The Netherlands

Yvette Borrius
Florent, Amsterdam
yvette.borrius@florent.nl

Daphne Beunk
Florent, Amsterdam
daphne.beunk@florent.nl

Gijs Wessels
Florent, Amsterdam
gijs.wessels@florent.nl

Cedric Ryngaert
Utrecht University, Utrecht
c.m.j.ryngaert@uu.nl

1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

Introduction

The scope in this response is limited to foreign judgments (excluding arbitral awards) in civil and commercial matters (outside the field of insolvency and/or family law). It does not cover recognition and enforcement of criminal sentences or decisions of a procedural nature.

The Netherlands, being receptive towards recognition and enforcement, has ratified various multilateral and bilateral conventions on recognition and enforcement of foreign judgments in civil and commercial matters.

Recognition and enforcement of judgments rendered in an EU Member State

The recognition and enforcement of judgments from EU Member States (except Denmark) is set out under the recast of the Brussels I Regulation and some other EU regulations. Under the Recast Brussels Regulation, a judgment rendered in an EU Member State does not require separate recognition and enforcement proceedings. Enforcement of such a judgment in the Netherlands takes place through a bailiff serving the judgment (including the required documentation from the court in the state of origin) on the debtor.

Recognition and enforcement of judgments convention-based

If there is a convention pursuant to which the foreign judgment qualifies for enforcement in the Netherlands, permission of the Dutch court must first be given in order to obtain enforcement powers in the Netherlands. This permission, or warrant to enforce, is known as an *exequatur*. Exequatur proceedings are set out in Articles 985–994 of the Dutch Code of Civil Procedure (DCCP). The Dutch court which receives the request for an exequatur does not investigate the case itself, but verifies whether all formalities – including, but not

limited to, the review criteria of the applicable convention regulations – have been observed. The exequatur DCCP proceedings may be overruled by special convention or statutory regulations.

Some conventions require that the party seeking recognition and enforcement provides evidence of proper notification to the defendant of the initiation of the foreign proceedings. The party seeking recognition and enforcement in the Netherlands must also provide evidence that the counterparty was properly notified of the request to recognise and enforce the foreign judgment.

Recognition and enforcement of judgments non-convention-based

For recognition and enforcement of foreign judgments, Dutch law makes a distinction between decisions imposing obligations on a party, such as damages, and all other types of decisions (ie, decisions creating or changing a legal status – declaratory and decisions of dismissal). Decisions falling within the latter category do not need to be enforced because they are considered to have force of law in the Netherlands from the moment when they are recognised. The recognition of a foreign judgment can also be invoked during ongoing proceedings to substantiate a claim or defence. Condemnatory decisions, such as a foreign money judgment must not only be recognised, but must also be enforced.

RECOGNITION

In principle, the Dutch court is free to judge if, and to what extent, authority is assigned to a foreign judgment in the Netherlands. Nevertheless, the starting point is that a foreign judgment, regardless of its nature or purpose, can only be recognised if four minimum requirements have been met:

1. the judgment was rendered by a court that has considered itself competent based on an internationally acceptable ground for jurisdiction;
2. rules of proper administration of justice have been observed;
3. recognition of the judgment would not conflict with Dutch public policy; and
4. the foreign decision should not be irreconcilable with an earlier decision of the Dutch courts between the same parties and involving the same cause of action, or with an earlier decision of a foreign court between the same parties and involving the same cause of action, provided that this earlier court decision of a foreign court fulfils the conditions necessary for its recognition in the Netherlands.

These four minimum requirements have been developed in case law (Supreme Court 26 September 2014, ECLI:NL:HR:2014:2838 (*Gazprombank/Brensadon*)). If the requirements for recognition are not met, the foreign judgment will not be recognised.

Note that a foreign judgment, if not eligible for recognition, may in certain circumstances be used for evidence of other than procedural facts that have been declared as established between the parties in the foreign judgment. The judge has a wide discretion in this regard.

ENFORCEMENT

	In the absence of a convention for enforcement in the Netherlands, it follows from Article 431(1) DCCP that a foreign judgment cannot be enforced in the Netherlands, even if the decision is susceptible of being recognised. Pursuant to Article 431(2) DCCP, new (simplified) proceedings have to be initiated before a Dutch court in order to obtain powers to enforce in the Netherlands. In practice however, a Dutch court will not review the case on its merits again if the (above mentioned, minimum) requirements for recognition are met. The (simplified) proceedings initiated before a Dutch court are therefore also referred to as obtaining a quasi-exequatur, seeking the same outcome as the foreign court judgment.
2.	**What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, (eg, notice provisions)?**
	The Netherlands is about to ratify the UN Convention on Jurisdictional Immunities of States and their Property (UN Convention). Accordingly, it will change the Code of Civil Procedure regarding service of process to foreign states. Service of process allows the foreign state to be given proper notice of a legal action initiated against it. Hereinafter, reference will be made to the current provisions, and the new rules, which codify the service of process rules set out in Article 22 of the UN Convention. In the Netherlands, the bailiff (*gerechtsdeurwaarder*) plays a key role in serving process, as explained below. **Current provisions for service of process** Note that the service of judicial or extrajudicial documents to states under the current provisions follows almost the same proceedings as the services of documents to other types of defendants. An important difference however, is the notice to the Dutch Minister of Justice and Security (see final paragraph of response to Question 2, above). *Service in an EU Member State* If the debtor lives/has offices in a European Union Member State (except for Denmark), service is made in accordance with Regulation EU 1784/2020. The standard method of service is by transmission of the enforceable title by the transmitting agency (in the Netherlands these are the bailiffs) to the receiving agency in the EU Member State. The bailiff also has the option of sending the documents by courier directly to the debtor in accordance with Article 18 of Regulation EU 1784/2020. This method of service is much faster. The moment of receipt by the debtor can be regarded as the moment of service, which, incidentally, can be the subject of discussion in practice. Dutch courts are reluctant to declare a default against an absent party based solely on an acknowledgment of receipt within the meaning of Article 18 of Regulation EU 1784/2020. Finally, any interested party has the option of directly instructing a bailiff, official or other competent persons in the relevant country to serve the documents on the debtor.

Service in a country which is a party to the 1965 Hague Convention on Jurisdiction and Enforcement

If the debtor resides/has offices in a country which, like the Netherlands, is a party to the 1965 Hague Convention on Jurisdiction and Enforcement and is not an EU Member State, service on the debtor must be made in accordance with the 1965 Hague Convention. The bailiff serves on the Public Prosecutor in the Netherlands, designated as the central authority. The Public Prosecutor ensures that the documents are forwarded for service to the central authority in the relevant country where the debtor resides, which in turn must arrange for service under national law. Countries impose different requirements before service can be effected. These vary from language requirements and/or the placing of wax seals and/or apostilles.

If service is successful, the central authority abroad draws up a certificate which it sends back to the central authority in the Netherlands (the Public Prosecutor). In many countries, this process takes weeks, months, and sometimes even years. The Dutch bailiff has no influence on this process. Under Dutch law (in contrast to the regulation in EU Member States), the moment of service by the bailiff on the Public Prosecutor is the moment of service.

No convention/regulation applicable

If the country where the debtor resides or has their office is not a party to any of the aforementioned conventions nor is an EU Member State, service shall be effected in accordance with Section 55 DCCP. The bailiff has to serve the debtor at the office of the Public Prosecutor. The Public Prosecutor receives the documents on behalf of the debtor and sends them to their known contact in the country concerned. The question is whether that country is able or willing to serve these documents. Under Dutch law (in contrast to the regulation in EU Member States), the moment of service by the bailiff with the Public Prosecutor is the moment of service.

New (future) provisions pursuant to UN Convention

Article 277a (new) DCCP provides that a foreign state will be served process by writ effected in accordance with the procedures set out in Article 22(1) and (3) of the UN Convention (in Dutch: '*oproeping* by exploit').

Pursuant to Article 22 of the UN Convention, to be implemented in the Netherlands, provides as follows regarding service of process to foreign states:

> '1. Service of process by writ or other document instituting a proceeding against a State shall be effected: (a) in accordance with any applicable international convention binding on the State of the forum and the State concerned; or (b) in accordance with any special arrangement for service between the claimant and the State concerned, if not precluded by the law of the State of the forum; or (c) in the absence of such a convention or special arrangement: (i) by transmission through diplomatic channels to the Ministry of Foreign Affairs of the State concerned; or (ii) by any other means accepted by the State concerned, if not precluded by the law of the State of the forum.

	2. Service of process referred to in paragraph 1 (c) (i) is deemed to have been effected by receipt of the documents by the Ministry of Foreign Affairs. 3. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the State concerned. 4. Any State that enters an appearance on the merits in a proceeding instituted against it may not thereafter assert that service of process did not comply with the provisions of paragraphs 1 and 3.' In practice, the international legal instruments regarding notice that are relevant in the context of Article 22 of the UN Convention are the Hague Convention, The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) and Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ, L 324/79, 2007) in case of service of documents to EU Member States. (*Uitvoeringswet VN-Verdrag staatsimmuniteit*), p 2). **Requirement to inform the Dutch Minister of Justice and Security** Both under current and future provisions, a particular complication in enforcement proceedings against a foreign state is that the bailiff who is tasked with serving a notice on a foreign state, or is instructed to attach foreign state property, is required to inform the Dutch Minister of Justice and Security in case these actions may be incompatible with the international law obligations of the Netherlands, in particular regarding immunity from execution (see response to Question 6, below). In practice, this means that the bailiff nearly always has to inform the Minister (A G F Ancery, M A M Essed, 'Staatsimmuniteit van executie', Maandblad voor Vermogensrecht, Aflevering 2, 2015, p 45). The Minister, after having obtained the opinion of the Ministry of Foreign Affairs, can prohibit the bailiff from serving notice or attaching property if such actions would violate the international law obligations of the Netherlands (Art 3a, lid 2, *Gerechtsdeurwaarderswet*). The bailiff can challenge the Minister's decision ('aanzegging') in summary proceedings before Dutch courts (Art 3a, lid 7, *Gerechtsdeurwaarderswet*; Art 438 lid 4 DCCP).
3.	**What special considerations apply where the defendant/debtor in enforcement proceedings is a state, (eg, doctrine of sovereign immunity)?**
	In the Netherlands, the principle of state immunity has been established through Article 13a of the General Provisions Act (*Wet algemene bepalingen*). This article provides that the court's jurisdiction and the enforceability of judgments are limited by the exceptions recognised in international law. This means that international law – both treaty and customary international law – determines the contours of state immunity as applied in the Netherlands. The Netherlands is party to the European Convention on State Immunity 1985. This convention aims to establish common rules relating to the scope of the immunity of one state from the jurisdiction of the courts of another state. The Dutch Supreme Court confirmed in 2010 that the state immunity regime of the European Convention 1985, at least with respect to immunity from jurisdiction, corresponds with Dutch legal practice and

reflects customary international law (Supreme Court 26 maart 2010, ECLI:NL:HR:2010:BK9154, m.nt. Th.M. de Boer (*Azeta/Chili*).

Of major importance is the subsequently adopted, and more detailed UN Convention (see response to Question 2, above), which, in large part, codifies customary international law on state immunity (*Kamerstukken II*, 2021/22, 36027, nr 3 (MvT)). The UN Convention aims to promote legal certainty in the relations between states as well as between states and natural or legal persons by means of codification and harmonisation of the rules of state immunity.

The UN Convention was adopted on 2 December 2004, but has not yet entered into force. This will happen as soon as 30 states have ratified, accepted, approved, or acceded to the Convention. As discussed in the response to Question 2, the Netherlands envisages becoming a party to the UN Convention. However, also before acceding, Dutch courts largely apply the provisions of the UN Convention as customary international law. Accordingly, ratification of the UN Convention is a logical next step. As a result, Article 277a (new) DCCP will be adopted (see Question 2).

The ratification procedure regarding the UN Convention is currently on hold after a number of Members of Parliament filed an amendment to the Act approving the convention (Kamerstukken 2022-2023, 36027 (R2160), nr 9). The Minister subsequently asked the Dutch Advisory Committee on Public International Law (CAVV) for an advisory opinion, which is due at the end of 2023. The opinion will relate to the risks of differences in interpretation between judges from different states, parties to the Convention, in particular in relation to the concept of 'commercial purposes' in Articles 18 and 19 of the UN Convention (and whether such risks should lead the Netherlands to append a declaration or reservation to these articles); as well as the international discussion on the confiscation of Russian state property and, relatedly, the relationship between confiscation and state immunity (Letter of the Minister of Foreign Affairs to the Chair of the CAVV, Adviesaanvraag over het VN-verdrag staatsimmuniteit, 29 June 2023).

It should be emphasised that the European Convention 1985 and the UN Convention (if and when the latter will enter into force) only apply to contracting states. This means that, for Dutch courts to invoke such conventions as such, both the Netherlands and the foreign state need to have ratified such conventions. But nevertheless, as already noted, Dutch courts routinely apply conventional provisions as customary international law.

In accordance with relevant international law as applied in the Netherlands, the immunity from jurisdiction of foreign states is no longer absolute. Exceptions to immunity from jurisdiction exist in disputes of a private law character (Arts 4-11 European Convention 1985; Arts 5-18 UN Convention), and immunity from enforcement does not extend to state property that is used for commercial purposes (Art 19 UN Convention). Obviously, foreign states can also waive their immunity (Art 2 European Convention 1985). Where immunity applies, a state cannot give effect to a judgment given against a foreign state. Even where immunity does not apply, however, in some cases, states are not obliged to give effect to the judgment, for example, where it would be contrary to public policy, in case of *lis pendens*, etc (Art 20 European Convention 1985).

It may happen that a foreign state does not appear before the judge to defend itself by invoking state immunity. In this case, the Dutch judge is nevertheless required to examine

	ex officio whether the foreign state is entitled to immunity. This obligation of *ex officio* review is also stipulated in Article 6(1) of the UN Convention, but the Supreme Court of the Netherlands ruled in 2017 that there was no ground to consider this provision (nor Art 23 of the UN Convention, which pertains to default judgments) to be customary international law (Supreme Court 1 December 2017, ECLI:NL:HR:2017:3054, para. 3.4.4). Still, the Supreme Court took the view the obligation of *ex officio* review is currently accepted as a matter of Dutch law on civil procedure and applies to cases that have been filed after 1 January 2018 (*Ibid*, para 3.6.3).
4.	**What exceptions may apply where the claim results from improper actions of the defendant state, (eg, wars of aggression)?**
	The Netherlands has not taken an official position regarding the legality of confiscation of property of foreign states which have committed internationally wrongful acts, such as aggression. Also, no enforcement case is pending before Dutch courts against states which stand accused of committing internationally wrongful acts. This discussion largely plays out at an EU level, at least in relation to properties of the Russian state. The EU Commission has proposed to establish a structure to manage and invest frozen Russian assets, and to use the proceeds to finance the reconstruction of Ukraine ('Ukraine: Commission presents options to make sure that Russia pays for its crimes', press release 30 November 2022). The Dutch Government has asked the CAVV for an advisory opinion on the legality of confiscating Russian state assets (see the response to Question 3, above). Also Dutch legal doctrine has discussed the issue (eg, H Over de Linden en C M J Ryngaert, 'Confiscatie van Russische eigendommen met het oog op de wederopbouw van Oekraïne: juridische mogelijkheden', O&A 2022/26; M T Kamminga, T 'Confiscating Russia's Frozen Central Bank Assets: A Permissible Third-Party Countermeasure?', *Netherlands International Law Review*, *70*(1), 1-17 (2023)). Under current Dutch law, which is based on international law, there is no exception to the immunity from enforcement of foreign states which have committed an internationally wrongful act. Currently, under Dutch law, administrative confiscation of properties belonging to such states is in any event not possible. Insofar as confiscation of properties of foreign states violates the international law of immunity, this breach could potentially be justified as a countermeasure. Countermeasures are measures which, in principle, violate international law, but of which the wrongfulness is precluded on the ground that they are taken as a response to a prior violation of international law by another state (eg, the aggression committed by Russia against Ukraine). Countermeasures are not regulated by Dutch law, but by the (customary international law) articles on state responsibility, drafted by the International Law Commission (ILC) in 2001 (Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (ARSIWA), UN Doc A/56/10 (2001), *Yearbook of the International Law Commission, 2001*, vol. II, Part Two, Articles 49-54). Countermeasures are normally imposed by states directly affected (injured) by an internationally wrongful act. In advisory opinion nr 41 (2022), the CAVV however advised that countermeasures in the collective interest, imposed by non-directly injured states, could, in some circumstances, be lawful under international law (CAVV, Legal consequences of a serious breach of a peremptory norm: the international rights and duties of states in relation to a breach of the prohibition of aggression, p 20). This means that not only Ukraine, but also

	the Netherlands and the EU could potentially impose countermeasures against Russia, such as confiscating Russian state property, provided that the requirements for the taking of countermeasures are met. It is open to doubt, however, whether these requirements are met, in particular considering that confiscation is not a temporary but a permanent measure.
5.	**What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?**
	The process standards for enforcement of a foreign judgment against a foreign state are the same process standards as for enforcement of a foreign judgment in general. Reference is made in the responses given to questions 1 and 2, above. As explained in the response to Question 1, in the absence of a convention, it follows from section 431(1) DCCP that a foreign judgment cannot be enforced in the Netherlands, even if the decision is susceptible of being recognised in the Netherlands. Pursuant to section 431(2) of the Dutch Code of Civil Procedure, new (simplified) proceedings have to be initiated before a Dutch court in order to obtain powers to enforce in the Netherlands. The proceedings are initiated by summons. A complete and authenticated copy of the foreign judgment and a legal opinion confirming enforceability of the judgment in the country of origin are usually sufficient in terms of evidence. The court may require these documents to be legalised and translated into Dutch by a sworn translator. In the writ of summons it should be substantiated that the foreign decision meets the four minimum recognition requirements established in Dutch case law (See response to Question 1). Therefore, the burden of proof is on the plaintiff/creditor. The requirements are explained in detail below. *Internationally acceptable ground for jurisdiction* The first requirement is that the foreign court had jurisdiction over the case. In this respect, the issue is neither if the foreign court had jurisdiction under its own law nor whether Dutch international law of jurisdiction would provide for jurisdiction in that court. Rather, the question is whether the foreign court had jurisdiction on the basis of an internationally, generally accepted ground (ie, domicile of the defendant or execution of the service). For instance, the so-called *forum actoris* – the court considers itself competent because the claimant resides in its country – is not considered as an internationally, generally accepted ground for jurisdiction. It is important to note that the specific basis under which the court of origin has assumed jurisdiction is irrelevant. It is relevant whether the elements of the case would provide jurisdiction on internationally acceptable grounds. *Proper administration of justice* The second requirement is that the foreign decision was rendered in the context of the proper administration of justice. In this respect, Dutch law is normative. If the foreign proceedings fail to fulfil what Dutch law considers to be principles of proper administration of justice, the judicial decision concerned will not be recognised. In the

Netherlands, the following principles are considered as principles of proper administration of justice: effecting service of process on the defendant in a timely and effective manner, therefore enabling the defendant to defend themselves; equal treatment of the litigants, in particular with respect to the right to be heard and to present their arguments to the court; and, a proper investigation of the points of view of the parties.

If a judgment has been given in default, the recognition or enforcement will be refused if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable it to arrange a defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for them to do so.

Public-policy exception

The third requirement is that the foreign judgment cannot be incompatible with the public policy of the Netherlands. This does not refer to the correctness of the foreign decision, but to the consequences of granting recognition to the foreign judgment in the Netherlands. Therefore, the mere fact that the foreign court has reached a different decision than the Dutch court would have reached is not sufficient to refuse recognition.

A foreign judgment is considered to be in violation of Dutch public policy if fundamental principles of law have been violated. This can be a violation of European Convention on Human Rights rules, mandatory EU law or fundamental principles of due process. Only in exceptional cases will a foreign decision not be recognised based on the public-policy exception. For example, foreign decisions in which the defendant is convicted to pay an amount of 'punitive damages' or 'treble damages' that by far exceed the actual damage suffered by the affected party is likely to be a decision that will not be recognised on grounds of incompatibility with Dutch public policy.

For example, the Amsterdam Court of Appeal declined recognition of the Russian judgment pertaining to the bankruptcy declaration of Yukos Oil Company. The Court of Appeal determined that the Russian judicial authorities did not execute the process of imposing and enforcing tax claims in a lawful and orderly manner; instead, their actions were conducted unlawfully with the intention to deliberately bankrupt Yukos Oil Company. Consequently, the Court concluded that both the procedural and substantive aspects of the Russian authorities' actions were in direct conflict with Dutch public policy, leading to the rejection of the acknowledgment of the bankruptcy ruling (confirmed by Supreme Court 18 January 2019, ECLI:NL:HR:2019:54).

Similarly, the Amsterdam Court of Appeal determined that a judgment from an Albanian court lacked substantive rationale and was overtly unreasonable, rendering it ineligible for recognition in the Netherlands, to uphold Dutch public order (Amsterdam Court of Appeal 17 July 2018, ECLI:NL:GHAMS:2018:3008).

Irreconcilability

The fourth requirement is that the foreign decision should not be irreconcilable with an earlier decision of the Dutch courts between the same parties and involving the same cause of action, or with an earlier decision of a foreign court between the same parties and involving the same cause of action, provided that this earlier decision of the foreign court

fulfils the conditions necessary for its recognition in the Netherlands. This fourth requirement was stipulated by the Dutch Supreme Court (Supreme Court 26 September 2014, ECLI:NL:HR:2014:2838 (*Gazprombank/Brensadon*)), but its application is not clarified in that decision. The fourth requirement appears to stem from section 34 para 4 of the Brussels I Regulation (now s 45 para 1 sub d of the Brussels I recast).

In general, foreign judgments are likely not to be recognised or enforced if there are concurrent (still pending) proceedings in the Netherlands which began before the application for recognition and enforcement. The application for recognition and enforcement may be suspended pending the outcome of the other local proceedings.

Enforceability

Furthermore, it will have to become clear that the foreign decision is still enforceable in the country of origin. It follows from Dutch case law that the requirement of enforceability in the country of origin refers exclusively to 'formal enforceability' (eg, a remedy with suspensive effect is open in the country of origin, the foreign decision has been annulled at a higher level); it does not refer to 'material enforceability' (eg, the claim has already been paid, the debtor has become bankrupt in the meantime). By this explanation the Supreme Court has sought to tie in with the case law of the European Court of Justice in the context of (the predecessor of) section 38 (1) Brussels I.

Preliminary relief proceedings

Once a quasi-exequatur has been obtained the opposite party might start preliminary relief proceedings against enforcement of the quasi-exequatur. In those proceedings the opposite party might argue that the foreign decision is not enforceable from a material point of view or that the enforcement would contravene Dutch public policy.

Statute of limitations

The mere circumstance that the claim under the foreign judgment is time-barred under the laws of the country of origin does not mean that the requirement of enforceability is not met, as this requirement only refers to the notion of 'formal enforceability' (see under *Enforceability*, above). Furthermore, it follows from recent case law of the Dutch Supreme Court that the mere circumstance that the claim under the foreign judgment is time-barred under the laws of the country of origin does not mean that enforcement of that judgment is apparently contrary to Dutch public policy in the Netherlands. In other words, the foreign statute of limitations is in principle of no consequence for the (formal) recognition and enforcement of a foreign judgment through Dutch exequatur proceedings. However, this circumstance might affect the 'material enforceability' of the foreign judgment. Therefore, it is likely that such an issue will be addressed by the opposite party in preliminary relief proceedings against the enforceability.

The statute of limitations for a Dutch court to enforce a judgment is 20 years, including a court leave to enforce a foreign court judgment and a quasi-exequatur.

No reciprocity

	Reciprocity is not a requirement for obtaining a quasi-exequatur on the basis of section 431(2) of the Dutch Code of Civil Procedure.
5a.	**What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?**
	In the Netherlands, effecting the service of process on the defendant in a timely and effective manner, therefore enabling the defendant to defend themselves, is an important principle of proper administration of justice. When assessing whether the service requirements have been met, the service of documents, as set out extensively in the response to Question 2, is (most likely to be) accepted when followed correctly. *Judgment by default* If a judgment has been given in default, the recognition or enforcement will be refused if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable it to arrange a defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for them to do so. In addition, Article 139(2) (new) of the DCCP provides that, if a foreign state defendant does not appear in court, the judge cannot render a default judgment unless they have established that the process has been served pursuant to Article 22(1) and (3) of the UN Convention, and a period of at least four months has expired since the date of serving process pursuant to Article 22(1) and (2) of the UN Convention. Article 143(3) (new) of the DCCP adds that a foreign state can challenge a default judgment within four months of having received the judgment. These provisions codify Article 23 of the UN Convention, which governs default judgments rendered against foreign states in the following terms: ‘1. A default judgment shall not be rendered against a State unless the court has found that: (a) the requirements laid down in article 22, paragraphs 1 and 3, have been complied with; (b) a period of not less than four months has expired from the date on which the service of the writ or other document instituting a proceeding has been effected or deemed to have been effected in accordance with article 22, paragraphs 1 and 2; and (c) the present Convention does not preclude it from exercising jurisdiction. 2. A copy of any default judgment rendered against a State, accompanied if necessary by a translation into the official language or one of the official languages of the State concerned, shall be transmitted to it through one of the means specified in article 22, paragraph 1, and in accordance with the provisions of that paragraph. 3. The time-limit for applying to have a default judgment set aside shall not be less than four months and shall begin to run from the date on which the copy of the judgment is received or is deemed to have been received by the State concerned.’

5b.	**What exceptions may apply where conventional forms of service against a state are impossible, (eg, due to absence of diplomatic relations)?**
	Reference to this is made in the response to Question 2. If the country in which the debtor resides or holds office is not a party to any treaty and is not an EU Member State, service must be conducted in accordance with Article 55 DCCP. In such a case, the bailiff must effect service upon the debtor at the Office of the Public Prosecutor (*Officier van Justitie*). The Public Prosecutor receives the documents on behalf of the debtor and forwards these to the known contact in the respective country. However, it remains uncertain whether the respective country will subsequently proceed with the service of these documents. Nevertheless, under Dutch law (unlike the arrangement with EU Member States), the moment of service by the bailiff to the Public Prosecutor is deemed the moment of service.
5c.	**What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?**
	Throughout the majority of the Dutch civil contentious procedural law, legal representation is mandatory (Art 79(2) DCCP). With a few exceptions, every defendant under Dutch law has the right to be represented by a lawyer which, if necessary, can be assigned *ex officio*. While this is not an absolute right, it is considered one of the most fundamental features of a fair trial. A defendant cannot lose this right solely on the grounds of non-appearance at the hearing (ECJ 28 March 2000, ECLI:EU:C:2000:164 (*Krombach/Bamberski*), par 39). In this context, the European Court deemed important the Netherlands ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECJ 2 April 2009, ECLI:EU:C:2009:219 (*Gambazzi/DaimlerChrysler*), para 28). A state may refuse recognition or enforcement of a decision rendered in another contracting state if such decision would, in an unacceptable manner, conflict with the legal order of the requested member state by infringing a fundamental principle/right (ECJ 28 March 2000, ECLI:EU:C:2000:164 (*Krombach/Bamberski*), para 37; ECJ 6 September 2012, ECLI:EU:C:2012:531 (*Trade Agency Ltd/Seramico Investments Ltd*), para 51). However, states are banned from examining the correctness of the foreign decision and from refusing recognition or enforcement of that decision solely on the ground that the legal rule applied by the court of the state of origin differs from the one the court of the requested member state would have applied if the dispute had been brought before it. Similarly, the court of the requested member state may not verify the correctness of the legal or factual assessment made by the court of the state of origin (ECJ 28 March 2000, ECLI:EU:C:2000:164 (*Krombach/Bamberski*), para 36; ECJ 6 September 2012, ECLI:EU:C:2012:531 (*Trade Agency Ltd/Seramico Investments Ltd*), para 50). Fundamental rights, such as the right to representation, are certainly not absolute rights but may entail limitations. Nonetheless, these limitations must genuinely correspond to objectives of general interest pursued by the measure in question and must not, in light of the intended purpose, constitute a manifestly and disproportionately intrusive infringement on the rights thus guaranteed (ECJ 2 April 2009, ECLI:EU:C:2009:219

	(*Gambazzi/DaimlerChrysler*), para 29). It is the task of the referring court to assess, in light of the specific circumstances of the case, whether this is the case (ECJ 2 April 2009, ECLI:EU:C:2009:219 (*Gambazzi/DaimlerChrysler*), para 30). It is also established by consistent case law that member states are generally free to define the requirements of their public policy in accordance with their national perspectives, but the delimitation of this concept is a matter of interpretation of the Treaty on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention). Consequently, it is not for the European Court to determine the content of a member state's public policy, but rather to oversee the boundaries within which a court of a member state can, on the basis of this concept, refuse to recognise a decision of another member state (ECJ 28 March 2000, ECLI:EU:C:2000:164 (*Krombach/Bamberski*), para 23; ECJ 6 September 2012, ECLI:EU:C:2012:531 (*Trade Agency Ltd/Seramico Investments Ltd*), paras 22 and 49).
5d.	**What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?**
	If a party chooses not to retain a lawyer despite the obligation of legal representation, that party will not be admitted to the proceedings. If a party seeks representation but is unable to find a lawyer, one will be appointed. Pursuant to Articles 17 and 18 of the Dutch Constitution, everyone has the right to legal representation. This principle was recently confirmed by the Court of Discipline (the highest Dutch disciplinary body for lawyers), in the context of Dutch lawyers no longer willing to provide legal assistance to Russian clients and the Russian Federation. The Court of Discipline emphasised that as one of the essential characteristics of the Dutch rule of law, everyone must have access to the courts/justice. No one should be denied the right to legal representation in order to gain access to the courts or to defend themselves, as set out in Article 13 of the Attorneys Act (Court of Discipline, The Hague, 18 August 2022, ECLI:NL:TAHVD:2022:132, par 4.11). The Court continued that the term 'litigants' should also be understood to include non-natural persons, such as legal persons, administrative bodies and also (foreign) states. The fact that the Russian Federation is involved in a conflict with another power (through its own actions or otherwise) does not alter this. A different interpretation, which could lead to a non-natural person actually being deprived of access to the Dutch courts, conflicts with the Dutch (and also the European Union) legal system. Consequently, the Russian Federation is entitled to invoke section 13 of the Attorneys Act and can demand to be assisted by a lawyer (Court of Discipline, The Hague, 18 August 2022, ECLI:NL:TAHVD:2022:132, par 4.13). It makes no difference that there are EU sanctions in place against the Russian Federation as they do not concern the provision of legal assistance in proceedings in which such assistance is mandatory.

6.	**What assets may be subject of enforcement if the claim is against a state and what are the requirements, (eg, enforcement against assets of state-owned entities)?**
	Once an enforceable title in in place, the bailiff is authorised to seize anyone's property in the Netherlands at their expense. The bailiff always levies the attachment after a judicial review has been carried out. We will not elaborate on the differences between conservatory and executory attachment. The debtor may be a natural person, a company or a legal entity under public law, such as the state of the Netherlands. Foreign states which have civil relations in the Netherlands are not treated differently in this regard. Consequently in a dispute, foreign states can also be ordered to do, leave or pay something. Where the debtor is a foreign state, however, the bailiff is required to notify the Minister of Justice and Security when issuing a writ intended for or an attachment against a foreign state. The Minister then has the power to ban the bailiff from making an attachment at the expense of the foreign state if doing so is contrary to the international law obligations of the Dutch state. In such a case, the bailiff may bring (summary) proceedings in Dutch Courts to challenge the Minister's decision (*aanzegging*). The doctrine of state immunity plays an important role in attachment or security against foreign states. Immunity from attachment or security is regulated by Article 18 of the UN Convention. Under this article, a state enjoys immunity in principle from attachment or security in connection with proceedings before the courts of another state under all circumstances. There are a number of exceptions under which there is no state immunity. First, a state cannot invoke its immunity if it has been waived in writing. Second, in any case, property intended for public service (including funds intended for the maintenance and operation of public service) cannot be seized, section 436 jo 703 DCCP. Third, Article 21 UN Convention provides for the protection of certain, non-exhaustive, specific categories of property. The article provides protection by excluding these specific categories of property from even any presumption or implication of consent to coercive measures. Properties named include bank deposits, and properties which serve diplomatic duties, military duties, central bank properties and properties that are part of cultural heritage or exhibitions and are not for sale. However, the Dutch Supreme Court ruled in 2021 in the matter of central bank property (Art 21.1.c UN Convention) that it cannot be assumed that this provision qualifies as an establishment of customary international law, since – at least according to the Supreme Court – the legislation and case law of many other states assumes less far-reaching central bank immunity (Supreme Court, 6 July 2021, ECLI:NL:HR:2021:1042, para 6.2.3). According to the Supreme Court, it can at must be assumed 'that the generally applicable, unwritten rule of customary international law can be regarded as the rule that central banks can claim immunity from seizure and execution insofar as it concerns "property" of the central bank that is intended or used for the performance of central bank duties in connection with monetary policy and currency policy' (*Ibid*, para 6.2.4). In this 2021 case, the Supreme Court also held that although the UN Convention does not cover 'criminal proceedings', it must be assumed that immunity in criminal cases is at least no more

limited than in civil cases. This means that, in principle, foreign states enjoy immunity from criminal proceedings, at least with respect to property which has a public purpose.

Incidentally, irrespective of the issue of immunity, execution is only possible on property that falls within the foreign state's recoverable assets. The determination of this is not always self-evident, for example, in case another party exploits intellectual property rights. The Court of Appeal of The Hague ruled in this regard in 2022 that rights are still in the recoverable property of a foreign state even if these rights have been transferred to another entity, insofar as the latter does not exploit the rights as a full right holder due to far-reaching restrictions on the power of disposal imposed by the foreign state (Court of The Hague, judgment of 28 June 2022, ECLI:NL:GHDHA:2022:1159, para 5.11-5.19).

According to the Supreme Court, the burden of proof and proof regarding the susceptibility to attachment and execution rests on the creditor who attaches or seeks to attach property of the foreign state (Supreme Court 30 September 2016, *Morning Star t. Republiek Gabon en Staat der Nederlanden*, ECLI:NL:HR:2016:2236, rov. 3.5.3, commented by C M J Ryngaert, 'Staatsimmuniteit van executie: beslagmogelijkheden voor crediteuren na de herfstarresten van de Hoge Raad (2016)', *TCR* 2017, p. 111-118). Accordingly, the creditor must always present evidence to establish that the goods are used or intended by the foreign state for, in short, use other than public purposes. In practice, it appears (unfortunately) hardly impossible to prove non-public use or destination (eg, District Court of The Hague, 27 January 2021, ECLI:NL:RBDHA:2021:533). The court will therefore usually examine the attached property has a public purpose, in which case it will be protected from enforcement.

For some Dutch case law, it was sufficient that the plaintiff made it plausible that the immediate destination of a good was non-sovereign (commercial) (District Court The Hague, 18 October 2017, ECLI:NL:RBDHA:2017:11906, *NJF* 2018/18 (*Crystallex International Corp/Petróleos de Venezuela S A*), r.o. 5.36; Court of Appeal Amsterdam 31 July 2018, ECLI:NL:GHAMS:2018:2736 (*Instrubel/Irak*), r.o. 3.9; ECJ, 19 March 2019, ECLI:NL:OGHACMB:2019:86, r.o. 2.12; Court of Appeal Amsterdam 7 May 2019, ECLI:NL:GHAMS:2019:1566 (*Samruk/Kazachstan*), r.o. 3.7.)

However, the Supreme Court ruled in 2020 that 'immunity from execution is not limited to property whose immediate destination is a public one' (Supreme Court 19 December 2020, (ECLI:NL:HR:2020:2103) *Republic Kazachstan / Samruk-Kazyna JSC*, rov. 3.2.4). This case law undeniably complicates the enforcement of judgments rendered against foreign states. While the burden of proof on the creditor is indeed heavy, it is not insurmountable in all cases. For example, in 2022, the Court of Appeal of The Hague ruled that the creditor had made it plausible that trademark and copyright rights belonging to a foreign state were aimed at the commercial exploitation of alcoholic beverages, and 'by their very nature intended for purposes other than public purposes, namely for the promotion of [commercial] sales'; attachment was therefore possible.