

IN-DEPTH

# Insolvency

NETHERLANDS



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# Insolvency

EDITION 13

Contributing Editor

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In-Depth: Insolvency (formerly The Insolvency Review) offers an incisive review of the most consequential features of the insolvency laws and procedures in key jurisdictions worldwide. It also examines the practical implications of recent market trends and insolvency case developments.

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**Generated: November 12, 2025**

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# Netherlands

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## Introduction

Insolvency law in the Netherlands is broader than just bankruptcy law. In addition to bankruptcy law, it also includes suspension of payments, debt restructuring for natural persons, and special procedures for banks and insurers. Dutch insolvency law has three insolvency procedures and one pre-insolvency procedure. These procedures, which are regulated by the Dutch Bankruptcy Act, are discussed in this article.

## Insolvency law, policy and procedure

### Legal framework and substantive law

In the Netherlands, insolvency proceedings are governed by the Bankruptcy Act. The Bankruptcy Act provides for three separate insolvency procedures:

1. bankruptcy, whereby a debtor who has ceased to meet their payment obligations is declared bankrupt by court order;
2. suspension of payments, whereby a debtor who foresees that they cannot pay their due debts can apply for a moratorium; and
3. debt restructuring for natural persons, whereby a natural person who can no longer pay their debts can apply for the appointment of an administrator to manage and liquidate the debtor's assets.

The Bankruptcy Act also provides for a pre-insolvency procedure, which is partly based on the UK Scheme of Arrangement. In this pre-insolvency procedure, the bankruptcy of a debtor can be avoided by the homologation of a private agreement, which can be binding to all creditors involved.

The same substantive law issues usually come into play in Dutch insolvency proceedings. When a company is declared bankrupt, a trustee is appointed by the court. The trustee must ensure that the bankruptcy proceeds in an orderly manner, and that creditors receive as much as possible of what they are entitled to. The trustee ensures that all creditors are treated equally in the bankruptcy process, and that prior to or during the bankruptcy no undue advantage is gained by one or more creditors. To this end, the trustee first has the possibility – on the basis of the so-called bankruptcy pauliana – of annulling nonobligatory legal acts as a result of which the joint creditors have been disadvantaged (Section 42 of the Bankruptcy Act). If the trustee successfully invokes the bankruptcy pauliana, these legal acts are retroactively annulled. This protects creditors in the event of bankruptcy.

The trustee will also assess whether parties have assumed a debt or claim in the face of or during the bankruptcy to give themselves an offsetting opportunity to the detriment of other creditors. Section 54 of the Bankruptcy Act stipulates in which cases creditors of the bankrupt are not entitled to set-off. This is the case if a party that assumed a debt to the bankrupt or a claim against the bankrupt before the declaration of bankruptcy did not act in good faith (meaning that the party knew that the debtor's bankruptcy was foreseeable).

Claims or debts acquired after the declaration of bankruptcy cannot be set off, regardless of the good faith of the acquiring party.

Third, the trustee assesses whether the board of directors of a bankrupt company may be liable for manifest mismanagement. This is the case if the board has performed its duties improperly prior to the bankruptcy and this is likely to be a major cause of the bankruptcy. Manifest mismanagement is presumed if no reasonable director would have acted in the same way under the same circumstances, knowing that the creditors would be prejudiced. If the board failed to fulfil its obligation to keep proper records and to file the annual accounts on time, manifest mismanagement is established and, under Section 2:138 or Section 2:248 of the Civil Code, the improper performance of duties is presumed to have been a major cause of the bankruptcy. In most cases, however, a trustee will not hold the board liable solely on the basis of poor record keeping and failure to file annual accounts on time and will carry out further investigations to establish the causes of the bankruptcy. The extent of the board's liability on this basis can amount to the entire bankruptcy deficit.

## Policy

A procedure to help Dutch companies try to avoid bankruptcy (the so-called WHOA procedure) was included in the Bankruptcy Act in 2021. The purpose of this pre-insolvency procedure is to allow the restructuring of companies with fundamentally sound business activities that are at risk of bankruptcy due to, for example, heavy debt. If the conditions are met, the WHOA procedure allows the court to homologate a private agreement between a company and its creditors, binding all creditors involved – including dissenting creditors – to the agreement. The past few years has seen a trend where more companies are trying to use this pre-insolvency procedure to restructure their businesses and avoid bankruptcy. The WHOA is gradually gaining a firm place in insolvency law. Developments in the coming years are eagerly awaited. In addition, the prospect of court proceedings provides an incentive for the parties involved to reach an amicable agreement.

If an agreement cannot be reached, the company may go bankrupt. After declaring bankruptcy, the trustee seeks an outcome that best serves the interests of the joint creditors. The trustee will also explore the possibility of a temporary continuation of the bankrupt company or a restart. In doing so, the trustee may consider social interests, such as the interests of employees, customers (including vulnerable customers) and third parties, in addition to financial interests. If a temporary continuation or a restart is not realistic, the trustee will proceed with liquidation.

## Insolvency proceedings

Dutch insolvency law has three insolvency procedures and one pre-insolvency procedure:

1. bankruptcy – for legal and natural persons;
2. suspension of payments – for legal entities;
3. debt restructuring – for natural persons and sole traders; and
4. Private Agreement Homologation Act – for legal and natural persons.

## Bankruptcy – for legal and natural persons

Bankruptcy is the legal procedure in which a legal or natural person who is no longer able to pay their debts is declared bankrupt by the court. Bankruptcy can be declared after the legal or natural person has filed for bankruptcy themselves or at the request of one or more creditors. Once bankruptcy is declared, the bankrupt loses the right to dispose of and manage their assets. The court also appoints a trustee, who then administers the bankruptcy under the supervision of a bankruptcy judge.

A key element of bankruptcy is the fixation principle, which means that the company's assets are 'frozen' and that creditors cannot, in principle, change their position in their own favour after the bankruptcy has become effective. However, creditors with a lien or mortgage right can, as secured creditors, recover from the secured assets as if there were no bankruptcy.

After bankruptcy has been declared, the trustee explores the possibility of a temporary continuation or restart of the company. A restart usually involves a transfer of assets by the trustee to a third party, after which the debts of the bankrupt legal entity are settled and the bankrupt legal entity is liquidated. From a social perspective, the trustee will make every effort to achieve a restart that preserves as many jobs as possible. In principle, however, the company being restarted can choose which employees are offered new contracts. The trustee is careful to ensure that a restart is not used by the bankrupt as a means of getting rid of employees at low cost.

Bankruptcy can end in a number of ways. One way is for the bankrupt to come to an agreement with their creditors. For creditors, accepting such an agreement can be advantageous, as they will often receive a higher percentage of their claim than if the bankrupt's assets were liquidated. A bankruptcy agreement is often funded (in whole or in part) by an external party and must be homologated by the court. If no bankruptcy agreement is reached, the trustee will, in principle, liquidate the assets of the bankrupt. The bankrupt legal entity then ceases to exist.

## Suspension of payments – for legal entities

Suspension of payments is intended for debtors who anticipate that they will be unable to pay their due debts. If this is the case, the debtor in question can apply to the court for a moratorium. This moratorium only affects unsecured creditors and therefore has no bearing on secured creditors (such as lien or mortgage holders) or preferential creditors (such as the tax authorities). The procedure is primarily aimed at restoring the debtor's financial position, often by restructuring all or part of the debt. Following the court's provisional grant of suspension of payments, it appoints an administrator, after which the administrator and the debtor are jointly responsible for the disposal and management of the assets. When the provisional suspension of payments is granted, the court also schedules a creditors' meeting to decide on the final suspension of payments. As there is often no sufficient viability of the company's operations and continuation is not feasible, in many cases the moratorium is converted into a bankruptcy at the request of the administrator prior to the creditors' meeting.

## Debt restructuring – for natural persons and sole traders

Natural persons and sole traders have the option of applying for natural person debt restructuring (called the WSNP) under the supervision of a court-appointed administrator. Once all debts have been paid, the debtor can start over with a 'clean slate'. The process often starts with an attempt to reach an amicable debt settlement. If this fails, the debtor can seek access to debt restructuring through a debt counsellor. The debtor should not take on any new debt during the restructuring process, which lasts 18 months.

#### Private Agreement Homologation Act – for legal and natural persons

In 2021, a new pre-insolvency procedure came into force: the Private Agreement Homologation Act (WHOA). The WHOA allows fundamentally sound companies that have run into financial difficulties to restructure their debts in order to avoid bankruptcy, or to achieve controlled resolution. A debtor can choose to restructure its high debt burden through a private agreement. The WHOA offers an agreement procedure under which the agreement can be imposed on dissenting creditors and shareholders. Because such a compulsory settlement is a drastic measure, the agreement must be reasonable and fair if it is to be imposed on dissenting creditors. This is subject to assessment by the court.

The initiation of a WHOA procedure requires that the debtor is in a state where it is reasonably likely that it will be unable to continue to pay its debts. The law stipulates that bankruptcy must be imminent.

#### Starting a procedure

##### Bankruptcy

Bankruptcy can be declared at the request of the debtor or of one or more creditors. If bankruptcy is requested by a creditor, the debtor can oppose it. The debtor can appeal the declaration of bankruptcy with the assistance of a lawyer, and if the appeal is rejected the debtor can lodge an appeal in cassation to the Supreme Court.

##### Suspension of payments

Suspension of payments can only be applied by the debtor. If the debtor is a company, the board of directors can apply for suspension of payments without a mandate from the general meeting of shareholders. Third parties are not heard by the court and therefore cannot oppose the application. Court decisions can only be appealed if fundamental rights have been violated or if the provisions of the Bankruptcy Act have been clearly misapplied or ignored.

##### WSNP

Admission to debt restructuring under the Debt Restructuring for Natural Persons Act (WSNP) can be requested by the creditor through a court application. If the declaration of bankruptcy of a natural person is requested by a creditor, the debtor may request that an application for admission to the WSNP be processed prior to the processing of the bankruptcy request.

## WHOA

A company can start a WHOA procedure by filing an initiation statement to the court. If a creditor wants to start a WHOA procedure, it may apply to the court for the appointment of a restructuring expert. This is not mandatory. The company's works council or shareholders can also apply to the court for the appointment of a restructuring expert. Third parties, including creditors, cannot oppose the initiation of a WHOA procedure. During the WHOA procedure, they do have the option to oppose a submitted WHOA agreement or any of its provisions.

## Management of insolvency proceedings

### Bankruptcy

During the bankruptcy process, the trustee is in possession. The bankruptcy judge oversees the trustee's management and liquidation of the bankruptcy estate. This judge also has the power to hear witnesses and order an expert examination. The trustee needs the prior approval of the bankruptcy judge for a number of actions. These include acting in legal proceedings, filing an action for annulment on the basis of the bankruptcy pauliana, terminating leases and employment contracts, and overseeing a temporary continuation and/or restart.

### Suspension of payments

In the case of suspension of payments, the administrator takes the lead together with the debtor. The debtor therefore stays in possession, but together with an administrator. Where appropriate, the court may also appoint a bankruptcy judge to supervise the administrator. The appointment of a bankruptcy judge is not mandatory.

## WHOA

In a WHOA procedure, the initiation statement is not evaluated by the court. However, if creditors, shareholders, the works council or staff representatives take the initiative in seeking an agreement, the process does start immediately with a substantive review by the court. If an agreement is reached, it is presented to the court during the homologation stage, after which the judge determines whether they can approve the agreement. The debtor stays in possession during the entire procedure. The court may appoint an observer or a restructuring expert, either on its own initiative or at the request of certain parties to the WHOA. The observer supervises the formation of the agreement in the interests of the joint creditors. The restructuring experts' job is preparing and presenting an agreement. An observer and a restructuring expert cannot be appointed at the same time. Unlike bankruptcy or suspension of payments, no bankruptcy judge is appointed.

## Special arrangements

The Dutch Bankruptcy Act includes special arrangements for the bankruptcy of banks, investment firms and insurers. Specific rules apply to these types of companies. For example, only De Nederlandsche Bank (the Dutch Central Bank) can file for their bankruptcy. In 2020, life insurer Conservatrix was declared bankrupt.<sup>[1]</sup> This bankruptcy involves a special group of creditors, consisting of all the insurer's former policyholders. Under the Bankruptcy Act, this group has special status and ranks ahead of regular creditors. The verification process in an insurer bankruptcy has its own unique rules to protect policyholders.

## Cross-border issues

The Netherlands is party to the European Insolvency Regulation (Regulation 2015/848). Under this regulation, insolvency proceedings must be filed in the country where the debtor's centre of main interests (COMI) is located. This country has exclusive jurisdiction to conduct the primary insolvency proceedings. Insolvency proceedings initiated in other states that are party to the European Insolvency Regulation are recognised in the Netherlands.

For insolvency proceedings in countries not party to the Insolvency Regulation, the insolvency proceedings may be recognised under private international law.<sup>[2]</sup>

## Insolvency metrics

### Economic situation in Europe and the Netherlands

The Dutch economy was hit by an energy crisis in 2022 and 2023, caused by a combination of the coronavirus pandemic and the war in Ukraine. Energy prices rose sharply during this crisis, which together with increased commodity prices and other factors pushed inflation up to 11.6 per cent.<sup>[3]</sup> Over the course of 2023, the inflation rate showed a steady decline, reaching 4.1 per cent. In 2024 the inflation rate was expected to fall to 2.8 per cent but remains at 3.2 per cent, which is relatively high. For 2025 an average inflation rate of 3.0 per cent is expected. Meanwhile, inflation in the euro zone fell from 6.4 per cent in 2023 to 2 per cent in 2024 and is expected to fall to 2.1 per cent in 2025.<sup>[4]</sup>

From July 2022 to September 2023, the European Central Bank raised its official interest rates to combat eurozone inflation. In 10 tranches, the deposit rate was raised to 4 per cent and the refinancing rate to 4.5 per cent.<sup>[5]</sup> In June 2024, these interest rates were lowered again for the first time, to 3.75 per cent and 4.25 per cent, respectively. The interest rates were subsequently reduced further in eight steps, and, in June 2025, they had been reduced to 2 per cent and 2.15 per cent, respectively. The Dutch long-term interest rate is expected to reach 2.7 per cent in 2025.<sup>[6]</sup> The decline in global trade, combined with interest rate hikes, has also affected the Dutch economy.<sup>[7]</sup> Although the Netherlands experienced a period of mild recession in 2023, the economy ultimately grew by 0.2 per cent and 1.0 per cent in 2024.<sup>[8]</sup> The Dutch economy is expected to grow by 1.1 per cent in 2025.<sup>[9]</sup>

In 2023 and 2024, one of the major challenges facing businesses has been finding sufficient skilled staff to meet growing demand. At 3.6 per cent, unemployment was

very low in 2023. In addition to low unemployment, there were 119 vacancies per 100 employees. In the first quarter of 2025, the labour market tightened. For the first time in four years, the number of jobs declined slightly. For every 100 unemployed people, there were 101 job vacancies.<sup>[10]</sup> A significant cause of this decline is the decrease in the number of self-employed jobs. This is because companies are hiring fewer self-employed people due to stricter checks on bogus self-employment and self-employed people being more quickly classified as employees of the company.<sup>[11]</sup>

## Figures on insolvency proceedings

Since the beginning of the coronavirus pandemic, the Netherlands has seen historically low levels of bankruptcy as a result of the government's various support measures. These ranged from relief to companies for fixed costs (including staff costs) to tax deferrals and (in exceptional cases) remissions. This resulted in a sharp reduction in the number of bankruptcies from 2019 (4,776) to 2022 (2,671).<sup>[12]</sup> A clear increase in the number of bankruptcies can be observed from 2023 onwards. In 2023, 3,987 bankruptcies were declared (50 per cent more than in 2022, but still 20 per cent fewer than in 2019). In 2024, 5,171 were declared (30 per cent more than in 2023) and in the first five months of 2025 the number of bankruptcies was 2,004 (a reduction of 7 per cent compared to the first five months of 2024). The number of bankruptcies in 2024 was the highest in eight years. The peak of 9,431 bankruptcies was reached in 2013 during the euro crisis.

Most bankruptcies in 2024, just as in the previous years, have occurred in the trade sector (811), which is the largest industry in terms of the absolute number of companies. This was followed by the construction sector and the specialised business services sector, with 618 and 509 bankruptcies, respectively.<sup>[13]</sup> Although some larger retail chains with multiple branches in the Netherlands went bankrupt in 2024 and 2025, the increase in bankruptcies mainly concerned smaller companies.

The WHOA came into force in 2021 and was evaluated by the Scientific Research and Data Centre after two years.<sup>[14]</sup> Figures published by the judiciary show that a total of 293 initiation statements were filed in 2021 and 2022.<sup>[15]</sup> In 2023 a total of 335 initiation statements were filed. During the same period, there were 16 homologations of WHOA agreements. Although slightly more rulings were handed down in 2023 than in 2022, there has been a general decline in the number of rulings since 2021. The main reasons for this are the high cost and long duration of a WHOA procedure. The WHOA is gradually gaining a firm place in insolvency law. Developments in the coming years are eagerly awaited.<sup>[16]</sup>

## Looking to the future

As a result of the coronavirus pandemic, more than 400,000 companies have claimed tax deferrals amounting to roughly €48 billion in tax liabilities. Approximately €6.0 billion of these deferred taxes (owed by 120,000 companies) have not yet been repaid, and the Tax and Customs Administration expects that a part of this will be unable to collect.<sup>[17]</sup> With effect from 1 July 2025, the Tax and Customs Administration has amended its restructuring policy to make it easier for fundamentally solid companies to restructure their tax debts.

As a result of higher interest rates and currently outstanding tax debts, the number of bankruptcies and restructuring procedures is expected to continue to rise steadily in 2025 to 2027. Labour market tightness will also contribute to this steady growth. The number of bankruptcies is expected to increase by between 15 per cent and 25 per cent in 2025 and by approximately 17 per cent in 2016. An increase of approximately 10 per cent is expected for 2027. Despite this increase, the number of bankruptcies remains historically low. Part of the increase can be explained by an increase in the number of companies. Sectors that have a lot of contact with foreign countries, such as trade, transport and industry, are likely to experience difficulties. The development of the German economy and any import duties imposed by the United States will influence the number of bankruptcies in the Netherlands.<sup>[18]</sup>

## Plenary insolvency proceedings

### McDermott

McDermott International Holdings NV is an international provider of contracting and engineering services to the energy sector. The company gradually fell into serious financial difficulties due to loss-making contracts and an unsustainable debt position. In addition, one of the companies in the McDermott Group has been ordered to pay US\$1.3 billion to a Colombian creditor.

In 2020, the capital structure of the top holding company in the McDermott Group was restructured based on US Chapter 11 proceedings. The financing made available for this restructuring was due to mature in 2024, which would have led to immediate financial problems. McDermott therefore filed a WHOA initiation statement in September 2023 to restructure €2.6 billion of debt. In October 2023, a subsidiary of the Colombian creditor requested the appointment of a restructuring expert.

Parallel to the Dutch WHOA procedure, a similar procedure ran in the United Kingdom. These procedures were conditional in the sense that both had to succeed to achieve the intended effect. The WHOA procedure has been recognised in both the United Kingdom and the United States, and the agreement was homologated on 21 March 2024.

### IHC Merwede Holding BV

IHC Merwede Holding BV (IHC) is an international shipping company that focuses on developing, designing and building ships and equipment for the dredging, offshore energy, mining and defence industries. Early in 2023 IHC offered its creditors a WHOA agreement. This agreement includes an obligation for IHC's financiers to continue to provide the financing committed under the existing financing agreement in the future. However, the financing agreement has been amended on a number of points in the agreement. In short, the financiers are obliged to continue financing on terms other than those initially agreed. The total credit facility amounts to half a billion euros. The WHOA agreement was approved by the Rotterdam District Court on 9 March 2023. In short, the court ruled that imposing this obligation – to provide committed financing on amended terms – is possible under

the WHOA. The defence of one of the financiers – that the WHOA does not provide grounds for amending the financiers' obligations – was rejected.

In professional literature, the question has arisen as to whether a WHOA agreement can actually change the terms of existing obligations, because the text of the law only mentions the possibility of forcibly changing the rights of creditors. No appeal or cassation can be lodged in WHOA proceedings. In view of the importance of this question, the Procurator General has lodged a so-called application for cassation in the interest of the law with the Supreme Court, so that the Supreme Court has the opportunity to answer this question.

The Supreme Court ruled on 25 October 2024 that the WHOA does not provide a basis for forcing financiers to provide new credit or to honour an existing credit commitment under amended conditions by means of a compulsory settlement. According to the Supreme Court, imposing an obligation to provide new credit or credit on amended terms would not be in line with the principles of the WHOA. One of those principles is that an agreement should not place a creditor in a worse position than it would have been in if the company had gone bankrupt.

The Supreme Court further ruled that the WHOA does offer the possibility of changing the ranking of creditors bound by the agreement in the event of a subsequent distribution of the debtor's assets.<sup>[19]</sup>

## Blokker

Blokker, one of the largest retail chains in the Netherlands, was declared bankrupt on 13 November 2024. At the time of its bankruptcy, Blokker employed approximately 3,500 people and had around 400 stores. In the years before the bankruptcy Blokker made a loss of €42 million in 2022, €7 million in 2023 and €19 million in 2024. The debts of Blokker were around €70 million. The receivers temporarily continued the operations and eventually sold off all assets. The sales of the assets generated proceeds of over €100 million.

Recently a new company – led by a member of the Blokker Family – opened a few Blokker stores and wants to open about 40 stores with the original Blokker concept.

## GINAF Trucks Nederland

GINAF was declared bankrupt on 19 November 2024. GINAF is a truck manufacturer that specialises in customising and converting trucks to specific customer requirements (for example, an extra axle or axle relocation). In addition, GINAF was involved in converting diesel trucks into electric trucks or trucks with a hydrogen module. The receiver was able to continue business operations for some time and ultimately restart and sell the business to an investor from Singapore.

## Gerry Weber, Vanilia, Casa, Amslod

Four other retailers that went bankrupt in 2025 were Gerry Weber (women's clothing), Vanilia (women's clothing), Casa Nederland (home and interior design items) and Amslod (bicycle manufacturing).

## Mercon

Mercon is part of the Mercon Coffee Group, a global coffee supplier. The company filed a WHOA initiation statement on 7 December 2023. Earlier in 2023, Mercon had taken its first steps towards resolution by starting Chapter 11 proceedings in the United States. With the WHOA, the group seeks a controlled settlement outside bankruptcy.

As part of this process, Mercon requested that the internationally established JIN Guidelines be declared applicable to the Dutch WHOA procedure. The JIN Guidelines had already been declared applicable to the Chapter 11 proceedings, on the condition that the foreign courts involved also declare them applicable. In addition, the American court included two additional special provisions. Mercon therefore asked the Dutch court to declare these JIN Guidelines applicable as well. On 27 February 2024, the Dutch court denied this request due to the administrative burden imposed by the special provisions.

On 4 April 2024, an additional request was made by Mercon, subject to the objections of the Dutch court. The Dutch court then granted the new request and declared the 'Amended Cross-Border Court- to-Court Communications Protocol', the JIN Guidelines and the JIN Modalities applicable to this Dutch WHOA procedure.

## Year in review

As explained in the previous sections, the WHOA procedure introduced in 2021 has brought about a change in Dutch insolvency law. Viable companies with heavy debt burden – including those operating internationally and subsidiaries of global groups – now have more tools at their disposal to achieve a successful restructuring in the Netherlands. This trend was also observable in 2024, when several international companies resorted to the Dutch WHOA procedure. The number of bankruptcies increased further in 2024 and early 2025, with several (larger) retail chains in particular going bankrupt. The increase in bankruptcies mainly concerned smaller companies. Overall, the number of bankruptcies remains historically low.

## Outlook and conclusions

All in all, the Netherlands still has historically low levels of bankruptcy. However, the retail sector has taken more than a few hits with the bankruptcies of not only Blokker, but also Gerry Weber, Vanilia, CASA and Amslod. The coming year will bring more of the same. Sectors that have a lot of contact with foreign countries, such as trade, transport and industry, are likely to experience difficulties. As a result of higher interest rates and currently outstanding tax debts, the number of bankruptcies and restructuring procedures is expected to continue to rise steadily in 2025 to 2027. Labour market tightness and the position of self-employed people will also contribute to this steady growth; an exponential increase in the number of bankruptcies is not expected.

## Endnotes

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- 3 <https://www.dnb.nl/en/current-economic-issues/the-state-of-the-dutch-economy/>. <sup>^</sup> [Back to section](#)
- 4 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_2567](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2567). <sup>^</sup> [Back to section](#)
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