

Netherlands Commercial Court: Presentation NCC January 2019

This document contains the alternate text of the original. This document is intended for people with a visual impairment, such as the blind.

What is NCC?

NCC DISTRICT COURT

international commercial chamber Amsterdam District Court (incl. CSP - Court in Summary Proceedings).

NCC COURT OF APPEAL

International commercial chamber Amsterdam Court of Appeal.

Why NCC?

- Judges with experience in complex international business cases
- Panels of three judges
- In English
- Case management + case-by-case approach
- Efficiency and focus on global best practices
- eNCC, video-conferencing, conference calls
- Easy to enforce in the EU

In English

- Entire litigation – documents, hearing and judgment in English
- No need to translate documents into Dutch, German or French, unless the court directs otherwise
- Third parties: the court will give directions on the language of the case (Art. 2.2 NCC Rules (NCCR))
 - Adding third parties: English language requirement applies to the third party
 - Contribution/indemnity: allowed only if the third party agrees for English to be the language of the case
 - Lifting attachment: in English if action is brought in the CSP

Case-by-case approach

- Make a plan for the just, speedy and cost-effective disposition of the action
- Case management for motions, a timetable and next steps

- Communication on the way forward

Efficiency

- World leader in just and efficient disposition of civil cases (source: worldjusticeproject.org)
- Fifth in EU in speed of civil justice (after 2 Baltic states, Luxembourg and Austria): 130 days
- New NL procedure code fully applicable (claims, applications, CSP)
- Referrals to the Supreme Court or ECJ
- Active case management
- No fishing expeditions
- Preparatory testimony and document disclosure

Focus on global best practices

- Video and audio recordings of hearings (Art. 7.7.2 NCCR)
- Court reporters (Art. 7.7.3 NCCR)
- Article 22 Chamber for confidentiality issues (Art. 8.4.2 NCCR)
- Joint hearing with foreign case (Art. 7.8 NCCR)
- Evidentiary agreements and flexibility (Art. 8.3 NCCR)
- Pre-hearing written witness statements (Art. 8.5.2 NCCR)

Communication – eNCC and more

- Electronic filing and communication in eNCC
- 24/7 up-to-date **view of what's going on**
- Electronic courtroom facilities
- Video-conferencing solutions for case management or other hearings; remote off-site participation.

Jurisdiction

- Art. 30r DCCP (proposed legislation) + Art. 1.3 NCCR:
- If Amsterdam District Court has jurisdiction
- Civil or **commercial cases within the parties' autonomy**
- International dispute
- Not: Subdistrict Court jurisdiction and cases allocated to specialist court/chamber
- Election of proceedings in English before the NCC.

“International dispute”

- NCC Rules (explanatory note on Art. 1.3.1 (b)):
- A party is established in another jurisdiction
- A party is incorporated under foreign law
- A convention or foreign law applies to the dispute
- The dispute arises from an agreement in a language other than Dutch
- Majority of worldwide employees are based somewhere other than NL
- Over half of consolidated turnover is realised somewhere other than NL
- Securities are traded on a regulated market not in NL
- The dispute concerns legal facts or legal acts not in NL

- The dispute otherwise involves a relevant cross-border interest
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How to get in

- Art. 30r DCCP (proposed legislation) + Art. 1.3 NCCR:
- **"In writing"**
- **"Express": tacit consent in general terms and conditions is not enough (MvT)**
- Before or after a dispute arises
- Including CSP cases (summary proceedings, attachment, European Account Preservation Order)
- Set aside an arbitral award: NCC Court of Appeal, if Amsterdam is the seat of the arbitration

How to get in

NCC model clause (NCC Rules):

All disputes arising out of or in connection with this agreement will be resolved by the Amsterdam District Court following proceedings in English before the Chamber for International Commercial Matters ("Netherlands Commercial Court" or "NCC"). An action for interim measures, including protective measures, available under Dutch law may be brought in the NCC's Court in Summary Proceedings ("CSP") in proceedings in English.

How to get in

- Referral by Dutch court to NCC (Art. 1.3.1 (c) (explanatory note) + 4.1.5 en 10.1 NCCR):
- Agreement by the courts: provide information on referral and what NCC can do
- While a case is pending
- NCC is bound by the referral
- Court fees are adjusted to NCC rates, following referral

NCC Rules

- English and Dutch versions
- Incorporates key DCCP rules, creating a common baseline that everyone understands
- Glossary of legal terms in English and Dutch

Chapters:

1. Scope
2. Language
3. Mode of procedure and time limits
4. Initiating an action
5. Default and defence
6. Motions and interim measures

7. Hearing
8. Evidence
9. Judgment
10. Costs
11. Discontinuance, withdrawal and restart
12. Final provisions

Costs

Court fees

- **CSP: € 7.500**
- **NCC District Court: € 15.000**
- **NCC Court of Appeal: € 20.000**

Allocation of costs

- Agreement by the parties will be enforced, as a rule (Art. 10.2 NCCR)
- **Absent agreement: NCC rates apply (€ 1.000 - € 12.000 for each point; see Annex III to the NCCR)**

Electronic communication

eNCC - the portal for electronic communication with NCC:

- Initiating an action - filing the originating document
- Submitting and receiving documents and exhibits
- Electronic correspondence

Proposed NCC legislation

No. 34.761:

“Engelstalige rechtspraak internationale handelskamers rechtbank en gerechtshof Amsterdam (Netherlands Commercial Court)”

For updates, go to www.eerstekamer.nl

Questions?

website: <http://www.ncc.gov.nl> email: NCC@rechtspraak.nl