The world around us is changing - also for board members

Developments in The Netherlands

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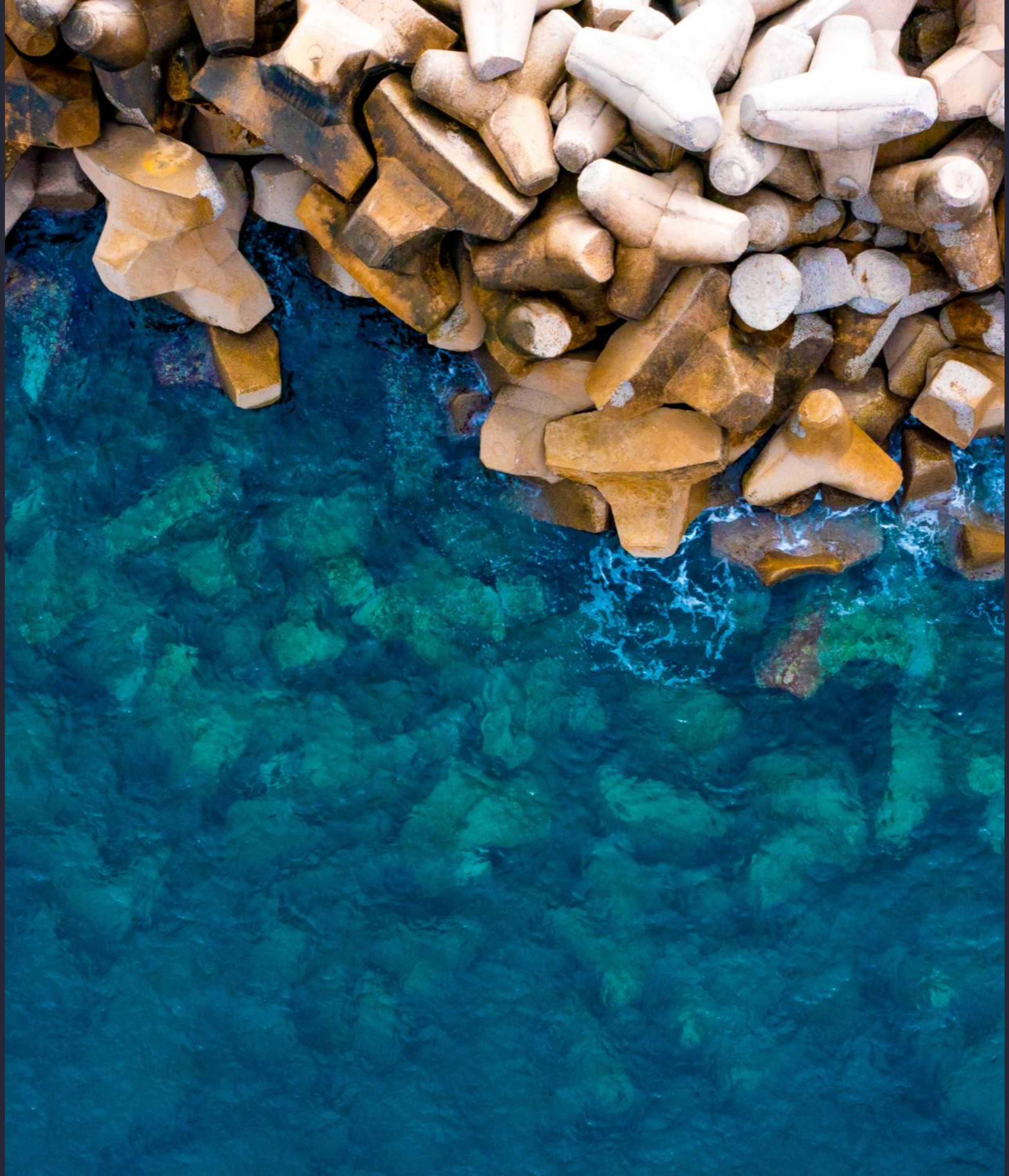

Developments in the environment

- Act on Settlement of Mass Damages in Collective Action (WAMCA)
- EU cyber directive
- Digital Operational Resilience Act (DORA – financial institutions only)
- EU directive pay transparency
- EU Corporate Sustainability Reporting Directive (CSRD – large companies only)

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WAMCA

Dutch Civil Code; article 3:305a paragraph 1

“A foundation or association with full legal capacity can institute an action intended to protect similar interests of other persons to the extent that its articles promote such interests and these interests are sufficiently safeguarded"

WAMCA

Requirements for the claim foundation

- Representativeness
- Governance
- Funding transparancy
- Definition of the class (opt out system)

The Court must appoint the most representative foundation as the Exclusive Representative if there are multiple interest groups

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WAMCA

Some examples

- ‘Dieselgate’
- ‘Frisse wind’ versus Tata Steel
- Consumers United In Court versus Odido

Most WAMCA-claims are directed against the legal entity but they do have a potential D&O impact

European directives

Once implemented into local legislation personal liablity of directors and officers can be applicable

- Cyber directive: personal liability for all board members for cyber incidents
- CSRD: personal liability for ‘greenwashing’
- Pay transparency: personal liability for discrimination

Impact on D&O insurance

- D&O is an ‘all risk’ insurance: all is covered unless excluded
- So far no specific exclusions are applicable but the new exposures are part of the underwriter’s risk assessment
- Depending on claims developments amendments can be made but no signs that the market will change due to the directives

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D&O insurance

- Claims can be filed against the legal entity as well as against the directors and officers of the entity
- D&O coverage is only available for the directors and officers and for entity securities claims (if applicable)