Questionnaire for national reports

Revised

General guidelines

This questionnaire addresses practical and theoretical aspects regarding the structure, contents and effects of enforcement titles in EU Member States and one Candidate Country. Each partner should provide substantive answers for their respective State/Country (or additional State/Country, if specifically stipulated by the coordinator). Certain questions require knowledge on instruments of cross-border enforcement in the EU, particularly Regulation 1215/2012 ("Brussels Ia Regulation"; hereinafter also: B IA). The latter questions address the interplay of national law and the EU regime on cross-border enforcement in civil and commercial matters.

For useful information, especially relating to B IA and cross-border enforcement in the EU, please refer, among other sources, to:

- Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[1]
- Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[2]
- Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[3]
- Study on residual jurisdiction (Review of the Member States' Rules concerning the 'Residual Jurisdiction' of their courts in Civil and Commercial Matters pursuant to the Brussels I and II Regulations),[4]
- Report on the Application of Regulation Brussels I in the Member States (Heidelberg Report),[5]
- The Commission's Civil Justice Policy site,[6]

[1] OJ L 351/1, 20.12.2012. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1215&from=EN.
[2] COM(2010) 748. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0748:FIN:EN:PDF.
[3] COM(2009) 174 final. Available at: http://ec.europa.eu/civiljustice/news/docs/report_judgements_en.pdf.
[4] http://ec.europa.eu/civiljustice/news/docs/study_residual_jurisdiction_en.pdf.
[5] B. Hess, T. Pfeiffer, P. Schlosser, Study JLS/C4/2005/03, 2007. Available at: http://ec.europa.eu/civiljustice/news/docs/study_application_brussels_1_en.pdf.
[6] https://ec.europa.eu/info/policies/justice-and-fundamental-rights/civil-justice_en.

- The European e-Justice portal,[7] embedded with the European Judicial network (and the old e-Justice portal).[8] The portal features several many useful sources, e.g. Study on European Payment Order, Study on making more efficient the enforcement of judicial decisions within the European Union etc.
- The Access to Civil Justice portal[9] hosted by the University of Maribor, Faculty of Law together with the results of our previous projects and the project blog.

The structure of each individual report does not necessarily have to follow the list of questions enumerated below, however, following the structure is strongly advised. The questions raised should be dealt with within the reports, however, the authors are free to decide where this will be most suitable. If authors choose to address certain issues elsewhere within the questionnaire, then they are instructed to make cross-references and specify where they have provided an answer for the respective question (e.g. "answer to this question already provided in 1.6."). Following the structure of the questionnaire will enable and ease comparisons between the various jurisdictions.

The list of questions is not regarded as a conclusive one. It may well be that we did not foresee certain issues that present important aspects in certain jurisdictions. Please address such issues on your own initiative where appropriate. On the other hand, questions that are of no relevance for your legal system can be left aside.

Please provide representative references to court decisions and literature. Please try to illustrate important issues by providing examples from court practice. If possible, please include empirical and statistical data.

Please do not repeat the full questions in your text. There is no limitation as to the length of the reports.

Languages of national reports: English.

Deadline: 30 April 2020.

Upload report to: "https://www.dropbox.com/request/Vw2BGUFUFRO8ukJylrfr".

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[7] https://e-justice.europa.eu/home.do?plang=en&action=home.
[8] http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_ec_en.htm.
[9] https://www.pf.um.si/en/acj/.

Terminology used in the questions

The use of a unified terminology can certainly ease the comparison between national reports. For the purposes of this questionnaire, the following definitions shall apply:

Action: Used in the sense of lawsuit, e.g. "bringing an action" (starting a lawsuit, filing a suit). Should be differentiated from 'claim'.

Appeal in Cassation: Second appeal in the Romanic family of civil procedure (in the Germanic family one uses "Revision" instead).

Application: Request addressed to the court. Note: the term "motion" is in B IA exclusively used for acts issued by the court.

Astreinte: Monetary penalties used as a means of enforcing judgments in certain civil law jurisdictions. A proper English term to describe "*astreinte*" does not exist.

Authentic instrument: A document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

(i) relates to the signature and the content of the instrument; and

(ii) has been established by a public authority or other authority empowered for that purpose

Civil Imprisonment: Imprisonment of a judgment debtor in order to force them to satisfy the judgment.

Claim / Defence on the Merits: Claim or defence which concerns the specific case at hand and not preliminary (procedural) issues. Opposite of preliminary defences.

Claimant: Before the Woolf Reforms (England and Wales) designated as "Plaintiff". In your contributions, please only use "claimant" (the term which is also used in B IA).

Co-litigants: More than one person being considered a party or several parties on either the Claimant or the Defendant side.

Counsel: Generic term for the lawyer assisting a party. We would advise to use this terminology instead of "advocate", "procurator", etc.

Court of origin: The court which has given the judgment the recognition of which is invoked or the enforcement of which is sought.

Court settlement: A settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings.

Default: Failure to perform the required procedural act (e.g. where the summoned defendant does not appear); failure to perform.

Defaulter: Party in a civil action who does not perform the required procedural act.

Defendant: Please use this term instead of "Respondent".

Enforcement: Use the term enforcement instead of execution.

Enforcement officer: Official involved in enforcing court rulings. Enforcement is among the duties of a "*huissier de justice*" in France and other jurisdictions belonging to the Romanic family of civil procedure.

Ex officio / Sua Sponte: Both "*ex officio*" and "*sua sponte*" are used to indicate that the judge may act spontaneously without being asked to do so by the parties. In other words, we are dealing with powers of the judge that he may exercise of his own motion.

Final judgment: Judgment that is binding on the parties and against which generally no ordinary legal remedy is permitted.

Hearing: Session before the court, held for the purpose of deciding issues of fact or of law. For civil law jurisdictions, we would suggest avoiding using the terminology "trial" (which in English civil procedure refers to a specific stage in litigation).

Interlocutory Proceedings: Proceedings that are not aimed at obtaining a final judgment on the merits in the case but aim at an intermediate, non-final decision in a pending lawsuit.

Joinder of Claims: The position whereby Claimant raises (either initially or after the initiation of proceedings) several claims.

Judgment: 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.

Judicial Case Management: An approach to litigation in which the judge or the court is given powers to influence the progress of litigation, usually in order to increase efficiency and reduce costs.

Main Hearing: In German: *Haupttermin*.

Means of recourse against judgments: General terminology to indicate all possible means to attack judgments, e.g. ordinary appeal, opposition, cassation, revision etc.

Member State of origin (MSO): The Member State in which in which the judgment has been given, the court settlement has been approved or concluded or the authentic instrument has been drawn up or registered.

Member State addressed (MSA): The Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought.

Operative part: The "tenor" or "holding" part of the Judgement which contains a "finding" or "declaration" or "order" to the debtor to pay a sum of money or undertake an action. Usually denotes the obligation of the debtor, executable in enforcement proceedings. In German: *Urteilstenor*.

Opposition: Act of disputing a procedural act or result, e.g. a default judgment.

Preclusion: The fact that a party is barred (precluded) from taking specific steps in the procedure since the period for taking these steps has expired ("*Reihenfolgeprinzip*").

Preliminary defences: "Exceptions"; (usually) procedural defences. Opposite of defences on the merits.

Process server: Official serving the summons on the opponent party. This is among the tasks of a "*huissier de justice*" in France and other jurisdictions belonging to the Romanic family of civil procedure.

Second instance appeal: First appeal, not to be confused with a Cassation Complaint or Revision (i.e. second appeal or third instance appeal).

Statement of Case: General terminology for the documents containing the claim, defence, reply, rejoinder etc. Before the Woolf (England and Wales) reforms these documents were indicated as "pleadings". In French: "conclusions".

Statement of Claim: Document containing the claim.

Statement of Reasons: The part of the judgment that contains the grounds for the decision.

Statement of Defence: Document containing the defence.

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Part 1: General inquiries regarding Enforcement titles

1.1 Briefly present how an "enforcement title" is defined in your national legal order.

Comment: *In addition to the definition, enumerate the domestic judicial (and other legal) instruments which conform to the above definition of an enforcement title. If there is a statutory definition, then please provide the citation to the exact article/paragraph of that law and an English translation. Provide a list of enforcement titles.*

Introduction

The Dutch Code on Civil Procedure[10] regulates the concept of "enforcement title". It makes a difference between national titles and foreign titles. The national "enforcement titles" are regulated in Article 430 Rv. The foreign "enforcement titles" are regulated in Articles 431 and article 985, 992 as well as 993 Rv. The concept of "enforcement titles" will be discussed with regard to national "enforcement titles" first. Then, this concept will be discussed regarding foreign "enforcement titles".

National "enforcement titles"

The concept of "enforcement title" is defined in article 430 Rv as a judgement (*"vonnis"* or in appeal proceedings *"arrest"*) or a court order (*"beschikking"*) issued by a Dutch court as well as an authentic instrument (*"authentieke akte*") drawn up in the Netherlands. In addition, an enforcement title may be all other instruments that are named by law to be executed in the Netherlands.

First, court judgments as well as court orders are enforcement titles according to the Dutch definition in article 430 para 1 Rv. These judgements must be drawn up in an executorial form ("*grosse*"). Furthermore, at the top of the judgment or court order the text *"In the name of the king"* ("*In de naam van de Koning"*) must be written in order to get the executorial effect, see article 430 para 2 Rv. The judgement or court order must be issued by a Dutch court, see article 430 para 1 Rv. These are not exclusively civil courts, but also administrative of criminal courts, if the court decision has to be executed by means of the Dutch civil

[10] Wet van Burgerlijke Rechtsvorderingen, hereinafter referred to as "Rv".

proceedings. In addition, the claim of decision must be due and therefore eligible for the execution.

Second, authentic instruments (*"authentieke akte"*) are considered to be enforcement titles according to article 430 para 1 Rv. A definition of the concept *"authentieke akte"* is laid down in article 156 Rv. According to this definition, the authentic instrument must be a written document that is signed and has the purpose of evidence. This document must be drawn up by an official person, like a notary or a civil servant. In order to have the effect of an enforcement title the authentic instruments must describe precisely what the debtor has to perform. Conform the decision of the Dutch Supreme Court[11] of 26 June 1992, the authentic instrument must state the claim as well as the legal relationship that existed at the moment the authentic instrument was drawn up.[12] In case of a monetary claim, the authentic instrument must contain the amount of the claim. In the event the authentic instrument does not fulfil these requirements, it is then not qualified as an enforcement title as laid down in article 430 Rv. An example of an authentic instrument is a deed of a mortgage.

In addition, article 430 para 1 Rv states that all other instruments may be enforcement titles that are named by law to be executed in the Netherlands. Such instruments are the official report of a court hearing in which a settlement of the parties ("court settlement") is drawn up as laid down in article 87 para 3 Rv (*"proces verbal"*) as well as the order related to the procedural costs based on article 237 para 4 Rv and article 250 para 4 Rv. In addition, the order of a judge to pay out the revenue of an execution (article 485 Rv) and the order of the tax authority (article 12 et seq. of the Code of tax[13]) as well as the prosecution (article 575 of the Code of criminal proceedings[14]) have the status of an enforcement order. Furthermore, a decision of an administrative judge in the event it contains a money claim (article 8:76 Administrative Code[15]) is also qualified as an enforcement title. Finally, arbitration decisions in executorial form are enforcement titles according to article 430 para 1 Rv.

These enforcement titles must have the effect to be executed in the Kingdom of the Netherlands. This encloses the Netherlands, Aruba, Curacao and Saint Martin.

In order to have the effect of the execution, the service of the enforcement title on the debtor is required by article 430 para 3 Rv. In the event that the service requirements are not fulfilled, the enforcement is then invalid. However, the invalidity of the enforcement must be invoked by the defendant.

Foreign "enforcement titles"

Foreign enforcement titles are dealt with in article 431 Rv. However, this provision needs to be read in connection with articles 985-994 Rv, which regulate the exequatur of foreign titles in the Netherlands. Article 985 Rv states that in cases where a "decision" ("*beslissing*") of a foreign judge needs to be enforced in the Netherlands, a court permission ("*rechterlijk verlof*") needs to be given. This is the general clause with regard to foreign decisions. However, according to article 992 Rv, these provisions only apply as far as international

[11] Hoge Raad, hereinafter referred to as "HR".
[12] Hoge Raad 26 June 1992, NJ 1993/449.
[13] Invorderingswet 1990.
[14] Wetboek van Strafvorderingen.
[15] Algemene Wet Bestuursrecht.

treaties as well as other instruments, such as the B IA, the EU Enforcement Order, European Order for Payment or the European Small Claims Regulations do not apply.

Article 431 Rv as well as the articles 985-994 Rv do not define the concept of foreign "enforcement titles". The reason for this approach is that the basis for an execution of a foreign title lies in an international Treaty or another instrument. Therefore, the Dutch rules on enforcement of foreign titles refer to the definitions of "enforcement titles" as they are laid down in the international Treaties or the other instruments. Here one can refer to the definition in Article 2 B IA. Therefore, with regard to foreign titles within the scope of the B IA, "enforcement titles" are defined as laid down in Article 2 sub a B IA.

1.2 How are "civil and commercial" matters defined in your national legal order?

The concept of "civil and commercial" matters does not create a lot of issues within the Dutch legal system. It is not legally defined within the Dutch legal system. Not only the Dutch courts but as well the Dutch literature refer here to the definition as developed in the case law of the ECJ. Therefore, the case law of the ECJ with respect to the concept of "civil and commercial" matters is here relevant.

The Dutch Supreme Court ruled however in one case, where the Dutch tax authority based her claim not only on Dutch tax law, but also on tort, that the EU Service Regulation applies, as this is a "civil and commercial" matter.[16] This decision has been criticized in the literature for the fact that the Dutch Supreme Court did not refer preliminary questions to the ECJ, but stated that this is an *acte clair*.[17] Accordingly, the Dutch Supreme Court raised *ex officio* the question of the interpretation of the "civil and commercial" notion in a case currently pending before the ECJ where one of the parties invokes its immunity as an international organization to rule out the application of the B IA Regulation.[18]

1.3 Which bodies conform to the definition of "Courts and Tribunals" as provided for by the B IA under your domestic legal system?

The Dutch courts fall under the definition of "Courts and Tribunals" as provided by the B IA. The concept of "Courts and Tribunals" is not directly defined by the Dutch law. However, the Dutch Constitution[19] (especially Article 112 para 1 and Article 116 GW) lists the tasks of the Dutch judiciary and states which bodies form part of the Dutch judiciary. The Dutch law on the organization of the judiciary further stipulates which entities are covered. According to Article 2 of the Dutch law on the organization of the judiciary, the following entities are part of the judiciary and fall under the concept of "Courts and Tribunals" as provided by the B IA: the Regional Courts (*rechtbanken*), the Courts of Appeal (*gerechtshoven*) and the Dutch Supreme Court (*Hoge Raad*). Next to these guidelines the concept of "Courts and Tribunals" is formed by the principles developed within the scope of article 6 ECHR. In addition, the

[16] Hoge Raad 8 April 2005, NJ 2005/347.
[17] See regarding this decision Freudenthal/Van Ooik, NIPR 2005, p. 381.
[18] Pending case C-186/19. See the Opinion of AG Saugmandsgaard Øe rendered on 2 April 2020.
[19] Grondwet, hereinafter referred to as "GW".

caselaw developed by the EJC regarding the concept "Courts and Tribunals" has as well influence on the definition of this concept in the Netherlands.

According to this legal framework "civil jurisdiction" is defined as the precise and binding decision of a dispute by an independent, neutral public body established by law, which determines the relevant facts of law and having regard to those established facts, makes a decision on the basis of criteria of lawfulness.

Based on these parameters, the Dutch courts fall under the concept of "Courts and Tribunals" as provided by the B IA. In addition to the Dutch courts, courts with a jurisdiction having effect on several Member States, like the Benelux Court of Justice, fall under the concept of "Courts and Tribunals" as provided by the B IA.

1.4 Briefly present the types of domestic decisions (e.g. Judgments, Decrees, Decisions, Orders) which may be rendered/issued under your Member State's civil procedure.

Comment: *Briefly elaborate on the meaning and effects of these of types of decisions. Please note that the word "decision" is used as a generic and neutral term, e.g. in Slovenia, "decisions" rendered by the court shall take form either of a "judgment" (Slovene: "Sodba") or of a decree (Slovene: "Sklep"). "Civil procedure" is to be understood as any procedure so designated by domestic law. In addition, decisions not rendered in civil procedure, but having a civil character (e.g. decision on damages in criminal procedure), should also be included. Indicate which of these decisions may be considered enforcement titles. Additionally, please state what these decisions are called in the official language of your Member State. If enforcement titles are exhaustively enumerated by statute, please provide the citation to the exact article/paragraph of that statute and an English translation.*

The Dutch civil procedure knows two different kinds of judicial decisions. The first one is the judgment (*"vonnis"* or in appeal proceedings *"arrest"*). This decision can be issued in proceedings which are of contradictory kind, so-called *"dagvaardingsprocedures"*. The second kind of judicial decisions within the Dutch civil procedure is an order (*"beschikking"*). This kind of a decision is given within procedure of a non-contradictory kind (*"verzoekschriftprocedures"*). However, in the judicial practice this differentiation between decisions given in contentious and non-contentious procedures is not always very clear. Therefore, in contentious proceedings an order (*"beschikking"*) can be issued.

Next to these decision in the field of civil procedure, there are decisions in other fields of law, which have a civil character. In the field of Criminal Proceedings, the prosecution can issue a so-called order based on Article 575 of the Code of criminal proceedings. This decision is called *"dwangbevel"*.[20] In administrative proceedings, a decision (*"uitspraak"*) can be given with regard to a money claim. In this event, the enforcement rules of the civil proceedings are applicable. This is laid down in Article 8:76 Administrative Code.[21] Finally, the tax

[20] Article 575 para 2 of the Code of criminal proceedings states as follows: *"Het dwangbevel wordt in naam van de Koning uitgevaardigd door het openbaar ministerie, dat met de tenuitvoerlegging van het vonnis, het arrest of de strafbeschikking is belast. Het wordt ten uitvoer gelegd als een vonnis van de burgerlijke rechter."* ("The enforcement order is issued, on behalf of the King, by the public prosecutor's office, which is charged with the execution of the judgment, judgment or penal decision. It is enforced as a judgment of the civil court").

[21] Article 8:76 Administrative Code states as follows: *"Voor zover een uitspraak strekt tot vergoeding van griffierecht, proceskosten of schade als bedoeld in artikel 8:74, 8:75, 8:75a, 8:82, vierde lid, 8:87, derde lid, of 8:95 levert zij een executoriale titel op, die met toepassing van de voorschriften van het Wetboek van Burgerlijke*

authorities can issue orders based on which a money claim has to be paid, as is laid down in Article 12 et seq. of the Code of tax. This decision is called *"dwangbevel"*.[22]

1.5 Taking account of the euro-autonomous definitions of "Judgment" and "Authentic instrument" elaborated by the CJEU for the purposes of B IA, which domestic decisions and instruments conform to these definitions?

Comment: *Please explain which domestic decisions and instruments are problematic in the light of the euro-autonomous definitions and why. Explain which decisions and instruments do not fall within the definitions. If you use English translations of domestic decisions, then please also provide the domestic term in brackets next to the translation, e.g. In Slovenia, condemnatory Judgements [Sodbe] issued in litigious proceedings…".*

In the Netherlands, only the decisions which are issued in civil and commercial cases fall within the scope of a "judgment" as laid down in the B IA. These are the judgment (*"vonnis"* or in appeal proceedings *"arrest"*) and the order (*"beschikking"*). Whereas the judgment (*"vonnis"* or in appeal proceedings *"arrest"*) falls always under the definition of "judgment" as laid down in the B IA, it is not always the case for the order (*"beschikking"*). Certain orders (*"beschikking"*) are issued in *ex parte* procedures, they do not fall under the concept of "Judgment" according to the B IA. Therefore, only the orders (*"beschikking"*) fall under the concept of "Judgement" according to the B IA where the defendant is heard or the decision is served on him, before the decision is being enforced. The other decisions as explained under point 1.4 do not fall under the concept of "judgment" for the purpose of the B IA.

The transcription of a court hearing in which a settlement of the parties is drawn up as laid down in Article 87 para 3 Rv (*"proces verbal"*) fall under the definition of "authentic Instruments" according to the B IA. However, the B IA has a separate definition of "court settlement" in Article 2 sub b B IA, which also encloses the Dutch transcription of a court hearing in which a settlement of the parties (*"proces verbal"*). In addition, the *"authentieke akte*" as laid down in Article 156 Rv falls under the concept of "authentic instruments" as laid down in the B IA.

1.6 Have the national courts of your Member State addressed any questions for a preliminary ruling (Art. 263 TFEU) to the CJEU regarding the notion of "Judgment"?

Yes, there are two cases that the CJEU had to deal with. Case C-474/93 and C-104/03 were brought by Dutch courts.

Rechtsvordering kan worden tenuitvoergelegd." ("To the extent that a judgment serves to compensate court fees, costs of proceedings or damages as referred to in Article 8:74, 8:75, 8:75a, 8:82, fourth paragraph, 8:87, third paragraph, or 8:95, it shall produce an enforceable title, which may be enforced pursuant to the provisions of the Code of Civil Procedure.")

[22] Article 12 para 1 of the Code of tax states as follows: *"De invordering van de belastingaanslag kan geschieden bij een door de ontvanger uit te vaardigen dwangbevel."* ("The collection of the tax assessment can take place by means of a court order to be issued by the recipient.").

1.7 Please explain the level of judicial control (the "power of assessment") exerted by the courts when rendering default judgments in your Member State.

Comment: *The power of assessment may significantly vary. For instance, the courts may be barred from examination of the substance of the case or limited to checking compliance with mandatory rules of law.*

In case of a default judgment, the court first examines whether the writ of summons has been properly served on the defendant. In addition, the court examines whether the court fees have been paid by the claimant. Furthermore, the judge examines whether all formal requirements to issue a default judgement are met. If all the formal requirements are fulfilled the court grants the claim unless the claim appears to the court to be unlawful or unfounded. This examination is laid down in Article 139 Rv. This examination is not very extensive. It is a summarized examination, so that the judge must *prima facie* be convinced that the claim is founded.

Part 2: General aspects regarding the structure of Judgements

2.1 Which elements are comprised in the structure of a domestic (civil) Judgment in your legal order?

Comment: *A judgment normally contains an array of (necessary) information in separate constituent parts (elements), e.g. the title; the proclamation that the Court issues the Judgment in the name of the people; the Court and the judge rendering the judgment; Parties to the dispute; the Operative part; the Reasoning; the Legal instructions etc.*

The structure of a domestic (civil) judgment is determined by the requirements as to the content of a domestic (civil) judgment based in the national provisions. Article 121 Dutch Constitution (*Grondwet*) sets outs two requirements with regard to the content of a domestic (civil) judgement. First, the judgment has to contain the reasons for the decision. Therefore, it must be motivated by the court. Second, the judgment must be issued in public. These requirements are further refined out in the Rv (Dutch Code on Civil Procedure). In particular, Article 28 Rv sets out the requirement that a decision must be given in public and Article 30 Rv states that the decision must be motivated by the court.

In addition, for both kind of decisions, the Rv set requirements as to the content in Article 230 Rv for the judgment (*"vonnis"* or in appeal proceedings *"arrest"*) and Article 287 in combination with Article 230 Rv for the order (*"beschikking"*). Based on these requirements, the Judiciary has developed a certain structure of the domestic (civil) judgements in the Netherlands, which will be shown in the following.

Judgment (*"vonnis"* or in appeal proceedings *"arrest"*)

Article 230 para 1 Rv contains the requirements on the content of a judgment (*"vonnis"* or in appeal proceedings *"arrest"*) issued by a Dutch court in civil matters. The judgment (*"vonnis"* or in appeal proceedings *"arrest"*) must state the names and place of residence of the parties as well as the names of their counsels or legal representatives (sub a). Further, the course of the procedure has to be included in the judgement (*"vonnis"* or in appeal

proceedings *"arrest"*) (sub b) as well as the claim as formulated in the writ of summons together with the statements of the parties (sub c). Where applicable, the claim and the statements of the prosecution have to be included in the judgment (sub d). This is mostly the case in matters where the prosecution is playing a role. Furthermore, the judgment (*"vonnis"* or in appeal proceedings *"arrest"*) must state the ground of the judgment (sub e) as well as the decision (sub f). At the end, the name of the judge and, in case of a decision by a chamber, the name of the president of the chamber (sub g) as well as the date of the judgment (sub h).

In practice, these requirements have led to a structure of the judgement (*"vonnis"* or in appeal proceedings *"arrest"*), which is as follows:

- The text *"In the name of the King"* ("*In de naam van de Koning"*) only in cases of a final decision;
- Type of the decision, judgement (*"vonnis"* or in appeal proceedings *"arrest"*) or order (*"beschikking"*);
- Name of the court issuing the decision;
- Case number;
- Name of the parties, place of residence, role in the procedure and name of the representatives;
- The course of the procedure (documents that were exchanged by the parties, hearings etc.);
- Facts of the case as determined by the court;
- The claim as laid down in the writ of summons and, where applicable the counterclaim;
- The reasoning of the decision (regarding the claim and the counterclaim);
- The decision, where the court can give as well instructions to the parties;
- Name and signature of the judge and the registrar and the date of the judgment.

Order (*"beschikking"*)

The requirements regarding the content of an order (*"beschikking"*) are laid down in Article 287 Rv, which refers to the requirements applicable for judgment (*"vonnis"*) as laid down in Article 230 Rv. Therefore, the requirements as to the content are similar for the judgement (*"vonnis"* or in appeal proceedings *"arrest"*) and order (*"beschikking"*) in the Netherlands.

The common structure of an order (*"beschikking"*) is based on Article 287 Rv in combination with Article 230 Rv as follows:

- Type of the decision, judgment (*"vonnis"* or in appeal proceedings *"arrest"*) or order (*"beschikking"*);
- Name of the court issuing the decision;
- Case number;
- Name of the parties, place of residence, role in the procedure and name of the representatives;
- The course of the procedure (documents that were exchanged by the parties, hearings etc.);
- Facts of the case as determined by the court;
- The petition;

- The grounds of the decision regarding the petition;
- The decision;
- Name and signature of the judge and the registrar and the date of the judgment.

2.2 Is the structure of a Judgement prescribed by law or court rules or developed in court practice (tradition or custom convention)?

Comment: *If applicable, please provide the citation to the exact article/paragraph of the rule and an English translation.*

As seen under question 2.1 of this questionnaire, the structure of the Judgments is partly prescribed by law (Article 230 Rv[23] for judgments and Articles 287[24] and 230 Rv for orders). Partly, the courts have developed a practice as to the structure of the decisions, by applying these requirements. These requirements form the minimum standards of a Judgment. Therefore, depending on the courts (first instance or courts of appeal, district courts or regional courts) or the field of law (employment law, intellectual property law etc.) some slight differences may occur. However, the basic structure as described can be found in all judgements. This basic structure is developed by the Judiciary especially in order to standardize the decisions of the Dutch Judiciary and to improve its quality. This basic structure has been set into guidelines which were published by the Dutch Council for the Judiciary (*Raad voor de Rechtspraak*).

[23] Article 230 para 1 Rv: "*Het vonnis vermeldt: a. de namen en de woonplaats van de partijen, en de namen van hun gemachtigden of advocaten; b. het verloop van het geding; c. de slotsom van de dagvaarding en de conclusies van partijen; d. de slotsom van de conclusie van het openbaar ministerie in de gevallen waarin het is gehoord; e. de gronden van de beslissing, waaronder begrepen de feiten waarop de beslissing rust; f. de beslissing; g. de naam van de rechter of, bij een meervoudige kamer, de namen van de rechters door wie het vonnis is gewezen; h. de dag van de uitspraak*." (The verdict names: a. the names and addresses of the parties, and the names of their representatives or counsels; b. the course of the proceedings; c. the conclusion of the summons and the form of order sought by the parties; d. the conclusion of the conclusion of the Public Prosecution Service in the cases in which it has been heard; e. the grounds for the decision, including the facts on which the decision rests; f. the decision; g. the name of the Judge or, in the case of a multiple Chamber, the names of the Judges by whom the judgment was delivered; h. the date of the judgment.) Article 230 para 2: *"Indien tegen de gedaagde of, bij meer gedaagden, tegen hen allen verstek is verleend en de vorderingen van de eiser geheel of gedeeltelijk worden toegewezen, kan ten aanzien van de ingevolge het eerste lid onder a, c, e en f te vermelden gegevens worden volstaan met verwijzing naar een door de griffier gewaarmerkt afschrift van het exploot van dagvaarding waarop het vonnis wordt gesteld of dat aan het vonnis wordt gehecht."* (If the defendant or, in the case of several defendants, all of them are in default and the plaintiff's claims are allowed in whole or in part, a reference to a copy certified by the Registrar of the writ of summons on which the judgment is rendered or which is attached to the judgment shall suffice in respect of the information to be mentioned under subparagraphs a, c, e and f of paragraph 1). Article 230 para 3 Rv: *"Het vonnis wordt door de rechter, of, bij een meervoudige kamer, door de voorzitter en de griffier ondertekend. Het vonnis kan ook worden ondertekend door de rechter die het uitspreekt."* (The judgment shall be signed by the Judge or, in the case of a multiple chamber, by the President and the Registrar. The judgment may also be signed by the judge pronouncing it).

[24] Article 287 Rv: *"1. Op een beschikking is artikel 230, eerste en derde lid, van overeenkomstige toepassing. 2. Indien het verzoekschrift rechtstreeks aan de voorzieningenrechter ter hand is gesteld en de voorzieningenrechter toewijzend op het verzoek beschikt, is ook artikel 230, tweede lid, van overeenkomstige toepassing."* (1. Article 230 (1) and (3) shall apply mutatis mutandis to a decision. 2. If the application has been submitted directly to the Interim Injunction Judge and if the Interim Injunction Judge is in possession of the application, Article 230 (2) shall also apply mutatis mutandis).

2.3 How standardised (regarding form and structure) do you consider judgments from your Member State to be (e.g. inadequately; adequately; standardised, although exceptions can be found)?

Comment: *If the law regulates this issue, then it is expected that judgments are standardised. However, if certain courts tend to disregard standards or if standards are too loosely defined, then please elaborate. If your Member State has multilevel governance structures (e.g. federalisation; autonomous regions) please elaborate if the different governance structures also apply different standards.*

The judgments are in their basic form highly standardised. As explained under point 2.2, slightly differences in the structure of the judgment may occur due to the issuing court (first instance or courts of appeal, district courts or regional courts) or the field of law (employment law, intellectual property law etc.). These differences, however, do not alter the basic structure of the judgments, but could lead to an additional heading in the Judgment.

2.4 How are the different elements of the Judgment separated from one another (e.g. headline, outline point etc.)?

The different elements of the Judgments are separated headings (which are emphasized by bold letters) as well as numbers, like 1. Procedure, 2. Facts, 3. The claim(s), 4. The reasoning and 5. The decision. The different sections are therefore visually divided in the judgments.

2.5 If courts, other than courts of first instance, may issue enforceable judgments, how does the structure of such judgments differ from judgments issued by the courts of first instance?

Comment: *The question comes into play especially in cases where, after recourse, appellate and other courts may modify first instance judgments or decide on the claim independently. In addition to general observations, please focus on the operating part, e.g. does it make reference to first instance judgements, how does it uphold or dismiss those judgements?*

The structure of Judgments of Courts of Appeal does not differ very much from the judgements in first instance. First, the name of the judgments in appeal procedures (*"arrest"*) differs from the ones in first instances (*"vonnis"*). In addition, the judgments in appeal procedures contain a heading, in which – in short – the procedure in first instance is described. In this part, the court refers to the decision in first instance, which in some cases is published in the database of the Judiciary.[25] Besides this point, the structure of the decisions in appeal proceedings is the same as of the decisions in first instance.

The same can be said about the decisions of the Dutch Supreme Court (*Hoge Raad*). Here – similar to the decisions in appeal procedures – the name of the decision (*"arrest"*) differs from the decisions in first instance proceedings (*"vonnis"*). The structure of the decision of the Dutch Supreme Court differs only in that way that it contains a heading relating to the procedures before the lower courts. In some cases, the Dutch Supreme Court refers to the

[25] See https://uitspraken.rechtspraak.nl/. Here you will be find the decisions which are published by the Judiciary. These decisions are however published not in the form as they are published for the parties involved in the proceeding. However, the structure of these decisions can be seen as well in these decisions published online.

relevant decisions and in other cases it gives a summary of the facts, which are relevant for the decision by the Dutch Supreme Court.

2.6 How does the assertion of a counterclaim affect the structure of the Judgment?

Comment: *In addition, explain when a counterclaim can be entertained in the same proceedings and be decided in a single Judgment (if possible).*

The assertion of a counter claim effects the structure of the Judgment in such a way that the Judgment gets new headings in which the counterclaim is, first, stated as laid down in the documents of the defendant and, second, the reasons of the decisions regarding the counterclaim are stated. Finally, the decision with regard to the counterclaim is also given separately. All three points are included under separated headings. The counterclaim as formulated by the defendant can be found under the heading claims. The reasoning with regard to the decision is also shown in a separate part of the reasoning made by the court. Here, the court also decides on the costs only with regards to the counterclaim. Finally, under the heading "Decision", the court decides separately with regard to the claim and to the counterclaim.

2.7 Does the Judgment include a specification of the time-period within which the obligation in the operative part is to be (voluntarily) fulfilled by the defendant? Conversely, does the judgment contain a specification of the time-period within which the judgment is not to be enforced? Does the judgment contain a specification of the time-period after which the judgment is no longer enforceable?

Comment (2.7): *If applicable, please also explain what happens if the court does not include the above time period(s). If applicable, how would the court, acting as a court of the Member State addressed, deal with a situation where a judgment is no longer enforceable after the limitation period for enforcement has expired, and this time period was not specified by the court in the Member State of origin, either because there is no obligation for the court to specify the period or because the court unintentionally omitted the specification?*

In decisions where a party is ordered to do something, the courts regularly state that the obligation has to be fulfilled within a certain amount of time after the service of the judgement on the defendant. In practice, the counsel of the winning party contacts the counsel of the party losing the procedure and asks whether this party is voluntarily willing to fulfil the obligation as laid down in the operative part. Here the party has discretion in the enforcement of the Judgment. In the event the losing party refuses to voluntarily fulfil the judgment, the winning party can enforce the decision. Then the time period as laid down in the operative part is applicable.

In cases without a specific time-period, the obligation has to be fulfilled as soon as the judgment is being enforced based on the rule of enforcement. However, here again, the counsels first negotiate whether the party is willing to voluntarily fulfil the judgment.

In the Netherlands, the judgments do not contain a specification of a time-period within which the judgment is not to be enforced or a specification of the time-period after which the judgment is no longer enforceable. This is not common in the Netherlands. However, there might be situations in which the claim relates to an event (prohibition of a tv show due to infringement of copyright or the seizure of good at the customs in the event of a specific

transportation). Once the event takes place without the enforcement, the judgment factually loses its effect.

2.8 What personal information must be specified in the Judgment for the purposes of identifying the Parties to the dispute?

Comment: *For example, in Slovenia, the Judgment will list the Parties' name and surname, residence and Unique Personal Identification Number (so-called "EMŠO"). This number is provided to each citizen of Slovenia and is also a feature in other countries of the former Yugoslavia. The information is stated in the Introduction to the judgment and is usually not repeated in other parts of the judgment.*

In the judgment, the parties must be specified in case of a natural person by their last name and their initials. In addition, the place of residence must be included in the judgment. Legal entities must be specified by their legal form, the name and place of establishment of the legal entity. This data corresponds with the data from the Chamber of Commerce, where the company is registered.

2.9 How do courts indicate the amount in dispute?

Comment: *Please elaborate how this amount is specified (if this information is specified), especially in cases where amendments to claims occur during proceedings.*

The amounts in dispute are shown by quoting the claim as it was formulated in the writ of summons or – in the event the claim has been changed during the procedure – in the document in which the claim was last changed. The judgment always contains the latest version of the claim as formulated by the plaintiff. This claim as laid down by the plaintiff is automatically taken over by the court in the judgment. The court issues the judgment on the basis of the claim as formulated by the plaintiff.

2.10 How do courts indicate the underlying legal relationship (legal assessment of the dispute), if this circumstance bears further relevance, e.g. in enforcement proceedings?

Comment: *Take for example § 850f of the German ZPO, where enforcement is sought against earned income (wage) of the debtor. The law imposes limitations to the scope of the attachable part of the income. However, these limitations may be disregarded to an extent, if enforcement is pursued for a claim arising from an intentionally committed tort. The execution court must therefore be able to identify the legal relationship (intentional tort). Similar examples might include the indication of maintenance or annuity by way of damages.*

The Dutch civil courts, generally speaking, do not include any specific information in the operative part other than the decision with regard to the claim as formulated by the plaintiff. Additional information which could be of relevance after the judgment has been issued, e.g. in enforcement proceedings, is provided in the reasoning of the court, if at all. There, the court may state some circumstances explaining the enforcement. Besides this, the Dutch civil procedure does not know an organ like the execution court in Germany. After the judgment is issued, it will be enforced by the bailiff, who must interpret the operative part of the judgment. If any issues arise with regard to the enforcement, the parties have the opportunity

to start an interim procedure regarding the enforcement of the judgment (*"executie kort geding"*).

2.11 Can the Claimant seek interim declaratory relief and what effects (if any) are attributed to the decision on this claim? How is the decision specified in the Judgment?

No, it is not possible to seek a declaratory decision within an interim proceeding like the Dutch *"kort geding"*. This kind of decisions do not have an interim effect, so are therefore not suitable for interim proceedings within the Dutch legal system.

2.12 What kinds of decisions can a court issue in regular litigation proceedings?

Comment: *For example, in certain Member States, the court may decide on procedural issues (e.g. admission of evidence; modification of claim) with a "decree" and a "Judgment" on the merits of the case. Provisional and protective measures may or may not be tied to the proceedings.*

In regular civil proceedings, the court can decide on numerous issues. Next to the decision on the merits, the court can decide on the jurisdiction of the court, the admissibility of a third party in proceedings, the admission of evidence, the burden of proof, or other questions related to the proceedings or the claim. It is also possible that – in cases of a number of claims – the court decides only with regard to one part of the claims and regarding the other part, the court can decide on evidence issues.

2.13 How are Judgments drafted when (if) they contain a "decision" on issues other than the merits of the case?

Comment: *Such decisions can, for example, pertain to the modification of a claim, withdrawal of a claim, joinder of parties, joinder of proceedings etc.*

These judgments do not differ from judgements on the merits. As such, decisions can only be issued in a judgement as laid down in Article 230 Rv so these decisions have to fulfil the formal requirements of a judgment. Therefore, these decisions do not differ from judgments on the merits.

2.13.1 How does this effect the operative part and/or the reasoning?

In such situations, the operative part and the reasoning concern the "decision" which is given in the judgement. So, if the judgment concerns an issue regarding the jurisdiction, the court refers in the reasoning and in the operative part only to the points which are relevant for its decision. For the remaining part, on which the court has not decided yet, the court upholds any further decision. In these cases, the court may either instruct the parties to react within a period of time or state how the procedure will continue. This is only different, in cases where the court decides that it does not have jurisdiction. In such a case, the court dismisses the claim and the procedure is finished. Against such decisions, only the appeal procedure is open.

2.13.2 Which decisions (2.12) can be incorporated into the judgment?

All the abovementioned decisions can be incorporated in the judgment.

2.13.3 Can provisional and protective measures form part of a Judgment or can they only be issued separately?

Provisional measures could form a part of a judgment. They can be – depending on the claim – claimed within proceedings on the merits and separately. However, it is more common that they are issued separately. This is especially the case when the provisional measure is necessary for the decision on the merits. Therefore, cases where the provisional measure is laid down in the final judgment are not very common.

Protective measures, on the other hand, have to be issued in a separate procedure. This procedure – *conservatoir beslag* – is initiated prior to the procedure on the merits. It is an *ex parte* procedure where the debtor is not heard prior to the issuing of the order (*"beschikking"*). The claimant has at least seven days to file the procedure on the merits after the enforcement of the order. However, this periods gets regularly extended up to four weeks.

Part 3: Special aspects regarding the operative part

3.1 What does the operative part communicate?

The operative part contains the decision of the court. Basically, it is an answer to the claim of the plaintiff as formulated in the writ of summons. In case of a – for the plaintiff – negative decision, the court can state that the claim is dismissed due to formal aspects or substantive issues. In case of a – for the plaintiff – positive decision, the court states what the obligation for the defendant is. In addition, the court states the decision regarding the costs. With respect to the costs, the court states a sum of the costs to be paid by the party which has lost the procedure. Furthermore, the court declares whether the decision is provisionally enforceable, which also has effect on the decision regarding the costs. At the end, the court states in a sentence that, besides the decision, anything else which might have been claimed shall be rejected. By doing so, the court clearly states what the decision is.

3.1.1 Must the operative part contain a threat of enforcement?

Comment: *A threat of enforcement is to be understood as a legal instruction referring to the possibility of enforcement proceedings if the debtor does not voluntarily perform the obligations imposed by the judgment.*

No. A threat of enforcement does not form a part of the operative part. The reason for this is that the judgment is an enforcement title which forms the basis of the enforcement. However, based on Article 430 para 3 Rv. the title needs to be served on the defendant. Especially for titles where the debtor is obliged to pay a sum, the service of the judgment is combined with an order of the bailiff, in which the debtor is being ordered to fulfil the obligation as laid down in the judgment within a period of two days. This obligation is laid down in Article 439 para 1 Rv, which regulates the seizure of movables. Without the service of the title as well as the order, a seizure of the movables shall be null.

3.1.2 Must the operative part include declaratory relief if the Claimant sought payment (e.g. if the debtor's obligation to perform is found to be due and the Claimant requested performance)?

In cases where the Claimant claims for a payment, the operative part does not need to include a declaratory relief. The operative part of the decision only contains the obligation of the debtor to perform a payment. This can be different in tort cases, where the Claimant could have an interest that the court declares that the debtor has acted unlawful, for example by the infringement of an intellectual property right of the Claimant. If the Claimant wishes that the court includes such a declaratory relief, the Claimant has to request this and state a special interest for such a declaratory relief. This must be done in the writ of summons.

3.1.3 Is the specification of the debtor's obligation finalized by the court or is it left to later procedures/authorities?

The specification of the debtor's is finalized by the court. It is therefore very important how the claim is formulated in the writ, as the court takes this formulation as a basis for his decision.

3.1.4 How is the operative part drafted in a case of a prohibitory injunction (German: "Unterlassungsklage")?

In case of a prohibitory injunction, the operative part is drafted in the form of a prohibition. The court orders the defendant to cease and desist a specific doing.

3.1.5 If applicable, how is the operative part drafted in an interim judgment?

Comment: *Should a claim be in dispute both on its merits and as regards its amount, the court may take a (preliminary) decision on the merits. An interim judgement in the context of the above question should therefore be understood as a judgement on the merits (basis, grounds, liability) of the claim (e.g. a court issues a judgement regarding the liability of a defendant for tort, but leaves the amount of the damages to be decided later in a "final" judgement).*

In decision, where the court decides on the merits of the ground of a claim, but not on the amount of the damages, the operative part of the judgment contains two parts. In the first part, the court declares that the debtor is liable. With regard to the amount of the damages, the court states, in the second part, that this amount shall be determined either in a separate procedure (so-called *"schadestaatprocedure"*) or shall be proved by the Claimant. In the second case, the court stays the proceedings for the determination of the amount of the damages.

3.1.6 If applicable, how is the operative part drafted in an interlocutory judgment?

Comment: *Within the context of the question, an interlocutory judgement refers to a temporary decision regulating the matter of the dispute. Take for example the French "Ordonnance de référé«, which is a provisional decision made on the application of one party, the other one being there or having been called, in cases where the power to order immediately the necessary measures is vested to a judge who is not called to decide the whole case.*

The operative part in an interlocutory judgment does not differ from judgments issued on the merits. The only difference is that the court gives an instruction to the parties on how the procedure shall continue. The court may also decide on one part of the claim and order that one of the parties has to prove a fact with regard to the other part of the claim.

3.1.7 How is the operative part drafted in the case of alternative obligations, i.e. where the debtor may decide among several modes of fulfilling a claim?

Cases of alternative obligations, where the debtor may decide how to fulfil the claim, are not very common in judgments in the Netherlands. In addition, such cases depend on the claim as formulated in the writ of summons. What can be seen, however, is that claims are drafted in a step format. The Claimant demands primarily that the debtor is ordered to do a certain act, e.g. to provide information to the Claimant in a written form. The Claimant can then demand, in subsidiary order, that the debtor provides the information in a different form, e.g. in electronic form. The same could be in a situation where the Claimant claims that the debtor primarily fulfils an obligation and, in subsidiary order, pays a damage.

However, the courts generally orders that the debtor fulfils one obligation, so that an alternative obligation is not included in the operative part.

3.1.8 How is the operative part drafted when a claim is wholly or partially dismissed (on substantive grounds)?

Comment: *For the purposes of the question, a "dismissal" refers to the situation where a claim appears to be without justification, either in and of itself or as the result of an objection lodged by the defendant (German: Klageabweisung).*

In case of a wholly dismissal, the court states in the operative part that the claim is dismissed. It does not provide the grounds for dismissal. These can be found in the reasoning of the judgment.

In cases where the claim is partly dismissed, the operative part is in such cases divided into two parts. One part where the court states what part of the claim was successful, so the debtor is ordered to fulfil. In the second part – at the end of the operative part – the court states that everything else shall be dismissed.

3.1.9 How is the operative part drafted when a claim is wholly or partially rejected (on formal/procedural grounds)?

Comment*: For the purposes of the question, a "rejection" refers to the situation where the court finds it cannot entertain a claim due to formal/procedural reasons (or lack thereof), e.g. if it lacks jurisdiction or if the prescribed time for filing the action has elapsed.*

In case of a rejection of the claim based on formal grounds, the drafting of the operative part of the judgement depends on the ground for rejection. If the rejection is a lack of jurisdiction, the courts states that it has no jurisdiction to decide on this matter. In other cases, the courts states that either the Plaintiff or the claim are inadmissible. In addition, the court then decides on the costs of the proceedings as well as whether this decision regarding the costs is provisionally enforceable.

3.1.10 How is the operative part drafted if the debtor invokes set-off? Provide an example.

Comment: *In certain jurisdiction, set-off (compensation invoked in proceedings) requires the operative part to specify how the claim and counter-claim are extinguished and to what extent. This may, for instance, be done by specifying the amount of both claims and declaring the amount to be compensated*.

There are no specific requirements with regard to the operative part in cases of a set-off invoked by the debtor. In general, the courts evaluate the invoking of a set-off by the debtor in the reasoning of the judgments. In the decision, the operative part, the court states the final decision. It states there the (remaining) amount that the debtor is obliged to fulfil in case the set-off was effectively invoked by the debtor.

3.2 Are there specifications pertaining to the structure and substance of the operative part of the Judgment in your national legal system – set out by law or court rules or developed in court practice? If so, please provide an English translation of the relevant provisions.

There are no specifications regarding the structure and substance of the operative part of a judgment set out by law or court rules or developed by relevant provisions. The structure and substance of the operative part of the judgment is determined by the claim of the Plaintiff, which he or she has formulated in the writ of summons. The court therefore follows the structure made by the plaintiff in the writ, unless the claim is dismissed by the court. In this event it states that the claim is dismissed, inadmissible or that the court does not have jurisdiction. Furthermore, it decides on the costs of the proceedings.

3.3 Does the operative part contain elements from or references to the reasoning of the judgment (grounds for the decision/legal assessment)?

Yes, it is possible that the court refers to parts of the reasoning or other parts of the judgment, like the facts. This is mostly the case if the reasoning contains an extensive explanation, which could specify the decision laid down in the operative part of the judgment. This is the case if the court states under the reasoning part of the judgment that the debtor has acted unlawfully and explains precisely what was unlawful. In such cases it could state in the

operative part that it declares that, by acting as laid down in the reasoning, the debtor has acted unlawfully. Another option is that the court refers to picture or other visual parts which are included in the reasoning or under the facts of the judgment.

3.4 Elaborate on the wording used in your national legal system, mandating the debtor to perform.

Comment: *For instance, in Slovenia, the debtor is not specifically "ordered" to perform by the wording of the operative part, since the operative part only finds the debtor "liable to pay" a certain amount. However, in practice, it is universally understood that this "liability" is to be understood as a duty to perform and not merely as declaratory relief. Would you find such wording problematic?*

In the Netherlands, the usual wording is as follows: *"The court orders Party X to pay Party Y an amount of ... as ... (e.g. damage) within x days after the service of the judgment, plus the statutory interest rates as laid down in Article 6:119 BW*[26] *(or in case of commercial claims Article 6:119a BW) from the DATE until the day of complete payment."*[27] This is the common wording in the operative part when a debtor is ordered to pay.

3.5 If applicable, explain how the operative part is drafted in cases of reciprocal relationships where the Claimant's (counter-)performance is prescribed as a condition for the debtor's performance? How specifically is this condition set out?

In such cases, the specific conditions are not set out in the operative part of the judgment, but in the reasoning. In cases, for instance, where the Claimant is willing to perform, but demands the payment of the debtor, the court does not state the performance of the Claimant in the operative part but describes it in the reasoning. In the operative part, the court drafts that the debtor is ordered to pay the amount which has been claimed by the Claimant.[28] In certain cases, the court can include in the operative part that the claim is due under a condition that the Claimant has to fulfil. In such cases, the court states that the debtor has to perform a certain obligation, however, only after the claimant has performed an obligation first.[29]

3.6 How are the interest rates specified and phrased in a judgment ordering payment?

Comment: *Please provide a typical wording and the legal basis – not concerning the merits but concerning the requirement in procedural law as to how to draft the operative part.*

The interest rates are specified and phrased in the operative part by stating the amount of the principal claim, the interest rate and the beginning date of the obligation to pay interest rates. A common wording can be found in answer 3.4 above.

[26] Dutch Civil Code.
[27] The Dutch text is as follows: "*De rechtbank veroordeeld Partij X tot betaling aan Partij Y van EUR X aan ... (schadevergoeding) binnen x dagen na betekening van het vonnis, te vermeerderen met de wettelijke rente als bedoelt in artikel ... BW vanaf DATUM tot de dag van de volledige betaling.*"
[28] See e.g. Rechtbank Arnhem 23.05.2012, ECLI:NL:RBARN:2012:BW7459.
[29] See e.g. Rechtbank Den Bosch 05.06.2007, ECLI:NL:RBSHE:2007:BA6557.

3.7 Please demonstrate how the operative part differs when claims to impose different obligations on the debtor are joined (e.g. performance, prohibitory injunction etc.) or when the action is of a different relief sought (e.g. action for performance, action for declaratory relief, action requesting modification or cancellation of a legal relationship).

Comment: *Please elaborate on the second part of the question only if such a joinder of claims is admissible. Please accompany your answer by providing typical (abstracted) examples of operative parts in situations where the debtor is ordered to pay an amount of money; when he is ordered to perform an action; when a prohibitory injunction is issued against him; when he is ordered to hand over moveable property. Additionally, formulate abstracted examples of declaratory relief (including negative declaratory relief) and actions for the creation, modification or cancellation of legal relationships).*

Claims imposing different obligations on the debtor are not joined in one operative part of the judgment. In case of different claims imposing different obligations, the different obligations are addressed in different parts of the operative part. Therefore, the obligation to pay an amount will not be combined with another obligation in the operative part, but the two obligations will be dealt with separately.

The typical wording of the operative part of a judgment in cases of a performance is as follows:

"The court orders Party X to perform what is claimed within in a period of X days after the service of this judgment."[30]

The typical wording of the operative part of a judgment in cases of a prohibitory injunction is as follows:

"The court orders (or prohibits) Party X (not) to perform an act what is claimed by the Claimant after the service of this judgment."[31]

The typical wording of the operative part of a Judgment in cases of a delivery of a movable is as follows:

"The court orders Party X to deliver what is claimed by the Claimant after the service of this judgment."[32]

The typical wording of the operative part of a Judgement in cases of a declaratory as well as negative declaratory decision is as follows:

"The court declares legally binding that something took or did not take place."[33]

[30] The Dutch text is as follows: "*De rechtbank gebiedt Partij X om binnen een termijn van X dagen na betekening van dit vonnis het gevorderde na te komen.*"
[31] The Dutch text is as follows: "*De rechtbank verbiedt Partij X om binnen een termijn van X dagen na betekening van dit vonnis een handeling te verrichten.*"
[32] The Dutch text is as follows: "*De rechtbank veroordeeld Partij X tot afgifte van onroerende zaken.*"
[33] The Dutch text is as follows: "*De rechtbank verklaart voor recht dat iets heeft of niet heeft plaatsgevonden.*"

3.8 May the operative part refer to an attachment/index (for example, a list of "tested claims" in insolvency proceedings)?

Comment: *Please explain the "technique" of drafting such operative parts and how attachments are actually attached/connected to the judgment? Which attachments can be referred to in the operative part?*

This is possible in the Dutch legal system. The court refers then directly to an attachment and states in the operative part that it orders the debtor to, for example, hand over all movables as described in exhibit X. The court can only refer to attachments which are part of the court file of the case. It can refer to earlier (interlocutory) judgments or official records of hearings issued in this matter as well as written documents put forward as evidence by one of the parties.

3.9 What are the legal ramifications, if the operative part is incomplete, undetermined, incomprehensible or inconsistent?

Comment: *Explain whether this presents a ground for appeal or other legal remedy. Explain how this affects enforcement proceedings.*

This depends on the fault in the operative part. In cases where the operative part contains an obvious mistake, which is clear to all parties, such as a number (instead of 1000 the court wrote 100000), there is a chance of rectification of this clear mistake. This rectification has to be filed at the court issuing the judgment. In other cases, incomplete, undetermined, incomprehensible or inconsistent operative parts can be dealt with in appeal proceedings, where, according to Dutch law, the claim can be amended. Another option regarding incomplete, undetermined, incomprehensible or inconsistent operative parts is to start a preliminary procedure ("*kort geding"*) during the enforcement of the judgment. In these cases, the court in charge has to interpret how the operative part of the judgment must be read.

3.10 May the operative part deviate from the application as set out by the claimant? If so, to what extent? In other words, how much discretion does the court enjoy when formulating the operative part?

This is only to the extent possible that the court can grant less than claimed by the Claimant, but not more or different. Therefore, the court can grant to the Claimant a payment of a damage by the debtor that is lower than the one he or she claimed. But the court cannot grant a higher amount of damages than claimed by the Claimant. The court is bound by the claim as formulated in the writ. This is laid down in Article 23 Rv.

Part 4: Special aspects regarding the reasoning

4.1 If applicable, how does the law or court rules or legal practice govern the structure and content of the reasoning of the judgment?

Basically, there is not a strict structure and the content of the reasoning of the judgment. However, the reasoning contains "only" the grounds of the decision. The facts of the case as well as the claim of the Claimant are included in a separate part of the judgment.

The structure and content of the reasoning (excluding the facts and the claim) depend on the issue the court has to deal with and the agreements of the parties. That means that the court has to follow the structure of the claim as formulated by the Claimant in the writ of summons. If the claimant for example states that an agreement has been concluded and the debtor does not perform his obligation as laid down in this agreement, then the court will examine first whether an agreement has been concluded. Then the court will need to examine how the performance of the debtor was and whether the claimant has a damage. So, the structure and content of the reasoning depend on the claim. In addition, the structure and content depend on the arguments of the parties, especially whether one party disputes a fact. In that event, the court will evaluate the arguments of the parties and make his own decision. In cases where certain points are not disputed by the parties, the court will state that these facts are not disputed.

As a result, the structure and content of the reasoning (excluding the facts and the claim) depend on the subject matter of the proceedings as well as the arguments of the parties.

4.1.1 Is there a specific order to be followed when drafting the reasoning?

Comment: *The reasoning usually contains both factual and legal grounds for the decision. Should these aspects follow a predetermined order or may they intertwine?*

If the facts and the claim form a part of the reasoning, then the structure of the reasoning is as follows. First, the facts of the decision will be set out. After the facts, the court states the claim as formulated by the Claimant. In cases of a counterclaim, the counterclaim will be presented after the claim. Then the legal grounds for the decision are included in the judgment. This order can be found in all judgments in the Netherlands.

4.1.2 How lengthy/detailed is the reasoning?

This depends on the case and the court. Sometimes reasoning is very detailed and sometimes it is rather short. It is therefore impossible to generally state how extensive the reasoning is.

4.1.3 Do you find the reasoning to be too detailed?

A general answer here is not possible. This depends on the case and on the procedure, especially on the argumentation of the parties. In some cases, the reasoning is very detailed. In other cases, the reasoning could be more extensive in order to explain how the court came to the decision.

4.1.4 Are the parties' statements (adequately) summarised in the grounds for decision?

Generally speaking, the statements of the parties can be summarized in two different ways. First, the statements of the parties are described under the heading claim, where the courts show the grounds for the claim as put forward by the Claimant. In a second part, the court describes the defence of the debtor. Second, the court shows the positions of the parties in the reasoning regarding the legal grounds. Here the court describes first the position of the parties and then gives its decision with regard to this point.

4.1.5 Is it possible to distinguish between the parties' statements and the court's assessment (the problem of an unclear distinction between the parties' statements and the court's findings and interpretation)?

Yes, it is easy to distinguish the statements of the parties and the reasoning of the court.

4.2 In the reasoning, do the courts address procedural prerequisites and applications made after the filing of the claim?

Comment: *Prerequisites are to be understood as all criteria necessary to initiate the proceedings correctly under national law, e.g. jurisdiction, standing, party capacity etc.*

In Dutch Civil Proceedings, the procedural prerequisites and applications made after the filing of the claim are dealt with in the reasoning of the judgment. However, if the procedural prerequisites and applications form a preliminary question, it is possible that the court issues a separate interlocutory judgment where this issue is dealt with. This is mostly the case in jurisdictional cases. If the defendant challenges the jurisdiction of the court, the court will deal with this issue first and will give a decision regarding this question in a separate interlocutory judgment.

4.3 Are independent procedural rulings properly re-addressed in the judgment?

Yes, they are. In the final judgment, the courts sum up all the documents that form the basis of the decision. If an independent procedural ruling has been taken by the court, the court will mention this decision in the summary of the final judgment. In addition, the court will, if necessary – refer to this ruling in the final judgment.

4.4 What legal effects (if any) are attributable to the reasoning, e.g. is the reasoning encompassed within the effects of the finality of the Judgment?

The reasoning is part of the decision, which means that the decisions made in a separate interlocutory judgment have a binding character and the court is bound to its ruling in the following procedure. That means that the court, once deciding that it has jurisdiction or that one party has the burden of proof, is bound by this earlier decision. The earlier decisions form therefore part of the appeal proceedings, as they can only be challenged together with the final decision. This is different if the first instance court gives his permission to separately challenge an earlier decision in an appeal procedure. This principle of Dutch appeal proceedings is laid down in Article 337 para 2 Rv.

Part 5: Effects of judgments – the objective dimension of res judicata

5.1 A final judgment will, in most Member States, obtain res judicata effect.[34] With regard to this point, please answer the following questions:

[34] If your national legal order does not operate with the principle of res judicata, then please thoroughly describe the alternative doctrine governing finality of judgements. Please answer the questions in this Part of the

5.1.1 What are the effects associated with res judicata in your national legal order?

The effects of res judicata are laid down in Article 236 para 1 Rv. According to this provision, decisions regarding a dispute and that are laid down in a judgement (*"vonnis"*) are binding in another procedure between the same parties. This provision requires that the judgment has become res judicata, which means that no higher provision, such as appeal or another remedy, is open against this judgment. The wording "decision" does not only refer to the operational part of the judgment but includes also the legal grounds of the judgment as well as decisions (and legal grounds) made prior in interlocutory judgments.

The principle of res judicata effects – according to Dutch law – the decision regarding a legal relationship. Purely factual decisions or *obita dicta* do not fall under the effect of res judicata. In order to have res judicata effect, the court must give a decision regarding a legal relationship. The facts that support that decision regarding the legal relationship fall within the concept of res judicata. If a claim is dismissed based on just one question (for example non-performance), the Claimant could start new proceedings on a different ground (for example tort) provided this ground was not dealt with in the first decision.

The parties in a procedure can refer to the concept of res judicata regarding an earlier given decision by a court. So, if a court has decided in a decision that a contract has been concluded by the two parties, the court does not have to decide on this fact anymore in a following procedure, so that this contract can form the basis of another claim.

5.1.2 What decisions in your Member State have the capacity to become res judicata?

Even though Article 236 para 1 Rv only mentions "judgments", it also applies to court orders (*"beschikkingen*"). Only judgments issued in provisional procedures (*"kort geding"*) do not have the effect of res judicata.[35] Furthermore, *obita dicta* do not fall within the concept of res judicata.[36]

5.1.3 At what moment does a Judgment become res judicata?

Comment: *Pinpoint the time and/or requirements when the judgment meets the criteria for becoming res judicata.*

A judgment becomes res judicata either if it is issued by the highest judicial instance or if no judicial remedy (for example appeal) is open against this judgement. Another option is that the party that has lost the proceedings will declare that it will accept the decision (so-called *"berusting"* conform Article 334 Rv). In these situations, the Judgment will become res judicata.

questionnaire by mutatis mutandis applying your respective doctrine. If this is not possible, please approximate the answers as far as possible or provide additional explanations.

[35] Hoge Raad 16.12.1994, *Nederlandse Jurisprudentie* 1995, 213.

[36] Hoge Raad 20.1.1984, *Nederlandse Jurisprudentie* 1987, 295.

5.1.3.1 How (if at all) does the exercise of the right to appeal/the exercise of legal remedies affect this moment?

As shown under point 5.1.3., the possibility to appeal or to exercise another legal remedy against the judgment has the effect that this judgment cannot become res judicata. The judgment becomes res judicata only if appeal or another legal remedy is not possible anymore.

5.1.3.2 How does the answer to this question differ depending on whether the remedies being invoked are considered "ordinary" or "extraordinary" under your domestic law – is the classification of remedies into one of these two categories dependent on these effects?

The answer differs in such a way that only ordinary legal remedies have effect on the judgment becoming res judicata. Therefore, only in cases where an ordinary remedy is still possible against a judgement, this Judgment does not have the effect of res judicata.

5.1.4 Is res judicata restricted to the operative part of the judgment in your legal system or does it extend to the key elements of the reasoning or other parts of the judgment?

No. As explained under point 5.1.1, not only the operative part of the judgment, but also the reasoning fall under the concept res judicata. To be affected by res judicata, the decision made within the reasoning must have been made regarding a legal relationship of the parties. Therefore, pure factual statements which are not used for the reasoning of a legal relationship do not fall within the scope of res judicata of the judgment.

5.1.4.1 Are courts bound by prior rulings on preliminary questions of law?

Comment: *A court in Member State A has to rule whether a seller must deliver goods. In its decision, the court argues that the contract between the seller and the buyer is null and void because of some errors of will. If the seller in Member State B later submits an action for the payment of the purchase price, does a court in Member State B have to dismiss that claim, as it is bound by the reasoning in the judgment of the court in Member State A, which argued that there had been an error of will? Will this be the case in your Member State? In other words, does finality pertain to preliminary questions on points of law? If it does, how are preliminary questions decided upon? Does the decision on preliminary issues form part of the operative part or reasoning? How are they elaborated in the Judgment?*

In the Netherlands, courts are bound by the decisions regarding the legal relationship of the parties, which are not only laid down in the operative part but also in the reasoning of the judgment. In cases the court has ruled on a preliminary question, the second court dealing with this issue is bound by the ruling of the first court. The decision given by the first court could be decided in the operative part of the Judgment and in the reasoning. This depends on the claim put forward by the Claimant. For the scope of res judicata, the fact that a decision is not included in the operative part does not have any effect, as res judicata applies to the operative part and the reasoning of the Judgment. One point must be taken into consideration here: the parties will need to refer in the second procedure to the first decision, the court will

not perform a research whether a prior decision was issued between the two parties of the proceedings.

5.1.4.2 Does your legal order operate with the concept of "claim preclusion"?

Comment: *Claim preclusion bars a claim from being brought again on an event, which was the subject of a previous legal cause of action that has already been finally decided between the parties. Consider the following examples.*

First example: A claimant files suit for damages he incurred in a traffic accident, alleging that the defendant acted negligently. The court dismisses the claim. The claimant then files a second action for damages arising from the same traffic accident; however, this time he alleges battery (intentional tort) on defendant's side. Is the second action admissible?

Second example: A claimant files suit for personal injury (non-material damages) he incurred in a traffic accident. The court awards the claimant the relief sought. The claimant then files a second action, wherein he claims material damages from the same traffic accident. Is the second action admissible or should the claimant have requested all damages in the first action?

The Dutch civil procedure knows the concept of claim preclusion. In general, the claimant cannot bring the same claim again against the Debtor, a court has decided on this claim between the same parties earlier. However, there are some exceptions regarding this principle. The claim preclusion applies, if the claimant puts forward enough facts but could not proof a certain legal fact. In such an event, the claimant cannot bring – even with new evidence – a new action regarding the same claim against the same defendant. According to the case law of the Dutch Supreme Court, this is different if the claimant did not bring sufficient facts that support his claim and the court is not able – due to the statement of the Claimant – to decide on the claim. In such situations, the claim would not be affected by the preclusion.[37] The Claimant can also start new proceedings against the same debtor, if the claim or the grounds of the claim differ from the claim priorly brought forward. If the Claimant bases his claim on tort and not on a contract, as in the first Judgment, then his second claim is not precluded.

Regarding the first example, the concept of claim preclusion applies here. Both of the actions have their basis in tort law. So, if the court has decided that there was no tort and that the claim must be dismissed, the Claimant will not have the chance to bring the case once again before a second court. In the second example, the Claimant should bring all the damages in the first action. Here – again – the claim is based both on tort. Therefore, the second claim is precluded to be brought forward again.

[37] Hoge Raad 19.11.1983, *Nederlandse Jurisprudentie* 1994, 175.

5.1.4.3 Are courts bound by the determination of facts in earlier judgements?

Comment: *Consider the following example. A claimant files suit for personal injury (non-material damages) he incurred in a traffic accident. The court finds that the claimant correctly observed traffic rules and drove through a green light. The court awards the claimant the relief sought. The claimant then files a second action, wherein he claims material damages. In these proceedings, however, the court finds that the claimant drove through a red light. Is this a permissible finding or should the court give effect to the findings of the first judgement?*

Based on the concept of res judicata, the courts are bound by all decisions regarding the legal relationship of the parties that are made in a judgment. This applies also to decisions regarding the determination of facts, if these facts are necessary to make a decision regarding the legal relationship of the parties. Facts, which support the decision of the court fall within the scope of res judicata and the courts are bound by earlier judgments. Facts that do not support the decision regarding the legal relationship of the parties, fall outside the scope of the concept of res judicata. The court are then not bound by the determination of these sorts of facts in earlier judgments.

5.2 If part of a civil claim is being claimed in civil proceedings, how does this affect the remainder of the claim, taking into account res judicata effects?

This depends on the grounds of the claim. If the grounds of the claim differ, then the Claimant is able to bring the two parts of the claim separately. This is the case, for instance, where the Claimant claims the payment of royalties based on a licence agreement and his claim is being dismissed. He could then start an action regarding the infringement of the intellectual property right.

5.3 In the case of a negative declaratory action, what is the effect of a finding that the matter is res judicata?

Comment: *For example, A initiates an action against B for a declaration that he does not have to pay B 1000 EUR (negative declaration). If the court dismisses the claim, does the judgment at the same moment declare that A does have to pay B 1000 EUR? If the dismissal of a negative declaratory action is the equivalent of a declaration of the converse (in inter partes proceedings), is such a judgment enforceable for the creditor (in this case: B)?*

According to Dutch civil procedural law, the question whether a negative declaratory action can be initiated is controversial. In general, the claimant cannot just bring forward a negative declaratory action, but needs to demonstrate that he has a specific interest in the negative declaratory action.

In principle, the negative declaratory action is the mirror image of the positive declaratory action or the action for performance. Regarding the example, the situation is that such a decision – dismissal of a negative declaratory action – does not have the effect that the claimant can enforce the claim after such a judgment. This is only a declaratory action and not an action where the debtor is ordered to pay. If the Claimant wants to enforce the payment, he will need to start actions for performance against the debtor. Then he will be able to enforce such a payment.

5.4 If a court issues an interim judgment concerning the well-foundedness of a claim, does this judgment have any effects outside of the pending dispute?

Comment: *Can a party rely on the res judicata effects of such a judgment in separate proceedings (is the court in another set of proceedings bound by the judgment) or are these effects confined to the dispute in which the judgment was rendered? Note: an interim judgment on the well-foundedness of a claim refers to a judgment finding the liability of the defendant to pay, but leaves the amount of payment to be determined in a subsequent judgement (the same as under question 3.1.5).*

No, this interim judgment has no effect for further proceedings beyond the pending dispute. Judgments in interim proceedings do not fall under the concept of res judicata.

5.5 Suppose the following hypothetical. If, in Member State Y, a seller (S) as claimant is suing the buyer (B) as defendant for payment of the purchase price, B will not be able to sue S in Member State Z for liability on a warranty at the same time due to lis pendens rules under B IA.

5.5.1 Is it possible for B to sue S in Member State Z after the case in Member State Y has been decided with res judicata effect? What is the position regarding this question in your Member State?

This depends on the res judicata effects of the judgment of the court in Member State Y has. This must be determined by the law of the Member State of origin of the judgment. In this case this must therefore be decided by the law of Member State Y.[38]

5.5.2 If it is possible for B to sue S in Member State Z (in the above situation), will the court in State Z be bound by the reasoning in the judgment from the court in Member State Y? What is the position on that question in your national legal order:

The effect of res judicata has to be determined by the Member State where the Judgement has been issued. So, whether the court in State Z is bound to the reasoning of the court in State Y, must be examined by the law of State Y.

5.5.2.1 If in domestic cases you do not extend res judicata effect to the elements of a court's reasoning (Question 5.1.4)?

See point 5.5.2.1.

5.5.2.2 If res judicata effect is extended to elements of the reasoning in the Member State of origin but not in the Member State addressed?

See point 5.5.2.1.

[38] Hoge Raad 12.3.2004, *Nederlandse Jurisprudentie* 2004, 284; Hoge Raad 11.7.2008, *Nederlandse Jurisprudentie* 2008, 417.

5.5.2.3 If res judicata effect is not extended to elements of the reasoning in the Member State of origin but is in Member State addressed?

See point 5.5.2.1.

5.5.3 How do you handle the limitation period problem in the scenario described above? The lis pendens case law of the CJEU prevents the filing of a warranty liability claim in State Z as long as a payment claim is pending in State Y. How can the buyer prevent the limitation period from running in State Z (your home State) without making the warranty case pending?

In such a case, the buyer will need to write an official letter demanding the payment based on the warranty. In such a situation, the limitation period will be interrupted. Based on Article 3:316 of the Dutch Civil Code, the limitation period is interrupted in case where either judicial proceedings are initiated or an act that the claim will be enforced is made. This is the case where the claimant demands the fulfilment of the claim in a written form.

Part 6: Effects of judgements - res judicata and enforceability

6.1 What is the relation of res judicata to enforceability, i.e. can a judgment be enforced before it is res judicata?

Comment: *Does your legal order operate with the institution of "provisional enforceability", i.e. the enforceability of judgments that are not (yet) res judicata, but have nonetheless been endowed, either by the decision of a court or by operation of law, with the attribute of enforceability? Do you think such (foreign) judgments might be controversial from the perspective of the (procedural) legal order of your Member State, if the creditor attempted to enforce them? For an example of provisional enforceability, see §§704, 708, 709 of the German ZPO).*

The Dutch legal system knows the concept of provisional enforceability. Generally speaking, a judgment can be enforced directly after it had been issued, according to Dutch civil procedure. However, in case a party files an ordinary legal remedy, the effect is that the execution of the title will be suspended until the title becomes res judicata. The Claimant can however file the motion of provisional enforceability in his claim, see Article 233 Rv. If the courts grant this motion either for the whole or a part of the title – which happens in most of the cases – the title will not be suspended in case an ordinary legal remedy is filed. According to Article 233 para 1 Rv, the court can grant the provisional enforceability of a title, if this is claimed by the parties, unless the provisional enforceability is not possible due to the legal provision or the claim. The court can grant provisional enforceability in combination with the requirement to provide financial security by the party enforcing the title.

In cases of foreign judgments, the concept of provisional enforceability does not constitute a problem in the Netherlands. Foreign judgments, which may be enforced before they are res judicata, can be enforced in the Netherlands.

6.1.1 Is provisional enforceability suspended (by operation of law or at the discretion of the court) if an appeal is lodged?

Ordinary legal remedies have suspensory effect on the enforcement of a title. For the appeal procedure, this is laid down in Article 350 para 1 Rv.

6.1.2 Who bears the risk if the provisionally enforceable judgement is reversed or modified?

The person who enforces the judgment, bears the risk of the enforcement of a provisionally enforceable declared Judgment. In such cases, the person enforcing such title has to take into consideration that in case the title will be declared void in the appeal procedure, the provisional enforcement was not based on a legal ground. Therefore, the enforceability was illegal, so that the person enforcing the title is liable based on tort.

6.1.2.1 Must the judgment creditor provide security before the judgment can be enforced?

This is possible, but not mandatory. The court has a discretion to order that the Creditor has to provide security, see Article 233 para 3 Rv. Even though the courts are able to order *ex officio* that the Creditor has to provide a security, in practice the courts only do so if one of the party requests it.

6.1.2.2 Must the creditor compensate the debtor for damages he has suffered by the judgement being enforced, or by the payments he had to make, or any other actions he had to take in order to avert enforcement?

In such a situation, the creditor is obliged to pay for the damages the Debtor has suffered with the enforcement of the judgment.[39] This will include the damages caused to prevent the enforcement occurred by the Debtor.

6.1.2.3 Does the answer to the previous question (6.1.2.2) vary, if the debtor voluntarily payed (performed) the claim?

No. When the Debtor voluntarily paid the claim, he did this on basis of the provisionally enforceable judgment. Therefore, the Debtor was obliged to pay. This payment can be done voluntarily or could be enforced by the Claimant. The Claimant bears here the risk of enforcement of this provisionally enforceable Judgement.

6.1.2.4 Does the answer to the previous question (6.1.2.2) vary, if the judgement was a default judgement, by a first instance court or a court of appeals?

No.

[39] Hoge Raad 19.5.2000, *Nederlandse Jurisprudentie* 2000, 603; Hoge Raad 1.4.2016, *Nederlandse Jurisprudentie* 2016, 189.

6.1.2.5 What is the scope of the compensation? Is it limited to direct loss or is indirect loss also covered?

There is no limitation of the scope of compensation. Therefore, direct as well as indirect loss can be compensated. However, there must be a connection with the enforcement of the provisionally enforceable Judgement.[40]

6.2 Does your legal order prescribe a suspensive period within which the judgement creditor cannot initiate the enforcement proceedings? For example, must the judgement creditor first demand payment from the debtor before he can move to enforcement (execution of the judgement)?

Comment: *The question is framed in general terms regarding enforcement of judgements, not in relation to provisional enforceability. If answered in the positive, please indicate what are the legal consequences of the suspension, i.e. is the judgement by operation of law not considered enforceable within this period or does the judgement creditor merely take on the risk of bearing costs for enforcement*.

In general, a suspensive period is not prescribed in the Dutch civil procedure. However, to enforce the judgment, it has to be served on the debtor as laid down in Article 439 Rv. In addition, in case the Claimant wishes to seizure moveable goods, first, an order needs to be served on the debtor demanding a payment or a performance according to the title within two days. This period can be shortened by the court. Therefore, there is a relatively short period which needs to be taken into consideration before the enforcement – at least with regard to moveable goods – can be started.

6.3 Does the judgment incorporate elements akin to the French "command and order to the enforcement officer" (*Mandons et ordonnons a tous huissiers de justice à ce requis de mettre le present jugement à execution*) and what are its effect?

No, this is not incorporated in the judgments.

6.4 How would your legal order deal with foreign enforcement titles, which involve property rights or concepts of property law unknown in your system?

Concepts that are unknown in the Dutch legal system will be transformed into a Dutch instrument that is the closest to the foreign one as laid down in the foreign title.

Part 7: Effects of Judgments – Personal boundaries of res judicata

7.1 How are co-litigants and third persons (individuals who are not direct parties of the proceedings) affected by the judgment (e.g. alienation of a property or a right, which is the subject of an ongoing litigation; indispensable parties)?

A judgment generally affects only the parties involved in the procedure. In case of co-litigants, the judgement affects also the co-litigants as they are considered to be parties of the procedure. Based on Article 236 para 2 Rv, the judgment also affects the legal successors of

[40] See, for instance, Rechtbank Overijssel, 19.9.2018, ECLI:NL:RBOVE:2018:4056.

the parties involved in the judgment. The legal successors are also bound to the judgment. Individuals not being direct parties of the proceedings are generally speaking not affected by the judgment. However, there are certain judgments that could also affect third parties. This could be the case, where an issue of a procedure also affects the relationship between one of the parties and the third person. In this event, the judgment could have indirect effect. The same could be said in situations where the judgment creates a new certain legally binding situation. In these cases, these judgments will affect the positions of the third persons not being parties of the procedure.

7.2 Do certain judgments produce in rem (*erga omnes*) binding effects?

It cannot be said that there is a certain kind of judgments that always produce an *erga omnes* effect. However, there are certain situations where a judgment can have an *erga omnes* effect, for instance, when the court has declared a patent null. In such situations, this Judgment has an *erga omnes* effect.

7.3 How are (singular and universal) successors of parties affected by the judgment?

Comment (7.3): *Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible, e.g. succession to non-pecuniary damages claims.*

According to Article 236 para 2 Rv, successors of parties are affected by the Judgment. This means that the res judicata effect of the judgments also affects the successors of parties. The succession can be singular or universal. (Singular and universal) succession could be limited in cases of strictly personal rights and obligations.

Part 8: Effects of Judgments – Temporal dimensions

8.1 Can changes to statute or case-law affect the validity of a judgment or present grounds for challenge?

Changes to statute or case-law do not affect the validity of a judgment. However, the defendant could present either in appeal proceedings or within a remedy concerning the enforcement of the Judgment, that the statute or the case-law has changed. The situation is different if the Judgment is based on fraud or documents that were falsified. In such cases, the effected party may file for an extra-ordinary remedy, called *herroeping* based on Article 382 Rv. Another option is to file an interim injunction (*"kort geding"*), in which the Claimant could bring forward that the circumstances have changed, which have effect on the Judgment.[41]

[41] See for example Rechtbank Oost-Brabant, 1.2.2016, ECLI:NL:RBOBR:2016:443.

8.2 If the judgment requires the debtor to pay future (periodic) instalments (e.g. maintenance or an annuity by way of damages), how can the judgment be challenged in order to amend the amount payable in each instalment?

The judgement can be challenged based on Article 1:401 of the Dutch Civil Code regarding maintenance or annuity claims based on a marriage. In these cases, the party wishing to adjust earlier decisions must apply to the court that the circumstances have changed and that the amount payable must be amended.

8.3 Can facts that occur after the last session of the main hearing and are beneficial to the defendant (debtor), be invoked in enforcement proceedings with a legal remedy?

Yes, the defendant is able to invoke beneficial facts during the enforcement proceedings. This is done within an interim injunction (*"kort geding"*) according to Article 438 Rv.

8.4 Can set-off of a judicial claim be invoked by the debtor in enforcement proceedings, even if the debtor's counterclaim already existed during the original proceedings?

In general, a set-off of a claim can be invoked if the substantive requirements for the set-off are fulfilled. This can be done within the enforcement proceedings. If the Claimant then continues with the enforcement of the Judgment, the Debtor has the option to start an interim injunction (*"kort geding"*) according to Article 438 Rv, in which he can invoke a counter claim, which he wishes to set-off.[42]

Part 9: Lis pendens and related actions in another Member State and irreconcilability as a ground for refusal of recognition and enforcement

9.1 The B IA Regulation uses the concept of a "cause of action" for the purposes of determining lis pendens.

9.1.1 How does your national legal order determine lis pendens?

According to Dutch law, lis pendens is determined in a judgment, in which the question is raised whether the court has jurisdiction in the specific matter. Within this decision, the courts first need to examine whether another procedure in another state is pending and the moment the procedure is pending. This however has to be invoked by the parties. Then, the court determines whether the pending procedure involves the same parties and concerns the same matter based on the same action. In the event that lis pendens has been invoked, the Dutch courts examine the claims being put forward in the first procedure as well as in the second.[43]

[42] See an example Rechtbank Oost-Brabant, 26.7.2018, ECLI:NL:RBOBR:2018:3629.
[43] See an illustrative example Rechtbank Midden-Nederland, 30.12.2013, ECLI:NL:RBMNE:2013:7419, where the courts examines and compares step by step the claims put forward in a German and then later in a Dutch procedure.

9.1.2 How does the B IA concept of a "cause of action" correspond to any similar domestic concept in your national legal order? Describe how your national legal order establishes the identity of claims.

The concept of lis pendens is also integrated in the Dutch civil procedure. Article 12 Rv is based on the rules regarding lis pendens as laid down in the B IA. Therefore, the concept of a "cause of action" as laid down the internal national provisions (Article 12 Rv) is highly similar with the concept "cause of action" as laid down in the B IA. Therefore, the case law of the CJEU regarding this concept is also applicable for the interpretation of Article 12 Rv.[44]

9.1.3 Does your national legal order allow a negative declaratory action? If so, how is this action treated in relation to contradictory actions (e.g. for (payment of) damages)?

In the Netherlands, negative declaratory actions are permitted. However, such actions are not very common in practice.[45] In the Dutch literature, the question whether a negative declaratory action is permitted is highly controversial.[46] The Claimant has to show that he has a sufficient interest for starting such an action.[47] These actions are treated as declaratory decisions having effect between the parties of the procedure. The relationship between the negative declaratory actions and contradictory actions is determined by the case law of the CJEU. Based on this case law, the concept of the negative declaratory action is a reflection of the positive declaratory action as well as of the action to perform.[48]

9.1.4 How do you determine the identity of parties in national proceedings and how (if at all) does the methodology differ from that of the B IA?

For the determination of the parties, the Dutch court apply as well the methodology as laid down in the B IA. Therefore, there are no difference between the Dutch approach and the B IA.[49]

9.1.5 How should we understand the requirement that judgments need to have "the same end in view" as expressed by the CJEU?

The concept of "the same end in view" as expressed by the CJEU is interpreted by the Dutch courts. This concept does not require that the actions have the same claim. It is sufficient that the claims could lead to contradictory judgments in the Member States involved which cannot be executed as laid down in Article 45 para 1 sub c B IA. So, the concept of "the same end in view" is interpreted by the Dutch courts that the "cause of action" according to Article 29 B

[44] M. Zilinsky, in: A.I.M. van Mierlo/C.J.J.C. van Nispen (ed.), Burgerlijke Rechtsvordering [Civil Procedural Code] (Wolters Kluwer 2018) p. 76.
[45] N.E. Groeneveld-Tijssens, De verklaring voor recht [The declaratory action] (Wolters Kluwer 2015) p. 82.
[46] N.E. Groeneveld-Tijssens, De verklaring voor recht [The declaratory action] (Wolters Kluwer 2015) p. 79 et seq.
[47] See Hoge Raad 12.4.2013, *Nederlandse Jurisprudentie* 2013, 502; N.E. Groeneveld-Tijssens, De verklaring voor recht [The declaratory action] (Wolters Kluwer 2015) p. 82 et seq.
[48] See CJEU 25.10.2012, ECLI:EU:C:2012:664 – *Folien Fischer*; see here B. Sujecki, Torpedoklagen im europäischen Binnenmarkt, GRUR Int. 2012, p. 82 et seq.
[49] See L. Strikwerda/S.J. Schaafsma, Inleiding tot het Nederlands Internationaal Privaatrecht [Introduction to the Dutch Private International Law], 12 edition, 2019, p.100-101.

IA is the same, when the two actions are based on the same legal relationship of the parties involved.[50]

9.2 Does your national legal order operate with the notion of "related actions"? If so, what are the effects it ascribes to them? Please accompany the answer with relevant case law.

This concept is interpreted as laid down in the case law of the CJEU, for instance in the *Tatry*-decision. Therefore, there must be sufficient connection between the claims that it is necessary to deal with the two claims in one procedure, in order to prevent that two contradicting decisions will be issued so that an enforcement of these two decisions will not be possible.[51]

A very recent decision in which the concept of "related action" played a role is the decision of regional court (Rechtbank) Amsterdam, where the relation was examined between the procedure in Amsterdam and proceedings in Germany and South Africa. The court applied the concept of "related actions" as laid down in the B IA.[52]

9.3 Has your Member State experienced cross-border cases involving related actions within the meaning of the B IA?

There are not many cases involving related actions within the meaning of the B IA. Around 7 cases can be found regarding the concept of related action based on Article 30 B IA or the Brussels I Regulation.[53] Only one of these cases refers to Article 30 B IA.[54] The other concern Article 28 Brussels I Regulation.[55]

9.3.1 How have your courts defined irreconcilability for the purpose of related actions?

The courts took the case law of the CJEU as starting point of their examination. First, they looked at the claims involved in the two procedures. Then the court examined whether there is a close connection between these two cases. Here the courts look at the claims of the procedure a court in another Member State and the claim the Dutch court has to deal with. Generally speaking, the concept of "related actions" is interpreted broadly by the Dutch courts. The court however did not define the notion of irreconcilability but examined more the close connection. In case where the courts have ruled that there is a close connection between the two procedures, they did not examine the notion of irreconcilability separately. Only in one case[56] the court examined the chance of irreconcilability while deciding on whether to stay the procedure.

[50] See L. Strikwerda/S.J. Schaafsma, Inleiding tot het Nederlands Internationaal Privaatrecht [Introduction to the Dutch Private International Law], 12 edition, 2019, p.100-101.
[51] See L. Strikwerda/S.J. Schaafsma, Inleiding tot het Nederlands Internationaal Privaatrecht [Introduction to the Dutch Private International Law], 12 edition, 2019, p.100-101.
[52] See Rechtbank Amsterdam, 5.2.2020, ECLI:NL:RBAMS:2020:555.
[53] See www.rechtspraak.nl
[54] See Rechtbank Amsterdam, 5.2.2020, ECLI:NL:RBAMS:2020:555.
[55] See Rechtbank Amsterdam, 23.5.2012, ECLI:NL:RBAMS:2012:BW6423; Rechtbank Dordrecht, 15.3.2006, ECLI:NL:RBDOR:2006:AV6072; Rechtbank Rotterdam, 17.8.2011, ECLI:NL:RBROT:2011:BR7069; Rechtbank Arnhem, 19.1.2005, ECLI:NL:RBARN:2005:AS8578; Rechtbank Arnhem, 2.2.2005, ECLI:NL:RBARN:2005:AT2827; Rechtbank Den Haag, 1.12.2010, ECLI:NL:RBSGR:2010:BU3521.
[56] See Rechtbank Rotterdam, 17.8.2011, ECLI:NL:RBROT:2011:BR7069.

9.3.2 How have your courts exercised the discretion to stay proceedings?

This cannot be answered in a general way. It depends on the case. In certain cases, the proceedings were stayed and in others the court ruled to continue. However, a general answer is impossible here.

Part 10: Court settlements

10.1 What are the prerequisites for the conclusion of a court settlement?

Article 89 Rv regulates court settlements in Dutch civil proceedings. The only requirement this provision sets is that the parties have to reach a settlement during the court hearing. This settlement will then be written down in the transcript of a court hearing (*"proces verbaal"*), in which the obligation of the parties will be included. Both parties have to sign this written document. The court settlement will then be issued in an executorial form.

10.1.1 Describe the necessary elements a court settlement must contain.

There must be a settlement reached by the parties. This settlement must be reached regarding the dispute, so that by reaching the settlement the procedure will end. These kinds of settlements are qualified as settlement agreement (*"vaststellingsovereenkomst"*) as laid down in Article 7:900 Dutch Civil Code. Based on this provision, the parties have to reach a settlement regarding a dispute between them over their legal relationship. The court settlement is therefore a settlement agreement written down by the court in an executorial form.

10.1.2 What formal requirements must be satisfied (e.g. signature of the parties; service)?

The court settlement has to be in written form and must be signed by the parties as it is laid down in Article 89 Rv. The court settlement will be written down in a form of a report of a court hearing. In addition, when a court settlement is issued by the court, it will be issued in an executorial form. That means that it can be enforced without any further steps.

10.1.3 How are the parties identified?

The parties are identified like in a judgement, as the court settlement is issued in an executorial form.

10.1.4 What (substantive) legal relationships can be settled in a court settlement?

The settlement can refer to any kind of dispute existing between the parties. As described in point 10.1.1, the court settlement is a settlement agreement (*"vaststellingsovereenkomst"*) according to Article 7:900 Dutch Civil Code. Therefore, the core of the settlement is the dispute between the parties. By concluding the settlement agreement, the parties wish to put down the conditions to end this existing dispute. So, not the legal relationship that is disputed, but the settlement is the ground for the legal relationship of the parties.

10.2 When does a court settlement become enforceable?

In general, the court issues the court-settlement in an executorial form. That means that it is a title, which could be enforced right after it has been issued by the court. However, in practice it is very common that the parties fulfil their obligations very fast, so the enforcement of the court settlement is not needed.

10.3 How are (singular and universal) successors of parties affected by the judgment?

Comment: *Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible.*

Here the normal rules regarding succession apply. As the settlement is a contractual relationship, the succession can take place in singular as well as universal way. Restriction might be applicable in cases of strictly personal rights and obligations. See for the succession of judgments, point 7.3 above.

10.4 If applicable, describe how the legal relationship, once settled, can be amended?

Basically, the amendment of the court settlement – once concluded – is not possible. The reason is that the court settlement is written down by the court together with the parties. The parties have to sign the documents. The court therefore uses this document signed by the parties to draw up the court settlement in an executorial form. An amendment of the settlement once it has been issued is therefore difficult to be reached. It could be done by reaching another settlement agreement. However, in this case, the new settlement would not be in an executorial form.

10.5 If applicable, describe how (under what circumstances) a court settlement can no longer be considered enforceable?

This, as well, depends on the settlement and the agreements the parties have made.

10.6 If applicable, describe how errors in a court settlement can be remedied and the recourses that are available against a notarial act, whether independently or during enforcement proceedings.

As explained under point 10.5 the settlements are drawn up in such a way that it is difficult that the courts make errors, as the settlement is drawn up in attendance of the parties and their representatives. In the event of errors, both parties could ask the court to remedy the error. Another option could be to file interim injunctions proceedings during the enforcement of a court settlement. However, it will be difficult to prove the enforcement is based on an error. The same could be said regarding a notarial deed.

Part 11: Enforceable notarial acts

11.1 Briefly describe the competence the notary holds in civil and commercial matters in your Member State.

The notary is the competent authority to draw up notarial deeds. In certain situations, for instance to establish a company, to transfer immovables or to establish mortgage, a notarial deed is mandatory. In other events, the parties are free to put statements or agreements in form of a notarial deed.

In civil and commercial matters, the notary prepares the deed in cases where the law requires such a form. This is the case for the transfer of immovables, the establishment of securities on immovables, the transfer of shares of a Dutch limited company (*"besloten vennootschap"*).

In addition, parties are free to put statements or agreements in form of a notarial deed. These notarial deeds can include different kind of statements or agreements. These deeds could contain acknowledgements of debts of certain contracts.

11.2 Is (can) a notarial act be considered an enforcement title in your respective Member State/Candidate Country? If so, briefly present, how the concept of a notarial act as an enforcement title is defined in your national legal order.

Comment: *If the definition is provided by a provision of law, then please provide the citation to the exact article/paragraph of that rule and an English translation.*

Yes, a notarial act can be considered as an enforcement title in the Netherlands. Based on Article 430 para 2 Rv, in order to become an enforcement title, a notarial act has to be drawn up by a notary in the Netherlands (or a similar officer in another Member State of the EU or the EEA). This has to be done in an executorial form. If these requirements are fulfilled the notarial act can be enforced in the Netherlands. However, in order to start the enforcement, the notarial act has to be served on the person against whom the enforcement is being done. In addition, the content of the deed has to contain obligations of one of the parties involved. Only if it contains obligations which can be enforced, the deed can be drawn up in an executorial form. The obligation must be in such a way specified that it is possible for the debtor to determine what the obligation is.

11.3 Is, according to your domestic legal order, a notarial act an enforcement title *per se* or must it contain additional conditions/clauses to be considered as such?

Comment: *For instance, in Slovenia, notarial acts are considered enforcement titles only if they contain a so called 'direct enforceability clause'.*

A notarial act is not automatically an enforcement title. In order to become an enforcement title, the notarial deed needs to be in form of an executorial title (*"grosse"*). That means that the notary has to state that the deed is drawn up as a *"grosse"*. This is a special authentic copy of the deed made by the notary in which he states the words "In the name of the King" (*"In naam van de Koning"*). At the end of the deed the words *"Uitgegeven voor eerste grosse"* ("Issued as first executional form") must be included in the act. In addition, the deed needs to be first served on the person against whom the enforcement will be done. Only if these requirements are fulfilled, the notarial act is qualified as an enforcement title.

11.3.1 If there is a certain clause (that constitutes the notarial deed an enforcement title) please set out an example of such a clause (cite an example clause). Furthermo re, explain if there a difference in said clause if the deed refers to monetary or non-monetary claims?

In order to have the effect of an enforcement title, the notarial act must contain at the beginning the words "In the name of the King" (*"In naam van de Koning"*) and at the end of the deed the words "Issued as first executional form" (*"Uitgegeven voor eerste grosse"*) included in the deed. This requirement is laid down in Article 50 on the Dutch Act of the Notary (*"Wet op het notarisambt"*). Furthermore, the notary has to use his seal at the end of the document. There are no differences between deeds that refer to monetary claims and the ones that refer to non-monetary claims.

11.3.2 Is the debtor's consent to direct enforceability considered to be part of a notarial act?

No, it is not necessary that debtors give the consent in order to issue the notarial act in enforceable form.

11.3.3 If the previous question is answered in the positive, can such consent be of a general nature or specific and concrete to the debtor's obligations arising from the notarial act?

See above point 11.3.2.

11.4 How is a notarial act structured in your domestic legal order? What elements must it contain?

The deed starts with the date of the deed and the name of the notary. Then the names of the parties and their personal data (birthdate, place of residence or establishment, the ID including the number of the ID which was used for identification, as well as the authority issuing the ID, and if applicable the status of a natural person, married etc.). The sort of deed that is being issued (deed for mortgage etc.). Then the document contains the statement or the agreement, which concerns the parties involved. A notarial deed can also contain an observation of the notary of for instance an executorial auction. In such a case, the notary lays down his observations made in a certain situation. At the end of the deed, the notary states that the identity of the parties is examined. Furthermore, the place where the deed is made. In addition, the notary states that the parties were informed about the content of the deed as well as the consequences signing the deed. Finally, the deed must be signed, and the notary must put his seal on the document.

11.5 What personal information must be specified in the notarial act for the purposes of identifying the Parties?

The personal data includes the following: birthdate, place of residence or establishment, the ID including the number of the ID which was used for identification, as well as the authority issuing the ID, and if applicable the status of a natural person, married etc. In case of a legal entity, the legal status, the number of the Chamber of Commerce, where this entity is

registered. In addition, the name of the person acting for the entity must be stated as well as his function within the entity.

11.6 Must a notarial act, considered to be an enforcement title, contain a threat of enforcement?

No. A threat of enforcement is not required.

11.7 If applicable, how lengthy and important is the part of the notarial act, which contains warnings and explanations by the notary?

The information concerning the warnings and explanations made by the notary is not very extensive. The notary states that he or she has informed the parties involved about the content of the deed, and that the content of the deed has been explained to the parties. Furthermore, the deed contains a short statement whether the notary has read the content of the deed to the parties. Finally, the parties declare that they are aware of the content of the deed as they had the chance to get to know the content of the deed as the deed in draft form has been sent to the parties earlier. Furthermore, the parties declare that they are aware of the consequences that result of the content of the deed.

A standard text that is being used is as follows:

"Final statement by the person appearing:
The person appearing finally stated:
1. *that he and the Parties to this deed have been given the opportunity to take notice of the contents of this Deed on a timely basis;*
2. that he has taken notice of the contents of this Deed; and
3. that he consents to a limited reading of this Deed.
Final statement by the civil-law notary:
The person appearing is known to me, civil-law notary.
THUS DULY NOTED.
This Deed is executed in X, the Netherlands on the date stated at the head of this deed.
Prior to the execution of this Deed, I, civil law notary, informed the appearing person of the substance of this Deed and gave the appearing person an explanation thereon. Furthermore I, civil law notary, pointed out to the appearing person the consequences which will result for the Parties or one or more of the parties to this Deed from the contents of this deed.
The parts of this Deed which must be read out by law have been read out by me, civil-law notary, to the appearing person.
Subsequently, after the aforementioned limited reading, this Deed is signed immediately by the appearing person and immediately thereafter by me, civil-law notary."

11.7.1 Is the notary obliged to explicitly warn the parties about the direct enforceability of the act?

There is no obligation of the notary to warn the parties about the direct enforceability of the act. In practice it is mostly that the parties receive in first instance only a copy of the deed and if they wish they will get the deed in executorial form.

11.7.2 Is there a need for parties and/or the notary to sign each page of a notarial act, to be considered valid?

The notarial act does not need to be signed on every page. It is sufficient that it is signed on the last page by the notary and – if necessary – by the parties.

11.8 What are the consequences if the parties fail to meet the formal requirements for a valid notarial act?

Then the act is invalid, if the formal requirements are not fulfilled.

11.9 What kind of (substantive) obligations, arising out of legal relationships and contained in a notarial act can become directly enforceable, according to your domestic legal order (e.g. mortgage)? Conversely, are there legally valid obligations, which cannot become directly enforceable due to restrictions in legislation or due to judicial decisions?

Comment: *For instance, in Slovenia, taxes, which arise from the claim-enforcement procedure, cannot be directly enforced by the creditor. The same applies to some bank products.*

In general, the obligations laid down in a notary deed are related to civil and commercial matters. The notary deed has to be in the field of civil and commercial law, it must contain an obligation and it must regulate the legal relationship between the parties. In order to be enforceable, the obligation however, needs to be due. There are no provisions within the Dutch legal system, according to which certain obligations cannot be directly enforceable. In addition, a number of issues arise from the enforcement of notary deeds in which non-monetary obligations are included. These issues arise mostly due to the claims (to perform or not to act) and especially the way it is formulated in the deed.[57]

11.10 Is it possible that conditional claims, contained in a notary act are directly enforceable? If so, are there any special conditions, which have to be met in notarial acts or in enforcement procedure?

It is not possible that conditional claims are directly enforceable. With regard to conditional claims, the conditions set out in the deed need to be clear or at least determinable. Therefore, if obligations of the conditions are not formulated in a clear manner, the enforcement of a notary deed might be rejected.[58]

[57] See with examples A.R. de Bruijn/C.A. Kraan, De notariële akte als executoriale titel [The notary deed as an enforcement title], 3 edition, 2012, p. 73 et seq.
[58] See with examples A.R. de Bruijn/C.A. Kraan, De notariële akte als executoriale titel [The notary deed as an enforcement title], 3 edition, 2012, p. 82 et seq.

11.11 Can obligations, contained in a directly enforceable notary deed, be contained in attachments to the notarial act or must they be set out specifically within the text of the act?

The obligations must be contained in the deed. Attachments can only be used to – if needed – explain the obligations laid down in the deed. The deed however must contain the obligations.[59]

11.12 Is it possible for parties to conclude a contract wherein they set up a legal (contractual) relationship and only later bring said contract to the notary in order to confirm the direct enforceability of obligations, arising out of the contract?

This depends on the legal contractual relationship the parties wish to set up. In certain cases, the legal contractual relationship can only be established by a notary, like the establishment of a limited liability company. In these cases, the notary needs to set up a deed, in which the contractual relationship is laid down.

11.13 Must the notarial act include the specification of the time period in which the obligation of the debtor is to be performed? In conjunction, is there the possibility that a notarial act is directly enforceable even if the time period has not yet expired? If so, under what conditions?

There is no legislative obligation according to which a specification of the time period in which the obligation of the debtor is to be performed. Therefore, a notarial act could be directly enforceable, if not regulated differently by the parties.

11.14 Disregarding EU legislation, are there any special restrictions regarding recognition and enforcement under the private international law of you Member State, pertaining specifically to foreign notarial acts?

For the enforcement of a notarial deed, the general rule regarding enforcement of enforcement titles apply, see Article 993 Rv in combination with Article 985 Rv. These were explained under point 1.1 above.

11.15 Is it possible to bring grounds of objection in enforcement proceedings, concerning not only enforcement proper (execution), but opposition to the claim itself? In other words, can the debtor raise grounds against the claim contained in the notary act in enforcement proceedings?

In general, the ground of objections against the claim as laid down in the deed cannot be examined in the enforcement proceedings. Therefore, only formal points can be examined during the enforcement of a notary deed. This must be done with an interim injunction (*"kort geding"*) regarding the execution. However, within this examination the court not only examines whether all formal requirements are fulfilled, but also examines whether the enforcement constitutes an abuse of power. Within this examination, the court can examine the obligation and also the oppositions but forward by the debtor.

[59] See with examples A.R. de Bruijn/C.A. Kraan, De notariële akte als executoriale titel [The notary deed as an enforcement title], 3 edition, 2012, p. 89.

11.16 If your domestic legal order does not operate with enforceable notarial acts, how would you enforce a foreign enforceable notarial act?

This question does not apply in the Netherlands.

11.17 Are there other authentic instruments under your domestic legal order, which are considered enforcement titles?

There are no other authentic instruments considered enforcement titles than the ones mentioned in this report.

Instructions for contributors

1. References

As a rule, specific references should be avoided in the main text and, preferably, should be placed in the footnotes. Footnote numbers are placed after the final punctuation mark when referring to the sentence and directly after a word when referring to that word only. We humbly invite our authors to examine carefully our sample references which are preceded by [•]. These sample references put the theory of our authors' guidelines into practice and we believe that they may serve to further clarify the preferred style of reference.

1.1. Reference to judicial decisions

When citing national judicial authorities, the national style of reference should be respected. References to decisions of European courts should present the following form:

[Court] [Date], [Case number], [Party 1] [v] [Party 2], [ECLI] (NB: the "v" is not italicised)

- ECJ 9 April 1989, Case C-34/89, Smith v EC Commission, ECLI:EU:C:1990:353.
- ECtHR 4 May 2000, Case No. 51 891/9, Naletilic v Croatia.

1.2. Reference to legislation and treaties

When first referring to legislation or treaties, please include the article to which reference is made as well as the (unabbreviated) official name of the document containing that article. The name of a piece of legislation in a language other than English, French or German should be followed by an italicised English translation between brackets. In combination with an article number, the abbreviations TEU, TFEU, ECHR and UN Charter may always be used instead of the full title of the document to which the abbreviation refers. If the title of a piece of legislation constitutes a noun phrase, it may, after proper introduction, be abbreviated by omission of its complement. Thus:

- Art. 2 Protocol on Environmental Protection to the Antarctic Treaty (henceforth: the Protocol).
- Art. 267 TFEU.
- Art. 5 Uitleveringswet [Extradition Act].

1.3. Reference to books

1.3.1 First reference

Any first reference to a book should present the following form: [Initial(s) and surname(s) of the author(s)], [Title] [(Publisher Year)] [Page(s) referred to]

- J.E.S. Fawcett, The Law of Nations (Penguin Press 1968) p. 11.

If a book is written by two co-authors, the surname and initials of both authors are given. If a book has been written by three or more co-authors, 'et al.' will follow the name of the first author and the other authors will be omitted. Book titles in a language other than English, French or German are to be followed by an italicised English translation between brackets. Thus:

- L. Erades and W.L. Gould, The Relation Between International Law and Municipal Law in the Netherlands and the United States (Sijthoff 1961) p. 10 – 13.
- D. Chalmers et al., European Union Law: cases and materials (Cambridge University Press 2010) p. 171.
- F.B. Verwayen, Recht en rechtvaardigheid in Japan [Law and Justice in Japan] (Amsterdam University Press 2004) p. 11.

1.3.2 Subsequent references

Any subsequent reference to a book should present the following form (NB: if more than one work by the same author is cited in the same footnote, the name of the author should be followed by the year in which each book was published):

[Surname of the author], [supra] [n.] [Footnote in which first reference is made], [Page(s) referred to] Fawcett, supra n. 16, p. 88.

- Fawcett 1968, supra n. 16, p. 127; Fawcett 1981, supra n. 24, p. 17 – 19.

1.4. Reference to contributions in edited collections

For references to contributions in edited collections please abide by the following form (NB: analogous to the style of reference for books, if a collection is edited by three or more co- editors only the name and initials of the first editor are given, followed by 'et al.'):

[Author's initial(s) and surname(s)], ['Title of contribution'], [in] [Editor's initial(s) and surname(s)] [(ed.) or (eds.)], [Title of the collection] [(Publisher Year)] [Starting page of the article] [at] [Page(s) referred to]

- M. Pollack, 'The Growth and Retreat of Federal Competence in the EU', in R. Howse and K. Nicolaidis (eds.), The Federal Vision (Oxford University Press 2001) p. 40 at p. 46.

Subsequent references follow the rules of 1.3.2 supra.

1.5. Reference to an article in a periodical

References to an article in a periodical should present the following form (NB: titles of well-known journals must be abbreviated according to each journal's preferred style of citation):

[Author's initial(s) and surname(s)], ['Title of article'], [Volume] [Title of periodical] [(Year)] [Starting page of the article] [at] [Page(s) referred to]

- R. Joseph, 'Re-Creating Legal Space for the First Law of Aotearoa-New Zealand', 17 Waikato Law Review (2009) p. 74 at p. 80 – 82.
- S. Hagemann and B. Høyland, 'Bicameral Politics in the European Union', 48 JCMS (2010) p. 811 at p. 822.

Subsequent references follow the rules of 1.3.2 supra.

1.6. Reference to an article in a newspaper

When referring to an article in a newspaper, please abide by the following form (NB: if the title of an article is not written in English, French or German, an italicised English translation should be provided between brackets):

- [Author's initial(s) and surname(s)], ['Title of article'], [Title of newspaper], [Date], [Page(s)]: T. Padoa-Schioppa, 'Il carattere dell' Europa' [The Character of Europe], Corriere della Serra, 22 June 2004, p. 1.

1.7. Reference to the internet

Reference to documents published on the internet should present the following form: [Author's initial(s) and surname(s)], ['Title of document'], [<www.example.com/[...]>], [Date of visit]

- M. Benlolo Carabot, 'Les Roms sont aussi des citoyens européens', <www.lemonde.fr/idees/article/2010/09/09/les-roms-sont-aussi-des-citoyens-europeens_1409065_3232.html>, visited 24 October 2010. (NB: 'http://' is always omitted when citing websites)

1.8. Cross-references

In referring to other chapters and sections of the text, as well as to other footnotes, supra is used to refer to previous sections of the contribution, whereas infra is used to refer to subsequent sections. Cross-references should never refer to specific page numbers. Thus:

- See text to n. 10 supra.
- See text between n. 10 and n. 12 infra.
- Compare n. 10 supra.

2. Spelling, style and quotation

In this section of the authors' guidelines sheet, we would like to set out some general principles of spelling, style and quotation. We would like to emphasise that all principles in this section are governed by another principle – the principle of consistency. Authors might, for instance, disagree as to whether a particular Latin abbreviation is to be considered as 'common' and, as a consequence, as to whether or not that abbreviation should be italicised. However, we do humbly ask our authors to apply the principle of consistency, so that the same expression is either always italicised or never italicised throughout the article.

2.1 General principles of spelling

- Aim for consistency in spelling and use of English throughout the article.
- Only the use of British English is allowed.
- If words such as member states, directives, regulations, etc., are used to refer to a concept in general, such words are to be spelled in lower case. If, however, the word is intended to designate a specific entity which is the manifestation of a general concept, the first letter of the word should be capitalised (NB: this rule does not apply to quotations). Thus:
- [...] the Court's case-law concerning direct effect of directives [...]
- The Court ruled on the applicability of Directive 2004/38. The Directive was to be implemented in the national law of the member states by 29 April 2006.

- There is no requirement that the spouse, in the words of the Court, 'has previously been lawfully resident in another Member State before arriving in the host Member State'.
- Avoid the use of contractions.
- Non-English words should be italicised, except for common Latin abbreviations.

2.2. General principles of style

- Subdivisions with headings are required, but these should not be numbered.
- Use abbreviations in footnotes, but avoid abbreviations in the main text as much as possible.
- If abbreviations in the main text improve its legibility, they may, nevertheless, be used. Acronyms are to be avoided as much as possible. Instead, noun phrases are to be reduced to the noun only (e.g., 'the Court' for 'the European Court of Human Rights'). If this should prove to be problematic, for instance because several courts are mentioned in the text (e.g., the Court of Justice and the European Court of Human Rights), we ask our authors to use adjectives to complement the noun in order to render clear the distinction between the designated objects (e.g., the Luxembourg Court/the European Court and the Strasbourg Court/the Human Rights Court). As much will depend on context, we offer considerable liberty to our authors in their use of abbreviations, insofar as these are not confusing and ameliorate the legibility of the article.
- In English titles, use Title Case; in non-English titles, use the national style.

2.3. General principles of quotation

- Quotations are to be placed between single quotation marks, both in the main text and in the footnotes (thus: 'aaaaa').
- When a quotation forms part of another quotation, it is to be placed between double quotation marks (thus: 'aaaaa "bbbbb" aaaaa').
- Should a contributor wish to insert his own words into a quotation, such words are to be placed between square brackets.
- When a quotation includes italics supplied by the contributor, state: [emphasis added].