

# LEXOLOGY®

## Litigation: Enforcement of foreign judgments in the Netherlands

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#### General framework

##### *Domestic law*

#### **Which domestic laws and regulations govern the recognition and enforcement of foreign judgments in your jurisdiction?**

Articles 431 and 985-994 of the Code of Civil Procedure govern this area.

##### *International conventions*

#### **Which international conventions and bilateral treaties relating to the recognition and enforcement of judgments apply in your jurisdiction?**

**EU legislation** The Netherlands is a member of the European Union, and therefore EU regulations apply directly (without the need for implementing legislation). The most relevant pieces of EU legislation regarding recognition and enforcement of judgments are as follows:

- The Brussels I Regulation (Recast) (1215/2012) sets out the mutual enforcement and recognition of judgments from courts in EU member states. The Brussels I Regulation (Recast) applies to any legal proceedings instituted, authentic instruments formally drawn up or registered and court settlements approved or concluded on or after January 10 2015.
- The Brussels I Regulation (44/2001) applies to judgments given in legal proceedings instituted before January 10 2015.
- The Brussels Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil And Commercial Matters also applies to the enforcement of judgments from Gibraltar and certain dependent territories of EU member states. The Brussels Convention is the predecessor of the Brussels I Regulations.
- The EU European Enforcement Order (805/2004) enables the judge of the country of origin to certify a judgment as a European enforcement order for uncontested claims. This judgment is then enforceable across the entire European Union (except Denmark) without a grant of execution in the member state of enforcement.
- EU Regulation 2015/2421 came into force on July 14 2017 and modifies EU Regulation 861/2007 (European small claims procedure) and EU Regulation 1896/2006 (European order for payment procedure). It aims to simplify and speed up the resolution of cross-border disputes. The most important modifications are set out below:
  - The European small claims procedure establishes a European procedure for small claims. It is intended to simplify and speed up litigation concerning small claims in cross-border cases and to reduce costs.
  - Intermediate proceedings to enable recognition and enforcement in other EU member states of judgments given in another EU member state are not necessary. Following the enactment of Regulation 2015/2421, one

of the main changes to the European small claims procedure is the increase, from €2,000 to €5,000, of the maximum amount allowed. In addition, documents can be exchanged digitally.

The European order for payment procedure allows creditors to recover uncontested civil and commercial claims before the courts of the EU member states according to a uniform procedure that operates on the basis of standard forms. Following the enactment of Regulation 2015/2421, the procedure can be continued not only under the domestic rules, but also under the rules of the European small claims procedure insofar as the claim is being contested.

**International conventions** The Netherlands is also bound by the following key international conventions concluded by the European Union:

- The Lugano Convention (1992 and 2007) relates to the jurisdiction and the enforcement of judgments in civil and commercial matters between the European Community, Switzerland, Norway, Iceland and Denmark. The 1992 Lugano Convention remains applicable in the cases that were initiated before the 2007 convention entered into force. It is similar to the former Brussels Convention (now the Brussels I Regulation).
- The Hague Convention 2005 relates to the choice of court agreements. The only non-EU member states which are party to this convention are Singapore and Mexico.
- The Convention on International Access to Justice 1980 also contains some regulations on enforcement and orders for costs. This convention applies to the majority of European countries, as well as Brazil, Costa Rica and Kazakhstan.

**Bilateral treaties** The Netherlands has concluded numerous bilateral treaties on mutual recognition and enforcement of foreign judgments. Most of these bilateral treaties have been superseded by the EU framework, such as the Brussels I Regulation (Recast and predecessors). However, some of the bilateral treaties remain important because they cover the reciprocal recognition and enforcement of judicial decisions in areas excluded under the EU framework. These include:

- the Convention between the Netherlands and Belgium on Jurisdiction and Enforcement (1925);
- the Convention between Italy and the Netherlands on the Enforcement of Judgments (1959);
- the Convention between Germany and the Netherlands on the enforcement of Judgments (1962);
- the Convention on the Enforcement of Judgments between Austria and the Netherlands (1963);
- the Convention on the Enforcement of Judgments between the United Kingdom and the Netherlands (1967); and
- the Convention on the Enforcement of Judgments between Surinam and the Netherlands (1979).

#### *Competent courts*

#### **Which courts are competent to hear cases on the recognition and enforcement of foreign judgments?**

The competent court is the district court or the cantonal section of the district court in the district where the party against whom enforcement is sought is domiciled or where the judgment is to be (or might be) enforced.

#### *Distinction between recognition and enforcement*

#### **Is there a legal distinction between the recognition and enforcement of a judgment?**

Recognition and enforcement are legally distinct in the sense that, depending on the legal framework governing the judgment, not all judgments that are recognised must be enforced. If the foreign judgment concerns the establishment of a certain status it is sufficient to, for example, invoke recognition of that status in ongoing proceedings. It is not then necessary to also seek the court's leave for

enforcement in the Netherlands or to seek recognition in separate proceedings. However, if the foreign judgment concerns an order to perform a certain act (eg, make a payment or transfer ownership), mere recognition is insufficient and leave for enforcement must be sought from the Dutch courts. Recognition is also sometimes a prerequisite for enforcement.

### *Ease of enforcement*

#### **In general, how easy is it to secure recognition and enforcement of foreign judgments in your jurisdiction?**

Unless agreed in an international convention, foreign judgments will not be recognised outright or enforced in the Netherlands. Whether the recognition and enforcement of a foreign judgment is easy to obtain ultimately depends on:

- the applicable legal framework;
- the matter of the foreign judgment to be recognised and enforced; and
- the strength of any defences raised by the judgment debtor.

However, in principle there will be no review of the merits.

The pursuit of the recognition and enforcement of a foreign judgment on the basis of the Code of Civil Procedure, the EU framework or one of the international conventions cited above depends on the location of the court of origin where the foreign judgment is rendered.

***Judgments rendered in EU member state*** Judgments rendered in an EU member state are automatically recognised and enforceable in the Netherlands if the Brussels I Regulation (Recast) is applicable. This means that no special procedure is necessary and the judgment can be enforced as if it were a Dutch domestic judgment (subject to certain formal requirements as further explained below).

***Judgments rendered in state that is party to treaty*** The recognition of judgments rendered in a state that is a party to a convention on execution of judgments alongside the Netherlands arises from the convention. This means that no special procedure is necessary regarding the recognition. Most treaties that discuss the enforcement of a foreign judgment in the Netherlands reference the Code of Civil Procedure in regards to the enforcement procedure (ie, enforcement by means of an enforcement order or '*exequatur*'). These *exequatur* proceedings are relatively simple and swift.

***Judgment rendered in another state without treaty*** In the absence of an applicable treaty, in principle the claim must be re-litigated before a Dutch court in order to obtain a court order enforceable in the Netherlands. In order to recognise such foreign judgments, re-litigation is not necessary if the requirements set out below are met. However, re-litigation as to the substance is not always necessary for enforceability. If a party has obtained a final judgment from a foreign court that is enforceable in the relevant jurisdiction, and files the claim with a court in the Netherlands, the Dutch court can render a similar decision to the foreign court if the formal and substantive conditions set out below are met.

### *Reform*

#### **Are any reforms to the framework on recognition and enforcement of judgments envisioned or underway?**

The Dutch judiciary is currently undergoing a digitalisation process which includes some reforms to the civil procedure law. The general purpose of this is to simplify the submission of a claim or defence and to bring the judiciary in line with broader digitalisation trends. Most of the reforms are expected to take effect in 2019.

The Brussels I Regulation (Recast) implemented reforms to the recognition and enforcement regime of judgments of EU member states. Given the fact that the provisions regarding reciprocal recognition and enforcement of foreign judgments of the Lugano Convention were equivalent to the (former) Brussels I Regulation, a reform of the Lugano Convention is anticipated.

### **Conditions for recognition and enforcement**

#### *Enforceable judgments*

**Which types of judgment (eg, monetary judgments, mandatory or prohibitory orders) are enforceable in your jurisdiction and which (if any) are explicitly excluded from recognition and enforcement (eg, default judgments, judgments granting punitive damages)?**

***Judgments rendered in EU member state*** All types of EU judgment (including but not limited to decrees, orders (interim or permanent), decisions or writs of execution) issued by an EU member state court are enforceable pursuant to the relevant EU regulations.

The Brussels I Regulation (Recast) (1215/2012) applies in civil and commercial matters, excluding revenue, customs or administrative matters. It does not apply to the status or legal capacity of natural persons, matrimonial matters, wills and succession, bankruptcy, social security and arbitration. A judgment given in a member state that orders a penalty payment is enforceable only if the amount of the payment has been finally determined by the court of origin.

**Judgments rendered in state that is party to treaty** The applicable treaty will describe in general which judgments can be enforced on the parties to the treaty. To be enforceable in the Netherlands, the judgment should also be enforceable in the state of origin.

**Judgments rendered in any other state without treaty** Article 431 of the Code of Civil Procedure applies only to condemnatory judgments, which are enforceable. Constitutive judgments, declaratory judgments and judgments dismissing a claim fall outside the scope of this chapter. However, according to case law, the judge may attach his or her own conclusion on the law applicable to these judgments and will recognise such judgments if they comply with the conditions set out below.

### **How are foreign judgments subject to appeal treated?**

**Judgments rendered in EU member state** Judgments rendered in an EU member state are automatically recognised and enforceable in the Netherlands if the Brussels I Regulation (Recast) is applicable. The recognition and enforcement of a judgment rendered in an EU member state can be refused on the application of any interested party. In such cases, the court that hears the appeal may stay the proceedings if an ordinary appeal has been lodged against the judgment in the member state of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.

**Judgments rendered in state that is party to treaty** Some of the treaties to which the Netherlands is party to require that the foreign judgment cannot or can no longer be appealed in the country of origin, and evidence of same.

**Judgments rendered in any other state without treaty** Other foreign judgments that are still subject to appeal are recognisable and enforceable in the Netherlands, provided that the formal and substantive requirements are fulfilled. The court has a broad discretion in this respect.

### *Formal requirements*

### **What are the formal and documentary requirements for recognition and enforcement of foreign judgments?**

**Judgments rendered in EU member state** No enforcement proceedings are necessary for judgments from EU member states and no further enforcement order (or '*exequatur*') or declaration of enforceability is required. Such an enforceable judgment carries with it the power to use any protective measures that exist under the law of the addressed member state.

A party which wishes to invoke a judgment issued in another member state must provide the court or authority:

- a copy of the judgment which satisfies the conditions necessary to establish its authenticity (eg, a certified copy); and
- a certificate issued by the state of origin that certifies enforceability and contains formal details of the judgment (eg, information on recoverable costs of the proceedings and the calculation of interest).

If the judgment grants a provisional or protective measure and this was ordered without the defendant being summoned to appear, the claimant must also submit proof of service of the judgment. The competent enforcement authority can, where necessary, require the enforcing party to provide a translation or a transliteration of the contents of the certificate if it is unable to proceed without a translation. The competent authority in the Netherlands is the bailiff.

**Judgments rendered in state that is party to treaty** The applicable treaty provides the formal and documentary requirements for recognition and enforcement of the judgments. For example, the Lugano Convention follows the Brussels I Regulation and states that the claimant must provide the court or authority with a copy of the judgment that satisfies the conditions necessary to establish its authenticity (eg, a certified copy) in order to obtain recognition. In order to enforce judgments rendered by the courts of the Lugano Convention states, the claimant must apply for a declaration of enforceability.

Most treaties that discuss the enforcement of a foreign judgment in the Netherlands reference Dutch domestic law (the Code of Civil Procedure) enforcement procedure (ie, enforcement by means of *exequatur*). The application for an enforcement order must be submitted by petition. The request should be accompanied by a complete and authenticated copy of the foreign judgment and evidence of formal enforceability in the country of origin. The court may require those documents to be authenticated and translated into Dutch by a sworn translator. Some treaties require that the party seeking recognition and enforcement provide evidence of proper notification

to the defendant of the initiation of the foreign proceedings. In addition, the party seeking recognition and enforcement in the Netherlands must provide evidence that the counterparty was properly notified of the request to recognise and enforce the foreign judgment.

**Judgments rendered in any other state without treaty** The procedure in Article 431 of the Code of Civil Procedure does not formally entail recognition or enforcement of a foreign state court judgment. However, in practice it gives binding effect to a foreign court judgment in the Netherlands. The procedure can be used to initiate new simplified proceedings in the Netherlands, seeking the same outcome as the foreign court judgment without review of the merits of the foreign judgment. The proceedings are initiated by summons. A complete and authenticated copy of the foreign judgment and a legal opinion confirming enforceability of the judgment in the country of origin are usually sufficient in terms of evidence. The court may require those documents to be legalised and translated into Dutch by a sworn translator.

However, the recognition of a foreign state court judgment can also be invoked during ongoing proceedings to substantiate a claim or defence. In order to be recognised, the substantive requirements set out below must be met.

#### *Substantive requirements*

#### **What substantive requirements (if any) apply to the recognition and enforcement of foreign judgments? Are enforcing courts in your jurisdiction permitted to review the foreign judgment on the merits?**

**Judgments rendered in EU member state** No enforcement proceedings are necessary for judgments from EU member states and no further *exequatur* or declaration of enforceability is required. Any interested party (usually the defendant) may initiate proceedings in the member state of enforcement to prevent the recognition and enforcement of the judgment. Recognition and enforcement of the judgment will be refused by a member state court if:

- recognition is manifestly contrary to Dutch public policy;
- 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 them to arrange for their defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for them to do so;
- the judgment is irreconcilable with a judgment given between the same parties in the Netherlands;
- 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 Netherlands; or
- the judgment conflicts with:
  - jurisdiction matters relating to insurance, consumer contracts or individual employment contracts, where the defendant was the insured/beneficiary, injured party, consumer or employee; and
  - exclusive jurisdiction under the Brussels I Regulation (Recast).

In the examination of the grounds of jurisdiction, the court will be bound by the findings of fact on which the court of origin based its jurisdiction. However, under no circumstances will a judgment given in a member state be reviewed as to its substance as addressed by the original member state.

**Judgments rendered in state that is party to treaty** The enforcement leave can be refused by the district court on the grounds mentioned in the relevant treaties. However, the treaties typically include some of the following recognition and enforcement refusal grounds that also follow from Dutch case law:

- the foreign judgment is not based on an internationally recognised ground for jurisdiction;
- recognition and enforcement would violate Dutch public order;
- principles of due process were violated in the proceedings that resulted in the foreign judgment;

- the judgment is not a result of proceedings compatible with Dutch concepts of due process;
- the foreign judgment is incompatible with an earlier foreign judgment between the same parties that is recognisable in the Netherlands;
- the foreign judgment is incompatible with a Dutch judgment between the same parties;
- the foreign judgment is by its terms not, no longer or not yet enforceable; or
- the foreign judgment has already been satisfied.

Under most treaties, it is up to the judgment creditor to establish that the foreign judgment is by its terms enforceable in the country of origin, while the other grounds for refusal may be raised by the Dutch courts *ex officio* or must be asserted and evidenced by the judgment debtor. The Dutch courts will not review the merits of the foreign judgment.

***Judgments rendered in any other state without treaty*** A foreign judgment is eligible for recognition and enforcement if:

- the competence of the court issuing the judgment is grounded in competency principles that are generally accepted under international standards;
- principles of due process were not violated in the proceedings that resulted in the foreign judgment;
- the foreign judgment was rendered in judicial proceedings that meet the requirements of and include safeguards for the proper administration of justice;
- the recognition of the foreign judgment does not contravene Dutch public order;
- the foreign judgment is reconcilable with any judgment rendered by a court in a matter between the same parties or with any earlier judgment by a foreign court in a matter between those same parties in a dispute regarding the same issue and the same cause, subject to the proviso that such earlier judgment is eligible for recognition in the Netherlands;
- the foreign judgment is by its terms still enforceable; and
- the foreign judgment has not yet been satisfied.

In this event, the Dutch court will render a similar decision as the foreign court and that decision – as a Dutch decision – will be enforceable in the Netherlands (or the court will recognise the foreign judgment in ongoing proceedings). If the requirements are not met, the claim has to be re-litigated as to the substance and the court is permitted to review the foreign judgment on the merits.

#### *Limitation period*

#### **What is the limitation period for enforcement of a foreign judgment?**

In *Gazprombank* (2014) the Supreme Court held that expiry of leave to enforce in and under the laws of the country of origin would not prevent recognition and enforcement in the Netherlands of that foreign judgment. In other words, the foreign statute of limitations is of no consequence for the recognition and enforcement in the Netherlands of a foreign judgment.

In any event, the limitation period for a Dutch court to enforce a judgment (including a court leave to enforce a foreign court judgment) is 20 years.

#### *Grounds for refusal*

#### **On what grounds can recognition and enforcement be refused?**

Recognition and enforcement can be refused if either the formal or substantive requirements as described above are not fulfilled.

#### *Service of process*

#### **To what extent does the enforcing court review the service of process in the original foreign proceedings?**

If a judgment has been given in default, the recognition or enforcement will be refused 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 it to arrange a defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for it to do so.

### *Public policy*

#### **What public policy issues are considered in the court's decision to grant recognition and enforcement? Is there any notable case law in this regard?**

A foreign judgment is considered to be in violation of Dutch public policy if fundamental principles of law have been violated. This can be a violation of European Convention on Human Rights rules, mandatory EU law or fundamental principles of due process. The case law on this point results from individual cases. However, the general perception is that a violation of public policy may be only assumed in exceptional situations.

### *Jurisdiction*

#### **What is the extent of the enforcing court's power to review the personal and subject-matter jurisdiction of the foreign court that issued the judgment?**

The court's power to review the jurisdiction of the foreign courts depends on the origin state of the foreign judgment.

Judgments rendered in an EU member state and Lugano Convention member states are subject to a review of their jurisdiction only in regard to certain specific situations. Recognition and enforcement will be refused only if the judgment conflicts with:

- jurisdiction matters relating to insurance, consumer contracts or individual employment contracts, where the defendant was the insured or beneficiary, injured party, consumer or employee; or
- exclusive jurisdiction provisions under the Brussels I Regulation (Recast) or the Lugano Convention.

In other situations, the member state court's jurisdiction may not be reviewed. Judgments from a state party to another treaty will mostly have a broader range of review of the jurisdiction of the court of origin. Judgments from states with which the Netherlands has no regulation or treaty will not be enforced by the court if foreign judgment is not based on an internationally recognised ground for jurisdiction. In such cases, the specific basis under which the court of origin has assumed jurisdiction is irrelevant. It is relevant whether the elements of the case would provide jurisdiction on internationally recognised grounds (ie, domicile of the defendant or execution of the service).

### *Concurrent proceedings and conflicting judgments*

#### **How do the courts in your jurisdiction address applications for recognition and enforcement where there are concurrent proceedings (foreign or domestic) or conflicting judgments involving the same parties/dispute?**

**Concurrent proceedings** Concurrent proceedings (foreign or domestic) involving the same matter do not influence the recognition and enforcement of judgments issued in EU member states or Lugano Convention states. Judgments rendered in a state party to a treaty with the Netherlands could contain information on this issue. In general, judgments from other states will not be recognised or enforced if there are concurrent proceedings in the Netherlands which began before the application for recognition and enforcement. The application for recognition and enforcement may be suspended pending the outcome of the other local proceedings.

**Conflicting judgments** If the judgment is rendered in a foreign state (regardless of the state of origin), the court will refuse recognition or enforcement of the judgment on the application of any interested party if the judgment is irreconcilable with:

- a judgment given between the same parties in the Netherlands; or
- 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 Netherlands.

### **Opposition**

#### *Defences*

#### **What defences are available to the losing party to a foreign judgment that is sought to be recognised and enforced in your jurisdiction?**

The losing party may argue that the substantive requirements for recognition and enforcement (as set out above) have not been

fulfilled. The manner in which the defences are available depends on the origin state of the foreign jurisdiction:

- a judgment rendered by an EU member state – the losing party can apply for refusal of recognition or enforcement;
- a judgment rendered by a state that is party to a treaty – the losing party must argue that the substantive requirements for enforceability were not fulfilled before the Dutch court where the enforcement procedure is pending; and
- a judgment rendered by any other state without a treaty – the losing party must argue that the substantive requirements for recognition or enforceability were not fulfilled before the Dutch court where the recognition or enforcement procedure is pending.

### *Injunctive relief*

#### **What injunctive relief is available to defendants (eg, anti-suit injunctions)?**

There is no injunctive relief available to defendants against the recognition or enforcement of foreign judgments in the Netherlands. The defendant has several possibilities to challenge the recognition or enforcement (see above). However, once the court has ruled that the foreign judgment is enforceable in the Netherlands, the defendant may attempt to prevent enforcement. The dispute may relate to, for example:

- the significance and scope of the enforceable document;
- the impact of facts emerging after the judgment (the enforceable document);
- the validity of an attachment; or
- the question of who owns the attached assets.

An enforcement dispute relates solely to the matter of enforcement. The substance of the main action in which a judgment has already been handed down is not re-appraised.

In an enforcement dispute the debtor may argue that, for example, the executor is abusing his or her rights or the attachment is disproportionate to the judgment. The debtor (the party against whom enforcement action is being taken) cannot put forward any further substantive objections to the judgment at this stage.

#### **Recognition and enforcement procedure**

##### *Formal procedure*

#### **What is the formal procedure for seeking recognition and enforcement of a foreign judgment?**

***Judgments rendered in EU member state*** No enforcement proceedings are necessary for judgments from EU member states and no further enforcement order (or '*exequatur*') or declaration of enforceability is required. Such an enforceable judgment carries with it the power to use any protective measures that exist under the law of the addressed member state.

A party which wishes to invoke a judgment issued in another member state must provide the court or authority:

- a copy of the judgment which satisfies the conditions necessary to establish its authenticity (eg, a certified copy); and
- a certificate issued by the state of origin that certifies enforceability and contains formal details of the judgment (eg, information on recoverable costs of the proceedings and the calculation of interest).

If the judgment grants a provisional or protective measure and this was ordered without the defendant being summoned to appear, the claimant must also submit proof of service of the judgment. The competent enforcement authority can, where necessary, require the enforcing party to provide a translation or a transliteration of the contents of the certificate if it is unable to proceed without a translation. The competent authority in the Netherlands is the bailiff.

**Judgments rendered in state that is party to treaty** The applicable treaty provides the formal and documentary requirements for recognition and enforcement of the judgments. For example, the Lugano Convention follows the Brussels I Regulation and states that the claimant must provide the court or authority with a copy of the judgment that satisfies the conditions necessary to establish its authenticity (eg, a certified copy) in order to obtain recognition. In order to enforce judgments rendered by the courts of the Lugano Convention states, the claimant must apply for a declaration of enforceability.

Most treaties that discuss the enforcement of a foreign judgment in the Netherlands reference Dutch domestic law (the Code of Civil Procedure) enforcement procedure (ie, enforcement by means of *exequatur*). The application for an enforcement order must be submitted by petition. The request should be accompanied by a complete and authenticated copy of the foreign judgment and evidence of formal enforceability in the country of origin. The court may require those documents to be authenticated and translated into Dutch by a sworn translator. Some treaties require that the party seeking recognition and enforcement provide evidence of proper notification to the defendant of the initiation of the foreign proceedings. In addition, the party seeking recognition and enforcement in the Netherlands must provide evidence that the counterparty was properly notified of the request to recognise and enforce the foreign judgment.

**Judgments rendered in any other state without treaty** The procedure in Article 431 of the Code of Civil Procedure does not formally entail recognition or enforcement of a foreign state court judgment. However, in practice it gives binding effect to a foreign court judgment in the Netherlands. The procedure can be used to initiate new simplified proceedings in the Netherlands, seeking the same outcome as the foreign court judgment without review of the merits of the foreign judgment. The proceedings are initiated by summons. A complete and authenticated copy of the foreign judgment and a legal opinion confirming enforceability of the judgment in the country of origin are usually sufficient in terms of evidence. The court may require those documents to be legalised and translated into Dutch by a sworn translator.

However, the recognition of a foreign state court judgment can also be invoked during ongoing proceedings to substantiate a claim or defence. In order to be recognised, the substantive requirements set out above must be met.

#### *Timeframe*

#### **What is the typical timeframe for the proceedings to grant recognition and enforcement?**

There is no typical timeframe in the Netherlands for the proceedings to grant recognition and enforcement. A judgment rendered in an EU member state can be recognised and enforced without any further proceedings needed. In the event that any interested party initiates proceedings to prevent recognition and enforcement of a foreign judgment, the court shall decide on the application for refusal of recognition and enforcement without delay. In the event that an enforcement order (or *'exequatur'*) procedure is conducted, the decision on the request for enforcement must be given swiftly, although a speedy decision must not frustrate the rights of the defendant to a fair hearing. Usually, procedures will be finalised within a few months.

In the event that the recognition and enforcement procedure must be re-litigated, the timeframe largely depends on the state of origin of the judgment, the documents provided and the arguments raised by the defendant. It could take up to 24 months before a final judgment is given.

#### *Fees*

#### **What fees apply to applications for recognition and enforcement of foreign judgments?**

The applicant is charged a court fee. The fee varies from a few hundred euros for claims with an unspecified amount to a few thousand euros for claims with a specified amount. The lawyer's fees will usually be calculated on an hourly basis although alternative fee arrangements are allowed to a certain extent as well. In the event that the claim is dismissed, the losing party will be ordered to pay the costs of the proceedings. However, these costs are relatively low and do not include the actual costs incurred by the defendant's lawyers.

#### *Security*

#### **Must the applicant for recognition and enforcement provide security for costs?**

**Judgments rendered in EU member state** In the event of an application for refusal of enforcement of a judgment rendered in an EU member state, the court may, on the application of the party against whom enforcement is sought, make enforcement conditional on the provision of such security.

**Judgments rendered in state that is party to treaty** According to the Code of Civil Procedure, if the claimant seeks recognition and enforcement of a judgment rendered in a state party to a treaty the court can declare the decision provisionally enforceable under the condition that security is provided (eg, in the event the judgment in the state of origin is appealed against), except in the event the specific treaty states differently.

***Judgments rendered in any other state without treaty*** A claimant can be required to provide security for costs in advance of costs being decided on the demand of the defendant if the claimant is a foreign party and the claim must be re-litigated before enforcement can take place. However, in practice this right is rarely used because of the large number of exceptions, international treaties prohibiting security for costs and the EU framework.

### *Appeal*

#### **Are decisions on recognition and enforcement subject to appeal?**

Yes. A decision in enforcement proceedings can be appealed to the Court of Appeal, and a Court of Appeal decision can be contested before the Supreme Court.

### *Other costs*

#### **How does the enforcing court address other costs issues arising in relation to the foreign judgment (eg, calculation of interest, exchange rates)?**

In an *exequatur* procedure no conversion of foreign currencies is made. Interest depends on what is determined in the foreign judgment, but it may be granted.

### *Enforcement against third parties*

#### **To what extent can the courts enforce a foreign judgment against third parties?**

In general, a foreign judgment is directly enforceable only against the parties to which it is addressed. However, third parties may be affected by judgments in a few rare cases. According to *Schuring/Sweelinck*, the enforcement of a judgment against one of the parties mentioned in the judgment can also have consequences for third parties within the limits imposed by the formulation of the order and by the rules prescribed by law. For example, the enforcement of an eviction order against the owner can also be used against people who were not party to the proceedings, but are present at the premises.

### *Partial recognition and enforcement*

#### **Can the courts grant partial recognition and enforcement of foreign judgments?**

Yes, insofar as the claims covered by the judgment can be separated.

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