

# **Eurojuris International**

## **European Law Guide**



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## **Nederlands**

November 2007

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# Introduction by the author

The tricolour of the Netherlands with its three horizontal stripes is one of the world's sovereign flags. Since about the year 1630, the Dutch national flag has always been red-white-blue and has always borne the name the Prince's Flag. The Dutch national flag is one of the very few national flags who have retained their original form.



So despite the fact that the Netherlands is a rather small country it has clearly managed to keep her independence, traditions and values and has become known as an international orientated community.

Due to its favorable location by the North Sea, the Netherlands plays an important role as a main port, distribution and trading centre for companies operating worldwide. The port of Rotterdam handles some 327 million tons of goods every year, and is one of the biggest ports in the world. Amsterdam Schiphol international airport is the fourth biggest cargo-handling airport in Europe. That is why the Netherlands is often called the Gateway to Europe.

As a founding member of the EU, the Netherlands has played an important part in promoting EU integration and in pioneering closer European ties. As a small country, it also has much to gain from a strong European legal order. An organization such as the EU, driven by common, rather than national interests, offers smaller countries protection.

The Dutch economy, strongly geared to exports, has benefited hugely from EU membership. Dutch agricultural and manufacturing goods now reach their European customers much more easily. Three-quarters of Dutch exports go to other EU member states. The Netherlands is the EU's second biggest agricultural exporter after France.

Covering all regions and legal areas, the Dutch network of Eurojuris law firms can offer you full legal service on all aspects of developing business in the Netherlands.

Paul van den Berg,

Eurojuris Nederland (Marree en Dijkhoorn Advocaten, Amersfoort, Nederland)

# Word from the President of Eurojuris International

Eurojuris International with its 5000 lawyers represents one of the largest legal knowledge centres in Europe and beyond.

Doing business in Europe still remains a big challenge. The law still differs from country to country.

Our goal is to make this huge local expertise and knowledge available to you.

We provide you with practical "European Law Guides" for the various jurisdictions. Drafted by professionals, they are a good introduction to conducting business in the different countries.

We are keen to help you succeed in Europe and remain at your disposal.

Sincerely yours,

Thomas Rinne  
President Eurojuris International



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# The legal system

The Dutch legal system originates from Canonical and Roman law and is compatible to the legal system in other continental European countries.

The Dutch legal system is traditionally divided up into public law and civil law. Civil law regulates relations between citizens and between natural persons and legal persons e.g. company and institutions.

Public law regulates more or less the general social states interest and the legal relationship between citizens and the state at times the state exercises from her exclusive rights. Public law is divided into constitutional law, international law, administrative law and criminal law while civil law can be divided into corporate and company law, labour law, property law, merges and acquisitions, commercial law and intellectual property law.

At the top of the legal Dutch hierarchy stands the Code Civil of 1838 which is a direct result of the Code Napoleon which was implemented in the Netherlands until that time. After World War II a total renovation of the Civil Code took place.

The dispensation of justice consists out of several authorities. These authorities are spread all over The Netherlands based upon provincial lines. The Netherlands is divided into 19 districts, each with its own court.

Each court has a number of sub-district venues. It is relatively simple for ordinary

citizens to have their case heard in the sub-district sector. This means that they have the right to argue their own case and do not need a lawyer to represent them in court. In terms of civil law, the sub-district judge deals with all cases involving rents, hire purchase and employment. He also deals with all conflicts involving an amount under 5,000 euros.

The 19 districts are divided into five areas of Court of Appeal jurisdiction. With regard to criminal and civil law, the justices of the Court of Appeal only deal with cases where an appeal has been lodged against the judgement passed by the district court. The Court of Appeal re-examines the facts of the case and reaches its own conclusions. In most cases it is possible to contest the Court of Appeal's decision by appealing in cassation to the Supreme Court of the Netherlands. In addition to criminal and civil cases, the Court of Appeal also deals with all appeals against tax assessments, in its capacity as administrative court.

Disputes may also be referred to arbitration before the Dutch Institute of Arbitration or other arbitration boards and mediation. Nowadays much effort from the Dutch government is put into solving disputes in a alternative way regarding the time frame for legal proceedings and the average costs of legal proceedings.

# Commercial law

Dutch law is build on the general principal of freedom of contract however the legal system contains a wide range of rules protecting the commercial environment, especially in terms of consumer and state protection.

## **Jurisdiction rules**

The Brussels convention on jurisdiction and enforcement of judgement in civil and commercial matters is enforced in The Netherlands and apply the most legal actions with a commercial aspect.

## **Governing law**

The Netherlands have acceded to the Rome convention which in general regulates a proper choice of law in The Netherlands with respect to contract.

## **Sale of Goods**

The Sale of Goods Act is the main piece of law helping buyers to obtain their legal position when their purchases go wrong. Eventually the act states that whatever you sell must fit its description, be fit for its purpose and be of satisfactory quality. Aside from the legal issues it makes sense to comply with the Act in order to build costumer relationships. The rules from the Sale of Goods Act will only apply when the parties have not agreed otherwise or where trade custom or usage does not imply otherwise. However, the act does contain some mandatory rules on the sale of goods to consumers which can not be derogated from.

## **Limitation and exclusion of liability**

In commercial contracts it is possible to limit or exclude any given liability However it is not possible to exclude or limit liability for personal injuries regarding product liability. Furthermore it is not possible to exclude or limit certain liability in contract with consumers. The court may censor an exclusion of liability if the exclusion is being concerted unfair or unreasonable.

## **Data protection**

The writer privacy is also in The Netherlands a highly developed area of law. Therefore The Netherlands have implemented Directive 59646/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

## **Competition law**

The Dutch competition law has implement articles 81 en 82 of the EC 3 d and prohibits anti competitive agreements and abuse of a dominant position. The Dutch competition act has taken effect from 1989. Since 1989 cartels and other economical positions of power are prohibited unless approval has been given by the Dutch Competition Authority (NMA).



# Company law

Due to its geographical location and Dutch economic strength, for example the port of Rotterdam and the Amsterdam Schiphol International Airport, the Netherlands has an international strongly orientated society and was ranked the eighth largest exporter in the world in 2003. So many foreign groups, institutions or companies decided to set up companies in the Netherlands.

Public limited companies and private limited companies are the most used forms of companies in the Netherlands. Business can also be formed as limited partnership general or commercial partnership and European companies.

## **Public Limited Companies (naamloze vennootschap / NV)**

The act on public limited companies requires a minimum paid up share capital of € 40.000,-- and the company structure is based upon a board of directors, board of supervisory directors and a shareholders meeting. Public limited companies are allowed to issue share certificates and can be listed on the Euro Next Stock Exchange in Amsterdam.

## **Private Limited Companies (besloten vennootschap / BV)**

Private limited companies require a minimum paid up share capital of € 80.000,--. Private limited companies are not allowed to issue share certificates and to purchase own shares and cannot be listed on the Euro Next Stock Exchange in Amsterdam.

## **Limited Partnerships (commanditaire vennootschap / CV)**

Limited partnership must comply with a set of articles of association. A limited partnership can be formed as an entity with one or more general partners having unlimited liability while the given number of partners have their liability limited to a certain amount.

## **Limited Partnership Company (vennootschap onder firma / VOF)**

It is not necessary for commercial partnership to comply with the set of articles of association. Therefore all partners have unlimited liability so your entire personal assets are liable for obligations.

## **Partnership**

A partnership is based upon a partnership agreement which leads to a total personal unlimited liability.

## **European Company (SE)**

Companies also have the opportunity to form an European Company which is governed by Community law directly applicable in all member states. An European Company will be able to operate on an European wide basis and requires a minimum paid up share capital of € 120.000,--.



# Mergers and acquisitions

As a part of corporate development companies are constantly seeking for expansion both national and international. Businesses are bought, sold, and merged.

Companies can merge in two ways. Either one company takes over assets and liability of another company and continues to exist while the company taken over is dissolved or two companies are dissolved and joined to form a new company (Newco).

Relevant legislation concerning mergers and acquisitions is the Dutch competition act and the body, responsible for its enforcement, the Dutch competition authority (NMa). If a merger or takeover falls within the scope of the Dutch competition act, the merger must be notified to the Dutch competition authority and may not be put into effect until the competition authority has given its permission. The criterion applied by the competition authority is to scrutinize the merger whether the merger creates a dominant position in the Dutch market.

On 1 January 2007 also the Financial Supervision Act (FSA) is entered into force. The FSA consolidates a large number of financial supervision laws and makes legislation more transparent and more market orientated.

## Acquisition of assets

In case a company wishes to acquire assets and liabilities rather than shares, it will often be preferable to incorporate a Dutch company which will acquire the assets and liabilities and employ the employees due to the exclusion of certain actual or contingent

liabilities and text issues.

However, the scope of a due diligence investigation and the sellers' representation and warranties are often the same regardless of whether shares or assets are purchased.



# Property

In most cases a mortgage credit institution finances the purchase. However, property can also be purchased with cash or financed by a mortgage from a bank. The purchase is registered in the Dutch land register, which is open to the public.

The owner's identity, registered mortgages and owner's bankruptcy are all listed at the land register. The same applies for other burdens and easements such as right of way, local restrictions on construction etc.

The land register makes it very easy for the public to obtain information and documents at a low cost within short time as to what liabilities are attached to any particular property. As the ranking of priority of lenders will appear on the property's list of mortgages the land register serves as a dependable way of providing security to lenders. The registration of a mortgage protects the mortgagee against subsequent purchasers and against the mortgagor's other creditors.

The Ministry of Justice has not the possibility to consent when non-residents of the Netherlands or companies, associations etc. which are not domiciled in the Netherlands wish to purchase property in the Netherlands. In fact every EU or EEA company or citizen is entitled to purchase property in the Netherlands without any restrictions.

In the Netherlands renters have a large

variety of possible claims relating to rent protection. For example termination of the tenancy agreement is only possible by a judicial decision. Concerning the lease of commercial property, shopping centres, office buildings etc., a large amount of rental restrictions apply in the Netherlands like the strict term of the lease of five years.

In the Netherlands land-use plans are very common and also strict and far-reaching which makes it (more) difficult for purchasers of Dutch property to decide what to do with the property or (even) to amend the zoning plan.



# Intellectual Property Rights

Due to the implementation of many intellectual property directives the Dutch law on intellectual property rights has become more and more an European matter.

## Copyright

The Netherlands has implemented all of the UE copy right related Directives and acceded to most of the international conventions related to copy right and neighbouring rights. Copy right is a set of exclusive rights regulating the use of a particular expression, idea or information that may subsist in a wide range of creative, intellectual or artistic form or work as well as maps, certain types of catalogues and databases and computer programs.

A copy right exists as soon as a particular work is created by the authors' own intellectual creative contribution. Since protection is not conditional upon any form of registration there is no register available. Copy right protection is given for the lifetime of the author plus seventy years.

## Trade Marks

The Dutch (Benelux) trade marks act implements the EC trade marks directives and is obtainable either by registration or through use. Furthermore it is possible to register a community trade mark that will have effect in every EU member country including the Netherlands.

Trade marks can be any symbol, which is able to distinguish a product or service from the products or services of other undertakings. Protection of a registered trade mark is given for a period of ten years starting from registration date and holds a possibility for renewal. If the trade mark has not been used for five years, the registration and protection may cease.

## Designs

The Dutch (Benelux) design act implements the EU directive and provides protection for registered and unregistered design. According tot the Act the appearance of a product or a part of a product may obtain protection provided the design is novel and has an individual character. A registered design is protected for a total period of up to twenty five years. Without registration a community design is protected against copying for three years.

# Agents and distributors

## Agents

A lot of foreign companies, institutions and natural persons find it profitable to set up business through agencies or distributors in the Netherlands. Agency- and distribution agreements are therefore commonly used in the Netherlands also due to the geographical position of the Netherlands.

The Dutch Act on commercial agents implements the EU Directive on commercial agents. Most provisions of the Act are mandatory and cannot be derogated from. Upon termination or expiration of the agency agreement the Netherlands has opted for the indemnity model.

According to the Act agents have a right to receive a responsible and fair commission in case of limitations on noncompetition clauses. The clauses cannot exceed two years in duration and cannot extend to geographical areas, groups of customers or kinds of goods not covered by the agency agreement.

When the agreement is terminated the agent is entitled to indemnity if the agent has brought the principal new customers or significantly increased the business with existing customers from which the principal continues to derive substantial benefits, and if the extended payment of indemnity is equitable considering the circumstances.

## Distributors

Besides the relevant national and EU competition rules including the relevant group exemptions there is no statutory law in the Netherlands on distribution agreements. Therefore the parties are to a very large extent free to agree on specific terms of the distribution agreement.

In most cases the parties desired on specific termination notice provisions in their agreements. If parties have not decided any specific agreements in most cases the court will look to the length of the relationship and determine the notice period on this basis based upon the circumstances. The required notice period will often exceed six months.



# Personnel and labour market

Employment law has always drawn great interest in the Netherlands and the general public as it concerns every individual. There is a profusion of legislation in the Netherlands in this area not in the least because it is subject to constant change.

According to published figures in the first period of 2007 the labour force unemployment rate was 5.0 %, as against 6.1 % one year previously which indicates a strongly decrease of the Dutch unemployment rate.

## **Employment contract**

An employer and employee can decide to close a fixed-term employment contract or an employment contract for unspecified length of time. Furthermore it is possible to renew a fixed-term contract twice whereby the total duration of the sequence may not exceed three years.

## **Holidays**

An employee is entitled to a term of paid holiday equal to four times the amount of worked days. So if an employee works five days a week he earns an annual 20 days of paid holiday.

## **Mergers and Acquisitions**

No matter what general or specific terms an employee enjoys, these terms must be accepted by any purchaser who acquires a company or business.

## **Dismissal**

A dismissal must be in writing and be of a fair nature. To dismiss someone with immediate effect it is necessary the dismissal is filed without any delay.

## **Social security**

In cases of illness, childbirth, childcare, pension and unemployment the social coverage is comprehensive. The social security is mainly financed through taxes

## **Salary**

In the Netherlands every employee under 65 years is entitled to minimum wage. Minimum salary rates are normally defined at sector level mostly through collective bargaining. In practice most salary levels are agreed at company level.

## **Social Plan**

A social plan can evolve by big reorganisations or restructurings of a company or business. In a social plan the employees' rights are laid down as well as the conditions of the restructuring.

# Criminal law

Criminal law lays down the rules the individual is required to adhere to. The Netherlands has a criminal code which is generally divided in two parts and based upon the principle of the two types of punishable offence: summary offences and criminal offences. Summary offences are relatively minor, criminal offences are more serious.

One part contains the material aspect of Dutch criminal law and exists out of descriptions of criminal provisions and maximum penalties on these criminal provisions.

The other part of the criminal code consists out of formal aspects of Dutch criminal law explaining more or less the formalities regarding prosecution, investigation of criminal offences, at dedication of disputes and the enforcement of sentences.

Prison for life is the most strict punishment to be sentenced according to Dutch criminal law and is issued more or less in connection to murder and terrorism. Therefore death penalty cannot be sentenced in the Netherlands.

In the Netherlands, there are four bodies that are involved in criminal proceedings: the sub-district court, the district court, the court of appeal and the Supreme Court.

By no means all criminal cases are brought before the court: the criminal law also has other procedures. The police can dispose of some matters themselves, for example. So can the public prosecutor.

## Alternative criminal proceedings

Criminal cases often take a long time and cost the Dutch government a lot of money. In some cases it is therefore better to search for an alternative. Both the police and the public prosecutor can in certain cases attempt to dispose of the matter themselves. The public prosecutor is able to offer the suspect a compromise. If the suspect accepts, he pays a specific sum of money and the matter is closed. The suspect and the victim can sometimes also reach a compromise on how the matter should be dealt with. These are referred to as 'out-of-court' settlements.

Minor traffic offences are disposed of via the Central Fine Collection Agency, which automatically sends a giro payment slip to the offender.

In the case of some punishable offences, e.g. football vandalism, accelerated proceedings are often applied. This means that the suspects have to appear in court within a few days and have to serve any sentence they receive immediately. In these cases we speak of tit-for-tat policy.



# Civil procedure and practical issues

## Legal proceedings

In the Netherlands civil actions normally take place in court. The time frame for legal proceedings is generally between ten and twenty months from issue of proceedings to judgement delivered by the district court.

In order to institute legal proceedings the plaintiff and defender both must pay a court fee. At the beginning of legal proceedings a fee must be paid by both plaintiff and defender. If the subject matter does not exceed € 11.354,-- a fee of € 300,-- must be paid. Does the subject matter exceed € 11.354,-- a 2,2% of the subject matter has to be paid by the plaintiff and the defender.

The court grants the plaintiff compensation of his legal cost if the plaintiff succeeds in his claim. If the defendant has successfully succeeded in his (counter)action the defendant is entitled to legal cost.

However, the legal costs in the Netherlands are based upon a liquidation fee and do not cover all of the expenses but more or less 50% of the legal costs.



# Alternative dispute resolution

To avoid long and valuable legal proceedings many parties nowadays choose alternative dispute resolutions instead of starting legal proceedings. The Netherlands has different kinds of alternative dispute resolutions and they all require that the parties participate in solving the conflict.

## **Arbitration**

Arbitration implies that the parties have signed an agreement stating that a certain dispute must and can only be settled by arbitration proceedings instead of court. Arbitration is binding and final and therefore without access to appeal.

The arbitration tribunal consists of one or more judges chosen by the parties themselves. Arbitration is therefore characterised by the parties appointing a private court to settle their differences.

## **Mediation**

Mediation is a rather effective and cheap way of solving disputes and differences

which applies when dealing with any given dispute regardless of the party being a company or a private person. The purpose of the mediation is to find a solution satisfactory for both parties. The Dutch district courts try to enthusiastic parties to start participation into mediation due to the in some cases long time frame of legal proceedings.

## **Binding opinion**

Parties can also choose for binding third-party ruling. Depending on the wishes of the parties a third party charged with giving a binding opinion will be in session and finishes the dispute by a written agreement binding for both parties.



# “Koninkrijk der Nederlanden” Kingdom of the Netherlands



Geographical Position Western Europa  
between 53°33'22" and 50°45'4" latitude North  
between 3°21'30" and 7°13'42" longitude East

Capital Amsterdam  
Seat of Government The Hague  
Official languages Dutch

Government Constitutional monarchy  
Head of State Queen Beatrix  
Head of Government Prime-Minister Jan Peter Balkenende

Accession to EU March 25 1957

Area  
-Total 41.500 km<sup>2</sup>  
-Water 7.700 km<sup>2</sup> (19 %)  
-Land below sea level 26%

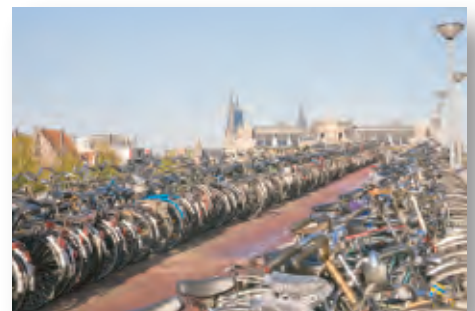
Population  
-2007 estimate 16.357.000  
-Population per km2 485

GDP 2005 estimate  
- Total € 505,6 billion  
- Per capita € 30.174

Currency Euro

Time zone CET2 (UTC+1)

Internet TLD .nl  
Calling code + 31



**E**urojuris International has been a leading network of independent law firms in Europe since 1992. With some 600 firms and about 5000 lawyers, we cover 610 cities in 30 European countries. Eurojuris is currently focusing extensively on the quality of its network as about 50% of Eurojuris firms are ISO certified or will be certified in the near future. The main objective of Eurojuris International is to provide its member firms with a unique international legal networking that meets the growing demand of our clients.

All Eurojuris law firms are well-established and reputable firms in their community. They are carefully selected and abide by defined quality standards relating to fees, mandatory professional indemnity insurance, knowledge of foreign languages, promptness and confidentiality. All firms maintain their professional independence.

## **With Compliments**