

NETHERLANDS

1. Delegations are invited to provide information on any domestic legislation existing on this particular issue.

Under the Court Bailiffs Act, Article 3A, the Ministry of Justice may issue an instruction prohibiting a court bailiff from performing an official act if such is deemed incompatible with the State's obligations under international law. Before issuing this instruction, the Minister of Justice consults the Minister of Foreign Affairs, who will provide the Minister of Justice with a legal opinion whether what the court bailiff intends to do is compatible with international law.

Court Bailiffs Act,

Section 3a

1. A court bailiff who is instructed to perform an official act shall, if he must reasonably take account of the possibility that performing the act in question would be incompatible with the State's obligations under international law, immediately inform Our Minister [the Minister of Justice] of the instruction in the manner prescribed by ministerial order.
2. Our Minister may notify a court bailiff that an official act which he has been or will be instructed to perform or which he has performed is incompatible with the State's obligations under international law.
3. Such notification may only be given ex officio. If the matter is urgent, notification may be given verbally, in which case it must be confirmed in writing without delay.
4. The notification shall be published by being placed in the Government Gazette.
5. If, when he receives notification as referred to in subsection 2, the court bailiff has not yet performed the official act, the effect of the notification shall be that the bailiff is not competent to perform the official act. An official act performed contrary to the first sentence shall be invalid.
6. If, when a court bailiff receives notification as referred to in subsection 2, the official act has already been performed and involved a writ of seizure, the bailiff shall immediately serve the notification on the person on whom the writ was served, cancel the seizure and reverse its consequences. The costs of serving the notification shall be borne by the State.
7. A judge hearing applications for provisional relief may, in interim injunction proceedings, terminate the effect of the notification referred to in the first sentence of subsection 5 and the obligations referred to in subsection 6, without prejudice to the powers of the ordinary courts. If the official act involves seizure, article 438, paragraph 4 of the Code of Civil Procedure shall apply.

In the original Dutch language:

1. *De gerechtsdeurwaarder die opdracht ontvangt tot het verrichten van een ambtshandeling stelt, indien hij redelijkerwijs rekening moet houden met de mogelijkheid dat het verrichten daarvan in strijd is met de volkenrechtelijke verplichtingen van de Staat, Onze Minister aanstonds van de ontvangen opdracht in kennis, op de wijze als bij ministeriële regeling is vastgesteld.*
2. *Onze Minister kan een gerechtsdeurwaarder aanzeggen dat een ambtshandeling die aan hem is of zal worden opgedragen, dan wel door hem reeds is verricht, in strijd is met de volkenrechtelijke verplichtingen van de Staat.*
3. *Een aanzegging kan uitsluitend ambtshalve geschieden. In verband met de vereiste spoed kan een aanzegging mondeling geschieden, in welk geval zij onverwijld schriftelijk wordt bevestigd.*
4. *Van de aanzegging wordt mededeling gedaan door plaatsing in de Staatscourant.*
5. *Is op het tijdstip waarop de gerechtsdeurwaarder een aanzegging ontvangt als bedoeld in het tweede lid, de ambtshandeling nog niet verricht, dan heeft de aanzegging ten gevolge dat de gerechtsdeurwaarder niet bevoegd is tot het verrichten van deze ambtshandeling. Een ambtshandeling die is verricht in strijd met de eerste volzin is nietig.*
6. *Is op het tijdstip waarop de gerechtsdeurwaarder een aanzegging ontvangt als bedoeld in het tweede lid, de ambtshandeling reeds verricht en behelsde deze een beslagexploot, dan betekent hij deze aanzegging aanstonds aan degene aan wie het exploot is gedaan, heft het beslag op en maakt de gevolgen daarvan ongedaan. De kosten van de betekening van de aanzegging komen ten laste van de Staat.*
7. *De voorzieningenrechter kan, rechtdoende in kort geding, de gevolgen van de aanzegging, bedoeld in het vijfde lid, eerste volzin, en de verplichtingen, bedoeld in het zesde lid, opheffen,*

onverminderd de bevoegdheid van de gewone rechter. Indien de ambtshandeling een beslag behelst is artikel 438, vierde lid, van het Wetboek van Burgerlijke Rechtsvordering van toepassing.

4. Text of the Court Bailiffs (Notification of Official Acts) Order

Order of the State Secretary for Justice containing rules regarding the notification of official acts of court bailiffs that are incompatible with the obligations of the State under international law (Court Bailiffs (Notification of Official Acts) Order) 9 July 2001/No. 5107250/801

The State Secretary for Justice, having regard to section 3a, subsection 1 of the Court Bailiffs Act,

Orders as follows:

Article 1

A court bailiff who is instructed to perform an official act as referred to in section 3a, subsection 1 of the Court Bailiffs Act notifies the following authorities:

- a. on weekdays between 08.30 and 17.30 the Legal Aid and Legal Professions Department of the Directorate-General for Administration of Justice and Law Enforcement at the Ministry of Justice by telephone (070 370 6024), fax (070 370 7957) or email (DGWRR.DRJB@best-dep.minjus.nl);
- b. at other times, the Ministry of Justice switchboard by telephone (070 370 7911).

Article 2

1. The notification must be accompanied by, at the minimum:

- a. the name, address, registered office and telephone number of the court bailiff;
- b. information regarding the nature of the official act in question;
- c. the name, address and capacity of the person who is the object of the official act;
- d. if known, the date and time at which the bailiff is intending to perform the official act.

2. A court bailiff who performs an official act on a weekday between 08.30 and 17.30 sends the documents relating to the official act in question by fax or email to the Legal Aid and Legal Professions Department of the Directorate-General for Administration of Justice and Law Enforcement at the Ministry of Justice. At other times he must send the documents to an address that will be made known to him after notification.

Article 3

This Order may be cited as the Court Bailiffs (Notification of Official Acts) Order.

Article 4

This Order enters into force on the date on which section 3a of the Court Bailiffs Act enters into force.

This Order will be published in the Government Gazette with explanatory notes.

The Hague, 9 July 2001

2. Delegations are invited to inform the Committee as to whether there are any other means for the Ministry of Foreign Affairs of communicating information to national courts and how the Ministry of Foreign Affairs perceives the scope of international legal obligations in [this] field.

The State has the power to request to be accepted as a party in a dispute before a court, at any state, either joining on of the parties or intervening independently. The Ministry of Foreign Affairs may under this heading instruct the State's attorney to file such a request. It will be upon the court to decide on the admissibility of the State in a particular case, in a particular role. This will depend on whether the state has a sufficient legal interest to intervene or to join. See Article 217 Wetboek van Burgelijke Rechtsvordering.

Two further instruments exist, but they are exceptional and not usually resorted to. In addition, the Ministry of Foreign Affairs cannot itself resort to these instruments as their use is at the discretion of the public prosecutor and the Advocate General respectively. First, the public prosecutor has the right to present a 'conclusion' (legal opinion) in a judicial procedure before a court. The Ministry of Foreign Affairs may ask the public prosecutor to present a conclusion in a particular case. The public prosecutor here enjoys prosecutorial discretion and will make

his/her own assessment of the desirability of presenting any conclusion. See Article 44 Wetboek van Burgelijke Rechtsvordering.

Secondly, anyone, including the Ministry of Foreign Affairs, may ask the Advocate General ("Procureur Generaal") to instigate an appeal at the supreme court in the interest of the law ("cassatie in belang der wet"). As in the case of a conclusion of the public prosecutor, the Advocate General will decide whether to comply with a request for an appeal in the interest of the law. See Article 78(1) Wet op de Rechterlijke Organisatie. In practice, these two instruments are resorted to only very rarely.

3. Delegations are invited to precise whether there are any prohibitions or stated limits in domestic law, which would prevent the transmission of information to national courts by the Ministry of Foreign Affairs. In this regard, are there, in your domestic legal order, any relevant legislation or national practices (any reference of case-law would be appreciated)?

Under Dutch law, no possibility similar to an *amicus curiae* procedure exists. Therefore, the State cannot provide information to the court except where such is explicitly provided for. This means that the State can only provide information to the Court directly as a party to the dispute (through the procedure of joining or intervention as described under question 2) or indirectly through a conclusion of the public prosecutor and through an appeal in the interest of the law. In both of these latter procedures, the public prosecutor and the Advocate General respectively will decide on the filing of the conclusion and the appeal respectively, but may receive information from the Ministry of Foreign Affairs which they may include in their respective conclusion or appeal.

4. From a broader perspective, delegations are called upon to express their views as to whether the Ministry of Foreign Affairs can communicate with the Parties engaged in procedures before national courts and, if so, as to how it can proceed. In particular with regard to:

- the principle of equality of arms (e.g. does the communication with one Party imply informing the others about the content of that communication ?)
- the scope of the communication (e.g. communication of possible factual elements or communication restricted to a single point of law)
- the principle of independence of the Judiciary
- any other related issue.

The Netherlands considers equality of arms, impartiality and independence of the judiciary and impartiality of the Ministry of Foreign Affairs with respect to disputes to which it is not a party key elements of the principle of a fair trial. It will therefore not communicate with any of the parties or express any views on the merits of either position. Exceptionally, and only on the basis of consent of both parties, the Ministry may offer its services in the context of good offices or, as the case may be, mediation.