



Fact sheet for Dutch prisoners in the European Union

WETS

Serving a sentence in the Netherlands?

The Dutch government thinks it is important that people return to society properly after their time in prison. The risk that they will make a mistake again will be smaller then.

But if you are detained abroad, a good return to society is more difficult.

For that reason you can serve your sentence in the Netherlands. It is called sentence transfer. There are two acts for international sentence transfer: WETS and WOTS. This fact sheet is about WETS.

Sentence transfer with WETS, how does it work?

WETS is the act on sentence transfer between the Netherlands and countries in the European Union. WETS means: Wet wederzijdse erkenning en tenuitvoerlegging vrijheidsbenemende en voorwaardelijke sancties (Mutual Acknowledgement and Execution of Detention and Probationary Sanctions Act). The act took effect in the Netherlands on 1 November 2012 and contains the new European rules on sentence transfer.

Important: which countries have joined WETS?

You can only use WETS if the destination country has its own national act with the new European rules for sentence transfer. You can see on www.dji.nl which countries these are. (homepage -> Go straight to -> Sentence Transfer).

Important: no WETS but WOTS

If you are Dutch and WETS does not apply in the destination country, WOTS may apply for you. Read the fact sheet WOTS - for Dutch prisoners abroad.

IOS

Sentence transfer comes under the responsibility of the Minister of Security and Justice. The department for international sentence transfers Internationale Overdracht Strafvonnissen (IOS) executes the sentence transfer acts on behalf of the minister. IOS is part of the Dienst Justitiële Inrichtingen (National Agency of Correctional Institutions) in The Hague.

Conditions WETS ('inbound')

Certain conditions apply for sentence transfer with WETS. There are eight conditions in total. You and the country in which you were convicted have to meet all eight requirements for you to be eligible for a WETS sentence transfer.

1 Relationship with the Netherlands

You have to have a 'relationship' with the Netherlands to be eligible for a WETS sentence transfer. It means that you have a Dutch passport and live in the Netherlands as well or are a student or have relatives here. For the purpose of the WETS is for you to be able to return to society properly. This is not possible without a relationship with the Netherlands. IOS checks if your relationship with the Netherlands is strong

enough. IOS can see in the municipal records if you live in the Netherlands and if your partner, parents or children live in the Netherlands. If this does not clarify that you have a relationship with the Netherlands, IOS will send you a letter with a questionnaire for you to fill in. Or the IOS asks the probation and after care service to investigate if you have a relationship with the Netherlands. This investigation takes about six weeks. It is only carried out when the Foreign Affairs department of the Probation Service knows you and if you do not object to the investigation. It only happens when you are in touch with the Foreign Affairs department of the Probation Service and if you have no objection against the investigation.

Residence permit

If you have a residence permit for the Netherlands, you may be eligible for sentence transfer. In that case you have to live and work in the Netherlands or have relatives here as well. You and the country where you were convicted also have to meet the other requirements. The Immigration and Naturalisation Service (IND) may pull your residence permit because you have been convicted abroad. The IND considers your situation, how long you have lived in the Netherlands and the length of your sentence. If the IND actually intends to pull your residence permit, the Minister of Security and Justice will decide that the sentence transfer will not take place, as there is no 'interest of resocialisation' in the Netherlands.

2 Rule: enough remaining sentence

The purpose of sentence transfer is that we can help you to return to society properly. That will require time. That is why there needs to be enough remaining sentence at the moment you arrive in the Netherlands. If that is not the case, the sentence transfer does not take place.

3 Case closed

4 Your criminal case (the trial and the verdict) has been concluded. You cannot appeal.

5 Prison sentence

You have been sentenced to prison or a custodial measure.

6 Also a criminal offence in the Netherlands

You have been convicted for something that is also a criminal offence in the Netherlands.

7 Both countries agree

The country where you were convicted and the Netherlands both agree to the sentence transfer. The country of conviction is not obliged to transfer the sentence. And the Netherlands is not obliged to take over the sentence in all cases.

8 Sentence: on or after 5 December 2011

The WETS only applies if the sentence became final on or after 5 December 2011. 'Final' means that the case is closed and cannot

be appealed anymore. If your sentence has become final on or before 5 December 2011, WETS does not apply for you, but WOTS does. Information on this is available in the fact sheet WOTS - for Dutch prisoners abroad.

9 The country where you are detained also has to have its own national act with the new European rules for sentence transfer.

See www.dji.nl (homepage -> Go straight to -> Sentence transfer) to see which countries have that.

Rules for the sentence transfer itself

Except for the conditions there are four other important rules for WETS sentence transfer:

1 The foreign sentence is continued

Your sentence is continued under WETS. It means that the sentence you were given abroad remains the same in the Netherlands, even though the sentence is higher than what is usual in the Netherlands.

Two exceptions

It is not always the case that the sentence is continued when transferred under WETS:

- 1) If your sentence is higher than the maximum sentence in the Netherlands for the crime for which you were convicted, your sentence is adjusted to the Dutch maximum sentence..

Example maximum sentence

S. has been sentenced in Rumania to 17 years in prison because he wanted to sell 2900 XTC pills. The maximum sentence for that is 8 years. If S. comes to the Netherlands for sentence transfer, the sentence here will not be higher than 8 years. The Arnhem Court of Justice rules. Rumania has to agree to the new sentence. S. and Rumania have to meet all other requirements.

- 2) If there is a return guarantee (see 'Other important rules for WETS sentence transfer').

2 Decision within 90 days

The Netherlands and the country where you are detained have to have taken a decision on the sentence transfer within 90 days. These 90 days start on the date that the Netherlands receives the request. The request is called: certificate. The time required to complete, send and check the certificate is thus not included. That may mean in practice that the whole procedure will take longer.

If the sentence transfer goes through, the country where you are detained has to make sure you are taken to the Netherlands within 30 days. This may take longer on special situations. The 30 days start on the date the Netherlands consent to the sentence transfer.

3 The prisoner's consent is not required

A WETS transfer can take place without your consent. The country where you are detained does ask your opinion of the sentence transfer. But the sentence transfer may still take place if you do not agree to it.

4 The country where you are detained will take the first step

The following rule applies in WETS: the country where the prisoner is being detained will take the first step for sentence transfer. It is not compulsory. And you are also not automatically entitled to sentence transfer. But you can indicate yourself that you want to be eligible for sentence transfer via the prison where you are detained. Sometimes it will go through a form. You can also notify the prison via your lawyer.

Other important matters regarding WETS

Return guarantee

Return guarantee is an agreement between the Netherlands and the country where you are detained, after you have been transferred. The agreement means that both countries have to support the sentence transfer.

Example return guarantee

P. has been arrested in the Netherlands at the request of Belgium, because he has committed a crime in Belgium. There has not been a criminal case for the crime yet. The Netherlands can then agree with Belgium: we hand over P. to Belgium and we agree on a return guarantee. P's criminal case will then be tried in Belgium. But P. will return to the Netherlands to serve his sentence. The Netherlands and Belgium both support the sentence transfer after P's conviction.

Important: sentence according to Dutch sentence

If a return guarantee has been agreed, your sentence is not continued as is common under WETS. Your sentence is changed to the usual sentence in the Netherlands instead. So: the Dutch sentence then applies in your case. The Arnhem Court of Justice will then determine the Dutch sentence.

Conditional release

A prisoner may be released earlier. This is a possibility only on condition that he or she does not commit a new crime during the probation time. Sometimes other conditions apply, such as compulsory treatment or Probation Service supervision. The rules for conditional release differ per country. Prisoners are usually released in the Netherlands if they have served two thirds of their sentence.

How does conditional release work under WETS?

The Dutch conditional release applies to WETS sentence transfers. But the Netherlands can assume the foreign conditional release date. This is only possible if:

- 1) This date is more favourable for the prisoner (so sooner) and
- 2) The date is sure.

If the conditional release date is changed, the total sentence remains equally long and the Dutch conditional release applies as well.

Example conditional release under WETS

G. got six years in the UK for smuggling drugs. If G. stays in the UK, he comes out on probation after three years (that is after half of six years). His probation time is also three years. What happens if G's conditional release date is adjusted to the Dutch rules? G. will get out after four years (that is after two thirds of the entire sentence of six years).

This means that the UK rules are more favourable to G. than the Dutch ones. That is why the Netherlands will assume the conditional release date of the UK in this case. For G. it means: free on probation after three years, with three years probation. The total sentence remains six years.

Is sentence transfer compulsory?

No, the other country and the Netherlands are not obliged to support the sentence transfer. Both countries may decide to not support it, for instance because an investigation about you is still ongoing, or because you have committed a very serious crime.

The Netherlands does have to accept the transfer in principle if:

- 1) You have a Dutch passport and verifiably live in the Netherlands;
- 2) You have a Dutch passport and have been declared undesirable in the country where you are staying at the moment. IOS checks if you have a Dutch passport and address and whether you have been declared undesirable.

Is sentence transfer a prisoner's right?

No, you are not automatically entitled to a WETS sentence transfer. You can indicate that you want to be eligible for sentence transfer. The WETS sentence transfer can also take place if you do not agree to it.



More information

Would you like to know more about WETS or another related subject? You can:

1 contact IOS:

-> call the WETS/WOTS information number: 08807 25 963

From abroad: 00 31 8807 25 963

Open Monday through Friday between 9.00 and 12.00 a.m.

Also attorneys and relatives with questions on sentence transfer may call this number.

-> or write to: IOS, Postbus 30132, 2500 GC Den Haag.

2 see www.dji.nl.

3 continue reading in the fact sheet WETS – for Dutch prisoners in the European Union.

Colofon

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Custodial Institutions Agency
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J-21045 1310