

**International
Comparative
Legal Guides**



Enforcement of Foreign Judgments

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1 Country Finder

1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.

Applicable Law/Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
Direct effect of judgments within the Kingdom of the Netherlands: art. 40 Statute.	Aruba. Curaçao. Sint Maarten.	Not applicable.
Bilateral treaties (as regards European countries partially replaced by the 1968 Brussels Convention).	Belgium (1925). Italy (1959). Germany (1962). Austria (1963). United Kingdom (1967). Surinam (1976).	Section 3.
Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (1971).	Albania. Cyprus. Kuwait. Portugal.	Section 3.
Hague Convention on Choice of Court Agreements (2005).	Denmark. EU Member States. Mexico. Montenegro. Singapore. Ukraine. United Kingdom and Gibraltar.	Section 3.
Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019).	EU Member States. Ukraine.	Section 3
Multiple treaties with relatively narrow scope (<i>e.g.</i> child support, transport by air, by road, by rail).	Dependent on the treaty.	Section 3.
If no treaty applies: art. 431 Dutch Code of Civil Procedure.	Cases where no treaty applies.	Section 2.

2 General Regime

2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?

If no treaty applies, the recognition and enforcement of a foreign court judgment in civil and commercial matters is governed by art. 431 of the Dutch Code of Civil Procedure.

2.2 What constitutes a 'judgment' capable of recognition and enforcement in your jurisdiction?

In general: a decision on the merits in a civil or commercial dispute. Some treaties provide explicitly that they do not apply to judgments of certain forums (*e.g.* administrative bodies) or in certain forms (*e.g.* penalties, provisional and protective measures) or on certain subjects (*e.g.* employment, product liability, consumer protection). Despite such treaty exclusions,

recognition and enforcement may still be possible under the general regime of art. 431 of the Dutch Code of Civil Procedure. It is still to be tested whether, absent an applicable treaty, a foreign court judgment imposing an administrative penalty (e.g. penalties imposed by a foreign antitrust authority) may qualify in the Netherlands as a foreign court judgment in a civil or commercial matter, especially since under Dutch law an administrative penalty creates a civil liability (art. 4:124, Dutch General Administrative Law Act, Awb).

2.3 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?

A complete and authenticated copy of the foreign judgment and a legal opinion confirming enforceability of the judgment in the country of origin is usually sufficient in terms of evidence. Unless an applicable treaty (e.g. the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents) provides otherwise, the court may require those documents to be legalised and to be translated into Dutch by a sworn translator.

2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

None of the parties need to be domiciled or even to have assets in the Netherlands for recognition and enforcement of a foreign judgment. Reciprocity (i.e. recognition of judgments of Dutch courts in the country of origin) is also not a requirement.

2.5 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

If the foreign judgment concerns the establishment of a certain status (e.g. divorce), it is sufficient to seek recognition of that status, but it is not necessary to also seek court leave to enforce in the Netherlands. No particular procedural requirements may apply to cause a foreign judgment to establish a certain recognised status in the Netherlands. If the foreign judgment concerns an order to perform a certain act (e.g. make a payment, transfer title), one should not only seek recognition of the foreign judgment but also seek leave to enforce it from the Dutch courts. Such court leave is required for a Dutch bailiff to take enforcement action, such as the involuntary sale of assets.

2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

Even though the procedure of art. 431 of the Dutch Code of Civil Procedure (i.e. absent an applicable treaty) does not formally entail recognition or enforcement of a foreign state court judgment, it does in effect result in giving binding effect to a foreign court judgment in the Netherlands. If no treaty applies, then art. 431 of the Dutch Code of Civil Procedure can be used to initiate (new) simplified proceedings in the Netherlands, seeking the same outcome as the foreign court judgment against the same parties without review of the merits of the foreign judgment. Depending on the subject matter and amount of the claim, the proceedings are initiated either at the *kanton* division or the division for regular commercial matters of the District Court in the first instance. The proceedings are initiated by summons

(*dagvaardingsprocedure*) and are *inter partes*, the outcome of which is subject to appeal and cassation. Contrary to a judgment granting leave to enforce a foreign judgment in the Netherlands (only) on the basis of a treaty, the judgment resulting from art. 431-proceedings qualifies as a judgment on the merits and can as such be enforced outside the Netherlands.

2.7 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

Recognition and enforcement may be refused if: (i) the foreign judgment is not based on an internationally recognised ground for jurisdiction; (ii) principles of due process were violated in the proceedings that resulted in the foreign judgment; (iii) recognition and enforcement would violate Dutch public order; (iv) the foreign judgment is incompatible with a Dutch judgment between the same parties; (v) the foreign judgment is incompatible with an earlier foreign judgment between the same parties that is recognisable in the Netherlands; (vi) the foreign judgment is by its terms not, no longer, or not yet enforceable; or (vii) the foreign judgment has already been satisfied. It is up to the judgment creditor to establish that the foreign judgment is by its terms enforceable in the country of origin (under (vi)), while other grounds for refusal may be raised by the Dutch courts *ex officio* (e.g. violation of Dutch public order) or have to be asserted and evidenced by the judgment debtor. The judgment debtor must be given an opportunity to be heard before the request for recognition and enforcement is decided upon.

2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

Under the regime of art. 431 of the Dutch Code of Civil Procedure (i.e. absent an applicable treaty), there are no additional requirements for specific subject matters. The Netherlands is a member of a number of treaties on the recognition and enforcement of foreign judgments, some with a relatively broad scope and some with a relatively narrow scope (for instance: child support; shipping; and transport by road, by air and by rail). Significant differences may apply depending on the applicable treaty.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

A conflicting local judgment between the parties relating to the same issue is a ground for refusal (see under question 2.7 (iv)). Local proceedings pending between the same parties may be a ground to suspend the proceedings pending the outcome of the local proceedings.

2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

Recognition and enforcement of a foreign judgment may be refused if such recognition and enforcement would violate Dutch public order (for example, U.S. punitive or treble damages). Certainly, not every conflict with Dutch laws and regulations

or with an earlier judgment between other parties amounts to a potential violation of Dutch public order. If the foreign judgment does not fit nicely into the Dutch public order (e.g. types of security rights that are foreign to the Dutch legal system), the Dutch court will seek to assimilate the foreign judgment into the Dutch legal system as much as possible. As regards cases where a foreign judgment conflicts with a prior Dutch judgment between different parties on the same or a similar issue, it should also be noted that, although the courts do seek to be consistent, there is no system of binding precedent in the Netherlands.

2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

A Dutch court will not, in principle, review the merits of the foreign judgment, and this is no different if the foreign court has applied Dutch substantive law. However, recognition and enforcement of a foreign judgment may be refused if such recognition and enforcement would violate Dutch public order.

2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

No, there are not.

2.13 What is the relevant limitation period to recognise and enforce a foreign judgment?

In the 2014 *Gazprombank* decision, the Dutch Supreme Court held that expiration of leave to enforce in, and under the laws of, the country of origin is no cause to refuse 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 of a foreign judgment in the Netherlands. This decision has raised the question of whether it is the Dutch statute of limitations or no statute of limitations at all which applies to recognition and enforcement of a foreign state court judgment in the Netherlands. In any event, the limitation period of a Dutch court's leave to enforce (including a court leave to enforce a foreign court judgment) is 20 years.

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

The answers in this section do not necessarily apply under EU Regulations and the Lugano Treaty.

The procedural rules applicable to seek recognition of, and leave to enforce, a foreign judgment in the Netherlands on the basis of a treaty are set out in arts 985–990 of the Dutch Code of Civil Procedure.

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. Unless an applicable treaty (e.g. the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents) provides otherwise,

the court may require those documents to be legalised and translated into Dutch by a sworn translator. Some of the treaties that the Netherlands is party to also require that the foreign judgment cannot, or can no longer, be appealed in the country of origin; and require evidence of the same. Some treaties require, for the recognition and enforcement of a foreign default judgment, that the party seeking recognition and enforcement thereof evidences proper notification of the initiation of the foreign proceedings to the defendant. In addition, the party seeking recognition and enforcement in the Netherlands must evidence that the counterparty was properly notified of the request to recognise and enforce the foreign judgment.

Some points to note with respect to the Hague Convention on Choice of Court Agreements (2005) are that it only applies in cases of an exclusive choice of court of a Member State, if that agreement was concluded after the Convention entered into force, and if the proceedings were instituted after the Convention entered into force.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

Even though arts 985–990 of the Dutch Code of Civil Procedure formally only apply to treaty-based requests for enforcement of a foreign judgment, some authorities hold that these provisions may also have to be followed for a treaty-based request to recognise a foreign judgment. Some of the treaties referred to do not apply to the recognition of foreign judgments as to a certain status.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

The request should be filed at the District Court. The proceedings are *inter partes*. The decision of the District Court is subject to appeal (within one month, unless an exception applies). The decision of the Court of Appeal is subject to cassation appeal at the Supreme Court (also within one month, unless an exception applies). Unless the court decides otherwise, leave to enforce is not suspended by the mere lodging of an appeal or cassation appeal.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

Although the grounds for refusal are formulated differently in the various treaties, they typically include some form of the following grounds for refusal: (i) the foreign judgment is not based on an internationally recognised ground for jurisdiction; (ii) the principles of due process were violated in the proceedings that resulted in the foreign judgment; (iii) recognition and enforcement would violate Dutch public order; (iv) the foreign judgment is incompatible with a Dutch judgment between the same parties; (v) the foreign judgment is incompatible with an earlier foreign judgment between the same parties that is recognisable in the Netherlands; (vi) the foreign judgment is by the terms of that judgment not, no longer, or not yet enforceable; or (vii) the foreign judgment has already been satisfied. Some treaties define additional categories for refusal, such as invalidity of or lack of capacity to enter into the agreement giving rise to

the foreign judgment, or fraud in the foreign court proceedings. 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 (under (vi)) while other grounds for refusal may be raised by the Dutch courts *ex officio* (e.g. violation of Dutch public order) or have to be asserted and evidenced by the judgment debtor. The Dutch courts will not review the merits of the foreign judgment.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

All physical actions pursuant to a leave to enforce (other than imprisonment) can only be initiated by a bailiff (*deurwaarder*). The bailiff may enlist the assistance of the police. The available actions include collection of receivables (e.g. trade receivables, bank balances, insurance proceeds) and involuntary sale of stock, inventory and other movables, real estate and shares. Certain assets may be immune from enforcement (e.g. certain foreign state-owned assets) or subject to a special regime (e.g. aircraft), and certain enforcement actions may amount to an abuse of right (e.g. satisfaction of the claim can also be achieved in a way that is substantially less burdensome for the debtor). Judgments other than payment orders may be strengthened with a monetary penalty (*dwangsom*). In extreme circumstances, a person may be imprisoned as long as the judgment is not satisfied (*lijfsdwang*). Depending on the basis of the leave to enforce in the Netherlands, the same leave may entitle the creditor to enforce in the rest of the EU (ECLI:EU:C:2022:264).

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

The Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019), adopted in The Hague in the Netherlands, has entered into force for EU Member States (except Denmark) and Ukraine on 1 September 2023, and will enter into force for Uruguay on 1 October 2024. On 23 November 2023, the UK announced an intention to join.

The Hague Convention on Choice of Court Agreements (2005) entered into force between the Netherlands, the United Kingdom and Gibraltar after the United Kingdom ceased to be a member of the EU on 1 January 2021. It entered into force for Ukraine on 1 August 2023. This treaty has a limited scope. For instance, it only applies in the case of an exclusive choice of

court of a Member State, if that agreement was concluded after the Convention entered into force, and if the proceedings were instituted after the Convention entered into force. The United Kingdom has also excluded certain insurance matters from its scope. If the 2005 treaty does not apply, the 1967 bilateral treaty between the Netherlands and the United Kingdom may, in certain cases, provide a basis for recognition and enforcement across the Channel. However, in all cross-Channel matters, Brexit has reintroduced the requirement to obtain leave to enforce in the country of enforcement.

On 13 December 2021, the Dutch government opined that the 1967 bilateral treaty between the United Kingdom and the Netherlands ceased to have effect when the United Kingdom acceded to the 1968 Brussels Convention in 1978, and that therefore, after Brexit, except if the 2005 Hague Convention on Choice of Court Agreements applies, there is no treaty that can be employed for the recognition and enforcement in the Netherlands of a judgment originating in the United Kingdom. It should, however, be noted that in 1970, the 1967 treaty between the United Kingdom and the Netherlands was extended to, *inter alia*, Aruba, Curaçao and Sint Maarten. This treaty extension was not negated by the 1978 accession by the United Kingdom to the 1968 Brussels Convention (even according to the Dutch government's opinion of 13 December 2021; see also art. 24 of the 9 October 1978 treaty on the United Kingdom's accession to the Brussels Convention) or by Brexit (as confirmed in a 15 November 2022 decision of the Amsterdam District Court). A judgment originating in the United Kingdom can thus potentially be recognised and enforced in, e.g., Curaçao under the 1967 treaty, and Curaçao's leave to enforce in this case may then potentially have effect in the entire Kingdom of the Netherlands, including the European part of the Netherlands (art. 40 Statute).

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

It is possible to attach assets (as security for satisfaction of a claim) in the Netherlands even before the proceedings on the merits have been initiated, and even if the proceedings on the merits have to be initiated abroad (provided there is a treaty in force between the Netherlands and that foreign country on enforcement of judgments). In most instances, court leave to effect such attachment can be obtained *ex parte*, within a matter of hours, without the need to post a bond and on the basis of a *prima facie* showing of a claim. None of the parties need to be domiciled in the Netherlands. The attachment of assets in the Netherlands can, in certain situations, even be used to create jurisdiction of the Dutch state courts to hear the case on the merits (*i.e.*, if proceedings would otherwise need to be initiated in a foreign country with which the Netherlands has not entered into a treaty on the enforcement of judgments).



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OSK Advocaten focuses on international commercial litigation and arbitration and criminal defence work. The founders of our firm have a wealth of international experience in dispute settlement and sanctions law. Our commercial litigation practice focuses on proceedings in state courts to resolve national and international complex commercial disputes. This encompasses disputes arising out of contracts in a wide variety of sectors, such as construction, oil and gas, energy, distribution, transport, telecoms, pharmaceuticals, financing and insurance. Many of these proceedings concern the compensation of damages caused by breach of contract or tort, or concern the conclusion, specific performance, rescission or nullification of contracts. Proceedings on the merits are frequently preceded by urgent relief proceedings (*kort geding*) and *ex parte* freezing orders (*conservatoir beslag*).

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- Recent Developments