

**No. 22952**

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**NETHERLANDS  
and  
UNITED STATES OF AMERICA**

**Treaty on mutual assistance in criminal matters (with annex  
and exchange of letters). Signed at The Hague on  
12 June 1981**

*Authentic texts of the Treaty and annex: Dutch and English.*

*Authentic text of the exchange of letters: English.*

*Registered by the Netherlands on 18 June 1984.*

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**PAYS-BAS  
et  
ÉTATS-UNIS D'AMÉRIQUE**

**Traité sur l'entraide judiciaire en matière pénale (avec  
annexe et échange de lettres). Signé à La Haye le 12 juin  
1981**

*Textes authentiques du Traité et de l'annexe : néerlandais et anglais.*

*Texte authentique de l'échange de lettres : anglais.*

*Enregistré par les Pays-Bas le 18 juin 1984.*

## TREATY<sup>1</sup> BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE UNITED STATES OF AMERICA ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

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The Government of the Kingdom of the Netherlands and the Government of the United States of America, desiring to conclude a Treaty on mutual assistance in criminal matters, have agreed as follows:

### *Article 1. OBLIGATION TO RENDER ASSISTANCE*

1. The Contracting Parties undertake to afford each other, upon request and in accordance with the provisions of this Treaty, mutual assistance in criminal investigations and proceedings.

2. Assistance shall include, but not be limited to:

- a.* Locating persons;
- b.* Serving documents;
- c.* Providing records;
- d.* Taking the testimony or statements of persons;
- e.* Producing documents;
- f.* Executing requests for search and seizure; and
- g.* Transferring persons in custody for testimonial purposes.

### *Article 2. LOCATING PERSONS*

The Requested State shall make thorough efforts to ascertain the location of persons specified in the request and believed to be within the Requested State.

### *Article 3. SERVING DOCUMENTS*

1. The Requested State shall cause service of any legal document transmitted for this purpose by the Requesting State.

2. Any request for the service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the scheduled appearance.

3. The Requested State shall return as proof of service a dated receipt signed by the person served or a declaration signed by the officer making service, specifying the form and date of service.

### *Article 4. PROVIDING RECORDS OF GOVERNMENT OFFICES OR AGENCIES*

1. The Requested State shall provide a copy of a publicly available record of a government office or agency, duly authenticated by an appropriate official.

2. The Requested State may provide any record or information in the possession of a government office or agency, but not publicly available, to the

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<sup>1</sup> Came into force on 15 September 1983, i.e., 30 days after the exchange of the instruments of ratification, which took place at Washington on 16 August 1983, in accordance with article 19 (2).

same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State in its discretion may deny the request entirely or in part.

*Article 5. TAKING TESTIMONY AND PRODUCING DOCUMENTS  
IN THE REQUESTED STATE*

1. A person from whom evidence is sought shall, if necessary, be compelled by subpoena to appear and testify or produce documents, records and articles to the same extent as in investigations or proceedings in the Requested State. Testimonial privileges under the laws of the Requesting State shall not apply in the execution of requests under this Article.

2. On request, the Requested State shall state the date and place of the taking of testimony.

3. At the execution of a request, the Requested State shall permit the presence of an accused, counsel for the accused, and any other interested person specified in the request.

4. The executing authority shall provide any person permitted to be present the opportunity to pose questions for the person whose testimony is sought.

*Article 6. EXECUTING REQUESTS FOR SEARCH AND SEIZURE*

1. The Requested State shall execute requests for search and seizure in accordance with its laws and practices if the subject offense is punishable under the laws of both Contracting Parties by deprivation of liberty for a period exceeding one year, or, if less, is specified in the Annex of this Treaty.

The competent Authorities referred to in Article 14 may agree in writing upon any modifications of the Annex. Such modifications shall take effect on a date to be determined in an exchange of diplomatic notes.

2. An offense shall be deemed punishable under the laws of the Requested State if the acts or omissions alleged, occurring in similar circumstances in the Requested State, would constitute a criminal offense under the laws of that State. For purposes of this paragraph, purely jurisdictional elements of United States Federal offenses, such as the use of the mails or interstate commerce, shall not be considered as essential elements of these offenses.

3. A request to the Kingdom of the Netherlands for the production of documents from private persons shall comply with this Article.

4. A request to the United States for a search and seizure shall be accompanied by a statement made under oath before, or by a judge in the Kingdom of the Netherlands, which shall establish good cause to believe that an offense has taken place or is about to take place and that evidence of the offense is to be found on the persons or the premises to be searched, and shall provide a precise description of the person or premises to be searched. Such a statement shall be considered in the United States in lieu of an affidavit sworn before a United States judicial officer.

5. Documents produced under this Article shall be duly authenticated as specified in the request, and a record shall be made of every transfer of other articles or evidence seized. Such records of transfer shall be admitted as evidence of the truth of the facts they assert.

*Article 7. TRANSFERRING PERSONS IN CUSTODY  
TO THE REQUESTING STATE*

1. A person in custody needed as a witness or for purposes of confrontation before an authority in the Requesting State shall be transported to the Requesting State if:

- a.* The person in custody consents;
- b.* No substantial extension of that person's custody is anticipated; and
- c.* The Requested State has no reason to deny the transfer.

2. The Requested State may postpone execution of the request for as long as the presence of the person is necessary for an investigation or proceeding in the Requested State.

3. The Requesting State shall have authority and be obligated to keep the person in custody unless the Requested State has ordered release.

4. The Requesting State shall return a person not released under paragraph 3 to the custody of the Requested State as soon as circumstances permit or as otherwise agreed. The Requesting State shall not decline to return a person transferred because such person is a national of that State.

*Article 8. TRANSFERRING PERSONS IN CUSTODY  
TO THE REQUESTED STATE*

1. When the Requesting State requires the transfer to the other State of a person in custody for purposes of confrontation, the request shall so state.

2. The Requested State shall hold the person in custody, unless the Requesting State has ordered release.

3. The Requested State shall return a person not released under paragraph 2 to the custody of the Requesting State as soon as circumstances permit or as otherwise agreed. The Requested State shall not decline to return the person transferred because such person is a national of that State.

*Article 9. SAFE CONDUCT*

1. A person appearing before an authority in either State pursuant to this Treaty shall not be subject to suit, or be detained or subjected to any other restriction of personal liberty, with respect to any act or conviction which preceded departure, except as provided in Articles 7 and 8 and in the following paragraph.

2. A person, of whatever nationality, summoned before the judicial authorities of the Requesting State as an accused, shall not be prosecuted or subjected to any restriction of personal liberty for acts or convictions prior to departure from the Requested State and not specified in the summons.

3. Safe conduct provided in this Article shall cease if, ten days after the person appearing has been notified that his or her presence is no longer required, that person has not left the Requesting State or, having left, has returned.

4. A person appearing as a witness in the Requesting State may refuse to testify when that person, because of occupation, has an obligation or right to do so under the laws of the Requested State and the testimony required relates to protected information. The Requesting State shall respect the obligation or right

when the Competent Authority of the Requested State verifies that such obligation or right exists.

#### *Article 10. LIMITATIONS ON COMPLIANCE*

1. The Requested State may deny a request to the extent that:

- a. Execution of the request would prejudice the security or other essential public interests of the Requested State;
- b. The request relates to a matter considered a political offense by the Requested State;
- c. The request relates to the prosecution of a person who is immune from prosecution for the offense for which assistance is requested, by reason of the laws of the Requested State relating to prior jeopardy; or
- d. The request does not comply with the provisions of this Treaty.

2. The Requested State may postpone execution of a request or grant it subject to conditions, if execution would interfere with an ongoing investigation or legal proceeding in the Requested State.

3. The Requested State shall immediately inform the Requesting State of the reason for denying or postponing the execution of a request.

#### *Article 11. PROTECTING CONFIDENTIALITY AND RESTRICTING USE*

1. When necessary, the Requested State may require that evidence and information provided under this Treaty and information derived therefrom be kept confidential in accordance with stated conditions, except to the extent that disclosure is necessary as evidence in a public proceeding.

2. The Requesting State shall not use any evidence obtained under this Treaty, nor any information derived therefrom, for purposes other than those stated in the request, without the prior consent of the Requested State.

#### *Article 12. EXECUTING REQUESTS*

1. The Competent Authority of the Requested State shall promptly comply with the request or, when appropriate, transmit it for execution to the authority having jurisdiction.

2. Requests shall be executed according to the domestic law and procedures of the Requested State except to the extent that this Treaty provides otherwise. Procedures specified in the request, even if unfamiliar to the Requested State, shall be followed except to the extent specifically prohibited by the laws of the Requested State.

#### *Article 13. CONTENTS OF REQUESTS*

1. A request for assistance shall indicate:

- a. The name of the authority conducting the investigation or proceeding to which the request relates;
- b. The subject matter and nature of the investigation or proceeding;
- c. A description of the evidence or information sought or the acts to be performed; and

d. The purpose for which the evidence, information or action is sought.

2. To the extent necessary and possible, a request shall include:

- a. Available information on the identity and whereabouts of a person to be located;
- b. The identity and location of a person to be served, that person's relationship to the proceeding and the manner in which service is to be made;
- c. The identity and location of persons from whom evidence is sought;
- d. A description of the manner in which any testimony is to be taken and recorded;
- e. A list of questions to be answered;
- f. A precise description of the place to be searched and the objects to be seized;
- g. A description of any particular procedure to be followed in executing the request; and
- h. Information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled.

#### *Article 14. COMPETENT AUTHORITIES*

All requests for assistance shall be made and executed through a Competent Authority for each Contracting Party. The Competent Authorities of the two States shall communicate directly with each other for the purpose of carrying out the provisions of this Treaty. For the United States of America, the Competent Authority shall be the Attorney General or that person's designee. For the Kingdom of the Netherlands, the Competent Authority shall be the Minister of Justice in the Netherlands or the Minister of Justice in the Netherlands Antilles or their designees.

#### *Article 15. RETURN OF COMPLETED REQUESTS*

1. Upon completion of a request the Requested State shall, unless otherwise agreed, return the original request together with all information and evidence obtained, indicating place and time of execution, to the Requesting State.

2. To the extent possible, all documents and records to be furnished pursuant to a request under this Treaty shall be complete and in unedited form. Upon application of the Requesting State, the Requested State shall make every effort to furnish original documents and records.

#### *Article 16. RETURN OF DOCUMENTS, RECORDS OR ARTICLES OF EVIDENCE*

The Requesting State shall return any documents, records or articles of evidence furnished in execution of requests as soon as possible unless the Requested State waives their return.

#### *Article 17. COSTS AND TRANSLATIONS*

1. The Requested State shall render assistance without cost to the Requesting State except for fees of private experts specified in the request.

2. The Requesting State shall bear all expenses related to the transfer under Articles 7 and 8 of a person in custody.

3. Requests shall be provided in both Dutch and English. Translation of documents provided pursuant to requests is incumbent on the Requesting State.

#### *Article 18. OTHER TREATIES AND DOMESTIC LAWS*

1. Assistance and procedures provided by this Treaty shall be without prejudice to, and shall not prevent or restrict, any assistance or procedure available under other international conventions or arrangements or under the domestic laws of the Contracting Parties.

2. Except where this Treaty specifically sets forth rules for the admissibility of evidence, the provisions of this Treaty shall not give rise to a right on the part of any person to take any action in a criminal proceeding to suppress or exclude any evidence. This Treaty does not expand or limit rights to judicial review otherwise available under domestic law.

3. No provision governing extradition of persons, whether of domestic law or treaty, shall apply to the transfer of persons under Articles 7 and 8 or to appearance under paragraph 2 of Article 9.

#### *Article 19. ENTRY INTO FORCE*

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged at Washington, D.C., as soon as possible.

2. This Treaty shall enter into force 30 days after the exchange of the instruments of ratification. This Treaty shall apply both with respect to acts committed before or after its entry into force.

#### *Article 20. SCOPE OF APPLICATION*

1. As regards the Kingdom of the Netherlands, the present Treaty shall apply to the territory of the Kingdom in Europe and to the Netherlands Antilles, unless the instrument of ratification of the Government of the Kingdom of the Netherlands, referred to in Article 19, shall otherwise provide.

2. The Kingdom of the Netherlands reserves the right to declare at the time of ratification that this Treaty shall not apply to requests for assistance relating to fiscal offenses addressed to the Netherlands Antilles.<sup>1</sup> This reservation may at any time be wholly or partially withdrawn through an exchange of diplomatic notes between the Contracting Parties.

#### *Article 21. DENUNCIATION*

1. Either Contracting Party may terminate this Treaty at any time by giving notice to the other Party and the termination shall be effective six months after the date of receipt of such notice.

2. Termination of this Treaty by the Government of the Kingdom of the Netherlands may be limited to one of the constituent parts of the Kingdom.

<sup>1</sup> On the occasion of the exchange of the instruments of ratification the Chargé d'affaires of the Kingdom of the Netherlands made the following declaration:

"I have the honour to declare, on behalf of the Kingdom of the Netherlands, with reference to Article 20, second paragraph, thereof, that this Treaty shall not apply to requests for assistance relating to fiscal offenses addressed to the Netherlands Antilles."

DONE at The Hague on 12 June 1981 in two copies in the Dutch and English languages, each version being equally authentic.

For the Government of the Kingdom of the Netherlands:

C. A. VAN DER KLAUW

For the Government of the United States of America:

THOMAS J. DUNNIGAN

## ANNEX

Requests for search and seizure may be executed under paragraph 1 of Article 6 of the Treaty, if they relate to offenses covered by:

### I

A. For the Kingdom of the Netherlands (Europe): The Criminal Code (*Wetboek van Strafrecht*), Articles 194, 272, 328 *bis*, 328 *ter* and 336.

B. For the Kingdom of the Netherlands (Netherlands Antilles): The Criminal Code of the Netherlands Antilles (*Wetboek van Strafrecht van de Nederlandse Antillen*), Articles 200, 285, 341a and 349.

### II

For the United States of America: Title 26, United States Code (The Internal Revenue Code), § 7203.

Texts of the relevant legal provisions:

## NETHERLANDS CRIMINAL CODE

### Article 194

Any person who has been declared bankrupt or is married "in community of property" to a bankrupt or who is a manager or director of a public or private company, association or foundation, and who has been legally summoned to give information in such capacity and either fails to appear without good reason or appears but refuses to give the required information or deliberately furnishes false information shall be liable to a term of imprisonment not exceeding one year.

### Article 272

(1) Any person who deliberately discloses information which he knows or should reasonably be assumed to know he is bound not to disclose on account of his present or former profession or office or of a statutory regulation, shall be liable to a term of imprisonment not exceeding one year or a fine not exceeding 6,000 guilders.

(2) If such an offence is committed against a particular person proceedings may be brought only if the person concerned registers a complaint.



*Article 328 bis*

Any person who commits a fraudulent act in order to mislead the public or a particular person, with the intention of building up, protecting or increasing his own sales or those of another person, shall, if this could result in any disadvantage to his competitors or those of such other person, be guilty of engaging in unfair competition and be liable to a term of imprisonment not exceeding one year or a fine not exceeding 1,800 guilders.

*Article 328 ter*

(1) Any person other than a public servant, who is in paid employment or acts as an agent and who accepts a gift or promise in consideration of his performing or failing to perform some act in the course of his duties as employee or agent and dishonestly conceals the fact from his employer or principal shall be liable to a term of imprisonment not exceeding one year or a fine not exceeding 100,000 guilders.

(2) The same penalty shall be applicable to any person who offers a gift or makes a promise to another person, who is not a public servant but is in paid employment or acts as an agent, in consideration of the latter performing or failing to perform some act in the course of his duties as employee or agent, if the gift or promise is of such a nature or is offered or made under such circumstances that it is reasonable to assume that he will dishonestly conceal the gift or promise from his employer or principal.

*Article 336*

The “merchant”, manager, managing partner or member of the board of a company, association or foundation who deliberately discloses untrue accounts, or a balance sheet, profit and loss account, statement of assets and liabilities or information explaining any of the above or who deliberately permits disclosure shall be liable to a term of imprisonment not exceeding one year.

## CRIMINAL CODE OF THE NETHERLANDS ANTILLES

*Article 200*

Any person who has been declared bankrupt or is married “in community of property” to a bankrupt or who is a manager or director of a public or private company, association or foundation which has been declared bankrupt and who has been legally summoned to give information in such capacity and either fails to appear without good reason or appears but refuses to give the required information or deliberately furnishes false information shall be liable to a term of imprisonment not exceeding one year.

*Article 285*

(1) Any person who deliberately discloses information which he is bound not to disclose on account of his present or former profession or office shall be liable to a term of imprisonment not exceeding six months or a fine not exceeding six hundred guilders.

(2) If such an offence is committed against a particular person, proceedings may be brought only if the person concerned registers as compliant.

*Article 341 (a)*

Any person who commits a fraudulent act in order to mislead the public or a particular person, with the intention of building up, protecting or increasing his own sales or those of another person, shall, if this could result in any disadvantage to his competitors or those of such other person, be liable to a term of imprisonment not exceeding one year or a fine not exceeding nine hundred guilders.

*Article 349*

The “merchant”, manager, managing partner or member of the board of a company, association or foundation who deliberately discloses untrue accounts, or a balance sheet, profit and loss account, statement of assets and liabilities or information explaining any of the above or who deliberately permits disclosure shall be liable to a term of imprisonment not exceeding one year.

## THE INTERNAL REVENUE CODE (TITLE 26, UNITED STATES CODE)

## § 7203

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

## EXCHANGE OF LETTERS

## I

EMBASSY OF THE UNITED STATES OF AMERICA  
THE HAGUE

June 12, 1981

No. 55

Excellency,

I have the honor to refer to the Treaty between the United States of America and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters signed today, and in particular to Articles 4, 6, 11 and 14 thereof, and express the understanding of the United States with respect to those Articles.

*Article 4*

Paragraph 2 of Article 4 permits each Party to provide to the other records in the possession of the government, other than those publicly available, and information derived therefrom. It also allows each Party the option of refusing to provide, or placing conditions on the disclosure of, such records and information. The Parties intend to furnish such records and information, to the extent permitted by domestic law, except where disclosure would cause harm to individuals cooperating in criminal investigations, compromise voluntary sources of information crucial to government operations, or otherwise adversely affect the operations of government or the administration of justice.

The Parties recognize that disclosure of tax records and information is strictly limited under their respective domestic tax laws because the proper operation of those laws depends upon taxpayer cooperation. Accordingly, tax records and information will be provided under the Treaty with respect to criminal investigations and proceedings only to the extent, and under the same conditions, that they would be available in criminal investigations and proceedings in the Requested State.

### *Article 6*

The Parties understand that Article 6 establishes a far-reaching mutual obligation to comply with requests for search and seizure. Since this kind of assistance entails compulsory measures which may seriously intrude into the private life and affairs of the individual, the Parties agree that requests for search and seizure will be granted only where the criminal acts or omissions are punishable under the laws of both States and the request is executed according to the domestic laws and administrative practices of the Requested State.

In the Kingdom of the Netherlands, the established administrative practice is that with respect to offenses called "fiscal offenses," which relate to duties, taxes, customs and exchange, compulsory measures of this kind are judiciously invoked. Accordingly, the Government of the Kingdom of the Netherlands takes the view that in executing requests for search and seizure under international agreements, it will not depart from its policy of restraint. The Government of the Kingdom understands Article 6 to allow it to retain its customary discretion in the execution of requests relating to fiscal offenses.

Certain Federal laws of the United States, such as those governing drugs, poisonous chemicals, substances injurious to health, firearms and other weapons, explosive and incendiary devices, are based on constitutional powers as the power to tax and promote public health and, consequently, are couched in terms of tax, health, and other laws. In executing requests by the United States with respect to such laws, the Kingdom of the Netherlands does not intend to retain the discretion ordinarily exercised with respect to fiscal offenses under the laws of the Kingdom of the Netherlands. This discretion will be retained only, when the subject offenses relate to duties, taxes, customs or exchange according to the laws of both Parties.

Under the laws and practices of the United States, the requirements for search and seizure in fiscal cases are no stricter than in other kinds of cases. An application for a warrant for search and seizure in the United States must establish good cause to believe that an offense has taken place and that evidence of the offense is to be found on the person or premises to be searched. The description of the person or premises to be searched and the objects to be seized must be precise. Accordingly, a request by the Kingdom of the Netherlands to the United States for search and seizure should ordinarily be accompanied by a statement, made by or before a judge of the Kingdom of the Netherlands, of the facts establishing the basis for the issuance of the warrant.

### *Article 11*

Although paragraph 1 of Article 11 allows either Party to impose restrictions on evidence and information provided, both Parties recognize that where judicial procedures require evidence to be presented in a public proceeding, such evidence and information may be so used to the extent the Requesting State deems necessary.

With respect to paragraph 2 of Article 11, both Parties agree that consent to use tax records and information for a purpose other than that stated in the initial request can be given. However, such consent will be limited to those instances where the subsequent use is consistent with the domestic laws and practices of the Requested State.

*Article 14*

Requests made by the Competent Authorities specified in Article 14 are to be honored in the Requested State in a way which harmonizes with domestic law. It is understood that whereas requests under this Treaty and all subsequent communications are exchanged between the Competent Authorities designated, such requests will originate from prosecutors, investigating authorities or courts. The Competent Authorities of the Kingdom of the Netherlands will convey requests from public prosecutors, examining magistrates and courts. The Competent Authority of the United States will make requests on behalf of prosecutors and law enforcement agencies and will convey requests from courts.

Certain domestic laws of the Parties provide for assistance to foreign authorities only when the originator of the request is a judicial authority. Although prosecutors and law enforcement agencies are not considered judicial authorities under the laws of the United States, requests made on their behalf by the Attorney General of the United States, for purposes of applying the laws of the Kingdom of the Netherlands, shall be considered requests of a judicial authority. Requests made on behalf of public prosecutors in the Kingdom of the Netherlands, for purposes of applying the laws of the United States, shall be considered requests of a judicial authority.

I would appreciate from your Excellency confirming that the understanding described above is also the understanding of the Kingdom of the Netherlands.

Accept, Excellency, assurances of my highest consideration.

THOMAS J. DUNNIGAN

## II

### MINISTRY OF FOREIGN AFFAIRS

The Hague, 12 June 1981

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

*[See letter I]*

I have the honor to confirm that the understanding described above is also the understanding of the Kingdom of the Netherlands.

Please accept, Sir, the assurance of my highest consideration.

C. A. VAN DER KLAUW

Sir Thomas J. Dunnigan  
Chargé d'Affaires of the United States  
of America  
The Hague