



# MANUAL - Netherlands

for legal practitioners dealing with cross-border enforcement of civil claims



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## **Manual – Netherlands**

This Manual is intended to help practitioners (primarily authorities in the field of civil enforcement) facing a foreign enforcement title. It offers answers to the most pressing issues faced in cross-border enforcement proceedings in a step-by-step manner, starting with the visual inspection and identification of the elements of the enforcement title. However, the Manual should only be used as an assisting tool in an unofficial capacity and cannot replace the scrutiny of regular inspection. The materials for this Manual have been sourced from national reports and other deliverables obtained within the EU-En4s project.

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# 1. Judgement

## 1.1 Headlines that form part of the judgement

Art. 230 para 1 of the Dutch Code on Civil Procedure sets out the relevant elements with regard to the content of the judgement. The court follows the structure of this article when issuing a judgement. In practice, the requirements set out by this article 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, including, where applicable, instructions to the parties;
- Name and signature of the judge and the registrar and the date of the judgment.

The different parts of the judgment (the course of proceedings, facts, claim, reasoning and decision) are separated by numbers. In addition, the reasoning may be divided in subheadings, showing a certain decision of the court with regard to a specific point. Dutch judgements are numbered and, as such, follow a very streamlined structure.

## 1.2 Structural and substantive division/sequence of the Reasoning

The courts use Arabic numerals in accordance with the following format, 1., 2., 3. and 1.1., 1.2., 1.3. and even 1.1.1, 1.1.2. etc. This, of course, depends on the complexity of the case.

## 1.3 Textual identification of the elements comprising the judgement

“the introduction of the judgement”: (Inleiding), however, the Dutch system does not include such “introduction”

“the operating part”: (De beslissing/alternatively referred to as “dictum”)

“the reasoning of the judgement”: (De beoordeling/motivering van de beslissing)

“legal instruction”: (rechterlijke instructies)

## 1.4 Short description of the elements of the judgement

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 out two requirements with regard to the content of a domestic (civil) judgment. 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 Dutch Code on Civil Procedure (hereinafter – Rv). 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.

### **1.5 Graphical separation of the elements of the judgement**

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.

### **1.6 Specification of time-period in which the judgement must be performed**

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.

### **1.7 Identification of Parties**

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.

### **1.8 Indication of the amount in dispute**

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.



## **1.9 Indication of the underlying legal relationship**

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*").

## **1.10 Information contained in the operative part**

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.

## **1.11 Existence of a threat of enforcement**

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.

## **1.12 Final specification of debt**

The specification of the debtor's obligation 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.

## **1.13 Partial rejection of a claim**

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.

### **1.14 Set-off of a claim**

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.

### **1.15 References to the Reasoning found within the operative part**

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.

### **1.16 Wording used to mandate performance**

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 of Burgerlijk Wetboek (Civil Code, hereinafter – BW) or in case of commercial claims Article 6:119a BW, from the DATE until the day of complete payment.” This is the common wording in the operative part when a debtor is ordered to pay.

### **1.17 Reciprocal claims**

In cases of reciprocal relationships, 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. 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.

### **1.18 Indication of interest (rates)**

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 section 1.16 Wording used to mandate performance.

### **1.19 Legal ramification for incomplete, undetermined, incomprehensible or inconsistent operative part**

Legal ramification 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.

## **1.20 Legal effects of the Reasoning of the judgement**

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.

## **1.21 Obtaining the *res judicata* effect**

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*.

## **1.22 *Res judicata* of negative declaratory relief**

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.

## **1.23 Suspensive periods barring the enforcement of a judgement**

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.

## **2. Court settlements**

### **2.1 Elements of a court settlement**

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.

## **2.2 Formal requirements**

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.

## **2.3 Identification of Parties**

The parties are identified like in a judgement (see paragraph 1.7 Identification of Parties for the details), as the court settlement is issued in an executorial form.

## **3. Notarial deeds**

### **3.1 Prerequisites for enforceability**

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 executorial 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.

### **3.2 Special clause**

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 executorial 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.

### **3.3 Consent**

It is not necessary that debtors give the consent in order to issue the notarial act in enforceable form.

### **3.4 Structure**

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.

### **3.5 Personal information**

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.

### **3.6 Obligations contained in attachments**

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.

### **3.7 Conditional claims**

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.