

The Netherlands

Glenn C. Haulussy LL.M.©

1. UNIFORMITY OF LAW AND REGULATIONS

The Netherlands has a uniform system of law. Consequently, the legal provisions on enforcement of foreign judgments apply all over the country.

2. JUDGMENTS

2.1. Definition

In the Netherlands, enforcement of foreign judgments is only possible in the case where a convention between the Netherlands and the foreign country so provides or in case the judgment is given by a court in a Member State of the EC. Due to the EC Regulation nr. 44/2001 {on jurisdiction, the recognition and the enforcement of judgments in civil and commercial matters}, the articles 985-991 of the Dutch Civil Law Procedure are not applicable to the *exequatur*. A judgment from a court in a Member State of the EC is recognized in the Netherlands because of the EC Regulation and can be enforced after a petition for the enforcement has been granted by the court.

If a convention provision does not apply, enforcement is not possible. In these cases the creditor will have to initiate fresh proceedings in the Netherlands so as to obtain a title for execution. In these proceedings the Dutch courts have discretionary powers with regard to the recognition of the foreign judgment. However, the Dutch courts will usually recognize the foreign judgment if the judgment meets certain procedural minimum standards. This procedure is referred to as '*exequatur procedure in disguise*'.

Only foreign judgments in civil procedures according to which (a) part(y)(ies) is/are ordered to perform or to refrain from certain acts are eligible for enforcement. Recognition means that the Dutch legal system acknowledges the legal status created by the foreign judgment, whereas enforcement sees to the granting of executive powers to foreign judgments. Only from foreign judgments which are recognized in the Netherlands may enforcement be sought. As for judgments on personal status (divorce, matrimony, inheritance, adoption, insolvency) however, plain recognition will suffice. Such recognition will be effected *ipso facto* in cases where an EC Regulation or a convention provides for this.

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The foreign judgment must be decisive in a legal dispute and must be rendered by institutions, established by, recognized or admitted to the task of the administration of justice.

2.2. Categories

- (a) Money judgments are enforceable.
- (b) Specific performance judgments are enforceable.
- (c) Injunctions are enforceable.
- (d) Arbitration awards are enforceable, provided they meet certain procedural standards and are not contrary to Dutch public order. Furthermore, execution of arbitral awards may be sought under the Convention of New York of 10 June 1958 to which convention the Netherlands is a party.
- (e) Judgments on personal status, such as divorce, matrimony, inheritance, adoption and insolvency are in themselves not eligible for enforcement since they are merely of a declaratory nature. Due to the EC Regulation these judgments from another Member State are recognized in the Netherlands. Non EC judgments are recognized unless they are contrary to Dutch public order or if the foreign judge that decided the matter was not competent. Should a judgment on personal status include aspects which are capable of enforcement, such aspects - subject to the rules stated above in paragraph 2.1 - are capable of enforcement.
- (f) An EC award for multiple/punitive damages is enforceable. In case of non EC awards, it must be pointed out that the Dutch courts may consider these damages excessive. In these cases, the award will be considered contrary to Dutch public order and will not be recognized. Consequently, the request for enforcement will be refused.
- (g) A judgment which in itself is a recognition of a foreign judgment is not enforceable in the Netherlands ('Exequatur sur exequatur ne faut').
- (h) Provided that a convention on recognition and enforcement is applicable, foreign interim orders may be enforced in the Netherlands, in cases where such awards are enforceable in the country of origin.
 - i. Relief *pendente lite* is enforceable in the Netherlands provided this is also the case in the country of origin.
 - ii. Interim-orders regarding maintenance and custody are enforceable in the Netherlands provided this is also the case in the country of origin.

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(i) Judgments against the local State or any of its organs are enforceable, provided that it is established that the foreign court effectively had jurisdiction and that the foreign judgment is not contrary to Dutch public order. As a basic rule no enforcement shall be granted in respect of judgments whereby the sovereignty of the Kingdom of the Netherlands is not respected.

(j) Judgments in criminal cases are not enforceable. Tax judgments are only enforceable if a convention on the collection of taxes provides for this.

2.3. Reciprocity

A condition precedent to the enforcement of foreign judgments under Articles 985-994 of the Dutch Code of Civil Procedure (exequatur procedure) is that a convention between the Netherlands and the country of origin exists which allows recognition and enforcement. In this regard it should be noted that in cases where such convention should provide for a special procedure for enforcement, this procedure will prevail. Without a convention, no enforcement can be sought under the general provisions of the Dutch Code of Civil Procedure.

3. CURRENCY REGULATIONS AND RESTRICTIONS

(a) As a general rule, there are no exchange controls or regulations in the Netherlands which would prevent free transfer of the recovered amounts.

(b) The creditor requesting for enforcement of a foreign judgment may choose whether payment has to be effected in the original currency or in euro's.

(c) The value of the money judgment in foreign currency must be converted into euro's to determine whether a lawyer admitted to the Bar must file the exequatur or whether it is not necessary to be a lawyer admitted to the Bar who must file the exequatur (article 2 implementation law EC-Execution Convention) (see 20)

4. DOCUMENTARY REQUIREMENTS

Together with the petition for enforcement, the petitioner should submit a certified copy of the foreign judgment, together with documents that establish that the judgment is fully enforceable in the country of origin.

The court may request that the petitioner provides legalized copies of these official documents. This requirement does not apply with respect to countries that are party to the Convention of New York of 5 October 1961, on the abolition of legislation of foreign official judgments. Also the court may request that the petitioner provides official translations of the respective documents.

Furthermore, the following should be pointed out:

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(a) Evidence of a lawyer's authority to represent his client in court is not required in the Netherlands. If the plaintiff is a business which is during a court hearing also represented by a member of its staff, the authority of the latter may be evidenced by an excerpt from the Trade Register or by a particular proxy.

(b) The question whether the foreign judgment is contrary to Dutch public order will *ex officio* be determined by the local court. Consequently, no evidence submitted by parties is required, although it can be efficient to submit such evidence in advance.

(c) The transcript of the documents - the judgments and documents that prove the enforceability in the country of origin - must be authentic, i.e. issued by and signed by the scribe of the judicial body that rendered the judgment. The Dutch judge can order that the transcripts be legalized. Legalization is the issue of a statement confirming the authenticity of the signature, the capacity in which the person that signed the document acted and the identity of the seal or stamp on the document. No notarization and/or consular authentication is required in the Netherlands. Legalization is not required for nationals of the countries that are party to the Convention of New York of 5 October 1961.

5. EC Regulations and Conventions

The Netherlands is a signatory to the following EC Regulations and Conventions:

- EC Regulation nr. 44/2001 on jurisdiction, the recognition and the enforcement of judgments in civil and commercial matters;
- EC Regulation nr. 805/2004 on the implementation of a European enforcement judgment for undisputed claims;
- EC Regulation nr. 1896/2006 on the implementation of a European Payment Order Procedure;
- EC Regulation nr. 861/2007 on the determination of a European Small Claims Procedure;
- EC Regulation nr. 2201/2003 on jurisdiction and the recognition and enforcement of decisions in matrimonial matters and on the parental responsibility for joint children;
- EC Regulation nr. 1393/2007 on the service and notification in the Member States of judicial and non-judicial documents in civil or in commercial matters;
- EC Regulation nr. 1206/2001 on the cooperation between courts in Member States on the field of furnishing of evidence in civil and commercial matters;
- Convention of New York on the recognition and enforcement of foreign arbitral judgments;
- The Hague Service Convention 1965;
- The Hague Evidence Convention 1970.
- Convention of 16 September 1988 on jurisdiction, the recognition and the enforcement of judgments in civil and commercial matters.

6. AUTHENTICATION OF DOCUMENTS

Reference is made to paragraph 4(c).

7. TRANSLATION OF DOCUMENTS

(a, b) Only Dutch is recognized as an official language in proceedings before the Dutch courts. The Dutch courts may therefore at any time order all documents to be translated by a certified translator into the Dutch language.

8. REOPENING OR REVIEW OF JUDGMENTS

(a, b) In case of a judgment rendered by a foreign court of a country with which the Netherlands has concluded a convention on the mutual recognition and enforcement of judgments, no material review of the judgment is permitted. Most enforcement treaties, however, allow a limited review by the local judge. In these cases the foreign judgment can be put to the test on the following points:

- The foreign judgment should be enforceable in the country of origin. If an appeal is pending the Dutch court can postpone its decision.
- The Dutch court should ascertain whether the foreign judgment has been issued after a proper trial. In that regard the court verifies whether either party has been granted the opportunity to express its views and to defend its interests. In cases where the foreign judgment was rendered in default, the Dutch court shall verify whether the writ of summons was properly served in accordance with the legal requirements of the country of origin.
- The Dutch courts furthermore will have to make sure that the foreign court was competent to decide the matter. In this respect, Dutch courts generally accept such competence if this is based on internationally accepted standards.
- No recognition will be granted to foreign judgments in the Netherlands in cases where these judgments are considered contrary to the Dutch public order.

(c) As the Dutch court will have to ascertain whether in general the foreign judgment was issued after a proper trial, allegations of fraud can be raised, even if such allegations had not previously been raised before the foreign court.

9. PENDING PROCEEDINGS

(a) Generally, the Dutch courts will refuse enforcement of foreign judgments, in cases where legal proceedings in the same matter have been initiated in the Netherlands before the date on which the foreign proceedings were initiated. In some treaties it is provided expressly that in such cases the judge is obliged to refer the case to the court at which the proceedings were first initiated. It is likely that in a case where proceedings concerning the same legal dispute between the same parties have been initiated in a third country prior to the initiation of the proceedings that have led to the foreign judgment, the Dutch court will refer the case to the court of this third country.

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(b) In cases where enforcement is sought from a foreign judgment, which judgment is enforceable in the country of origin and this judgment is made subject to appeal, the Dutch court may postpone its decision.

10. DEFENCES

Reference is made to paragraph 8. In general, where no convention exists, any defence available under Dutch law can be raised.

11. JURISDICTION

(a) The Dutch court will *ex officio* verify whether the foreign court was competent to decide the matter that led to the judgment for which enforcement is sought.

(b, c) The Dutch courts generally accept the competence of the foreign court if this competence is based on internationally accepted standards. Dutch private international law has developed for instance the following categories:

- forum of residence of defendant;
- forum chosen by parties;
- forum of voluntary submission by either the defendant or the plaintiff;
- forum of cause of action.

(d) The Dutch court will *ex officio* verify whether the foreign court was competent to decide the matter, notwithstanding a possible entry of appearance by the defendant in the foreign court. Should the defendant, however, not have contested the competence of the foreign court in the original proceedings, this will be of some relevance for the Dutch court's decision as this may imply that the defendant has submitted voluntarily to the jurisdiction of the foreign court.

(e) With regard to judgments rendered in default, the Dutch courts will verify whether the writ of summons was served in accordance with the legal requirements of service of the country of origin. Furthermore, the Dutch courts will verify whether these requirements have enabled the defendant to make proper arrangements for its defence. If this was the case a judgment by default is enforceable.

(f) According to Dutch international private law, the Dutch courts in principle accept the forum chosen by parties. As the Dutch court shall have to make sure that the foreign court was actually competent, it would nevertheless examine *ex officio* whether the forum clause applies to the parties' relationship.

(g) The request for an exequatur can only be filed at the court of the territory *{arrondissement}* in which the debtor is domiciled or where the execution shall have to take place. Consequently, should the debtor have assets within such jurisdiction, but does not reside in that jurisdiction, the court of the place where the assets are is competent to decide on the request for exequatur.

12. CONTRACTUAL WAIVER

(a) Provided that a contractual waiver of service or notice made in the principal foreign proceedings is not contrary to Dutch public policy, the Dutch courts will generally recognize such waiver.

(b) The statement under (a) above also applies to a contractual waiver of procedural requirements.

13. SERVICE REQUIREMENTS

In principle the Dutch courts accept the method of service accepted by the foreign judge, provided that the general standards of Dutch public policy are met. In case of a default judgment the Dutch courts will in particular verify whether the rights and interests of the defendant have been properly respected. This applies *a fortiori* if enforcement of a default judgment is sought.

14. CESSION

(a) Cession of the judgment is possible under Dutch law, provided the transfer of the underlying claim has been effected in accordance with the local requirements.

(b) Cession of judgment itself does not change the rights of the parties involved. Cession of the underlying claim prior to the initiating of proceedings may give the assignee however the possibility to initiate proceedings in his own country. Should this country be a member to a convention to which the Netherlands is also a member this may be advantageous.

15. INTERIM RELIEF

(a) Attachment for security does not require a final judgment and therefore no final decision on enforcement. For an attachment for security, plaintiff has to request the President of the District Court to grant permission to attach the assets of the debtor in the Netherlands. The foreign judgment could in this regard be used as evidence of plaintiff's claim. Should the President however

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seriously doubt whether such judgment is eligible for recognition and enforcement in the Netherlands, he may reject the request.

(b) Before the permission for attachment is granted, the President may require however that the applicant provides security. No distinction whatsoever is made between local and foreign applicants.

16. INTEREST

Foreign judgments that are eligible for enforcement will not be reviewed by the Dutch court. Consequently, interest is due in terms of the foreign judgment. Should the court however decide that the interest rate is excessive and contrary to Dutch public order the interest claim will be refused (wholly or partly). If interest was not granted by the foreign court, the Dutch court would not grant the same.

17. TIME OF ENFORCEMENT AND SUBSEQUENT ACTION

(a) i. Provided all necessary documents are available and the request for enforcement is unopposed, the decision on a request for enforcement will be rendered within approximately two to four months. ii. If, however, the request is opposed, this period may vary from one to two years.

(b) If the court has granted enforcement, the foreign judgment can be enforced in the following ways:

- i. By attachment of movable and immovable property, bank accounts.
- ii. By civil imprisonment. However, this measure is only possible in case the exequatur of the Dutch court explicitly allows such a measure after a request of the plaintiff. Civil imprisonment applies only to judgments on specific performance and not to money judgments. Civil imprisonment can be applied to judgments in which a party is obliged to pay alimony to his child(ren) or ex-spouse. The maximum term of civil imprisonment is a year.
- iii. If the debtor is unable to pay its debts, a request for bankruptcy may be filed with the District Court by its creditor. It should be noted that the court shall only grant such request if it is demonstrated that the debtor is in a situation in which he has ceased to pay his debts. This situation arises when two or more claims are left unpaid.
- iv. Apart from civil imprisonment no special restraint on leaving the country exists.

18. EXPENSES, LEGAL FEES AND SECURITY FOR COSTS

(a) A standard court fee of approximately € 263,- (as of 1 November 2010) applies for the filing of a request for enforcement of a foreign judgment.

(b) In the Netherlands lawyer's fees are usually charged on the basis of the hours spent on the case. Lawyer's fees in the Netherlands vary from € 100,- to € 500,- per hour. The fee depends on the size of the law firm and the experience of the lawyer. The fee for a straightforward application would be around € 800,-. As of 1 January 2011 in cases up to a value of € 25.000,- it is not obliged to hire an lawyer admitted to the Bar. A bailiff may also file a petition for an exequatur. So the costs could be lower than the amount of € 800,-.

(c) According to the rules of conduct of the Dutch Bar Association, Dutch lawyers are not permitted to render their legal services based on a contingency arrangement. However Dutch lawyers are allowed to render their services for a fixed fee. Because of the changes as of 1 January 2011 it is expected that lawyer's fees will decrease due to the expected competition with lawyers not admitted to the Dutch Bar.

(d) The court fees as well as the bailiff's fees are fully recoverable from the party against whom the judgment is issued. Attorney's fees are only recoverable to a certain maximum which is fixed by the court and not all fees will be recoverable.

(e) Security for costs may be ordered by the courts on request of the defendant, unless excluded by convention.

19. BANKRUPTCY/LIQUIDATION

(a) In the Netherlands, no distinction is made with regard to the rights to dividend between foreign and local creditors.

(b) The foreign trustee will be authorized to represent the bankrupt in the Netherlands. In his capacity of representative the foreign trustee may sell assets of the bankruptcy estate for the benefit of the creditors.

20. LAWYERS (WHO CAN APPEAR?)

As of 1 January 2011 in judgments with a value up to € 25.000,- a bailiff or any other person not being a lawyer or any lawyer not admitted to the Bar, can file the petition for the exequatur and appear in court. As of 1 January 2011 for judgments with a value above € 25.000,- only lawyers admitted the Dutch Bar Council are allowed to file the petition and appear in court.

21. EC REGULATIONS AND TREATIES

The Netherlands has ratified a series of international treaties which provide for recognition and enforcement of foreign judgments. But most important are the EC Regulations mentioned in paragraph 5.

22. CROSS-EXAMINATION OF AFFIDAVIT'S DEPONENT

(a, b) Dutch civil procedure law does not provide for the concept of cross-examination. However, in exequatur proceedings the court shall order parties to appear in court, unless an applicable convention provides otherwise. During the verbal hearing the court shall examine the case. Both parties are allowed to ask questions.

(c) Travel expenses are for the account of the plaintiff.

23. REQUIRED AFFIDAVIT

In the Dutch legal system the concept of a required affidavit does not exist.

24. NEW ACTION INSTEAD OF ENFORCEMENT

(a) If no convention is applicable, fresh proceedings may be initiated in the Netherlands. For this it will be required that the Dutch court has jurisdiction over the matter. In cases where a convention provides for recognition and enforcement, fresh proceedings that are initiated with a view to obtaining the same result will be rejected by the Dutch courts.

(b) There are many different periods of prescription.

25. PRESCRIPTION

No particular periods apply. However, should the application for exequatur be delayed for a considerable and unreasonable period, this could under circumstances be considered as an abuse of the right of execution.

26. STATES/CANTONS

The law within the Netherlands is unitary. Separate jurisdiction, however, exists for Curaçao, Aruba and St. Maarten which are, as of 10 October 2010, separate countries within the Dutch Kingdom. The islands Saba, St. Eustatius and Bonaire are as of 10 October 2010 special municipalities within the Netherlands (Caribbean Nederland) to which Dutch law is applicable.