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Small claims

Netherlands

Article 25 1 (a) Competent courts

Cases involving European small claims are dealt with and decided on by a sub-district court judge (*kantonrechter*).

Article 25 1 (b) Means of communication

Under Article 33 of the Code of Civil Procedure as it stands, claim forms may be submitted electronically provided that this is allowed under the court's procedural rules. None of the courts currently allows forms to be submitted electronically. Forms may only be submitted as follows:

- by post;
- by submitting them to the court registry.

In conjunction with legislation on the simplification and digitalisation of procedural law which is still in the pipeline (including a new Article 33 of the Code of Civil Procedure), the Implementing Act has incorporated rules on e-submission. These rules will probably enter into force at a later stage.

The new Article 30c of the Code of Civil Procedure states that proceedings must be instituted electronically. Pursuant to Article 30c(4), natural persons and associations whose constitutions are not set out in a notarial deed are not required to submit documents electronically unless they are represented by a third party providing professional legal assistance.

Direct e-submission of documents instituting proceedings from another Member State will not be possible for the time being. Parties from another Member State with a professional representative in the Netherlands will be able to submit documents electronically. Foreign parties without a legal representative wishing to institute proceedings must follow the paper route.

Article 25 1 (c) Authorities or organisations providing practical assistance

Practical assistance can be provided by the Legal Service Counter (*Juridisch Loket*) and, more specifically, by the European consumer information centre which is hosted by the Legal Service Counter.

See <http://www.eccnederland.nl> and <http://www.juridischloket.nl>.

Article 25 1 (d) Means of electronic service and communication and methods for expressing consent for thereof

Service pursuant to Article 13(1) of the Regulation and written communications pursuant to Article 13(2) of the Regulation are effected in accordance with Article 30e of the Code of Civil Procedure. After the legislation referred to above enters into force, the Netherlands will work on the assumption that proceedings are instituted electronically.

Pursuant to Article 30e of the Code of Civil Procedure, other documents whose submission is not specifically required and other communications between the court and the parties will be made available electronically unless Article 30c(5) applies. According to Article 30c(5), parties which are not obliged to circulate documents electronically, and are not doing so, follow the paper route.

Under the legislation on the simplification and digitalisation of procedural law it is not yet technically possible for parties whose place of residence is in another Member State to submit documents directly (see b) above) and circulate them via the courts' digital system. Neither foreign companies nor natural persons are required to submit documents electronically. Where a party from another Member State has a legal representative in the Netherlands, proceedings will take place electronically and the court may accordingly serve the documents referred to in Article 13(1) electronically.

In the case of parties which are not required to submit documents electronically and do not have a legal representative, service will be effected by post.

Article 25 1 (e) Persons or professions, obliged to accept service of documents or other written communications by electronic means

See the information indicated under d).

Article 25 1 (f) Court fees and the methods of payment

Only persons lodging claims with the sub-district court are liable for court fees. Defendants do not have to pay court fees. As regards the amount of court fees, where appropriate, a distinction is made in the Netherlands between

- claims of less than €500 or of an indeterminate amount, and
- claims of an amount between €500 and €12 500.

There are three flat rates. Which rate applies depends on whether the claimant is a legal person, a natural person or a natural person with limited financial capacity.

For rates see www.rechtspraak.nl.

Distance payments may be made to the Dutch courts by bank transfer. The statement of fees (*griffienota*) sent by the clerk of the court indicates the bank account details of the court. The court fees should be transferred to that account.

Article 25 1 (g) Appeal procedure and courts competent for an appeal

Under the national rules, appeals against decisions handed down by the sub-district court judge may be lodged with the court of appeal (*gerechtshof*) in the case of European small claims involving amounts of €1 750 or more. The time limit for lodging an appeal is 30 days from the date of the decision.

For information on the courts in the Netherlands, see: <http://www.rechtspraak.nl>.

Article 25 1 (h) Review of the judgment procedure and courts competent to conduct such a review

Defendants can petition the sub-district court that has handed down a decision on a European small claims case to review the decision on the grounds set out in Article 18(1) of the Regulation. This petition must be lodged within the 30-day time limit indicated in Article 18(2).

Article 25 1 (i) Accepted languages

Certificates within the meaning of Article 20(2) of the Regulation from a court in another Member State must be drawn up in, or translated into, Dutch.

Article 25 1 (j) Authorities competent for enforcement

The authorities responsible for the enforcement of a decision in a European small claims case are the Dutch bailiffs.

For the authorities responsible for the application of Article 23 of Regulation (EC) No 861/2007, see Article 8 of the Implementing Act for European Small Claims Procedures.

Article 8 of the Implementing Act for European Small Claims Procedures:

In the case of applications for enforcement as referred to in Articles 22 and 23 of the Regulation, Article 438 of the Code of Civil Procedure shall apply.

Article 438 of the Code of Civil Procedure

1. Disputes which arise in connection with enforcement shall be brought before the district court (rechtbank) that would have jurisdiction under the normal rules, or in whose geographical jurisdiction seizure is to take place, one or more of the items of property affected are located, or enforcement is to be carried out.
2. In order to obtain an interim measure, interim proceedings (kort geding) can also be brought before the judge hearing applications for interim relief (voorzieningsrechter) at the court with jurisdiction under paragraph 1. Without prejudice to his other powers, the judge hearing applications for interim relief can, if required, suspend the enforcement for a certain time or until judgment has been given in the dispute, or decide that the enforcement can go ahead or be continued only if a security is lodged. The judge can lift an attachment, with or without the provision of security. During enforcement the judge can order incomplete formalities to be rectified, stipulating which of the incomplete formalities must be carried out again and who is to bear the costs involved. The judge can order that any third party joined in the case must consent to the continuation of enforcement or cooperate with the procedure, with or without the provision of security by the party seeking enforcement.
3. If the case does not lend itself to interim proceedings, the judge hearing the application can, instead of dismissing the application and if the claimant so requests, refer the matter to the district court, specifying the date on which it must be heard. A defendant who fails to appear on that date and is not represented in court by his lawyer shall be declared to be in default if he was summoned to attend the proceedings on that date with due regard for the time limit prescribed for a summons or the time limit set by the interim relief judge at the claimant's request.
4. If an objection is made to the bailiff responsible for enforcement which calls for the adoption of an immediate interim measure, the bailiff may present himself to the interim relief judge with the report he has drawn up on the subject asking the judge to adopt an interim measure deciding between the parties involved. The interim relief judge shall stay the proceedings until the parties have been summoned unless, because of the nature of the objection, he considers that an immediate decision is required. A bailiff who exercises this power without the agreement of the party seeking enforcement may himself be ordered to pay costs if it transpires that his action was unfounded.
5. A third party can object to enforcement by serving a summons on both the party seeking enforcement and the party against whom enforcement is sought. Paragraphs 3 and 5 will be amended to take into account legislation still in the pipeline on the simplification and digitalisation of procedural law:
3. If the case does not lend itself to interim proceedings, the judge hearing the application can, instead of dismissing the application and if the claimant so requests, refer the matter to the district court. The court to which the matter is referred shall immediately set a date for the next procedural step. A defendant who fails to appear on that date and is not represented in court by his lawyer shall be declared to be in default only if he was summoned to attend the proceedings on that date with due regard for the time limit prescribed for a summons or the time limit set by the interim relief judge at the claimant's request.
5. A third party can object to enforcement by summoning both the claimant and the party against whom enforcement is sought.

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