

# Limitation Periods: Overview (Netherlands)

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A Practice Note providing an overview of the law of limitation in the Netherlands. This Note sets out the limitation periods that apply to various types of claims and provides guidance on the practical considerations parties should consider in relation to limitation when bringing or defending a claim.

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Limitation issues are the first thing on a legal practitioner's mind when faced with a claim that may lead to litigation or is pending before a court or tribunal. From a claimant's perspective, the lapse of the relevant limitation period may result in a court or tribunal dismissing the claim, which means no action can be brought on it. Counsel should ensure that a claim is brought within the limitation period, or that the limitation period stops running or is suspended (or extended) to accommodate the claim, if necessary. From a defendant's perspective, a claim barred by limitation may lead to its dismissal and therefore counsel may need to expressly raise it in their statement of defence. Counsel from both sides need to be aware that disputes regarding limitation periods often give rise to satellite litigation and delay the primary proceedings.

Limitation periods differ across jurisdictions, and even within a jurisdiction period it may vary according to the type of claim. This Note provides an overview of the laws of limitation in the Netherlands and the relevant limitation periods for different types of claims. It also sets out several practical considerations relevant to bringing or defending a claim, such as:

- The options to stop, suspend, or extend the running of the limitation period.
- The procedural options open to a defendant when a claim is time-barred.
- The impact of COVID-19 restrictions on limitation periods.
- The limitation law applicable to a claim governed by foreign law.

This Note also provides tips for claimants and defendants to keep in mind when considering the issue of limitation.

## Definition of Limitation Period

A limitation period is defined as the period that a legal claim is no longer enforceable in court after a certain period of time has elapsed (Article 3:307, Dutch Civil Code (DCC)).

## Principal Authorities Governing Limitation

Dutch law provides various limitation periods after which a claimant can no longer claim performance of their claim. The regulations on limitation are included in Articles 3:306 to 3:325 of the DCC. As a main rule, if no specific limitation period is stipulated, a claim lapses 20 years after the claim arose or became due and payable. However, the law stipulates a specific shorter limitation period for many types of claims, which means that most claims are time-barred within a shorter timeframe than this 20-year period.

Most exceptions to the main rule are subject to a five-year statute of limitations. This five-year limitation period applies to the following claims, among others:

- A claim for performance of an agreement to give or do (for example, the performance of a money loan agreement). The limitation period starts from the moment the claim is due and payable.
- A claim for periodic payment (for example, the payment of interest or wages). The limitation period starts from the moment the claim is due and payable.
- A claim for undue payment. The statute of limitations begins to run from the day after the day on which the injured party is actually able to bring a legal claim for reimbursement.
- A claim for compensation for damages or a stipulated penalty. The five-year limitation period starts to run from the day after both the damage and the perpetrator are known (with a maximum limitation period of 20 years after the day on which the event causing damage occurred). However, for damages resulting from certain crimes, longer periods apply.
- An action to rescind a contract on the grounds of breach, or to remedy a breach. The five-year limitation period starts from the moment the claimant became aware of the breach (with a maximum limitation period of 20 years after the breach occurred).

An even shorter limitation period applies to consumer purchases, and a legal claim for payment of the purchase price must be made within a two-year limitation period (which runs from the date of purchase).

All limitation periods are codified in the Netherlands.

## Limitation and Arbitration

The laws of limitation also apply to arbitration proceedings in the Netherlands.

## Legislative Intent

Under Dutch law, a claimant cannot enforce its rights against a defendant indefinitely. The limitation periods contained in the DCC ensure that claims do not run indefinitely and become unmanageable.

## Distinction Between Prescription and Limitation

There is no distinction in the Netherlands between the law of limitation and laws that extinguish a right of action after a specified period of time has elapsed.

## Expiry of the Limitation Period

When the limitation period expires and the claimant has failed to file a claim within the prescribed limitation period:

- The claimant can no longer legitimately enforce the claim.
- The defendant can use the expiry of the limitation period as a defence against the filed claim.

## Counterclaims

The law of limitation applies to counterclaims in the same manner as it applies to a claim.

## Amendments to Pleadings

The law of limitation applies to amendments to pleadings in the same manner as it applies to a claim. The law of limitation will apply to amendments to:

- The statement of case.
- Add new claims.
- Add new parties.
- Change the existing parties to the proceedings.

## Commencement of Time

The limitation period generally begins to run when the claim arises, and the claim is due and payable. However, there are some exceptions to this, for example:

- In a claim for damages, where the limitation period starts to run at the moment the claimant and the defendant knew both:
  - that there was damage; and
  - who was responsible for the damage.
- In the case of nullification of contract, where the limitation period starts to run at the moment the claimant (in the case of error or deceit) became aware that they had erred or were deceived.

## Length of Limitation Periods and Triggers

- For a comparative table on the length of limitation periods in different types of claims and actions, see [Length of Limitation Periods](#).

## Stopping and Suspending the Limitation Period

The running of the statute of limitations can be suspended by interruption (Article 3:317, DCC). An "interruption" to the limitation period takes place where a claimant takes a specific action that acts to "interrupt" the ongoing statute of limitations. For example, interruption can take place by the claimant:

- Instituting an act of prosecution (for example, starting legal proceedings by issuing a summons).
- Issuing a petition.

- Filing of a claim for verification.
- Levying an attachment to a claim.

The limitation period of a legal claim for performance of an obligation (including a claim for damages) can also be interrupted by the claimant sending a written demand or notice to the defendant, in which the claimant reserves the right to performance. This written notice should serve to act as a sufficiently clear warning to the defendant, so that the defendant can take into account the potential for a claim to be brought, and therefore retain any relevant data and evidence (so that the defendant will be able to properly defend themselves against the claim, if it is filed).

However, a written notice is not sufficient to interrupt the limitation period in all cases. Other legal claims (that is, legal claims that are not legal claims for the performance of an obligation) can only have the limitation period interrupted by either the claimant instituting a claim or conducting another act of prosecution, which must be done within six months after the submission of a written summons. Included in these types of other claims are:

- Actions for possession.
- Actions for revindication.
- Claims for annulment or dissolution.

If a defendant invokes the defence of prescription, then the onus is on the claimant to prove that the limitation period was interrupted by that defence (otherwise, where the claimant cannot prove this then no interruption will be present).

Where a limitation period is interrupted, a new limitation period starts to run with the same duration as the initial limitation period (for example, in a case involving the payment of a sum of money with a limitation period of five years, the new limitation period will also be for five years). The new limitation period starts to run on the day following the day that the interruption period ends.

Where the other party dismisses the claim in response to a demand letter (that is, before the claim is filed in court), that claim itself can count as an act of interruption (the fact that the claim was rejected by the other party does not automatically imply that no act of interruption took place).

The parties can use settlement discussions or mediation to interrupt the limitation period provided that the parties have documented, in writing, that the claim is to be interrupted. Such written documentation is important, because otherwise the mere act of entering into settlement discussions or mediation will not, of itself, interrupt the limitation period (this must be expressly agreed in writing).

## **Date on Which Proceedings Are Issued**

The commencement of court proceedings interrupts the running of the limitation period. Where a claim is filed in physical form, court proceedings are considered to be formally issued on the date when the summons are served and delivered at the defendant's address (which therefore interrupt the limitation period). Where a claim is filed electronically, the summons must still be served in person, so the same rule that applies for physical filings also applies for electronic filings.

## **Practical Issues**

There are no statutory, court, or legal rules in the Netherlands that prevent the expiry of the limitation period:

- If the court offices are closed on the last day of the limitation period.
- If there are problems in completing any of the court formalities for filing a claim.

The limitation period will still expire on its ordinary expiry date and no exceptions to this exist in those circumstances.

## Changing or Extending the Limitation Period

Generally, the limitation period set by law cannot be changed or waived by the parties. For the very limited situations in which the parties can agree, in writing, to the interruption of a limitation period, see *Stopping and Suspending the Limitation Period*.

The parties cannot agree between themselves to change, pause, waive, or extend the limitation period in commercial contracts, and any attempt to include contractual provisions to that effect will be null and void.

## Court Discretion

The courts in the Netherlands do not have the discretion to allow time-barred claims to proceed under any circumstances.

## Claims Involving Fraud, Concealment of Facts, or Mistake

In the case of fraud, deliberate concealment or suppression of facts, or mistake, there are no implications for the limitation period and the claim will expire between five to 20 years after the claim has become due and payable (depending on the applicable limitation period). Fraud, deliberate concealment or suppression facts, or mistake do not result in any extension of the limitation period.

## Differing Limitation Periods

If the parties plead that the facts and circumstances of the claim result in more than one cause of action, the basic principle remains that the limitation period begins to run when the first (single) claim arises and is due and payable. If there are different types of claims (with differing limitation periods) arising at different times, it will be possible to assume each different limitation period only if the claims each have an independent legal basis.

In the event that claims overlap and the limitation period of one of the claims has expired, in principle, the most favourable claim with the longest limitation period can be chosen. However, there must be an independent legal basis for the claim with the limitation period that has not expired.

The limitation period differs depending on the claim in issue. For the different claim periods, see *Principal Authorities Governing Limitation*.

## Limitation as a Defence

The defendant should raise the claimant's limitation issue in its defence to the action, in their statement of defence. If the defendant does not raise the limitation issue at any point in the proceedings, the court will not raise the limitation period *ex officio*.

The defence of limitation can also be raised at a later stage of the proceedings, provided that the claimant is notified by the defendant of the limitation period in the legal manner. A delay in pleading limitation as a defence cannot be automatically construed as the defendant having waived its right to rely on a limitation defence.

The burden of proof to establish whether the claim is (or is not) time-barred lies with the party invoking the expiration of the limitation period (which will usually be the defendant).

In the case of court proceedings, limitation periods will usually be dealt with at an early stage. If the claim is determined to be time-barred, the court will not reach any further assessment on the matter.

## Impact of COVID-19 on Limitation Periods

There have been no changes to the way the local courts have dealt with limitation issues in the Netherlands as a result of the COVID-19 pandemic.

## Claims Governed by Foreign Law

Limitation periods are generally governed by substantive law. Whilst limitation periods are also dealt with in procedural law, this is only as a substantive aspect of the claim. The court will apply the limitation period that applies to the claim under the relevant provision of substantive law.

## Tips for Claimants and Defendants

### When Acting for the Claimant

The claimant must be made aware the fact that the principle "the one who argues must prove" applies in the Netherlands. The court will not automatically review or apply the statute of limitations *ex officio*. Therefore, it is not wise for the claimant to raise the issue of limitation if the defendant has not raised it as an issue. However, the claimant should ensure, before commencing proceedings, that the claim is not time-barred because the limitation period has elapsed. Since different claims have different limitation periods in the Netherlands (usually between five to 20 years), it is recommended that the claimant keep an eye on the applicable limitation period to ensure that the claim can proceed in time (including where the claim may be subject to any interruptions).

### When Acting for the Defendant

The defendant must actively determine whether the claim is time-barred. If the claim is time-barred, a written letter addressed to the claimant must be drafted, highlighting the requirements under the law applicable in the Netherlands. Additionally, the defendant is free to argue that a claim is time-barred during the proceedings. However, if there are several claims, it must be considered that even if one of those claims is time-barred, the other claim (or claims) may not be time-barred because a different (and longer) limitation period applies to the other claim (or claims), which will therefore still be within the limitation period.

## Length of Limitation Periods

	Type of claim or action	Limitation period	When does the limitation period start to run?	Relevant law or legislation
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1.	<p>Claims based on breach of contract for:</p> <ul style="list-style-type: none"> <li>• A service.</li> <li>• A sale of goods.</li> <li>• A sale of land.</li> </ul>	<p>A service: 5 - 20 years.</p> <p>A sale of goods: 2 years.</p> <p>A sale of land: 10 - 20 years.</p>	<p>A service: from the due date.</p> <p>A sale of goods: upon notification to the defendant.</p> <p>A sale of land: from the moment that the party can consider itself as the owner of the land.</p>	<p>A service: Article 3:307, Dutch Civil Code (DCC).</p> <p>A sale of goods: Article 7:23, DCC.</p> <p>A sale of land: Article 3:99, DCC.</p>
2.	<ul style="list-style-type: none"> <li>• Claims based on breach of fiduciary duty or trust.</li> </ul>	Not applicable.	Not applicable.	Not applicable.
3.	Claims based on tort liability related to personal injury or death.	From 5 - 20 years.	<p>At the time the injured party became aware of both:</p> <ul style="list-style-type: none"> <li>• The injury.</li> <li>• The party liable for the injury.</li> </ul>	Article 3:310, DCC.
4.	Claims related to breach of warranty.	2 years.	From the moment the buyer has complained to the seller.	Article 7:23, DCC.
5.	Claims based on tort liability related to negligence.	From 5 - 20 years.	<p>At the time the injured party became aware of both:</p> <ul style="list-style-type: none"> <li>• The negligence.</li> <li>• The party liable for that negligence.</li> </ul>	Article 3:310, DCC.
6.	Claims based on tort liability related to latent damages.	From 5 - 20 years.	<p>At the time the injured party became aware of both:</p> <ul style="list-style-type: none"> <li>• The latent damages.</li> <li>• The party liable for the latent damages.</li> </ul>	Article 3:310, DCC.
7.	Claims where there is fraud, concealment of facts, or mistake.	From 5 - 20 years.	At the time the injured party became aware of the fraud, concealment of facts, or mistake.	Article 3:310, DCC.
8.	Claims related to defamation.	6 years.	From the moment the defamation is made.	Article 70, Dutch Criminal Code.

9.	Claims related to a deed.	5 years.	Once the claim has become due and payable.	Articles 3:306 and 3:307, DCC.
10.	Claims related to consumer protection rights.	2 years.	From the moment that the claim is due and payable.	Article 7:28, DCC.
11.	Claims related to recovery of land.	2 years.	From the moment that the party can recover the land.	Article 3:99, DCC.
12.	Claims related to recovery of rent.	5 years.	From the day that the rent becomes due and payable.	Article 3:308, DCC.
13.	Claims related to negotiable instruments.	From 5 - 20 years.	From the day that the claim becomes due and payable.	Article 3:307, DCC.
14.	Claims related to bad faith insurance.	Not applicable.	Not applicable.	Not applicable.
15.	Claims related to shareholder derivative suits.	5 years.	From the day that the shareholder derivative suits are initiated.	Article 3:310 DCC; Financial Supervision Act (Wet op het financieel toezicht) (Wft); Article 5:45, General Administrative Law Act.
16.	Claims related to securities laws.	5 years.	From the day the instrument can be claimed (governmental penalties can be invoked for 5 years after the violation of the law).	Article 3:310, DCC.
17.	Claims related to copyright infringement actions.	5 years.	From the day that the injured party became aware of both: <ul style="list-style-type: none"> <li>• The injury.</li> <li>• The breach.</li> </ul>	Article 3:310, DCC.
18.	Claims related to registered trademark infringement actions.	5 years.	<ul style="list-style-type: none"> <li>• From the day that the injured party became aware of both:</li> <li>• The injury.</li> <li>• The breach.</li> </ul>	Article 3:310, DCC.
19.	Claims related to patent infringement.	5 years.	<ul style="list-style-type: none"> <li>• From the day that the injured party became aware of both:</li> <li>• The injury.</li> <li>• The breach.</li> </ul>	Article 3:310, DCC.

20.	<p>Claims related to antitrust litigation, either or both:</p> <ul style="list-style-type: none"> <li>• Stand-alone actions.</li> <li>• Follow-on actions.</li> </ul>	5 years.	<p>From the day that the injured party became aware of both:</p> <ul style="list-style-type: none"> <li>• The injury.</li> <li>• The breach.</li> </ul>	Article 3:310, DCC.
21.	<p>Claims related to employment, including:</p> <ul style="list-style-type: none"> <li>• Unfair (wrongful) dismissal or termination.</li> <li>• Discrimination, harassment, and bias.</li> </ul>	5 years.	<p>From the day that the injured party became aware of both:</p> <ul style="list-style-type: none"> <li>• The injury.</li> <li>• The breach.</li> </ul>	Article 3:310, DCC.
22.	<p>Proceedings in which the court decides on the compatibility of laws with the Constitution (for example, judicial review).</p>	Not applicable.	Not applicable.	Not applicable.
23.	<p>Enforcement of judgments.</p>	20 years.	<p>From the moment of the service of the judgment.</p>	Article 3:324, DCC.

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