



Information sheet for Dutch prisoners in the European Union

The Mutual Acknowledgement and Execution of the Transfer of Sentences Act (WETS)

Serving a prison sentence in the Netherlands?

Introduction

The Dutch government thinks that it is important that people can return to society successfully after their prison sentence. Then they are less likely to reoffend. However, when you are a prisoner abroad, it is much more difficult to return to Dutch society.

This is why it is possible to serve a prison sentence in the Netherlands. This is called sentence transfer. There are two acts for sentence transfer: the Mutual Acknowledgement and Execution of the Transfer of Sentences Act (WETS) (within the European Union) and the Enforcement of Criminal Judgments Transfer Act (WOTS) (outside the European Union). This information sheet deals with the Mutual Acknowledgement and Execution of the Transfer of Sentences Act (WETS).

Who takes the decision?

The transfer of sentences falls under the responsibility of the Minister of Security and Justice. The Individual Affairs Division, Department of *International transfer of sentenced persons* (IOS) implements the acts for sentence transfer on behalf of the Minister. The IOS is part of the Custodial Institutions Agency (DJI) in The Hague.

Principles for the sentence transfer itself

Principles for sentence transfer with the WETS:

1 The foreign sentence is continued

With the WETS your sentence *will be continued*. This means that the sentence you were given abroad will remain the same in the Netherlands. The case will not be heard again with regard to its contents by a Dutch judge.

There are three exceptions where the sentence will not be continued on a one-to-one basis:

Exception 1 when your sentence is *higher than the maximum sentence that applies in the Netherlands for the crime for which you have been convicted*. Does this apply to you? Then your sentence will be adapted according to the Dutch maximum sentence.

Example maximum sentence

The Dutch citizen S. was convicted in Romania to a prison sentence of 17 years because he sold 2,900 XTC pills. In the Netherlands the maximum sentence is eight years for this. If S. goes to the Netherlands for a sentence transfer, the sentence will not be higher than eight years. The court of appeal in Arnhem passes judgement about this. Romania must agree with the new sentence, otherwise the sentence transfer will stop.

Exception II when there is a return guarantee

Return guarantee is an arrangement between the Netherlands and the country where you are detained, after you have been handed over. The arrangement implies that both countries must cooperate with the sentence transfer.

Example return guarantee

The Dutch citizen S. was arrested in the Netherlands at the request of Belgium. Because he had committed a crime in Belgium. There has not been a criminal trial yet for this crime. The Netherlands can arrange with Belgium: we will hand over P. to Belgium, and we will arrange a return guarantee. The lawsuit of P. will then be in Belgium, but P. may serve his sentence in the Netherlands. After P.'s conviction the Netherlands and Belgium will both cooperate with the sentence transfer.

In this case your sentence can be adapted to the sentence you would have been given in the Netherlands. The court of appeal in Arnhem decides about the Dutch sentence. This happens before you will be transferred to the Netherlands.

Exception III when the foreign sentence or punitive measure does not exist in the Netherlands

When a type of sentence or punitive measure has been imposed abroad that does not exist in the Netherlands, it can be adapted to a comparable sentence or punitive measure in the Netherlands.

2 Only the country where you are detained can submit the request for sentence transfer

The following rule applies in the WETS: the country where you are detained will take the first step for sentence transfer. This is not compulsory. And you are also not automatically entitled to sentence transfer. However, you can state that you want to qualify for sentence transfer. You can do this with the assistance of the prison where you are detained. You will then hear through the foreign authority whether a request for a sentence transfer will be made or not.

If you do not receive a reaction or if you have a problem to make your wish known to the appropriate authority, you can request the Department of International transfer of sentenced persons (IOS) to enquire about a possible request.

Then the IOS will need some details from you, such as:

- your name and date of birth;
- location (name prison and address) where you are detained;
- which court convicted you (name and place);
- when did your lawsuit become irrevocable (see under condition 4).

Only when the IOS has these details it can ask the appropriate authority about the request. Please be aware that it still does not oblige a country to send a request!

Attention: the sentence transfer on the basis of the WETS may also continue when you do not agree.

3 Conditional release scheme (V.i.-regeling)

V.i. means *conditional release*. A prisoner can be released earlier. This is only allowed on the condition that he or she does not commit a crime again during the probationary period. Sometimes there are other conditions. Such as the obligation to follow a treatment or supervision by the probation service. The rules for conditional release vary per country. In the Netherlands prisoners are usually released on a conditional basis when they have served two thirds of their sentence.

In the event of a sentence transfer on the basis of the WETS the Dutch conditional release scheme applies. However, the Netherlands can take over the foreign conditional release date. This is only possible if:

- this date is more favourable for the prisoner (so earlier)
- and
- if the date is certain. A conditional release date is not certain, for example, when a judge still has to pass judgement about granting the conditional release.

Example conditional release date not certain

The Dutch citizen B. has been detained in Belgium for six years as of 1 January 2016. After 1/3 of his sentence he can request a conditional release from the Belgian court, which will be as from 31 December 2017. The Belgian court will then decide whether the conditional release will be granted.

However, if both countries have already agreed about the sentence transfer before the Belgian court decides about the conditional release, the Dutch conditional release scheme will apply after 2/3 of the sentence.

The Dutch citizen B. has already been transferred to the Netherlands before 31 December 2017. The Dutch legislation will apply from the date of arrival in the Netherlands. After this the Belgian court cannot decide about the conditional release anymore.

In the event of a change in the conditional release date the total sentence will remain the same. The Dutch conditional release scheme will also continue to apply.

Example conditional release scheme

The Dutch citizen G. was sentenced in England for six years for drugs smuggling.

Will G. continue to be detained in England? It is certain for G. that he will be released on a conditional basis after three years (that is to say, after the half term of six years). His probationary period is also six years.

And what will happen if the conditional release date of G. will be adapted to the Dutch rules? In the Netherlands G. will be released on a conditional basis after four years (after 2/3 of his sentence).

For G. this means that the English conditional release date is more favourable than the Dutch date. This is why the Netherlands will take over the conditional release date of England. For G. this means: that he will be released on a conditional basis after three years, with a probationary period of three years. The total sentence will remain six years.

4 Sentence transfer is not compulsory

The other country and the Netherlands do not have to cooperate with the sentence transfer. Both countries can always decide to not cooperate. For example, because an investigation is still proceeding, or because you have committed a serious crime, or because you cannot comply with the conditions.

Request WETS

How does the process proceed?

Step 1: The foreign country sends the certificate

The country of the conviction takes the first official step. This is sending the request for sentence transfer to the Netherlands. This request is referred to as: certificate. The certificate includes your sentence and other important information. The procedure is not the same in all WETS countries. Countries will first investigate themselves whether you comply with the conditions.

Step 2: The IOS checks the certificate

The IOS checks whether you and the certificate comply with the conditions. In total seven conditions apply to a sentence transfer on the basis of the WETS. Otherwise you will not qualify for a sentence transfer on the basis of the WETS.

Condition 1 *Ties with the Netherlands*

For a sentence transfer on the basis of the WETS you must have sufficient ties with the Netherlands. The IOS can check in the country register whether you have the Dutch nationality and whether you live in the Netherlands. The IOS can also check how long you have been living in the Netherlands. The IOS hereby in particular checks the period of five years prior to your arrest abroad.

Finally, the IOS also checks whether your partner, children or parents live in the Netherlands. After all, the objective of the WETS is that your return to Dutch society is successful. This is impossible without having any ties with the Netherlands.

Residence permit

Do you have a residence permit for the Netherlands? Then you can also qualify for sentence transfer. This is only possible if you:

- have lived in the Netherlands for an uninterrupted period of five years prior to your arrest abroad and
- you are allowed to keep your residence permit.

The Immigration and Naturalisation Service (IND) can withdraw your residence permit because you were convicted abroad. The IND will assess your situation. Does the IND have the intention to withdraw your residence permit? Then the Minister of Security and Justice will decide that the sentence transfer is cancelled. Because then there is no 'rehabilitation interest' in the Netherlands.

Condition 2 *Sufficient remaining sentence*

The objective of sentence transfer is that your return to society is successful. This takes time and is done on the basis of detention. This is why there must be sufficient sentence must remain ('remaining sentence') when you arrive in the Netherlands.

When you receive the certificate the remaining sentence must be at least six months. This is calculated from the date that you are released on a conditional basis in the Netherlands. If this does not apply, the sentence transfer will be cancelled.

Condition 3 *Court case is ready*

Your criminal proceedings (the court case and judgement) has been completed abroad. The judgement is irrevocable. You cannot lodge an appeal anymore.

Condition 4 *Sentence: on or after 5 December 2011*

The WETS only applies when the sentence has become irrevocable on or after 5 December 2011.

Did your sentence become irrevocable before 5 December 2011? Then the WETS does not apply to you, but the WOTS applies to you. For this another information sheet is available.

Condition 5 *Prison sentence or punitive measure*

You have been given an unconditional prison sentence or a custodial order.

Condition 6 *Also punishable in the Netherlands*

You have been convicted for something that is also punishable in the Netherlands.

Condition 7 *Both countries agree*

The country where you have been convicted and the Netherlands both agree with the sentence transfer. The country of conviction is not obliged to transfer the sentence. The Netherlands is not obliged to take over the sentence.

Step 3: Decide within 90 days

Is all information complete and has it all been checked? Then the IOS will deal with the case on behalf of the Minister of Security and Justice. The Minister will decide within 90 days whether the Netherlands will take over the sentence or not. Sometimes it may last longer.

In those 90 days the IOS will send a request to the court of appeal in Arnhem. The court of appeal must assess whether your sentence can be implemented in the Netherlands. After this the court of appeal will judge the case. In case of a negative judgment the sentence transfer will be cancelled. In case of a positive judgment the IOS will agree on behalf of the Minister.

You can obtain information about the agreement through the country where you are detained. This also includes an explanation on paper about the consequences of the sentence transfer. The IOS will ask this country to send you this information. It is not always certain whether the country will also actually send you the information. Sometimes the post is not received.

Attention: despite the fact that the court of appeal may deliver a positive judgement, the IOS can still reject the request on behalf of the Minister. Moreover, the foreign country may also still decide to withdraw the certificate.

Step 4: Transfer within 30 days

It is stipulated in the WETS that you must be transferred to the Netherlands within 30 days in case of a positive judgement. Sometimes it may last longer. The country of conviction arranges the transport and the surveillance during the trip.

In the Netherlands you will be sent to a prison or forensic clinic.

Further information

Do you want to know more about the WETS or another subject that is related to this? Then you can do the following:

1 contact the IOS:

- phone the Information Line WETS WOTS: 08807 25 963
From abroad: 00 31 8807 25 963
Open Monday through Friday between 9.00 and 12.00 hours.
Lawyers and relatives who have any questions about sentence transfer can also phone this number.
- or write to: IOS, P.O. Box 30132, 2500 GC The Hague. Always state your full name, date of birth and the country where you are detained.

2 check www.dji.nl

(homepage → Directly to → Sentence transfer).

Colophon

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