



Custodial Institutions Agency  
Ministry of Security and Justice

Information sheet for Dutch prisoners abroad

# WOTS

Serving a sentence in the Netherlands?

**The Dutch government finds it important for people to properly return to society after their imprisonment. For this will reduce the chance that they will commit another offence. However, if you are imprisoned in a foreign country, a proper return to society will be much more difficult.**

**That is why it is possible to serve your sentence in the Netherlands. This is called a transfer of sentences. A transfer of sentences is governed by two acts: WETS (within the European Union) and WOTS (outside the European Union). This information sheet is about the WOTS.**

## How has a transfer of sentences been provided for by the WOTS?

WOTS means: Wet overdracht tenuitvoerlegging strafvonnis-sen or Enforcement of Criminal Judgments (Transfer) Act. Under the WOTS, it is possible to serve your foreign sentence in the Netherlands.

Which countries?

The WOTS applies in:

1. countries outside Europe that signed the Convention on the Transfer of Sentenced Persons (more than 60 countries);
2. other countries outside Europe with which the Netherlands has concluded a separate WOTS convention;

3. countries in the European Union (EU) that have not yet converted the new European regulations into their own national law.

At [www.dji.nl](http://www.dji.nl), you can find an overview of WOTS and WETS countries (homepage -> Direct naar -> Strafoverdracht).

## No convention? Then no transfer of sentence

If the Netherlands has not concluded a convention with the country where you were sentenced, the transfer of the sentence cannot continue.

## IOS

The transfer of sentences falls under the responsibility of the Minister of Security and Justice. The International Transfer of Criminal Judgments department (Internationale Overdracht Strafvonnis-sen or IOS) implements the acts on transfer of sentences on behalf of the Minister. IOS is part of the Custodial Institutions Agency (Dienst Justitiële Inrichtingen or DJI) in The Hague.

## Conditions for the WOTS

A personal does not automatically qualify for a transfer of a sentence under the WOTS. Certain conditions apply. You and the country where you were sentenced must meet all seven conditions. Otherwise, you will not qualify for a transfer of

your sentence under the WOTS.

These are the conditions for the WOTS:

### **1 Ties with the Netherlands**

You must have sufficient 'ties' with the Netherlands. This means: you are a Dutch citizen, you live and work or study in the Netherlands and you have family here. IOS will check this. For example, by checking if you have a Dutch passport and if you are registered in the municipal personal records database (gemeentelijke basisadministratie or GBA). IOS can also request information from the GBA about your partner, children or parents. If it is unclear if you have sufficient ties with the Netherlands, IOS will send you a letter with a questionnaire for you to complete. Or IOS will ask the Dutch Probation Service (Reclassering) to investigate if you have any ties with the Netherlands. This investigation will take approximately six weeks. This is only done if you are known to the International Office (Bureau Buitenland) of the Dutch Probation Service and if you have no objections to the investigation.

### **Residence permit**

If you are not a Dutch citizen, but have a residence permit for the Netherlands, you may also qualify for a transfer of your sentence. In that case, however, you must live and work in the Netherlands and also have family here. The Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst or IND) may withdraw your residence permit because you were sentenced abroad. The IND will assess your situation, the time you have been resident in the Netherlands and the severity of your sentence. If the IND indeed intends to withdraw your residence permit, the Minister of Security and Justice will decide to cancel the transfer of the sentence. For there will be no 'rehabilitation interest' in the Netherlands in that case.

### **2 Guideline: remaining sentence must be long enough**

The purpose of a transfer of sentences is that we can help you with properly returning to society. This takes time. That is why your remaining sentence must be long enough at the time when you arrive in the Netherlands.

Important: this rule could result in the transfer of the sentence being cancelled. More information about this can be found in the information sheet Procedure for international transfer of sentences to the Netherlands under the WOTS.

### **3 Criminal proceedings are complete**

Your criminal proceedings (lawsuit and judgment) are complete and you can no longer lodge an appeal.

### **4 Imprisonment**

You were sentenced to imprisonment or a custodial measure.

### **5 Also punishable in the Netherlands**

You are sentenced for an offence that is also punishable in the Netherlands.

### **6 Both countries agree**

The country where you were sentenced and the Netherlands both agree to the transfer of the sentence. The sentencing country is not obliged to transfer the sentence. And the Netherlands is not obliged in all cases to follow the sentence (except in case of a return guarantee, see below).

### **7 Submitting a personal request**

You must submit a personal request for a transfer of the sentence to the Netherlands. Such request is usually submitted to the prison management, but sometimes to a different authority. You can also ask your lawyer to help you with this. You must also place your signature in the application. This way, the Netherlands will know that you agree to the transfer of the sentence.

### **Transfer of sentence: a right or an obligation?**

You do not automatically have the right to a transfer of the sentence. However, you must agree to it, except if you were declared an undesirable foreign national in the sentencing country and if the other country has signed the Additional Protocol (to the convention on the transfer of sentences). The country where you were sentenced may also decide not to cooperate in the transfer of the sentence. For example, because of you are still subject to an investigation or because you committed a very serious offence.

### **Other important matters under the WOTS**

What happens to your sentence?

In case of a transfer of sentences under the WOTS, there are two options: commutation or continuation of the sentence.

Commutation of the sentence

Commutation means that the Netherlands adjusts your sentence to the sentence that would have been imposed on you in the Netherlands. The Dutch Public Prosecutor will make the demand and the court will ultimately determine your sentence.

### **Example of a commutation**

In panama, M. has been sentenced to imprisonment for six years and four months for smuggling cocaine. In the Netherlands, the sentence would have been three years. If the transfer of the sentence under the WOTS continues, M. must also appear before a court in the Netherlands. This court may then follow the demand of three years. For this purpose, however, M. and Panama must meet the seven conditions for WOTS.

## Continuation of the sentence

Continuation of the sentence means: the sentence that was imposed on you in the foreign country, remains the same in the Netherlands.

## Two exceptions

The rule of continuation of the sentence does not apply in all cases. There are two exceptions:

- 1) if your sentence is higher than the maximum sentence applicable in the Netherlands to the crime for which you were sentenced. If this applies to you, your sentence will be adjusted to the Dutch maximum sentence.
- 2) in case of a return guarantee. A return guarantee is an agreement between the Netherlands and the country where you are detained, after you have been handed over. The agreement means that both countries cooperate in the transfer of the sentence. In case of a return guarantee, your sentence will be commuted. So your sentence is changed to the sentence that would have been imposed on you in the Netherlands. A Dutch court will determine the new sentence.

## Example of a maximum sentence

X. was sentenced in Sweden to fifteen years' imprisonment for having 2800 grams of heroin in his suitcase. In the Netherlands, the maximum sentence for this is twelve years. If X. comes to the Netherlands for a transfer of his sentence, the sentence will not exceed twelve years. In that case, however, X. must meet all seven conditions for the transfer of sentences.

How has a conditional release been provided for by the WOTS? In case of a transfer of sentences under the WOTS, the Dutch regulation on conditional release applies. However, the Netherlands may follow the foreign date of conditional release. This is only possible if:

- 1) this date is more favourable to the prisoner (therefore an earlier date) and
- 2) if the date is certain and
- 3) if the country where the prisoner is detained agrees to the Netherlands applying the foreign date of conditional release and
- 4) if the Netherlands received the WOTS request after 1 November 2012.

In case of a change to the date of conditional release, the total duration of the sentence will remain the same. The Dutch regulation on conditional release also continues to apply.

## Example of a return guarantee

P. was arrested in the Netherlands at the request of France. For P. committed a crime in France. No criminal proceedings for this

crime have been instituted yet. In that case, the Netherlands and France may agree as follows: the Netherlands will hand over P. to France and will agree on a return guarantee. P. will then be tried in France. However, P. will return to the Netherlands to serve his sentence. After P.'s conviction, the Netherlands and France both cooperate in the transfer of the sentence.

## When a commutation and when a continuation?

This differs per country. In case of a transfer of a sentence between countries of the European Union, the sentence will always be continued.

## Regulation on conditional release

Conditional release means that a prisoner can be released on parole. This is only allowed on the condition that he or she does not commit another crime during the operational period. Sometimes, other conditions apply, compulsory treatment or supervision by the Dutch Probation Service, for example. The regulations on conditional release are different for each country. If the Netherlands takes over a foreign sentence, the Dutch regulation on conditional release will apply at all times. This means that a prisoner is released on parole if he or she has served two-thirds of the sentence. (The prisoner must also meet the other WOTS conditions.)

## Example of regulation on conditional release

In England, G. was sentenced to six years' imprisonment for smuggling drugs. If G. remains imprisoned in England, he will be released on parole after three years (i.e. after half of six years). His operational period is also three years. And what happens if the date of G.'s conditional release is adjusted to the Dutch regulations? In that case, G. will be released on parole after four years (i.e. after two-thirds of the full sentence of six years).

This means that the English regulations are more favourable to G. than the Dutch regulations. That is why, in this case, the Netherlands will follow the date of conditional release in England. For G., this means: conditional release after three years, with an operational period of three years. The total sentence continues to be six years.

## How long does it take to apply for a transfer of a sentence under the WOTS?

The procedure will take approximately six to twenty months. More information about the procedure can be found in the information sheet 'Procedure for international transfer of sentences to the Netherlands under the WOTS'.



## More information

If you want more information about WOTS or a related topic, you can:

**1 contact IOS:**

-> call the WETS WOTS Information Line: 08807 25 963

From abroad: 00 31 8807 25 963

Open from Monday to Friday from 9.00 am to 12.00 pm. Lawyers and family members who have questions about a transfer of sentences can also call this number.

-> or send a letter to: IOS, Postbus 30132, 2500 GC Den Haag.

**2 visit [www.dji.nl](http://www.dji.nl).**

**3 read more information** in the information sheet Procedure for international transfer of sentences to the Netherlands under the WOTS - for Dutch prisoners abroad.

### Colophon

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Postbus 30132 | 2500 GC Den Haag

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