

## Enforcement of foreign judgments in the Netherlands

*The recent introduction of the Brussels I Regulation (recast), which entered into force in the Netherlands on 10 January 2015, considerably simplified the enforcement procedure of the foreign judgements from the EU Member States. The below scheme provides a concise overview of the amended Dutch enforcement procedure in relation to foreign judgements. It discusses the most important types of enforcement procedures relating to: (i) foreign judgments subject to Brussels I Regulation (recast), (ii) foreign judgments subject to Lugano Convention, (iii) foreign judgments subject to EEO Regulation for uncontested claims, (iv) foreign judgments under enforcement treaties concluded between the Netherlands and the country of origin of the relevant foreign judgement and (v) foreign judgements to which none of the aforementioned applies.*

### **Applicable legislative pieces:**

- Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ("[Brussels I Regulation \(recast\)](#)");
- Lugano Convention of 30 October 2007 on jurisdiction and the enforcement of judgments in civil and commercial matters ("[Lugano Convention](#)");
- The Dutch act of 2 July 2003, as amended on 22 January 2014, in relation to implementation of the Brussels I Regulation (recast) and Lugano Convention ("[Implementation Act](#)");
- Regulation (EC) 805/2004 creating a European Enforcement Order for uncontested claims ("[EEO Regulation](#)");
- The act of 28 September 2005 in relation to implementation of the EEO Regulation ("[EEO Implementation Act](#)");
- Recognition and enforcement treaties concluded by the Netherlands with other countries ("[Enforcement Treaties](#)");
- The Dutch Code of Civil Procedure ("[DCCP](#)") and in particular Articles 985 – 994 DCCP in relation to recognition and enforcement of the foreign judgments under Enforcement Treaties and Article 431 DCCP in relation to recognition and enforcement of the foreign judgments from countries which did not conclude any Enforcement Treaties with the Netherlands.

What is a “judgment”?	What are the procedural requirements for enforcement?	On what grounds can enforcement of a foreign judgment or award be denied?
<p><b>Foreign Judgments under Brussels I Regulation (recast) and Implementation Act</b></p> <p>A definition of judgment is provided by Article 2 Brussels I Regulation (recast) and reads as follows: “<i>any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court</i>”. It “<i>includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation [Brussels I Regulation (recast)] has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement.</i>”</p>	<p><b>Foreign Judgments under Brussels I Regulation (recast) and Implementation Act</b></p> <p>Foreign judgement from the EU Member States, except of Denmark<sup>1</sup>, can be recognised and enforced pursuant to the Brussels I Regulation (recast). This regulation contains a simplified mechanism for the recognition and enforcement of the Member State judgments in other Member States, eliminating the need for a declaration of enforceability in the courts of the Member State in which enforcement is sought (Article 39 Brussels I Regulation (recast)). Instead, an applicant will simply have to submit to the Dutch enforcement authority a copy of the judgment, which satisfies the requirements for it to be considered authentic. This judgment will have to be accompanied by a translation (if required), and a standard form certificate issued by the court, which rendered the judgment. For the purposes of enforcement of a judgment containing provisional measures and where such measures were ordered without the defendant being summoned to appear (<i>ex parte</i>) the applicant will also have to provide a proof of service of the judgment (Articles 42 and 43 Brussels I Regulation (recast) and Articles 7 and 8 Implementation Act). If the judgment contains measures, which are not known in the Netherlands, these measures should be adapted to measures known under Dutch law (Article 54 Brussels I Regulation (recast)). Furthermore, the certificate will have to be served on the respondent against whom the enforcement is sought prior to the enforcement measure can take place (together with the judgment if the respondent has not received it earlier) taking into account a time period of one month if the respondent is domiciled in the Netherlands and a period of two months if the respondent is not domiciled in the Netherlands (Article 43 Brussels I Regulation (recast) and Article 9 Implementation</p>	<p><b>Foreign Judgments under Brussels I Regulation (recast) and Implementation Act</b></p> <p>The recognition and enforcement can only be refused on the following limited grounds and only upon an application of any interested party to the relevant District Court (Articles 45 Brussels I Regulation (recast), Article 10 Implementation Act):</p> <ul style="list-style-type: none"> <li>• If the recognition is contrary to public policy (<i>ordre public</i>);</li> <li>• Where 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;</li> <li>• Irreconcilability with an earlier judgment given between the same parties in the Netherlands;</li> <li>• Irreconcilability 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</li> <li>• If the judgment conflicts with some jurisdiction rules laid down in Brussels I Regulation (recast).</li> </ul> <p>In the event of an application for refusal of enforcement, the District Court may on application of the person against whom enforcement is sought (Article 44 Brussels I Regulation (recast)):</p> <ul style="list-style-type: none"> <li>• Limit the enforcement proceedings to protective measures;</li> </ul>

<sup>1</sup> Denmark is not bound by the Brussels I Regulation (recap) (see recital 41), but on 20 December 2012, Denmark notified the European Commission of its decision to implement the Brussels I Regulation (recast) in its national legislation pursuant to the agreement between the European Community and Denmark of 19 October 2005 (2006/325/EC).

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	Act).	<ul style="list-style-type: none"> <li>• Make enforcement conditional on the provision of such security as it determines; or</li> <li>• Suspend the enforcement proceedings.</li> </ul> <p>The decision of the District Court upon the application for refusal of enforcement can be appealed against by either party to the Court of Appeal. The decision given on the appeal by the Court of Appeal may only be contested by an appeal at the Supreme Court of the Netherlands (Articles 49 and 50 Brussels I Regulation (recast) and Article 10 Implementation Act).</p>
<p><b>Foreign Judgment under Lugano Convention and Implementation Act</b>  Article 32 Lugano Convention provides for a definition of a judgment: “<i>any judgment given by a court or tribunal of a State bound by this Convention, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court</i>”.</p>	<p><b>Foreign Judgment under Lugano Convention and Implementation Act</b>  Foreign judgments from Iceland, Norway and Switzerland can be enforced and recognised in the Netherlands pursuant to the provisions of the Lugano Convention and the Implementation Act. Pursuant to the Lugano Convention and Implementation Act, a simplified enforcement leave procedure will have to be followed in order for an enforcement to take place (Articles 38 Lugano Convention and Article 3 Implementation Act). This procedure entails that an enforcement leave can be immediately obtained upon submission to the Preliminary Relief Judge of the competent District Court of a copy of the judgment, which satisfied the conditions necessary to establish the authenticity and a standard certificate (Articles 39, 40, 41 and 53 Lugano Convention). After that the decision on the application for an enforcement leave will have to be brought to the notice of the applicant in accordance with the relevant provisions of the Dutch procedural law and it will also have to be served on the party against whom enforcement is sought (Article 42 Lugano Convention). After that the enforcement can take place. In so far as the judgment contains any protective measures, the enforcement leave will give the applicant a power to proceed with them (Article 47 Lugano</p>	<p><b>Foreign Judgment under Lugano Convention and Implementation Act</b>  A foreign judgment from Denmark, Iceland, Norway and Switzerland cannot be recognised and consequently cannot be enforced if one of the following grounds applies (Articles 34 and 35 Lugano Convention):</p> <ul style="list-style-type: none"> <li>• If the recognition is contrary to public policy (<i>ordre public</i>).</li> <li>• Where 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;</li> <li>• Irreconcilability with an earlier judgment given between the same parties in the Netherlands;</li> <li>• Irreconcilability with an earlier judgment given in another State bound by Lugano Convention or in a third State involving the same cause of action and the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Netherlands; or</li> </ul>

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	Convention).	<ul style="list-style-type: none"> <li>• If the judgment conflicts with some specific jurisdiction rules relating to insurance, consumer contracts, exclusive jurisdiction laid down in the Lugano Convention and in some specific cases where the provisions of the Lugano Convention contradict the Brussels I Regulation (recap) and other judicial instruments.</li> </ul> <p>The decision of the Preliminary Relief Judge on the enforcement leave can be appealed against by either party at the District Court within one month of service thereof if the party against whom enforcement is sought is domiciled in the Netherlands and within two months if this person is domiciled in another State bound by Lugano Convention (Article 43 and Annex III Lugano Convention and Article 4 Implementation Act). The decision given on the appeal by the District Court may only be contested by an appeal at the Supreme Court of the Netherlands (Articles 43, 44 and Annexes III and IV Lugano Convention).</p> <p>The District Court and Supreme Court of the Netherlands may on application of the party against whom enforcement is sought stay the proceedings if an ordinary appeal has been lodged against the judgment in the State of origin or if the time for such an appeal has not yet expired. Besides, it is also possible to make enforcement conditional (Article 46 Lugano Convention).</p>
<p><b>Foreign Judgment under EEO Regulation for uncontested claims and EEO Implementation Act</b> Article 4 provides the following definition of judgment “<i>any judgment given by a court or tribunal of a Member State,</i></p>	<p><b>Foreign Judgment under EEO Regulation for uncontested claims and EEO Implementation Act</b> If a foreign judgment from a EU Member State (with the exception of Denmark) concerns a claim that is 'uncontested' within the meaning of the EEO Regulation and if the court proceedings in the Member State of origin meet the following</p>	<p><b>Foreign Judgment under EEO Regulation for uncontested claims and EEO Implementation Act</b> The enforcement can be refused upon an application by the debtor to the competent District Court if the judgment is irreconcilable with an earlier judgment given in any Member State of in a third country, provided that (Article</p>

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<p><i>whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court</i>”. Furthermore, for EEO to apply the judgment should relate to an uncontested claim. A claim is defined by Article 4 as <i>"a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment, court settlement of authentic instrument."</i></p> <p>Pursuant to Article 3 EEO Regulation a claim shall be regarded as 'uncontested' if:</p> <ul style="list-style-type: none"> <li>• The debtor has expressly agreed to it by admission or by means of a settlement approved by or concluded before a court;</li> <li>• The debtor has never objected to it in the course of the court proceedings;</li> <li>• The debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to it in the course of the court proceedings (tacit admission); or</li> <li>• The debtor has expressly agreed to it in an authentic instrument.</li> </ul>	<p>procedural requirements (Article 6 EEO Regulation):</p> <ul style="list-style-type: none"> <li>• The judgment is enforceable in the Member State of origin;</li> <li>• The judgment does not conflict with the rules on jurisdiction as laid down in Brussels I Regulation (recast);</li> <li>• The service and information requirements laid down in the EEO Regulation are met; and</li> <li>• The judgment was given in the Member State of the debtor’s domicile within the meaning of the Brussels I Regulation (recast) in cases where it relates to a consumer contract and the debtor is a consumer,</li> </ul> <p>then such judgment can be classified as a European Enforcement Order pursuant to the EEO Regulation and will be recognised and enforced in the Netherlands without the need for an enforcement leave and without any scope for opposing its recognition (Article 5). Furthermore, no appeal is possible against the issuing of a European Enforcement Order (Article 10(4) EEO Regulation). In case the procedural requirements are not met, the deficiencies can be cured or in exceptional cases the judgment can be reviewed in the Member State of origin (Articles 18 and 19 EEO Regulation).</p> <p>In order to enforce a judgment, which is certified as a European Enforcement Order, an applicant will have to present to the Dutch enforcement authorities a copy of the standard certificate issued by the relevant court in the Member State of the origin and a copy of the judgment, where necessary accompanied by a translation, and then the judgment can be enforced under the same conditions as a Dutch judgment (Article 20).</p>	<p>21 EEO Regulation, Article 11 EEO Implementation Act, Article 438 DCCP):</p> <ul style="list-style-type: none"> <li>• The earlier judgment involved the same cause of action and was between the same parties;</li> <li>• The earlier judgment was given in the Netherlands or fulfils conditions necessary for its recognition in the Netherlands; and</li> <li>• The irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.</li> </ul> <p>Furthermore, where the debtor has challenged the European Enforcement Order and applied for rectification or withdrawal of the certificate, then the competent District Court may upon application by the debtor (Article 23 EEO Regulation):</p> <ul style="list-style-type: none"> <li>• Limit the enforcement proceedings to protective measures; or</li> <li>• Make enforcement conditional on the provision of such security as it shall determine; or</li> <li>• Under exceptional circumstances: stay the enforcement proceedings.</li> </ul>
<p><b>Foreign judgments under Enforcement Treaties (Articles 985 – 994 DCCP)</b></p> <p>In so far as it concerns enforcement of a foreign judgment under Enforcement</p>	<p><b>Foreign judgments under Enforcement Treaties (Articles 985 – 994 DCCP)</b></p> <p>The defence should be made between Enforcement Treaties</p> <p>The Netherlands concluded many Enforcement Treaties with different EU Member States, which have largely been</p>	<p><b>Foreign judgments under Enforcement Treaties (Articles 985 – 994 DCCP)</b></p> <p>The enforcement leave can be refused by the District Court on the grounds mentioned in the relevant Enforcement Treaty and on following grounds from Dutch</p>

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<p>Treaties (and not under any of the abovementioned EU enforcement instruments) concluded between the Netherlands and the country of origin of the judgment, the relevant Enforcement Treaty should contain a definition of judgment or guidance in this respect. Furthermore, Article 985 DCCP specifies in respect of a foreign judgment that it should be enforceable in the country of origin.</p>	<p>superseded by the aforementioned EU instruments. However, these treaties can still be relevant in so far as they provide for a more favourable enforcement regime. Besides, the Netherlands have concluded Enforcement Treaties with other countries such as Surinam and the US (which has a limited application scope) and other Enforcement Treaties.</p> <p>If such Enforcement Treaty applies, then the enforcement procedure as set out in Article 985 – 994 DCCP will have to be followed. Pursuant to this procedure an enforcement leave will have to be obtained from the competent District Court in order to be able to enforce such judgment (Article 985 DCCP).<sup>2</sup></p> <p>In order to obtain an enforcement leave the applicant will have to submit a petition to the competent District Court accompanied by the authentic copy of the judgment. Also the applicant must proof that the judgment is enforceable in the country of origin and must submit legalization and a translation of the judgment, if required (Article 986 DCCP). Furthermore, the District Court will schedule an oral hearing prior to making its decision (Article 987 DCCP). The enforcement leave will be granted if all formal requirements mentioned in the relevant Enforcement Treaty are satisfied, which requirements prevail above the provisions of DCCP in so far as there is a conflict and if the following procedural requirements are met:</p> <ul style="list-style-type: none"> <li>• The judgment must be a result of proceedings compatible with Dutch concepts of due process;</li> <li>• The judgment should not contravene public policy; and</li> <li>• The non-domestic court must have assumed jurisdiction on grounds, which are internationally accepted.<sup>3</sup></li> </ul>	<p>case law:</p> <ul style="list-style-type: none"> <li>• The judgment is not enforceable in the country of origin;</li> <li>• The judgment is not a result of proceedings compatible with Dutch concepts of due process;</li> <li>• The judgment contravenes public policy; and</li> <li>• The court of origin of the judgement did not assume jurisdiction on internationally accepted grounds.<sup>4</sup></li> </ul> <p>Both parties can lodge an appeal against the decision of the competent District Court by the Court of Appeal within one month after the decision was taken (Article 989 DCCP). The decision of the Court of Appeal can in its turn be appealed at the Supreme Court of the Netherlands, which cause of action will also have to be initiated within one month after the Court of Appeal made its decision (Article 990 DCCP).</p>

<sup>2</sup> For the sake of completeness, it is noted that there are also treaties which do not require following the enforcement leave procedure from Articles 985 – 994 DCCP, as they contain an enforcement mechanism of their own. An example of such treaty is The Hague Enforcement Treaty and the Enforcement Treaty between Germany and the Netherlands. The question of whether the enforcement leave procedure has to be followed in a specific case, must be answered on the basis of provisions of the relevant Enforcement Treaty and its implementation act.

<sup>3</sup> Supreme Court of the Netherlands, 27 June 2003, NJ 2004, 615, LJN: AF7005.

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<p><b>Foreign judgments without treaties (Article 431 DCCP)</b>  Neither Article 431 DCCP nor its Parliamentary History contains a definition of judgment. In fact, such definition in DCCP is also not required since in absence of an Enforcement Treaty a foreign judgment cannot be directly enforced in the Netherlands and new proceedings before the Dutch court will have to be commenced with a result that the final decision of a Dutch court will constitute an enforcement title.</p>	<p><b>Foreign judgments without treaties (Article 431 DCCP)</b>  The Netherlands has not entered into enforcement and recognition treaties with most countries outside the European Union. Therefore, judgments rendered in those jurisdictions cannot be enforced directly in the Netherlands, which means that new proceedings before the Dutch courts have to be commenced. However, if the following three criteria for recognition are met, then in general <i>no litigation on the merits</i> will be required:</p> <ul style="list-style-type: none"> <li>• The judgment must be a result of proceedings compatible with Dutch concepts of due process;</li> <li>• The judgment should not contravene public policy; and</li> <li>• The non-domestic court must have assumed jurisdiction on grounds, which are internationally accepted.<sup>5</sup></li> </ul> <p>However, even if these requirements are not fully met, the court may nevertheless recognise some aspects of such judgments as evidence of certain issues before the Dutch courts.</p>	<p><b>Foreign judgments without treaties (Article 431 DCCP)</b>  If one of the following criteria is not met, then the dispute between the parties will also have to be <i>re-litigated on the merits</i> before the Dutch courts:</p> <ul style="list-style-type: none"> <li>• The judgment must be a result of proceedings compatible with Dutch concepts of due process;</li> <li>• The judgment should not contravene public policy; and</li> <li>• The non-domestic court must have assumed jurisdiction on grounds, which are internationally accepted.<sup>6</sup></li> </ul>

<sup>4</sup> Supreme Court of the Netherlands, 27 June 2003, NJ 2004, 615, LJN: AF7005.

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