

Enforcement of Foreign Judgments

Fundamental Principles [Netherlands]

2020



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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

- 1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

Answer: Yes, Article 985 of the Dutch Code on Civil Proceedings (CCP) makes it possible to apply for enforcement of a foreign court judgment, if this judgment is enforceable in the Netherlands because of a specific treaty or Dutch statute.

B. Applicable Law: General Rules

- 1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

Answer: Article 985 -992 CCP.

C. Special Rules: European Union

- 1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

Answer: Enforcement of a foreign judgment is only possible if this can be derived from a specific treaty or statute. One of the most important rules for enforcement of foreign judgments in the Netherlands is that the Court is not allowed to rule on the substance of the case.

- 2. Does the European Union have a special procedure to enforce court judgments coming its member states?**

Answer: Yes.

- Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

This Regulation applies between all Member States of the European Union, including Denmark which has concluded a parallel agreement to Regulation 44/2001 with the European Community. This agreement entered into force on 1st July 2007.

The Regulation provides that a judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

A judgment given in a Member State and enforceable in that state shall be enforced in another Member State without any declaration of enforceability being required.

In the Netherlands, the application shall be submitted to the court or competent authority indicated: Court of first instance (District Court).

An appeal challenge is to be lodged with the court indicated by Member States. The Member State concerned has to communicate the court to the Commission. In the Netherlands the Courts of Appeal are indicated as such.

- Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims

The Regulation applies between all Member States of the European Union with the exception of Denmark.

Absent a dispute over the nature or extent of a debt, it dispenses, under certain conditions, with all intermediary measures in the Member State in which enforcement is sought that would otherwise be necessary for a decision rendered in another Member State.

Those conditions mainly concern the service of documents in the case of judgments by default and try to guarantee that the defendant has voluntarily passed on the opportunity to defend himself. Abolishing exequatur (recognition) enables creditors to obtain quick and efficient enforcement abroad without involving the Member State courts where enforcement is sought in time-consuming and costly formalities.

According to Article 20 (Enforcement procedure):

“1. Without prejudice to the provisions of this Chapter, the enforcement procedures shall be governed by the law of the Member State of enforcement. A judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement.

2. The creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement with:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity; and

(c) where necessary, a transcription of the European Enforcement Order certificate or a translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Community other than its own which it can accept for the completion of the certificate. The translation shall be certified by a person qualified to do so in one of the Member States.

3. No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment certified as a European Enforcement Order in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement”.

And According to Article 21 (Refusal of enforcement):

“1. Enforcement shall, upon application by the debtor, be refused by the competent court in the Member State of enforcement if the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

(a) the earlier judgment involved the same cause of action and was between the same parties; and

(b) the earlier judgment was given in the Member State of enforcement or fulfills the conditions necessary for its recognition in the Member State of enforcement; and

(c) the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.

2. Under no circumstances may the Member State of enforcement review the judgment or its certification as a European Enforcement Order as to their substance”.

D. Average Duration of Enforcement Procedure

1. What is the average length of time for this kind of procedure?

Answer: There is no fixed timeframe and the duration will depend on whether the other party will or will not oppose the application. However, the average length is between 6 weeks to 3 month for getting the courts permission to enforce, and then, depending on the assets at hand, several weeks to several months to execute. In the event that the recognition and

enforcement procedure must be re-litigated, it could take up to 24 months before a final judgment is given.

II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS

A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer: Yes. Recognition will be denied if there is no treaty that applies and forces the Court to recognise the judgment of any specific state. It may also be denied if the judgment is no longer enforceable in the state the judgment is from.

According to Article 45 of the Recast Brussels Regulation (Refusal of recognition), any of the following are reason for refusal of recognition:

"1. On the application of any interested party, the recognition of a judgment shall be refused:

(a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;

(b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

(c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;

(d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or

(e) if the judgment conflicts with: (i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or (ii) Section 6 of Chapter II"

B. Costs and expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer: The applicant is charged a court fee. The fee varies for claims with an unspecified amount and for claims with a specified amount. A bailiff will have to be instructed for the actual execution, and depending on the assets this will cost several hundred euro's. Together with attorney's fees the cost could vary from € 1,000 to € 10,000, mainly depending on: (1) the amount of the claim; and (2) the quantity of litigation between parties.

III. FORMAL REQUIREMENTS

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: No, but the judgment should still be enforceable in the foreign state, otherwise it is not enforceable in the Netherlands. In any event, the limitation period for a Dutch court to enforce a judgment (including a court leave to enforce a foreign judgment) is 20 years.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer: No, the judgment must be enforceable in the foreign state, but this does not mean it has to be final. If for example an appeal in the foreign state is pending, and this would make the judgment non-enforceable in the foreign state, then the judgment will not yet be enforceable in the Netherlands either.

C. Necessary Requirements

1. What necessary requirements must the foreign court Judgment fulfill to be recognised and enforced?

Answer: The judgment has to be from a court of a country that the Netherlands have entered into a treaty with and the judgment has to be enforceable.

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay Court Fees for this kind of application?

Answer: Yes, but the court fee depends on the amount of the claim.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: For enforcement in the Netherlands a lot of formal requirements apply. These depend on the nature of the assets that are targeted. The bailiff has an important role in this by law.

IV. PROCEDURE

A. Competent court

1. Which Court or courts are competent to decide an enforcement application?

Answer: The District Courts are competent to decide on an enforcement application. Both the District Court of the place of the debtor as well as the place where the assets are situated are competent, it is up to the claimant to choose.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer: The application must contain the following information: name of the claimant, name of the defendant and its address, description of the foreign judgment and the court that has given the judgment.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: The application must include a duly authenticated original court ruling or a duly authenticated copy thereof, and duly authenticated proof of the fact that the judgment is enforceable in the country that it originates from. The Dutch court may ask for translations of all documents, this is more likely to happen if the foreign judgment is in any language other than English.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer: First of all the application has to be filed with the court. The court will then call for both the claimant and defendant to appear at the court to be heard. The court will set a date for this hearing and the claimant has to make sure that the defendant is duly summoned by a bailiff, within the notice period that the court will issue. After the hearing the court will let both parties know when a decision on the request may be expected. It is important to know that both parties need to be duly represented by an attorney at law that is admitted at the Dutch bar.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: Yes, but the defendant has to appear at the hearing to do so.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer: Yes, the defendant may argue that:

- there is no law or treaty that gives the Dutch court a legal basis to be competent; or
- the foreign judgment is not (yet or anymore) enforceable in the originating state.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognise and enforce a foreign court decision?

Answer: Yes, parties may appeal from the ruling with the Court of Appeal within 1 month after the ruling of the court and the may also appeal with the Supreme Court within 1 month after the ruling of the Court of Appeal.

2. Can this appeal suspend the enforcement?

Answer: Normally the ruling of the court will be enforceable, regardless of if the other party appeals or not. However, the court can decide otherwise.

G. Recovery of judicial costs and expenses

- 1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

Answer: Yes, normally the judicial cost will have to be paid by the defendant, if the claimant gets the relief they are looking for. The cost for attorney's fees however will only be awarded for a fixed amount that is prescribed by law.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

- 1. What types of assets are subject to enforcement of the court's judgment?**

Answer: Any asset that falls within the jurisdiction of the Netherlands.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: In the Netherlands it is possible and relatively easy to impose pre-judgment attachment on assets. It is often wise to use this opportunity before you alert the other party with formal proceedings, to avoid assets disappearing before they are subject to enforcement.

The Netherlands

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