

Netherlands – national procedures for mutual legal assistance on laundering, search, seizure and confiscation of proceeds of crime (ETS No. 141)

Updated 09/06/2017

The information contained in this table should be updated on a yearly basis.

| Procedure for search (asset-tracing) and seizure  |  |
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| The Central Authority (name of the institution, address, telephone, fax and e-mail where available) responsible for mutual legal assistance (including freezing and seizure): | <p>Ministry of Security and Justice<br/>                     Directorate General for the Administration of Justice and Law enforcement<br/>                     Legal and Operation Affairs Department<br/>                     Office for International Legal Assistance in Criminal Matters<br/>                     Postbus 20301<br/>                     2500 EH The Hague<br/>                     The Netherlands<br/>                     Telephone number: 0031-70-370-7314<br/>                     Fax number: 0031-70-370 7945<br/>                     Email: airs@minvenj.nl</p>   |
| If different from the Central Authority, the authority to which the request should be sent (name of the institution, address, telephone, fax and e-mail where available):     | <p>Countries that are party to the European Union are kindly requested to send documentation directly between the local authorities where treaties or agreements make this possible. In the Netherlands, the administrative handling of all incoming and outgoing requests for mutual legal assistance, both for judicial and police assistance, are organized in 10 International Legal Assistance Centers (IRC) and one National IRC (LIRC) and the Department for International Affairs and Legal Assistance in Criminal Matters (AIRS) of the Ministry of Security and Justice also forms part of this national network. An IRC is a joint venture between the public prosecutions department and the police. (You can find more information on these centers at the website of the EJM, Atlas.)</p> |
| Channels of communication for the request for mutual legal assistance (directly, or other):   | <p>The Netherlands accepts requests directly except in the case when international treaty stipulates differently (through diplomatic channels).</p>  |
| Means of communication (e.g. by post, fax, e-mail <sup>1</sup> ):   | <p>Requests for mutual legal assistance must be received in original form. Other communications can be sent by fax or email. In case of urgency the original documents can</p>   |

<sup>1</sup> Please indicate if encryption or electronic signature is required.

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|   | be preceded by a fax or by e-mail.   |
| Language requirements:  | Requests and annexed documents shall be accompanied by a translation into Dutch or into one of the official languages of the Council of Europe. The Netherlands prefers to receive translations in Dutch or English.   |
| Double criminality requirement, if applicable:  | In case of a request for coercive measures, like a search or seizure, double criminality is required. In this case, please attach the relevant provisions of the national criminal law to the request or an explanation of the national law.   |
| Other requirements: for example a link between the proceeds and the criminal offence, or that a request for the confiscation judgment or measure will be made later, or that leave is given by a judge for the seizure of assets/goods: | <p>According to Dutch law, proceeds must be gained from criminal offences. A link between the underlying criminal offence and the proceeds however, is not required because value confiscation is also possible. The Netherlands has the possibility of object confiscation and value confiscation. The public prosecutor is competent to order the seizure with the purpose of object confiscation. In case of value confiscation the public prosecutor needs the permission of an examining judge. Requirements to seize assets for a foreign country (Section 13a of the applicant law – in Dutch WOTS):</p> <ul style="list-style-type: none"> <li>- an applicable Treaty;</li> <li>- the seizure should be permitted according to Dutch Law;</li> <li>- in the MLA is mentioned that the competent authorities of the requesting country have ordered the seizure or should have ordered the seizure;</li> <li>- in the MLA is mentioned that there are reasonable grounds to expect that the requesting country will send the confiscation order after this order has become irrevocable, with the purpose of executing the foreign confiscation order.</li> </ul> |
| Modalities/requirements for the execution of MLA requests for investigative assistance (search,   | There is a public central registry for real estate and one for businesses. There is no national database for bank accounts. There is however a government agency that combines   |

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| tracing, special investigative techniques), existence of a central register of real estate/ bank accounts, duration of preservation of bank data, etc.:  | information from different investigative agencies. With the right legal grounds, information on a suspect or his/her environment can be requested.   |
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| Limitation of use of evidence obtained:  | The evidence can be solely used in accordance with the mentioned criminal case in the MLA.   |
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| Modalities/requirements related to the execution of provisional measures (freezing, prejudgment seizing) including lifting of these measures (possibilities to seize (im)movable properties) and applicable time limits, if any: | <p>The public prosecutor's service manages all the seized assets as requested in a MLA. If assets need to be sold before the court decision (for instance a car, in order to prevent the value of the car diminishing), then the asset managers contact the national authorities of the requesting State, before any measures are taken.</p> <p>There is no specific time limit for continuing the seizure, but the owner of the asset can go to court in order to request the lifting of the seizure.</p> |
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| Available asset management system including preservative measures, (for example prejudgment selling), concerning the seized goods:   | All seized assets are managed in three different buildings throughout the Netherlands. All assets are photographed and registered. These assets are recorded in a Seizureportal, managed by the public prosecutor's service.   |
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| Procedure for confiscation/ Recognition of foreign decisions. Recovery of confiscated assets.  |  |
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| The Central Authority (name of the institution, address, telephone, fax and e-mail where available) responsible for Confiscation/ recognition of foreign judgments/decisions/measures:   | <p>Ministry of Security and Justice<br/> Directorate General for the Administration of Justice and Law enforcement<br/> Legal and Operation Affairs Department<br/> Office for International Legal Assistance in Criminal Matters<br/> Postbus 20301<br/> 2500 EH The Hague<br/> The Netherlands<br/> Telephone number: 0031-70-370-7314<br/> Fax number: 0031-70-370 7945</p>   |

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|  | Email: <a href="mailto:airs@minvenj.nl">airs@minvenj.nl</a>   |
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| If different from the Central Authority, the authority to which the request should be sent (name of the institution, address, telephone, fax and e-mail where available):                                |   |
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| Channels of communication for the request for mutual legal assistance (directly, or other):  | The Netherlands accepts requests directly except in the case when international treaty stipulates differently (through diplomatic channels).  |
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| Means of communication (e.g. by post, fax, e-mail <sup>2</sup> ):  | Requests for mutual legal assistance must be received in original form. Other communications can be sent by fax or email. In urgent cases the original documents can be preceded by a fax or by e-mail.   |
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| Language requirements:   | Requests and annexed documents shall be accompanied by a translation into Dutch or into one of the official languages of the Council of Europe. The Netherlands prefers to receive translations in Dutch or English.  |
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| Document requirements and modalities/requirements for the procedure of confiscation:   | In the request should be mentioned if seizure and/or confiscation is required. When confiscation is requested, then a court judgement from the requesting State is requested on the basis of which the confiscation can take place.   |
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| Other requirements, if applicable:<br><br>For example: a link between the proceeds and the criminal offence.<br><br>In case of money laundering, what are the requirements for the predicate offence(s): | According to Dutch law, proceeds must be gained from criminal offences. A link between the underlying criminal offence and the proceeds however, is not required. With regard to value confiscation assets or goods can be seized only after an examining judge gives permission to do so. With regard to object confiscation the public prosecutor is competent to order the seizure.<br><br>In the Netherlands it is not necessary to investigate the |

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|  | predicate offence with regards to money laundering. So the judge may condemn someone solely for money laundering.  |
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| Procedure /possibilities to trace assets/proceeds when a (foreign) confiscation order is already given:                                  | The foreign confiscation order can be sent to the Central Authority, with a request to execute this order. If assets of the defendant have not already been seized on the basis of a MLA, then please explain in the request the link to assets in the Netherlands. The Central Fine Collection Agency will work on executing this request. The Dutch public prosecutor is able to start a penal execution investigation after an examining judge gave permission to start such an investigation. In this investigation it is for example possible to order information from a bank and wiretap. |
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| Procedure for sharing of assets, if applicable:  | As a rule 50-50, unless there are victim damages involved.   |
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| Where applicable, limitations to the possibility for the requesting state to serve judicial documents directly to the persons concerned: | When this Convention is applicable judicial documents of a criminal nature should always be served through the Central Authority and not directly by the requesting State.   |
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| Other particularly relevant information on special types of assistance   |  |
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| Non Conviction Based Confiscation:   | In certain cases, the Netherlands can work together with countries that have a non conviction based system. It appears that it should be a case in relation to a criminal offence. A treaty basis must be present in order for the confiscation to take place.   |
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| MLA regarding liability of legal persons (criminal, civil or administrative):  | In the Netherlands a legal entity can also be condemned to a confiscation order after the legal person has been condemned to a criminal offence.   |
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| <p>Other information (for example, extended confiscation, confiscation for the purpose of victims):</p> | <p>It is possible to seize assets with the goal of value confiscation and to compensate victims at the final stage. . A court order by an examining judge is required for this.</p> <p>Addition remark by the Netherlands:</p> <p>The definition of 'confiscation' used in the existing Conventions refers to object confiscation and value confiscation, however not for "confiscation for the purpose of victims".</p> <p>The Netherlands has the possibility to seize an asset with the purpose of a compensation order. Such a compensation order is not an object confiscation order and value confiscation order. For example within the European Union two Framework decisions exist, the Framework Decision on the application of the principle of mutual recognition to financial penalties and the Framework Decision on the application of the principle of mutual recognition to confiscation orders.</p> <p>The Convention of Straatsburg and Warschau do not provide the possibility to take provisional measures, such as freezing or seizing, which, at a later stage, may be the subject of a request for "confiscation for the purpose of victims".</p> <p>In practice in a case in which victims should be compensated the Netherlands is able to seize assets with the purpose of a value confiscation order. After this order has become final, victims can be compensated.</p> |
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| <p>Links to national legislation, national guides on procedure:</p>                                     | <p>Through the CARIN network more information can be gathered.</p>   |