



Netherlands

e-manual appendix





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What is enforced

There is a large variety of enforceable documents that can be enforced:

1. A formal copy (“grosse”) of a Dutch court decision
2. A foreign judgment providing it has an exequatur
3. A judgment in a civil or commercial claim rendered in an EU member State which can be enforced in the Netherlands on the basis of the Brussels I Bis Regulation without an exequatur
4. A European Enforceable title (EET)
5. A European Payment Order
6. A decision based on the European small claims procedure
7. A Dutch or foreign arbitral decision provided with an exequatur;
8. A settlement reached between parties in court proceedings and issued in an enforceable form
9. A formal copy (“grosse”) of an authentic deed (this also includes a notarial mortgage agreement)

Dutch decisions do not need a separate order for enforcement. The formal copy of the judgment (“grosse”) with the heading “In the name of the King” (“In naam der Koning”) legitimates the enforcement agent to start enforcement. Once the enforceable title is served on the debtor, and the time limit for voluntary fulfillment (2 days) has passed, such title can be enforced. The enforceable title does not have to be final and have a conclusive effect in order to initiate the enforcement (article 431 CPC).

Who enforces

Enforcement in the Netherlands is carried out by two different professions: the civil servant enforcement agent whose focus is on the enforcement of tax cases only and the self-employed (private) enforcement agent. The last has a monopoly on the enforcement of all civil cases and certain criminal and administrative cases. In general the legislation in Netherlands applies to the enforcement agent and the professions connected with it (article 1, 4, 23, 25 and 27 LPEA):

- *Enforcement agent*: the person appointed by Royal Decree to exercise a practice
- *Deputy enforcement agent*: the person whom, in the event of discharge from office of the enforcement agent, or if the locally appointed enforcement agent cannot perform office due to illness, absence or suspension, is appointed by the Minister of Justice as a deputy enforcement agent to replace such enforcement agent.
- *Candidate enforcement agent*: the person who successfully completed a training recognised by the Minister of Justice for the

preparation of the profession of enforcement agent and who has been assigned for the benefit of the traineeship and who is employed at an office under the responsibility and supervision of an enforcement agent.

- *Assigned enforcement agent*: an enforcement agent who, with approval of the Minister of Justice, is assigned to an enforcement agent. The assigned enforcement agent is employed at the office of the enforcement agent to whom he has been assigned and can perform the official acts to which the latter is authorised under the responsibility and supervision of the said enforcement agent.

Enforcement procedure

Enforcement always starts with the Service of the enforceable document to the debtor and order to the debtor to fulfill the obligations from the enforceable document. In general, is given 2 days for such voluntarily fulfillment. After this period, the enforcement can be initiated.

After this period the enforcement agent will start the search for the assets of the debtor. The enforcement agent has easy access to information, obtained from various sources, in particular through (electronic) databases. Dutch law obliges the debtor to state the sources of income to an enforcement agent who is entitled to impose an attachment. As long as the debtor, though requested, does not state such sources of income, the seizure free foot (in case of an attachment in the income of the debtor) will be halved. The enforcement agent may further summon the debtor to state which bank has any moneys in their possession from the debtor. The enforcement agent is entitled to request the bank if such bank has any assets from the debtor in their possession. The bank is obliged to respond immediately upon such request. Dutch law forbids the bank to inform the debtor about the request of the enforcement agent, until after the arrest.

While searching for the assets, the enforcement agent will initiate (further) contact with the debtor to see if a solution without forced enforcement is possible (e.g., payment in instalments). If not, based on the information on the assets, the enforcement agent will decide on the enforcement procedure to follow. Most common in the Netherlands is the attachment on the bank account or the salary of the debtor, followed by attachment on the movables and attachment on immovables (depending on the amount of the claim).

Duration of enforcement procedure

Exact statistics are not available. It needs to be mentioned that the Dutch enforcement agent has wide powers. Not only enforcement is part of

the activities, but also the amicable debt recovery and acting as a representative in court (for claims up to 25,000 euro). This enables the enforcement agent already in a very early phase to start recovery. This approach has a positive influence on the length of the overall recovery process. A substantial number of cases will not even reach the enforcement phase since the debtor's obligations are fulfilled before.

As any other legal document, also the writ of summons to initiate court proceedings is served by the enforcement agent in person to the debtor. Such contact moments are important for the enforcement agent. For example: in 2019, 413.300 writ of summons were served on debtors. From this total number, 64.200 were withdrawn before the court session.

Cost of enforcement procedure

With regard to the activities of the enforcement agent in the Netherlands it is important to realize that the Dutch enforcement agent is, in line with CEPEJ Guideline 34, involved in amicable debt recovery, is allowed to do civil proceedings (up to of Euro 25,000, --) and carries out enforcement. Consequently, the costs the Dutch enforcement agent can charge consists of different components:

1. the costs of extra judicial debt recovery
2. the costs of proceedings
3. the costs of enforcement

The costs for extra judicial debt recovery, the costs of proceedings and the enforcement costs are to be paid by the debtor.

Ad 1: the costs for extra judicial (amicable) debt recovery

The fee for amicable debt recovery can be recovered from the debtor. Most creditors use Conditions or Terms of Delivery and Payment. According to these conditions, the costs for extra judicial recovery shall be borne by the debtor.

From 1 July 2012 the costs for extra judicial debt recovery are to a large extend regulated by law¹:

Claim until (In Euros)	Percentage	Maximum (In Euros)
2.500	15%	Minimum Euro 40, -- Maximum Euro 375, --
5.000	Euro 375, -- + 10% on the claim -/- 2500	Maximum Euro 625, --

¹ Law Standards for Costs for Extra Judicial Debt Recovery (Wet Normering Buitengerechtelijke Incassokosten)

10.000	Euro 625, -- + 5% on the claim -/- 5.000,--	Maximum Euro 875, --
200.000	Euro 875, -- + 1% over the claim -/- 10.000	Maximum Euro 2.775, --
>200.000	Euro 2.775,-- + 0,5% over claim -/- 200.000	Maximum Euro 6.775, --

Ad 2 Costs of court proceedings

The costs for civil proceedings in general, consist of the following components (all regulated by law):

- a. Court fees
- b. Service of writ of summons
- c. Lawyers (or enforcement agent) fees

Ad A. Court fees

Court fees are the administrative fee the creditor has to pay to court for the initiation of proceedings. The amount of court fees depends on the type of claim and the amount of the claim. Court fees in Netherlands are rather high, especially in comparison with other countries.

For example, per 1 January 2020:

Claim until (In Euros)	Court fee for not natural person	Court fee for a natural person	Court fee for financial vulnerable persons
Euro 500, --	Euro 124, --	Euro 83, --	Euro 83, --
Between Euro 500, -- and Euro 12.500, --	Euro 499, --	Euro 236, --	Euro 83, --
Higher than Euro 12.500, --	Euro 996, --	Euro 499, --	Euro 83, --
Until Euro 100.000, --	Euro 2.042, --	Euro 937, --	Euro 83, --
Above 100.000, --	Euro 4.131, --	Euro 1.639, --	Euro 83, --

Ad B. Service of the writ of summons

Service of the writ of summons is done by the enforcement agent, based on a fixed fee. Per 1 January 2017 such fee is Euro 83,38 (excluding VAT).

Ad C. The fee for the lawyer or enforcement agent

The fee depends on the amount of the claim and the number of phases within the civil process. In case the debtor does not appear in court proceedings (default judgment), the fee is restricted to one point only. In

case the debtor appears in court to object the claim, the creditor's representative is entitled to more points.

Claim Including interest and extra judicial costs) Until (In Euros)	Fee per point (in Euros)	Maximum number of points
250	30	3
500	60	4
1.250	100	5
2.500	150	5
3.750	175	5
5.000	200	6
10.000	250	6
20.000	300	7
40.000	400	10
100.000	600	10
200.000	700	No maximum
400.000	800	No maximum
1.000.000	1.000	No maximum
more	1.200	No maximum

Ad 3 enforcement costs

Netherlands has a system of fixed fees. This system applies to the costs payable by the debtor for the official duties of the enforcement agent. In case of unsuccessful enforcement, the enforcement costs need to be paid by the creditor. In the relationship enforcement agent and creditor, the fees are negotiable. When the fee system was introduced (2001) the Dutch legislator intended to stimulate market working (competition) among enforcement agents. Negotiable fees with the creditors fit in such policy.

The fixed fees are based on a cost price calculation. For service and seizures outside normal office hours the enforcement agent may ask an extra (negotiable) fee to the claimant. The "out of pocket expenses (e.g. costs of access to registers, removal and storage, the costs of a locksmith) need to be added to the fixed fees.

Also, the performance fee is a matter of negotiation between the enforcement agent and the creditor. The Dutch law does not have any provisions regarding such fee. In such case the "success fee" can be charged (to the creditor) based on a contractual agreement between the enforcement agent and the creditor. In general, a fee between 4% (for claims up to 5.000 euro), to 1.5% (for claims up to 200.000 euros) are considered

reasonable. However, it needs to be mentioned: in case the activities of the enforcement agent are limited to official duties only, such fee cannot be charged. In such case, the enforcement agent is only entitled to the fixed fee:

Article	Enforcement action	2020
2A	service writ of summons or inventory	83,38
2B	service of judgment	80,24
2C	service of request to appear in court	65,96
2D	service of other documents	70,59
2E	attachment on movables	109,66
2F	attachment on movables in use by a third party	147,27
2G	attachment on shares or other	217,04
2H	attachment shares in limited company or public company	238,23
2I	attachment on bearer shares or attachment under third party being an attachment on periodic payments	174,76
2J	attachment under third party relating to periodic payments e.g. income, salary, unless under 2K	124,39
2K	attachment alimony or maintenance case	106,23
2L	attachment under the creditor	145,51
2M	attachment non-monetary claim handing over certain goods	253,15
2N	attachment non-monetary claim, debtor has to deliver certain goods	108,86
2O	attachment immovables and planes registered in the Netherlands	150,70
2P	termination attachment on immovables	53,76
2Q	attachment on ships or planes not registered in the Netherlands	332,14
2R	legal custody	226,01
2S	announcement public sale	82,50
2T	public sale movables	288,72
2U	service of document priority creditor taking over enforcement	77,54
2V	eviction	215,70
2W	arrest	250,72
2X	Information request European Arrest Preservation Order	82,94
3A	administrative fee in case only one attachment on income (per payment)	10,63
3B	in case two attachments on income (per payment)	16,90

3C	from the third attachment, per attachment 9per payment)	6,28
5	Reduction concurrence enforcement measures	20,35
6A	witness in actions under 2 e/f/g/n	20,73
6B	witness in act ion under 2 m/o/q/v/w	72,61
7	in case the action: a. as meant in 2, under e, f, g, h en n, lasts longer than 1,5 h b. as meant in 2, under m, q, r, t, v en w, lasts longer than 3 the fee is raised with for every 15 minutes the action took longer than 1,5 respec 3 hours and For every 15 minutes the witness has been present longer 1,5 resp. 3 hours	20,35 12,07
8	Service of documents to a next address	25,67
	attempt attachment movable, nobody at home	51,67
	unsuccessful arrest	101,05

Fixed enforcement fees in the Netherlands per 1 January 2020 (all amounts excluding 21% VAT)

