in the public interest, in which Milieudefensie defends the interests of current and future generations of Dutch residents in a liveable climate and a sustainable society.

14. It is established case law that social division regarding the value to be attributed to such general interests, or regarding the manner in which those interests must be weighed against other, conflicting interests, does not preclude the admissibility of a collective action. Nor does it constitute an obstacle that the interests at stake are 'diffuse', in the sense that the adverse consequences of an infringement of the right invoked are difficult to foresee for individual persons. Indeed, the diffusion of interests is precisely an important reason for collective action in the public interest, because only in this way can legal protection be provided. Building on this, the Supreme Court ruled that the fact that a significant proportion of the persons whose interests a collective action is intended to protect *do not* agree with the purpose of the claim

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[5] Supreme Court 27 June 1986, NJ 1987/743, with commentary by W.H. Heemskerk.

[6] Ibid, para. 3.2.

[7] *Parliamentary Papers II* 1991/92, 22486, no. 3, p. 2: *"Gradually, there is an increasing need for interest groups to be empowered to bring legal proceedings before the civil courts to protect the interests they represent. This need is linked, among other things, to the phenomenon that in an increasing number of areas of social life, organisations are being established that champion a particular interest, the protection of which is difficult to achieve within the system of individual dispute resolution. Examples include organisations that defend the interests of the environment, of consumers and of persons at risk of discrimination*."

[8] *Parliamentary Papers II* 1991/92, 22486, No. 3, pp. 20–21.

does not, either, stand in the way of a claim under Article 3:305a of the Dutch Civil Code. According to the Supreme Court, the decisive factor is whether, in the case in question, there are '*similar* interests' within the meaning of Article 3:305a(1) of the Dutch Civil Code. That requirement is met if the interests concerned lend themselves to consolidation, so that efficient and effective legal protection for the benefit of the interested parties can be promoted.[9]

> ING opens its defence on the grounds of lack of standing with a remark that the law provides for such defences because this method of litigation is an exception to the principle that parties may, in principle, only act in their own interests (para. 736 of the Statement of Defence). In public interest actions, however, there is no question of representing the combined interests of a large number of individuals who (at least in theory) could also have opted for individual dispute resolution. Public interest actions are characterised precisely by the fact that it will be very difficult for individuals to defend these interests in court, whilst these interests do affect society as a whole and form a facet of virtually everyone's existence.[10] The admissibility requirements therefore serve a different purpose in public interest actions.

15. With the introduction of the WAMCA, it has become possible, as of 1 January 2020, to claim damages in a collective group action. In this context, the WAMCA provides for additional and stricter admissibility requirements designed to safeguard the quality and integrity of (ad hoc) commercial claims organisations. When introducing the WAMCA, the legislator recognised that the stricter admissibility requirements of the WAMCA are not intended to make it unnecessarily difficult for organisations that already play an important role in upholding collective interests in collective actions – and which, by definition, are not aimed at obtaining compensation – to continue their work.[11]

16. The introduction of the WAMCA has therefore not restricted the possibility of bringing public interest actions. On the contrary, where such actions are driven by non-financial interests, the requirements imposed on interest groups are less stringent than in the case of actions driven by financial interests. The legislature did not consider it appropriate or justified to impose such stringent admissibility requirements on a legal person advocating an idealistic interest.[12] For that reason, Article 3:305a(6) of the Dutch Civil Code provides an exception to the stricter

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[9] See Advocate General Wissink and Deputy Advocate General Langemeijer in their opinion for the Urgenda judgment, ECLI:NL:PHR:2019:887, para. 2.5, with reference to Supreme Court 26 February 2010, ECLI:NL:HR:2010:BK5756 (Stichting Baas in Eigen Huis v Plazacasa), *NJ* 2011/473 with commentary by H.J. Snijders, para. 4.2 and Supreme Court 9 April 2010, ECLI:NL:HR:2010:BK4549 (State v Clara Wichmann et al. and SGP v Clara Wichmann et al.), *NJ* 2010/388 with commentary by E.A. Alkema.

[10] Prof. A.W. Jongbloed in GS Property Law, Art. 3:305a of the Civil Code, note 8.1 (valid until 11 November 2024). Cf. Supreme Court of 18 December 1992 in the case of Kuunders v. Natuur en Milieu, Kuunders v. Milieuorganisaties, ECLI:NL:HR:1992:ZC0808, with commentary by C.J.H. Brunner, M. Scheltema, para. 4.1.2, where it is considered that this concerns *"interests of citizens which are ill-suited to being protected against infringement, such as that at issue here, by means of individual legal actions*."

[11] *Parliamentary Papers II* 2017/2018, 34608, no. 6, p. 11. See also *Parliamentary Papers II* 2016/17, 34608, no. 3, p. 18. See also The Hague Court of Appeal 19 March 2024, ECLI:NL:GHDHA:2024:363 (Right to Water), para. 6.8: *"First and foremost, it was never the intention of the legislature to make purely idealistic actions more difficult than they were prior to the introduction of the WAMCA*." See also Amsterdam District Court 13 July 2022, ECLI:NL:RBAMS:2022:4035 (*FNV & CNV v Temper BV et al.),* para. 4.7, in which it was held that, by introducing stricter admissibility requirements in Article 3:305a of the Dutch Civil Code, the legislature *"did not intend to make any changes regarding access to the civil courts for existing interest groups that already have a long track record and are often organised as associations, such as the FNV and CNV*."

[12] *Parliamentary Papers II* 2016/2017, 34 608, no. 3, p. 8 and p. 29.

admissibility requirements for representative interest groups pursuing an idealistic objective. However, under the current Article 3:305a(1) in conjunction with Article 3:305a(2) (preamble), the 305a organisation must be sufficiently representative, so that the interests of the persons whose interests the legal action seeks to protect are adequately safeguarded. Milieudefensie will comment on this requirement later.

17. For the time being, it suffices to note that public interest litigation has a history spanning decades, in case law and in legislation, based on the recognition that only in this way can access to the courts, and by extension efficient and effective legal protection, be afforded to public interests, voiceless interests, the interests of vulnerable groups and minority interests.

18. This applies in particular to the present action, in which Milieudefensie is advocating for climate interests relating to *"the greatest problem of our time"*.[13] The International Court of Justice even describes the climate crisis as an *"existential problem of planetary proportions that imperils all forms of life and the very health of our planet*."[14] Few other interests touch so closely upon the *very* foundations of our existence as the interest in preventing dangerous climate change. It is these interests that are central to this case and in light of which Milieudefensie has brought claims against ING, which, according to Milieudefensie, as a major systemic bank, bears a shared responsibility to align its climate policy with the universally recognised goal of limiting global warming to 1.5°C.[15] In the writ of summons, Milieudefensie explained at length in this regard that the financial sector is crucial to achieving the climate challenge, which requires, among other things, that financing flows be redirected to be consistent with the 1.5°C target and with climate-resilient development.[16]

3. The guarantee requirement

3.1 ING's defence

19. ING considers that, in the context of the requirement for a guarantee of benefit, it must be examined to what extent Milieudefensie's supporters would benefit from the claims being upheld. In this regard, it relies on the legislative history of the (former) WCAM and on lower court case law in class actions under the former Section 3:305a(2) of the Dutch Civil Code.[17] The passage in Advocate General Ibili's opinion to which ING refers also relates to the former Article 3:305a(2) of the Dutch Civil Code in a class action and concerns a completely different situation from the one at issue in this case.[18]

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[13] Court of Appeal, The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2099, para. 7.25.

[14] International Court of Justice 23 July 2025, Advisory Opinion on the Obligations of States in Relation to Climate Change, para. 456.

[15] Ibid, para. 224: *"the Court considers the 1.5°C threshold to be the parties' agreed primary temperature goal for limiting the global average temperature increase under the Paris Agreement*."

[16] Statement of Claim, Chapters IX and X, as well as Chapter XIV where the claims are substantiated.

[17] Statement of Case, para. 737.

[18] Ibid. ING refers to ECLI:NL:PHR:2026:106, para. 3.31. That consideration, in conjunction with para. 3.37, shows that, in the context of section 3:305a(2) (old) of the Dutch Civil Code, the question at issue was whether the Court of Appeal had rightly concluded that a generally worded declaratory judgment in a class action against Rabobank, Lloyds, UBS Switzerland, UBS Japan and ICAP would offer added value over individual claims, in individual follow-up proceedings or in settlement negotiations. Because the declaratory judgment was insufficiently tailored to the interests of the interested parties, the Court of Appeal held that this was not the case and that they would derive no benefit from the collective action.

20. ING then bases its entire defence of inadmissibility on this old criterion, on the basis of which it is alleged that it should be assessed whether the class members 'benefit' from the collective action, and furthermore misinterprets that outdated criterion.

21. To put ING's defence into the proper perspective, it is important to understand the background to the guarantee requirement.

3.2 Background and content of the guarantee requirement

22. Section 3:305a(2) of the Dutch Civil Code provided – prior to the entry into force of the WAMCA – that a 305a organisation is not admissible *"if the legal action does not sufficiently safeguard the interests of the persons on whose behalf the legal action is brought*." This so-called safeguard test was introduced in 2013 to ensure that the Section 305a organisation acts in the interests of its constituents and not in the (commercial) interests of its own organisation.[19]

23. The introduction of the safeguard test took place against the backdrop of the strong rise of (often ad hoc) claim foundations and *third-party litigation funding* ("TPLF") for class actions that (ultimately) aim to secure compensation.[20]

24. The guarantee requirement is intended to prevent abuse of collective action.[21] The legislature sought thereby to ensure that the interests of the individual claimants are paramount and provided the court with a tool to critically assess the admissibility of a collective action if it had doubts about the motives for bringing the action. This prevented claims foundations from using the right to bring collective actions to pursue their own commercially driven motives, according to the parliamentary history.[22]

25. Case law also refers to the fact that the purpose of the safeguard requirement is to exclude interest groups with impure motives. This also follows from the case law cited by ING (which, as mentioned, relates to the old version of Article 3:305a(2) of the Dutch Civil Code).[23]

26. In that specific context, it was held that, in the context of the guarantee requirement, the court must examine (i) the extent to which the parties concerned will ultimately benefit from the collective action if the claim is upheld and (ii) the extent to which it can be relied upon that the claimant organisation possesses sufficient knowledge and skills to conduct the proceedings.

27. These questions can only be answered on the basis of the specific circumstances of the case.[24] The legislative history does, however, mention a number of (non-exhaustive) factors that may play a role in answering these questions in a general sense, namely:[25]

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[19] *Parliamentary Papers II* 2011/12, 33126, No. 3 (Explanatory Memorandum), pp. 5–6.

[20] *Parliamentary Papers II* 2011/12, 33126, No. 3 (Explanatory Memorandum), from p. 4 (under section 3 *'The rise of* claims foundations') and *Parliamentary Papers II* 2016/17, 34608, No. 3 (Explanatory Memorandum), pp. 11 and 18. See also the Opinion of Advocate General De Bock of 30 January 2026 in Oracle Nederland v Stichting The Privacy Collective and SFDC & Salesforce v Stichting The Privacy Collective, ECLI:NL:PHR:2026:129, para. 6.5.

[21] Prof. A.W. Jongbloed, GS Property Law, Art. 3:305a of the Dutch Civil Code, note 18.1 Purpose: to prevent abuse (current until 11 November 2024)

[22] Opinion of Advocate General de Bock of 30 January 2026, ECLI:NL:PHR:2026:129, para. 6.5 (with references to the parliamentary history), para. 8.11 (*"the safeguard requirement introduced in 2013 […] is intended to keep interest groups that are driven solely by their own profit out of the* picture") and para. 9.10.

[23] CvA, para. 737, with reference to ECLI:NL:RBAMS:2023:468, ground 4.13 and ECLI:NL:RBAMS:2023:8485, ground 2.5.

[24] *Parliamentary Papers II* 2011/12, 33 126, No. 3 (Explanatory Memorandum), p. 12. See also Opinion of Advocate General de Bock of 30 January 2026, ECLI:NL:PHR:2026:129, para. 9.14.

[25] *Parliamentary Papers II* 2011/12, 33126, no. 3 (Explanatory Memorandum), pp. 12–13.

(1) the other activities the organisation has carried out to promote the interests of those affected;
(2) whether the organisation has in the past actually proved capable of achieving its own objectives;
(3) the number of aggrieved parties who are affiliated with or members of the organisation;
(4) the extent to which the aggrieved parties themselves support the collective action;
(5) whether the claimant organisation complies with the claims code;
(6) in the case of a foundation established on an ad hoc basis, it may be relevant whether it was established by existing organisations that have successfully represented the interests of those concerned in the past;
(7) whether the organisation has also acted as a discussion partner for the government in relation to the event;
(8) whether the organisation acts as a spokesperson in the media on the matter.

28. These factors influence the assessment under the safeguard requirement and demonstrate that the question of whether those affected *'stand to benefit from the claims being* upheld' is a context-dependent test of the organisation's suitability, the aim of which is to prevent the improper use of collective (group) action. In public interest actions, it is difficult to imagine that there could be any abuse or impure motives, let alone a situation in which the commercial motives of a claims organisation would conflict with the interests of its constituents.[26] After all, public interest actions have no commercial motive, and public interest organisations are funded through *crowdfunding*, donations and grants, rather than by commercial organisations that themselves (also) have a financial interest in the outcome of the proceedings.

> Nevertheless, when assessed against the factors mentioned above (insofar as these are not specifically tailored to class actions), it would become clear that the interests protected by Milieudefensie are sufficiently safeguarded, so that the 'benefit requirement' of Article 3:305a(2) (old) of the Dutch Civil Code would also be met.

29. Against this background, it is easy to explain why – at least as far as Milieudefensie is aware – there is no case law in which a Section 305a organisation has been declared inadmissible in a public interest action on the grounds of failing to meet the guarantee requirement. The guarantee requirement plays a very different role in public interest actions, simply because fewer guarantees are required in such actions.[27]

30. It also follows from the foregoing that ING wrongly treats this 'benefit requirement' under section 3:305a(2) (old) of the Dutch Civil Code – insofar as that requirement still exists at all – as a substantive test. In short, ING's position boils down to the view that current and future generations of Dutch residents would, on balance, derive no benefit if the claims were upheld, because ING's reported emissions are also those of its customers and, globally – in ING's view

[26] Cf. D. Barbiers & C.J.M. Klaassen, 'Admissibility requirements for non-profit collective actions in the Kingdom of the Netherlands', in Commemorative Volume on the Civil Code 1922–2022, The Hague: Boom Juridisch 2023, p. 283, pp. 285–286.

[27] Similarly: Ibid, pp. 285–286. See also P. Veerman, L. Bryk (Bureau Clara Wichmann), M.B. Hendrickx (PILP), The obstacles posed by the WAMCA to non-profit campaigns, September 2024, p. 16, footnote 80: *"The security requirement played a very limited role in 'classic' idealistic actions in which no private financial interests but supra-individual or general interests were represented"*, available at https://clara-wichmann.nl/wp-content/uploads/2024/10/De-Obstakels-van-de-WAMCA-voor-Ideele-Acties-_BCW_PILP_Rapport_2024.pdf.

– it would make no difference if ING were to reduce its emissions if customers and other financial service providers do not change. Milieudefensie believes that this fails to recognise ING's shared responsibility, as a major systemic bank, in helping to prevent dangerous climate change and the crucial role of the financial sector in this regard. The aim of these proceedings is to establish that ING has a legal obligation which it is in danger of breaching, so that the claims are admissible. Effective protection against dangerous climate change is only possible if all systemically relevant actors make an appropriate contribution to the solution and use their control and influence to that end. It is not appropriate, in this context, for parties to hide behind the behaviour of others in order to avoid bearing a share of responsibility. At present, however, the only point of relevance is that ING's defences are substantive defences, which anticipate the substantive examination of the claims, but for which there is no scope in the review under Article 1018c(5) of the Code of Civil Procedure. In addition, there are many other reasons why Milieudefensie believes that a reduction order imposed on ING will indeed be effective. Milieudefensie will also substantiate this further during these proceedings. In Chapter3.4 , Milieudefensie does briefly address ING's assertions that Milieudefensie is providing its supporters with incomplete and/or incorrect information regarding the claims.

31. As discussed above, the WAMCA came into force in 2020 and provides for stricter admissibility requirements, against the background that the WAMCA has made it possible for Section 305a organisations to claim monetary compensation exclusively on behalf of a large group of victims, and to bind the entire group of victims to a judgment (except where victims exercise an opt-out). These stricter admissibility requirements are intended to prevent a collective (damages) action from becoming unmanageable or being misused, or brought frivolously or solely for the purpose of harming the opposing party.[28]

32. Under the current Article 3:305a(1) of the Dutch Civil Code, a foundation or association with full legal capacity may bring legal proceedings aimed at protecting the similar interests of other persons, provided that it represents those interests in accordance with its articles of association and that those interests are sufficiently safeguarded. That safeguard requirement is then elaborated in paragraph 2, which provides that the interests of the persons whose interests the legal action is intended to protect are sufficiently safeguarded where the legal person referred to in paragraph 1 (i) is sufficiently representative, having regard to its membership base and the scale of the claims represented, and (ii) meets the requirements set out subsequently in Article 305a(2)(a) to (f) of the Civil Code regarding *governance*, financing and transparency.

33. As noted above, the WAMCA was not intended to unnecessarily complicate the work of existing advocates with a long track record. Partly for that reason, the WAMCA provides for a less stringent admissibility regime for collective actions with an idealistic purpose and a very limited financial interest, or where the nature of the claim gives rise to such a need (Article 3:305a(6) of the Dutch Civil Code). This exception is based on the legislature's recognition that in some collective actions it is neither necessary nor reasonable to impose stricter admissibility requirements.[29] Nevertheless, as a result of an amendment at a late stage of the legislative process, actions in the public interest must also be assessed against the representativeness requirement (as well as Article 3:305a(3) of the Dutch Civil Code).[30] Where Article 3:305a(6) of

[28] *Parliamentary Papers II* 2016/17, 34608, no. 3, p. 16.
[29] *Parliamentary Papers II* 2016/17, 34608, no. 3, p. 16.

the Dutch Civil Code applies, the requirements of Article 3:305a(2)(a) to (f) and Article 3:305a(5) of the Dutch Civil Code do not apply.

34. In light of the foregoing, where Article 3:305a(6) of the Dutch Civil Code applies, public interest actions are assessed against the representativeness requirement to determine whether the guarantee requirement has been met. The specific requirements regarding representativeness depend on the circumstances of the case.[31]

3.3 Application of the guarantee requirement in public interest actions

35. Although the representativeness requirement therefore also applies to actions in the public interest, the wording of Article 3:305a(2) of the Dutch Civil Code is primarily tailored to class actions. After all, it refers to representativeness in view of *'the* constituency' and *'the scale of the claims represented*'. This is because the requirement was originally not intended to apply at all to public interest actions, and the wording was not amended following changes at the end of the legislative process.

36. In the writ of summons, Milieudefensie explained that, in assessing whether a Section 305a organisation acting in the public interest is sufficiently representative, the practical approach is to examine whether the organisation is an adequate mouthpiece for the interests in question. In this regard – unlike in class actions – the question is not so much whether and how many 'victims' support the collective action and/or agree with the specific (partial) claims (which would be at odds with the Supreme Court's considerations regarding public interest actions, see para.14), but the emphasis lies on a context-dependent assessment in which, based primarily on qualitative factors, it is determined whether the interest group is a suitable advocate.[32]

37. In the words of The Hague District Court in the climate case brought by Greenpeace against the State, *"the real question in the case of claims based on public interest* is *therefore whether, in the specific case, the representative is an adequate advocate for the interests it claims to represent*."[33]

38. In this context, Advocate General Wissink refers, among other things, to the following qualitative circumstances: (i) the other activities the interest group has carried out to promote the public interest, (ii) whether the interest group has acted as a mouthpiece in the media for

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[30] *Parliamentary Papers II* 2018/19, 34608, No. 14, pp. 1–2. According to the proposer, the purpose of that amendment was to ensure *"that the mass claims procedure is not open to claims by unrepresentative profit-making legal entities with no connection to the Netherlands"*.

[31] Supreme Court 10 October 2025, ECLI:NL:HR:2025:1534, para. 3.3. See also the opinion of Advocate General Wissink prior to this judgment, ECLI:NL:PHR:2025:695, para. 2.20.1.

[32] Opinion of 20 June 2025 by Advocate General Wissink, ECLI:NL:PHR:2025:695, para. 2.20.2 and the commentary by R. Hermans on the judgment, JBPr 2025/68, p. 1012 (para. 5): *"The Supreme Court makes no reference to the size of the support base. I infer from this that, at least in public interest actions […], no quantitative criterion applies*." See also, inter alia, The Hague District Court ECLI:NL:RBDHA:2023:17145, paras. 5.17–5.18. See also R. Stolk, 'The public interest action contrary to the public interest?', NJB 2023/97; J.J. van der Helm, 'The representativeness requirement in idealistic actions', O&A 2024/2, p. 8.

[33] District Court of The Hague, 25 September 2024, ECLI:NL:RBDHA:2024:14834 (Bonaire Climate Case), para. 3.11. See also para. 3.11.4: *"Even if a large number of Bonaireans were not to support the action brought by Greenpeace Netherlands, one could not conclude, on that ground alone, that Greenpeace Netherlands is insufficiently representative. Moreover, this has not been argued, and the court has no other indications that the population of Bonaire does not support the collective action*."

the interest in question, (iii) whether the claim is supported by other interest groups, (iv) who is financing the claim, and (v) whether the interest or the interest group has previously been declared admissible in a collective action.[34]

39. Judged against these qualitative factors, it is clear that Milieudefensie, with (among other things) its decades-long commitment to climate interests and sustainable development, its *track record* in other collective actions, and its collaboration with and support from other interest groups, can undoubtedly be regarded as an adequate representative of the climate interests of current and future generations of Dutch residents, whom it represents in these proceedings.[35] Furthermore, it can also be established in quantitative terms that Milieudefensie has a (substantial) membership base whose interests it represents.[36] Milieudefensie therefore meets the representativeness requirement.

40. Following the service of the summons, the WAMCA evaluation was published (the **"WAMCA evaluation**").[37] This WAMCA evaluation, commissioned by the Scientific Research and Data Centre, confirms that it can be inferred from case law that the so-called 'mouthpiece criterion' has played a more prominent role since 2023 in assessing representativeness in Section 6 actions with an ideological purpose.[38] The WAMCA evaluation recommends formally introducing a qualitative representativeness test for (at least) Section 6 actions (with an idealistic purpose), whereby the suitability of the Section 305a organisation to represent the interests that are the subject of the proceedings is assessed.[39]

3.4 No question of incomplete or incorrect provision of information

41. In support of its defence that Milieudefensie does not meet the representativeness requirement, ING further argues that Milieudefensie does not provide its supporters with an adequate picture of the consequences of its claims being upheld. For that reason, according to ING, it is not plausible, or at least cannot be established, that Milieudefensie's supporters actually support the claims. In a footnote, ING concludes that Milieudefensie cannot therefore be regarded as an adequate mouthpiece.[40]

42. ING's arguments are incorrect for various reasons, but regardless of this, they cannot in any event lead to the conclusion that Milieudefensie does not meet the conditions of Article 3:305a of the Dutch Civil Code. As set out above, in the context of the representativeness requirement, it is (solely) relevant that Milieudefensie can be regarded as an adequate representative of the climate interests it claims to champion, and the central question is not whether, in quantitative terms, there are enough people who agree with the collective action (or – as ING apparently argues – with specific claims brought by Milieudefensie).

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[34] Opinion of 20 June 2025 by Advocate General Wissink, ECLI:NL:PHR:2025:695, para. 2.20.3. See also *Parliamentary Papers II* 2023-2024, 36169, no. 40, pp. 10-11, where the Minister for Legal Protection lists similar qualitative factors as relevant to the application of the representativeness requirement in idealistic actions.

[35] Summons, Chapter III.2.3, with reference to the detailed description in III.2.1 of the many practical activities that Milieudefensie has been carrying out for decades to promote the interests it protects.

[36] Summons, paras. 77, 135–136.

[37] R. Rijnhout & T. Arons, J. Hoevenaars, C. Klaassen, E. Erken, M. Overheul, E. de Jong, X. Kramer and W. van Boom, 'Five years of WAMCA: Evaluation of the Collective Action Mass Claims Settlement Act (2020–2025)', September 2025, available at https://repository.wodc.nl/bitstream/handle/20.500.12832/3488/rapport-vijf-jaar-wamca.pdf?sequence=1&isAllowed=y.

[38] Ibid, p. 13.

[39] Ibid.

[40] Footnote 1248 to para. 745.

43. Apart from that, there is no reason whatsoever to assume that Milieudefensie's supporters do not support the claims in this case or that they lack sufficient information in that regard.

44. Milieudefensie makes a great deal of information available on its website about its activities, as well as specifically regarding this public interest action against ING. Milieudefensie makes correspondence with ING and court documents in this case available in full, and also publishes publicly accessible summaries.[41] In addition, Milieudefensie organises public events, publishes research and briefings, and runs campaigns on the important role of banks, and ING in particular, in causing and helping to mitigate dangerous climate change.[42]

45. As such, this comprehensive provision of information is not a requirement for compliance with the guarantee requirement or the representativeness requirement (as part of the guarantee requirement). In this context, ING points to the need for a publicly accessible website containing information that ensures that *"an affected party can make an informed choice as to whether to support the claims of the interest group*."[43]

46. Firstly, when applying Section 3:305a(6) of the Dutch Civil Code, the requirement for a publicly accessible website under Section 3:305a(2)(d) of the Dutch Civil Code (as part of the safeguard requirement) does not apply.

47. Secondly, Article 3:305a(2)(d) of the Dutch Civil Code requires that information be provided on the organisation's *governance* and that an overview be given of the status of ongoing proceedings and their outcomes. Milieudefensie more than meets that requirement and even provides much more information, as it considers it important to involve its members and other interested parties in this subject in every possible way. The provision does not go so far as to oblige a Section 305a organisation to explain in detail the exact wording and content of the specific (partial) claims brought.[44]

48. Nor does this follow from the legislative history cited by ING in this context. The legislative history refers to the need to make essential information about the representative's operations available via a website, so that an affected party can make an informed choice as to whether or not to join a particular interest group.[45] That consideration is clearly aimed at class actions. After all, in class actions there may be multiple interest groups, whereby victims may or may not join, or face the decision of whether or not to opt out of the action in question. This is not the case in public interest actions, and therefore does not at all concern individualisable interests on which individual victims would need to make an informed choice.

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[41] See https://milieudefensie.nl/actueel/hier-vind-je-alle-juridische-documenten-van-onze-klimaatzaak-tegen-ing.

[42] See, for example, https://milieudefensie.nl/klimaatzaak-ing/supporter, https://milieudefensie.nl/klimaatzaak-ing/info/waarom-klagen-we-eigenlijk-een-bank-aan, https://milieudefensie.nl/actueel/milieudefensie-vs-ing-dit-is-de-stand-van-zaken, https://milieudefensie.nl/niet-met-mijn-geld/info/dit-zijn-de-bedrijven-waar-ing-jouw-geld-in-steekt, https://milieudefensie.nl/actueel/pulicatiepagina-somo-rapport.pdf, https://milieudefensie.nl/actueel/met-onze-volgende-klimaatzaak-pakken-we-een-bank-verzekeraar-of-pensioenfonds-aan, https://milieudefensie.nl/actueel/samenvatting-nl-onderzoek-klimaatplannen-7-banken-verzekeraars-en-pensioenfondsen, https://milieudefensie.nl/actueel/dit-was-milieudefensie-on-tour-de-klimaatzaak-ing.

[43] CvA, para. 738.

[44] However, there can be no doubt about this either, as the court documents in this case are also public. As explained in paragraph44 of this document, Milieudefensie also provides its supporters with information about this climate case and its importance in many other ways.

[45] Statement of Case, para. 738, with reference to *Parliamentary Papers II* 2016/17, 34608, no. 3, p. 20.

49. ING's reference to the judgment of the District Court of Oost-Brabant in the case of FNV v Mebin concerning the saved hours model is also irrelevant. That case concerned a class action in which the FNV's primary claims were declared inadmissible due to a lack of clarity regarding what the FNV could and wished to achieve through them, and on whose behalf, whilst this was particularly relevant to the individual class members.[46] FNV had apparently also made contradictory statements on this matter. In that specific class action, the question of whether it was clear to Mebin's employees and former employees whether and to what extent the primary claims related to them, and what positive and negative consequences the granting of those claims might have for them, was relevant in the context of the guarantee requirement. The specific issue at stake was whether a particular collective agreement provision on the basis of which those (former) employees had received payments should be declared null and void. Quite apart from the fact that this concerned a very specific situation, this aspect is entirely irrelevant in a public interest action, which by its very nature does not relate to the individual interests of group members.

50. Apart from the fact that ING is therefore applying the wrong test, it cites three arbitrary passages in the Statement of Case, which are purported to show that Milieudefensie does not adequately reflect what is at issue in these proceedings. It is already apparent from the foregoing that ING draws the incorrect conclusion from those assertions that this amounts to inadmissibility. Nevertheless, Milieudefensie refutes below that there has been any provision of incorrect information.

3.4.1 ING's responsibility for Scope 3 emissions

51. ING believes that Milieudefensie is wrong to claim that ING has a massive impact on the climate and that Milieudefensie incorrectly describes ING's Scope 3 emissions (over 99.9% of ING's total emissions) as ING's own emissions, as this would give the impression that ING emits those emissions itself, whereas they are in fact emissions from ING's customers.[47] Milieudefensie should therefore not claim that ING is "responsible" for those emissions.

52. Apart from the fact that the arguments regarding whether ING is responsible for its Scope 3 emissions are irrelevant to the assessment of whether the requirements of Section 3:305a of the Dutch Civil Code have been met, they are also surprising. The idea that Milieudefensie's arguments suggest that ING (for example) operates coal or gas-fired power stations itself (and thus emits CO2 itself) implies that society does not know what a bank is. Moreover, the argument that ING has a legal duty to reduce Scope 3 emissions in particular – and that ING therefore bears 'responsibility' for Scope 3 emissions – is, in fact, at the very heart of this case. That responsibility does not require the actor in question to emit those emissions itself.[48]

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[46] FNV had apparently sought a declaration of nullity of the saved hours model on the basis of a collective labour agreement, so that, if the claim were upheld, the basis for payment of all saved hours allowances would lapse, ECLI:NL:RBOBR:2024:5, paragraphs 6.14 to 6.19.

[47] CvA, paras. 740 to 742.

[48] The Court of Appeal in The Hague also holds Shell liable for its Scope 3 emissions, which account for 95% of its total emissions and consist largely of emissions associated with the combustion of the oil and gas products that Shell places on the market. See The Hague Court of Appeal 12 November 2024, ECLI:NL:GHDHA:2024:2099, paras. 7.99, 7.110, 7.111. The State also bears a legal responsibility to reduce the emissions of citizens and businesses originating from its territory. That responsibility is not negated by the fact that the State does not emit those emissions itself.

53. As ING itself states, over 99.9% of ING's emissions are Scope 3 emissions. Without a responsibility for Scope 3 emissions, ING would in fact only have to make its office buildings more sustainable and reduce energy and material consumption within its offices. However, the vast majority of ING's climate impact is linked to the activities in the real economy that ING finances and facilitates. The Summons provides a detailed explanation of what ING's Scope 3 emissions are and why ING's legal obligation also (and indeed) extends to those Scope 3 emissions.[49] Milieudefensie feels supported in this by many authoritative sources that recognise the important role of financial institutions in causing and combating the climate crisis.

54. In this context, Milieudefensie has also explained that ING's emissions can be quantified on the basis of the GHG Protocol and PCAF. The "Scope 3 category 15" emissions are intended, among other things, for financial institutions and include Scope 3 emissions related to investments in shares and bonds, bank loans, underwriting of share and bond issues, asset management and other forms of financial services. "Scope 3 category 15" thus reflects the contribution of financing to the greenhouse gas emissions of (financed) activities in the economy, and the role that banks play in providing that financing.[50] It is therefore also incorrect for ING to characterise these emissions as customer emissions: under the GHG Protocol and PCAF, these emissions are considered to be emissions of ING over which ING can exert a relevant degree of influence.[51]

55. Against this background, it is only logical that Milieudefensie refers on its website to ING's responsibility for Scope 3 emissions, and that it points, for example, to total Dutch CO2 emissions to illustrate the scale of ING's climate impact.

56. Incidentally, Milieudefensie also frequently makes it clear in its public statements that ING's climate impact is linked to the activities and companies that ING finances (and so it is indeed not the case that ING itself operates coal-fired or gas-fired power stations, insofar as that idea might even occur to the public).[52] Milieudefensie also makes this clear on the web pages to which ING refers. Indeed, the sentence immediately following the sentence from Exhibit ING-195 that ING cites in paragraph 740 states literally that this concerns emissions resulting from financing.[53] Exhibit ING-336 is, in fact, entirely devoted to explaining how ING causes

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[49] See, inter alia, Chapters IX, X and XIV of the Writ of Summons.

[50] See, inter alia, Chapter X.2.3 of the Summons, as well as pp. 138–139 (Box: What are Scope 1, 2 and 3 emissions?).

[51] See the Summons, pp. 138–139 (Box: What are Scope 1, 2 and 3 emissions?), with references to the Scope 3 Standard in the GHG Protocol. ING's clients will inventory and report their own Scope 1, 2 and 3 emissions. In this way, an overview is obtained for each relevant actor of all emissions in the value chain over which an organisation has control or influence.

[52] See also, for example, https://milieudefensie.nl/klimaatzaak-ing/info/waarom-klagen-we-eigenlijk-een-bank-aan: *"Banks' emissions are very high, but often hidden. A bank therefore helps polluting companies to obtain money (for example, through loans). ING, for instance, finances a company such as Shell. The emissions caused by Shell's oil are fuelling the climate crisis. We see it this way: whether you drill for oil yourself or pay for the oil rig, in both cases you are responsible*." See also https://milieudefensie.nl/actueel/waarom-we-juist-ing-aanklagen-de-uitstoot: *"A bank's emissions: how does that work? A bank doesn't have any smoking chimneys of its own, but is still responsible for a great deal of CO_2emissions. Here's how it works: A bank finances companies. Some companies emit few greenhouse gases, such as the builders of a wind farm. Other companies emit a great deal, such as steel companies that still produce steel using coal or industrial livestock farming. ING itself decides which companies it will or will not lend money to, and is now consciously choosing to invest a lot of money in companies that cause high emissions. ING is itself also responsible for the emissions that the bank finances*."

emissions through the provision of financial services to economic sectors.[54] To that extent, the selective choice of a few isolated sentences also fails to give an accurate picture of how Milieudefensie communicates with its supporters about the important role of banks in causing and combating climate change.

3.4.2 The impact or effectiveness of a reduction order on ING

57. In line with the above, ING argues that Milieudefensie's supporters would not benefit from the claims being upheld, as a reduction in ING's Scope 3 emissions would be pointless.

58. This legal case centres on ING's shared responsibility for reducing the emissions associated with its products and services. That is the focus of Milieudefensie's claims. These claims call, among other things, for absolute reductions in emissions linked to ING, because limiting climate change stands or falls with limiting the total amount of emissions into the atmosphere. In addition, Milieudefensie is demanding, among other things, that ING reduces the emissions intensity of its financing portfolio across various climate-relevant sub-sectors. This ensures that the absolute reduction achieved through absolute reduction targets is not merely attained by ceasing financing and support for part of its client portfolio in a particular sector, whilst the bank continues to provide financing and support to other parties in that sector who are not taking climate action.[55] In this way, ING, as a systemically important bank (with total assets of over EUR 1,000 billion[56]), will make its own appropriate contribution to the global climate challenge.[57]

59. The argument that ING's emission reductions would be pointless is one of ING's main substantive defences in this case. It claims these would merely be 'paper emission reductions' of emissions 'reported' by ING, which would not automatically lead to fewer emissions into the atmosphere, partly because other banks would take over the financing of former ING clients. ING then also frames this substantive defence as a plea of inadmissibility, arguing that Milieudefensie's supporters would not benefit from the claims being upheld and that the guarantee requirement would therefore not be met.

60. The assessment against the requirements of Article 3:305a of the Dutch Civil Code is not the place to refute these substantive defences put forward by ING. For now, it suffices to note that, with this argument, ING fails to recognise the substance of the guarantee requirement. It has already been explained that, in doing so, ING wrongly posits the 'benefit requirement' under Article 3:305a(2) of the Dutch Civil Code (old) as a substantive test (paragraphs26 to30) . The guarantee requirement is aimed solely at establishing that an organisation is an adequate representative of the interests it claims to represent. A substantive assessment of (the

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[53] See Exhibit ING-195, 5. On that same website, Milieudefensie explains on p. 2 that ING invests more money in polluting companies than other Dutch banks, and on p. 6 it explains how ING can transform into a sustainable bank.

[54] See Exhibit ING-336, the page which begins: *"The emissions of a financial institution, such as a bank, consist of operational emissions and financed emissions: […] Financed emissions account for by far the largest share of emissions. It relates to where a financial institution's money is invested, for example in loans to companies building gas-fired power stations. This is also referred to as 'scope 3 emissions', accounting for 99.9% of ING's emissions*."

[55] Summons, para. 969.

[56] Statement of claim, para. 11.

[57] This is not an exhaustive summary: Milieudefensie has, for example, also brought specific claims aimed at (in summary) ceasing the provision of services to fossil fuel companies that are still involved in the development of new fossil fuel projects.

likelihood of success of) the claims and/or defences is, of course, neither required nor appropriate for this purpose.

3.4.3 The assertion that Milieudefensie does not provide its supporters with an adequate picture of the consequences of granting its claims

61. ING goes on to argue that it cannot be established that Milieudefensie enjoys sufficient support from its supporters, as it cannot be determined whether those supporters are aware of the nature of the emissions reported by ING, the nature of Milieudefensie's claims and the possible actual consequences of those claims being upheld. Milieudefensie would therefore not be an 'adequate mouthpiece' for the interests it represents.
62. These arguments amount to the same as the arguments discussed above that ING only causes emissions 'on paper' and that other banks could take over former ING customers. As stated, these arguments do not belong in the admissibility debate, but require a legal and factual substantive assessment. As to whether Milieudefensie is an adequate mouthpiece for the interests it represents, it is irrelevant whether every Dutch citizen understands every specific claim, nor whether everyone agrees with them.
63. ING then specifically points to one particular sentence appearing on a specific Milieudefensie webpage where frequently asked questions about the climate case are answered.
64. The question answered reads: *"14. I am a customer of ING. Is my (savings) money still safe?"* Milieudefensie replies that the climate case against ING concerns ING's climate policy and emissions, and that Milieudefensie does not focus on citizens' savings or mortgages. In the same response, Milieudefensie further explains that, as a systemic bank, ING is in a position to take the most significant steps with the large polluting companies with which the bank collaborates, and that ING can earn sufficient revenue by financing sustainable companies and sustainable projects. Moreover, climate change poses a major risk, including for banks, meaning that ING also stands to benefit from limiting global warming. ING omits this further context.[58]
65. Firstly, Milieudefensie intended this explanation to make clear that the claims do not relate to mortgages or savings of individual existing ING customers, but to ING's total portfolio, including a partial claim that specifically relates to ING's mortgage portfolio in a general sense.
66. Secondly, Milieudefensie provides its supporters with very detailed information about the climate case and the claims brought (see the section44 -45 above). Whatever the case may be regarding the clarity or completeness of this specific response, it is sufficiently clear to its supporters that this case concerns all activities financed and facilitated by ING and the manner in which ING deploys the funds it manages for the purpose of the necessary sustainable transition.
67. Thirdly, it is irrelevant to the assessment of admissibility whether existing ING customers with a savings account and/or a mortgage with ING agree with the claims.
68. Milieudefensie advocates for the protection of the environment and nature, for both current and future generations, and the pursuit of a sustainable society. Although a proportion of the current generation of Dutch people will have an account or mortgage with ING, this does not mean that this section of the Dutch population no longer has an interest in protecting the environment and nature, achieving a sustainable society or combating climate change, and in

[58] Exhibit ING-195, under question 14.

ING making an appropriate contribution to this. Even if negative consequences were to be expected from Milieudefensie's claims regarding savings balances and mortgages held with ING – which has by no means been demonstrated – this does not stand in the way of Milieudefensie's admissibility.

69. Chapter 2 of this document has already explained that, according to established case law, social division regarding the value to be attributed to general interests or the manner in which those interests must be weighed against other, conflicting interests, does not preclude the admissibility of a collective action. Nor does the fact that a significant proportion of the persons whose interests a collective action is intended to protect would not agree with the purpose of the claim (or that other interests therefore outweigh it) preclude a claim under Article 3:305a of the Dutch Civil Code. It is sufficient that there are '*similar* interests' in the sense that the interests concerned lend themselves to being combined, so that efficient and effective legal protection for the benefit of the interested parties can be promoted. That is (undisputedly) the case here.

70. ING gives the impression that Milieudefensie is defending, or ought to defend, the financial interests of that section of the Dutch population which has savings or a mortgage with ING, and subsequently brings claims in proceedings to safeguard those interests that are contrary to them. That situation does not arise.

71. Fourthly, it is true that granting the claims will result in ING having to make its mortgage portfolio more sustainable over the next 25 years and to use the savings it manages in line with the 1.5°C target. However, it does not follow from this that existing customers with savings or a mortgage with ING will suffer any noticeable negative consequences from an award of Milieudefensie's claims, or part thereof. The financed emissions associated with customers' existing mortgages are already gradually decreasing as these mortgages are repaid. ING can then focus on further greening its mortgage portfolio when granting new mortgages. In addition to these opportunities for emissions reductions, ING has the ability to influence customers' sustainability decisions by offering loans with favourable terms for sustainability measures, together with advice and guidance. ING therefore has ample opportunities to reduce the emissions associated with its mortgage portfolio.

72. Fifthly, Milieudefensie keeps its supporters continuously and thoroughly informed about this case (as explained in paragraph44), covering both the substance of the case and the relevant procedural steps. In doing so, Milieudefensie makes the full court documents available and also publishes publicly accessible summaries and other clear information for its supporters.[59]

73. Sixthly, it is impossible to conclude from ING's arguments that Milieudefensie is not an adequate voice for the climate interests it champions, and the role of the financial sector in preventing dangerous climate change. Contrary to what ING claims, the test for this is not whether 'the supporters' actually support all of Milieudefensie's specific (sub)claims in this case.[60] After all, Milieudefensie does not advocate for the individualisable interests of a

[59] Following ING's Statement of Defence, Milieudefensie has also supplemented the information regarding the claim concerning the mortgage portfolio: https://milieudefensie.nl/actueel/dit-is-ings-reactie-op-onze-dagvaarding.

[60] Statement of Case, para. 748. Nor can the present case be compared with the case of Stichting Databescherming Nederland ("SDBN") v X and Twitter, see Amsterdam District Court 4 February 2026, ECLI:NL:RBAMS:2026:1555. In that class action, it was established that SDBN did not meet the guarantee requirement, with some relevance attached to the provision of information regarding the claims. This concerned a mass claim in which SDBN effectively sought to claim damages on behalf of all Dutch citizens, but only 11,000

'support base', but for the diffuse environmental, climate and sustainability interests of current and future generations. However, in a factual sense, Milieudefensie does have a very large support base that supports its activities in this area and is sympathetic to its cause.

3.5 Interim conclusion

74. The conclusion of the foregoing is that ING's defences, alleging that Milieudefensie does not meet the guarantee requirement, cannot succeed. ING is applying an incorrect standard of assessment in several respects. Furthermore, ING's factual allegations that Milieudefensie does not sufficiently inform its supporters are incorrect. In all honesty, Milieudefensie believes that the substance of ING's arguments cannot be regarded as a serious defence of inadmissibility, but must be understood as an attempt to undermine Milieudefensie's credibility.

4. Admissibility pursuant to Article 1018c(5) of the Code of Civil Procedure

75. Pursuant to Article 1018c(5) of the Code of Civil Procedure, before proceeding to consider the substance of the case, the court must first decide whether:

(1) the claimant meets the admissibility requirements of Article 3:305a of the Civil Code;
(2) the claimant has sufficiently demonstrated that bringing this collective claim is more efficient and effective than bringing an individual claim because the factual and legal issues to be resolved are sufficiently common; the number of persons whose interests the claim is intended to protect is sufficient and, if the claim is for damages, that they have a sufficiently substantial financial interest, either individually or collectively;
(3) there is no prima facie evidence of the invalidity of the collective claim at the time the proceedings are brought.

76. With regard to sub-point (a), the following applies. Milieudefensie has extensively substantiated that it meets the requirements of Article 3:305a of the Dutch Civil Code.[61] In the Writ of Summons, Milieudefensie has substantiated that, pursuant to Article 3:305a(6) of the Dutch Civil Code, the less stringent admissibility test applies and the requirements of subparagraphs (a) to (e) (and paragraph 5) do not apply.[62] Nevertheless, Milieudefensie has argued in the writ of summons that it also meets the requirements of subparagraphs (a) to (e) and that subparagraph (f) does not apply.[63] With the exception of the guarantee requirement/representativeness requirement, ING does not dispute in its Statement of Defence that Milieudefensie meets the requirements of Article 3:305a of the Dutch Civil Code (including Article 3:305a(2)(a) to (e) and (5) of the Dutch Civil Code).

77. Furthermore, with regard to sub-paragraph (b), the essence of the public interest action is that it is more efficient and effective than bringing an individual claim. Indeed, the protection of the

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people are said to have expressed their support by providing some details via a web form, and that SBDN had apparently stated, in order to obtain those registrations, that the claims were aimed, among other things, at ending and preventing unlawful breaches of privacy. According to the court, that objective could apparently only be achieved to a limited extent because the wrong entity had been sued. For these and other reasons, the court found that it had not been sufficiently established that SBDN had a 'genuine' constituency in this class action and mass claim (see paragraphs 5.21 to 5.26).

[61] Summons, Chapters III.2.2 and III.2.3.

[62] Summons, Chapter III.2.4.

[63] Summons, Chapter III.2.5.

public interest is in fact only possible through collective representation, in which the interests of a large group of unspecified persons are defended. After all, individual dispute resolution is, in such matters, virtually impossible to achieve. A collective action such as this therefore provides effective and efficient legal protection that would otherwise be lacking. See also, in this regard, the Court of Appeal in The Hague in the case brought by Milieudefensie, with the support of various civil society (environmental) organisations (also co-claimants), against Shell (emphasis added, adv.):

> *"The interests of citizens in the Netherlands and the Wadden Sea region that are to be protected are therefore sufficiently similar and lend themselves to being consolidated in these proceedings. In this regard, the Court takes into account that efficient and effective legal protection can only be guaranteed through collective action. It is inconceivable, and therefore undesirable from the point of view of legal protection, that all individual citizens of the Netherlands and the Wadden Sea region who belong to the support base of Milieudefensie et al. would (have to) bring individual proceedings against Shell to seek protection in their interest in preventing dangerous climate change."*[64]

78. With regard to sub-paragraph (c), this constitutes a filter against manifestly unfounded claims. Advocate General De Bock concludes, on the basis of the legislative history, *"that a collective action only fails, in exceptional cases ('in exceptional circumstances'), due to the requirement of Article 1018c(5)(c) of the Code of Civil Procedure. It must be abundantly clear that the collective action cannot succeed."*[65] According to De Bock, it is also inappropriate in this context to anticipate too much, even at the admissibility stage, the substantive assessment of the claims.[66] For this reason too, ING's arguments that it is not responsible for its Scope 3 emissions and that granting Milieudefensie's claims (on a global scale) would be pointless[67] cannot play a role in the admissibility phase. These are defences put forward by ING whose legal relevance and substantive correctness must be assessed, for which there is no scope in the admissibility phase.

5. Request to exclude the application of Articles 1018e, 1018f and 1018g of the Code of Civil Procedure

79. In the writ of summons, Milieudefensie requested the court to exclude Articles 1018e, 1018f and 1018g of the Code of Civil Procedure from application.[68] In this regard, Milieudefensie argued, with reference to case law, that the provisions for the appointment of an exclusive representative ('EB'), the determination of the narrowly defined group and the publication relating to the opt-out (or opt-in) from a collective action apply exclusively to group actions in which an association or foundation represents the combined interests of a specific or

[64] Court of Appeal, The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2099, para. 6.4.
[65] Opinion of Advocate General de Bock of 30 January 2026, ECLI:NL:PHR:2026:129, para. 11.7. See also Amsterdam District Court 14 February 2024, ECLI:NL:RBAMS:2024:745, para. 5.98, which refers to the *"exceptional situation [...] where the claim against these entities is manifestly unfounded or has been brought before the wrong court*." In this context, Wissink also refers to "*[a] mechanism for filtering out unfounded* claims *at an early* stage", see P. Wissink, 'Conference Report: International Class Action Regimes and Settling Mass Personal Injury', VR 2021/125, p. 300.
[66] Ibid, para. 11.8.
[67] See, inter alia, para. 743 of the Statement of Claim.
[68] Statement of claim, paras. 165 to 177.

determinable number of individuals. However, those provisions are not suitable for application in idealistic collective actions and serve no purpose in this context.[69]

80. ING did not comment on the applicability of these provisions in its Statement of Defence.

81. The WAMCA evaluation – published after the writ of summons was issued – confirmed that Articles 1018e to 1018g of the Code of Civil Procedure are not well suited for application in (in particular) non-pecuniary collective actions under Article 3:305a(6) of the Civil Code (for the sake of brevity, the WAMCA evaluation refers to paragraph-6-actions).

82. With regard to the appointment of an EB, it has been noted that appointing an exclusive representative in Section 6 proceedings presents a problem. That regime was designed for situations where multiple Section 305a organisations proceed to make a registration entry, but this situation has not yet arisen in Section 6 proceedings.[70] One of the recommendations of the WAMCA evaluation is to include a provision in the WAMCA regarding the (waiver of the obligation to) appoint an EB if a single 305aorganisation makes a registry entry (or if several interest groups jointly register a single summons) or to codify in law that the court has the option to skip this step in such cases.[71] For the same reason, the WAMCA evaluation also recommends giving the court the discretion to bypass the 3/6-month waiting period under Article 1018d of the Code of Civil Procedure in Section 6 actions.[72]

83. The phase following the appointment of a representative body normally consists of determining the narrowly defined group and their legal claim. In this phase, group members are also offered an opt-out option. The WAMCA evaluation also notes that this phase results in particular difficulties in Section 6 actions. This is because some Section 6 actions – such as the present action brought by Milieudefensie – target a group that is diffuse and undefined, making it impossible to designate a narrowly defined group.[73] Furthermore, the opt-out option does not always serve a purpose (or rather, serves no purpose) when a matter of public interest is at stake, in which case no one can escape the court's judgement on that point, according to the WAMCA evaluation as well.[74] The evaluation proposes that legislation should provide for the court to have the discretion not to define a narrowly defined group if a group is diffuse and indeterminate, thereby making its definition impossible, as well as to allow the court, by law, the discretion to skip the opt-out phase in the event of a member-6- action, to skip the opt-out phase if it concerns a matter of public interest from which an individual cannot opt out.[75]

84. Bearing in mind this widely recognised unsuitability of Articles 1018e and 1018f of the Code of Civil Procedure in public interest actions, Milieudefensie concludes once again that it is appropriate to exclude the application of Articles 1018e and 1018f of the Code of Civil Procedure, also bearing in mind the underlying rationale of the WAMCA to promote efficient and effective legal protection.

85. With regard to Article 1018g of the Code of Civil Procedure, the WAMCA evaluation considered that in Section 6 actions with an idealistic aim in which the public interest is defended, it may

[69] Statement of claim, para. 174, with references to relevant case law on this point.
[70] R. Rijnhout & T. Arons, J. Hoevenaars, C. Klaassen, E. Erken, M. Overheul, E. de Jong, X. Kramer and W. van Boom, 'Five years of WAMCA, Evaluation of the Mass Claims Settlement in Collective Action Act (2020–2025)', September 2025, p. 11.
[71] Ibid, p. 11.
[72] Ibid, p. 10.
[73] Ibid, p. 11.
[74] Ibid, p. 11.
[75] Ibid, p. 11.

not be reasonable to settle, and that, regardless of this, the settlement phase during the admissibility phase comes too early in the Section 305a procedure. Here too, the WAMCA evaluation recommends giving the court the discretion to skip the settlement attempt prior to the substantive assessment or to have such an attempt made at a (later) stage.[76] Furthermore, Article 1018g of the Code of Civil Procedure explicitly refers to a settlement aimed at obtaining compensation, whereas Milieudefensie's claims relate to obtaining an order for emission reductions. For that reason too, the institutionalised attempt at settlement under Article 1018g of the Code of Civil Procedure prior to further substantive consideration is not appropriate, and Milieudefensie also requests that this provision be set aside. Irrespective of this, Milieudefensie would, of course, be willing to enter into discussions with ING at any time should ING demonstrate a willingness to significantly tighten its climate policy.

6. The claims for a declaratory judgment

86. In paragraph 735 of the Statement of Defence and footnote 1247 to paragraph 747 of the Statement of Defence, ING argues that Milieudefensie cannot claim a declaration that ING *is 'acting unlawfully towards* Milieudefensie' because it is not acting in its own interests, but in the interests of current and future generations of Dutch residents.

87. ING has apparently lost sight of the basic principle of Article 3:305a of the Dutch Civil Code, which provides that Milieudefensie, provided it meets the requirements of Article 3:305a of the Dutch Civil Code, may act in its own name (and thus not on behalf of other persons) to defend the interests it protects. On that basis, Milieudefensie may bring legal proceedings in its own name to protect those interests, including an injunction, a prohibition or a declaration of law.

88. As a party to the proceedings defending the public interest (of current and future generations of Dutch residents) in preventing dangerous climate change, Milieudefensie can sue ING in its own name, and the court will then rule on the legal relationship between Milieudefensie and ING. The issue in this case is therefore whether ING is obliged *towards* Milieudefensie to reduce emissions and whether ING is acting unlawfully *towards* Milieudefensie.[77] It is clear that this means that, if granted, such a declaration would relate to the unlawful conduct towards the interests for which Milieudefensie is acting in court.

7. Conclusion

89. The conclusion of all the foregoing is that ING's defences are incorrect. ING fails to recognise the background and substance of the guarantee requirement. Furthermore, ING fails to recognise, in a more general sense, the nature of this collective action in the public interest.

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[76] Ibid, p. 13.

[77] See the judgment of the District Court in the Greenpeace nitrogen case, ECLI:NL:RBDHA:2025:578, paragraph 6.1 of the operative part, in which the court ruled that the State was acting unlawfully towards Greenpeace. In paragraph 5.9, the court also considers that this is a public interest action, partly because *"Greenpeace does not intend, through this collective action, to establish a legal relationship between the State and persons other than Greenpeace*." See also the judgment of the Supreme Court of 18 December 1992 in the case of Kuunders v Natuur en Milieu, Kuunders v Milieuorganisaties, ECLI:NL:HR:1992:ZC0808, with commentary by C.J.H. Brunner, M. Scheltema, para. 4.1.2 (emphasis added), in which the Supreme Court upheld the Court of Appeal's ruling that in the event of damage to environmental interests *"through a breach of standards intended to protect them, such conduct is unlawful vis-à-vis legal persons whose statutory duty includes the safeguarding of those interests, so that they may in any event derive from this the authority to seek an injunction in court to prevent further infringement*."

Finally, ING's reference to the alleged incompleteness and/or inaccuracy of a few isolated sentences on Milieudefensie's website cannot lead to inadmissibility; moreover, ING wrongly disregards the broader context of these statements and the further detailed information provided by Milieudefensie regarding this case.

90. Milieudefensie has demonstrated in the Writ of Summons and in this pleading that all relevant conditions of Article 1018c(5) of the Code of Civil Procedure have been met. Milieudefensie asks the court to declare its claims admissible and to disapply Articles 1018e, 1018f and 1018g of the Code of Civil Procedure.

Lawyer

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