

## 1 What does enforcement mean in civil and commercial matters?

### Enforcement law: general

Legal proceedings conclude with a judgment handed down by the court. In this judgment a party (the debtor) may be ordered to perform its obligations to the other party (the creditor). If the debtor fails to do so voluntarily, the creditor can enforce performance by taking measures under enforcement law. This area of law governs the enforcement (execution) of a judgment in which performance has been ordered by the court. To this end, it lays down statutory rules on coercive measures and how these can be applied. Court bailiffs (*gerechtsdeurwaarders*), also referred to simply as bailiffs (*deurwaarders*), are authorised to enforce judgments and are instructed to do so by creditors wishing to receive their entitlement.

Two conditions must be met if you wish to take the coercive measures provided for under enforcement law: you must be in possession of an enforceable document (*executoriale titel*), such as an enforceable judgment, and this must have been served in advance on the party against whom enforcement action will be taken.

The main parties involved in the enforcement process are the executor (the party requesting enforcement, the creditor), the debtor (the party against whom the enforcement action is being taken) and the bailiff (the public official responsible for taking the actual enforcement action at the executor's request).

### Coercive measures

The principal coercive measure is executory attachment (*executoriaal beslag*). This is discussed in detail in section 2.1.

Other coercive measures are:

the incremental penalty payment (*dwangsom*);

committal to prison for failure to comply with a judicial order (*gijzeling*).

An incremental penalty payment is a monetary sum established in a court judgment that the convicted party must pay if they fail to comply with the principal obligation to be performed. This measure is mainly used in interlocutory proceedings as a means of exerting pressure. An incremental penalty payment can only be linked to a principal obligation that does not involve the payment of a monetary sum.

Committal to prison for failure to comply with a judicial order is a coercive measure to force a party to comply with a particular obligation. This measure is not often imposed by the courts and even when it is, it is rarely actually enforced. It is only possible if ordered by the court. The court can allow such committal to enforce judgments and decisions at the creditor's request, provided that they concern an order that does not involve the payment of a monetary sum.

Committal can also be used, for example, in the case of judgments, decisions and authentic deeds under which a maintenance payment is owed in accordance with Book 1 of the Civil Code (*Burgerlijk Wetboek*), such as child maintenance (Article 585 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*)).

## 2 Which authority or authorities are competent for enforcement?

## 3 What are the conditions under which an enforceable title or decision may be issued?

### 3.1 The procedure

The procedure is described below.

#### Enforceable document

Judgments handed down by the Dutch courts (judgments, decisions and rulings), authentic deeds (notarial deeds) and certain other documents are regarded as enforceable documents. Other documents designated by law as enforceable documents are:

writs of execution issued by the Public Prosecution Service (*Openbaar Ministerie*);

writs of execution issued by the tax authorities;

arbitral awards with permission for enforcement;

official records of amicable settlements.

The court registrar provides the claimant and defendant who appeared in the proceedings with a copy of the judgment. If it is a final judgment containing a court order, the party who is authorised to enforce the judgment receives a copy in enforceable form. The parties are issued with a bailiff's copy (*grosse*) of the judgment free of charge. This is an authentic copy of the judgment. It is a court judgment issued in enforceable form. Enforcement action can only be taken if this bailiff's copy has been issued. A bailiff's copy, or first authenticated copy, of a notarial deed can also be issued. By handing over this document, you authorise the bailiff to take enforcement action.

Prior to enforcement, the bailiff will serve the document (bailiff's copy/first authenticated copy) on the party against whom the action will be taken. The purpose of service is to bring the judgment to the other party's attention and inform him that the creditor is demanding compliance with it.

For information on the service of enforceable documents from other EU Member States see the EU Service Regulation:

[Council Regulation \(EC\) No 1348/2000](#) of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

#### Court bailiffs

##### Role in enforcement

The bailiff is the main party involved in enforcing judgments and always acts on the instructions of the party requesting enforcement. These instructions are given by handing over the bailiff's copy (an authentic copy of the judgment) to the bailiff. Generally speaking, the bailiff does not require any separate authorisation.

The acts the bailiff may carry out in the context of enforcement include:

serving the enforceable document on the party against whom the enforcement action is being taken;

demanding compliance with the obligation to perform, e.g. demanding payment of a monetary sum;

receiving payment if the debtor does fulfil his payment obligation;

seizing assets;

requesting assistance from the police, if necessary (when seizing assets, for example).

## Bailiffs' fees

Official acts performed by bailiffs are subject to fixed fees, which may be charged to the debtor. There are no fixed fees for the creditor, which means these have to be negotiated with the bailiff. The fees that the bailiff charges to the debtor can be found in the Decree of 4 July 2001 establishing detailed rules on the official acts and fees of bailiffs, also known as the **Bailiffs' Fees Decree** (*Besluit tarieven ambtshandelingen gerechtsdeurwaarders*). Further information on the fees for official acts with effect from 2019 (*Tarieven ambtshandelingen m.i.v. 2019*) can be found on the website of the **Royal Professional Organisation of Judicial Officers** (*Koninklijke Beroepsorganisatie van Gerechtsdeurwaarders*).

## 3.2 The main conditions

The two general conditions that must be met to proceed with enforcement are:

possession of an enforceable document;

service of this document, prior to enforcement, on the party against whom enforcement action is being taken.

As mentioned above, executory attachment is the main coercive measure used.

There are also measures that can be taken pending the issue of an enforceable document. These can be requested before the judgment is handed down and also during or even prior to the proceedings. They are referred to as protective measures (*conservatoire maatregelen*) and function as interim measures of protection. Protective measures include prejudgment attachment (*conservatoir beslag*), the placing of seals (*verzegeling*) and the drawing up of an inventory (*boedelbeschrijving*). This information sheet deals with executory attachment.

## 4 Object and nature of enforcement measures

The object and nature of enforcement measures can vary. A distinction can be made between measures intended to bring about the payment of a monetary sum, the surrender of an asset, an act or an omission. The most common measure is an attachment for the recovery of money (*verhaalsbeslag*).

If the debtor's obligation does not involve an action, it may require the performance of an 'actual act' (*feitelijke handeling*, an act that has a legal consequence regardless of whether this was intended) or a juristic act (*rechtshandeling*, an act with an intended legal consequence). If the actual act is not linked to an individual, the creditor can ask the court for authorisation to bring about the situation that would have resulted from performance. If the debtor's obligation involved the performance of a juristic act, such as the acceptance of an offer, the act can be replaced by a court judgment. The court can also order the debtor to refrain from a certain course of action.

### 4.1 What types of assets can be subject to enforcement?

An executory attachment can be imposed:

on movable property that is not subject to registration. Property subject to registration covers: real estate, ships and aircraft;

on bearer rights or rights to order, rights to registered shares and rights to other registered securities;

against a third party, referred to as attachment by garnishment (*executoriaal derdenbeslag*);

on real estate;

on ships;

on aircraft.

As a general rule, the executor is at liberty to choose the assets on which he wishes to impose attachment.

In principle, attachment may be imposed on all of the debtor's property. However, certain assets may not be attached, such as basic necessities, e.g. clothing, food, workmen's tools, specialist literature and items used for the purposes of education, art and science. A portion of wage, maintenance or benefit payments is exempt from attachment. A protected earnings level applies in these cases to ensure the debtor has sufficient income left to provide for basic necessities.

Equally, attachment may not be imposed on assets intended for public services. The executor may impose attachment on various assets at the same time.

### 4.2 What are the effects of enforcement measures?

#### Legal consequences of attachment of movable property that is not subject to registration

One consequence of attachment is that any acts that the debtor performs after attachment cannot be prejudicial to the rights of the party imposing attachment. If, for example, the debtor were to sell the asset, the purchaser cannot, in principle, assert to the creditor that he is now the owner. Another consequence is that any income from the asset is also covered by the attachment.

#### Legal consequences of attachment of shares, securities and other assets

There are no specific legal consequences. The voting right remains with the person against whom the attachment is imposed for the duration of the attachment.

#### Legal consequences of attachment by garnishment

In the case of attachment by garnishment, the creditor (the party imposing attachment) imposes attachment on a third party (i.e. not the debtor), because this third party has a debt to the debtor or is holding property belonging to the debtor.

The party imposing attachment is protected against juristic acts performed by the other party. Juristic acts performed after the attachment cannot be relied upon against the party imposing attachment. Two common forms of attachment by garnishment are attachment of a bank account or of an employee's wage or benefit.

#### Legal consequences of attachment of real estate

Attachment of real estate is recorded in the public registers kept by the **Land Registry Office** (*Kadaster*). Ships and aircraft are regarded as real estate once they have been entered in the registers. Attachment becomes effective from the moment of registration. Any proceeds from the real estate received after attachment are covered by the attachment. The party imposing attachment is protected against juristic acts performed by the debtor after the attachment. The disposal (sale) of the real estate cannot be relied upon against the person imposing attachment.

### 4.3 What is the validity of such measures?

As a general rule, the authority to enforce a court judgment becomes prescribed 20 years from the day following that on which the judgment was handed down. If enforcement of a court judgment is subject to certain requirements, the fulfilment of which is not contingent upon the will of the person who obtained the judgment, then the authority to enforce the judgment becomes prescribed 20 years from the start of the day following that on which the requirements were met.

However, the prescription period is five years for any sum that the judgment orders to be paid within a year or less. In the case of interest, fines, incremental penalty payments and other additional court orders, prescription takes effect no later than the moment when the authority to enforce the main judgment becomes prescribed, unless the prescription period is interrupted or extended.

## 5 Is there a possibility of appeal against the decision granting such a measure?

### Enforcement disputes

Article 438 of the Code of Civil Procedure contains general rules on enforcement disputes (*executiegeschillen*). In such a dispute the debtor may attempt to prevent enforcement. The dispute may relate, for example, to the significance and scope of the enforceable document, the impact of facts emerging after the

judgment (the enforceable document), the validity of an attachment or the question of who owns the attached assets. An enforcement dispute relates solely to the matter of enforcement. The substance of the main action in which a judgment has already been handed down is not re-appraised.

In an enforcement dispute the debtor may argue that the executor is abusing his rights or that the attachment is disproportionate to the judgment, for example. The debtor (the party against whom enforcement action is being taken) cannot put forward any further substantive objections to the judgment at this stage. To do this, he must institute opposition (*verzet*), appeal (*hoger beroep*) or cassation (*cassatie*) proceedings, which are legal remedies.

#### **Territorial jurisdiction**

Territorial jurisdiction concerns the location of the court that deals with your case. The court with territorial jurisdiction is the court that is competent under the general rules of law on jurisdiction. This is either the court in the territorial jurisdiction within which the attachment has been or will be imposed, the court in the territorial jurisdiction within which the property concerned is located, or the court in the territorial jurisdiction within which enforcement will take place. A competent Dutch court will be found for all enforcement actions taking place in the Netherlands.

#### **Competent court**

The question here is which level of court will deal with your case. The District Court (*rechtbank*) has jurisdiction to hear all enforcement disputes, regardless of the court that pronounced the judgment to be enforced. The District Court is competent even if the Court of Appeal (*gerechtshof*) or Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*) handed down the judgment.

Enforcement disputes are usually settled in interlocutory proceedings (*kort geding*). The court may decide to suspend enforcement for a certain period or lift the attachment.

#### **6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?**

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