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Articles 6:74 & 6:87 DCC



Damages as an alternative to performance

### Step 1

Assess the nature of the breach of contract and notify the debtor



**Action:** object to debtor regarding the fault in the performance within a reasonable period of time after discovering the fault or after the fault should reasonably have been discovered.

**Action:** Check the contract for special provisions on termination (i.e. termination clause).

- ✓ The obligation is due and has not been performed.
- ✓ Breach is attributable
- ✓ Breach is not of minor importance and justifies conversion of the right to performance to a claim for damages.

### Step 2

Determine whether a notice of default is necessary



Permanently impossible?

**NO**

Notice of default is **required**.

**YES**

Notice of default is **not required**.

**Action:** declare debtor in default by final, written notice with additional period for performance "*ingebrekestelling*";

**Final notice exception**

### Step 3

Claim damages as an alternative to performance



✓ **Action 1:** written notification to debtor of conversion of right to performance to a claim for damages as alternative to performance.

Does the debtor comply with the request for damages?

**YES**

**NO**

**Action 2:** request the court to grant the claim for damages as alternative to performance.



**YES**