

No. 22703

NETHERLANDS
and
FEDERAL REPUBLIC OF GERMANY

**Agreement to supplement and facilitate the implementation
of the European Convention on Mutual Assistance in
Criminal Matters of 20 April 1959. Signed at Wittem
on 30 August 1979**

Authentic texts: Dutch and German.

Registered by the Netherlands on 13 February 1984.

PAYS-BAS
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

**Accord visant à compléter la Convention européenne d'en-
traide judiciaire en matière pénale du 20 avril 1959 et
d'en faciliter l'application. Signé à Wittem le 30 août
1979**

Textes authentiques : néerlandais et allemand.

Enregistré par les Pays-Bas le 13 février 1984.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS
AND THE FEDERAL REPUBLIC OF GERMANY TO SUPPLE-
MENT AND FACILITATE THE IMPLEMENTATION OF THE
EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRI-
MINAL MATTERS OF 20 APRIL 1959²

The Kingdom of the Netherlands and the Federal Republic of Germany,
Desiring to facilitate implementation of the European Convention of 20 April
1959 on Mutual Assistance in Criminal Matters² between the two States and to sup-
plement the provisions thereof concerning mutual assistance in criminal matters,
Have agreed as follows:

Article I. In this Agreement the term “Convention” means the European Con-
vention of 20 April 1959 on Mutual Assistance in Criminal Matters.

Article II (ad article 1 of the Convention). Mutual assistance shall also be
provided:

- (a) In proceedings in respect of offences which are punishable in one of the two
States and are punished in the other State as breaches of law and order by admin-
istrative authorities against whose decisions an appeal may be made to a court
which is also competent in criminal matters;
- (b) In proceedings concerning claims for compensation for prosecution and un-
justified sentencing;
- (c) In matters relating to pardons.

Article III (ad article 2 of the Convention). 1. Where the request concerns a
punishable act which the requested State considers to be an offence in respect of dues,
taxes, customs duties and foreign exchange, assistance shall be refused only if the re-
quested State is of the opinion that execution of the request is likely to prejudice its
law and order or other essential interests.

2. In the cases to which article II, subparagraph (b), of the Convention ap-
plies, assistance shall be provided so far as possible subject to conditions whereby
prejudice to the interests of the requested State can be avoided.

Article IV (ad article 3 of the Convention). 1. The property referred to in
article 3, paragraph 1, of the Convention shall be handed over if an order for seizure
issued by the competent authority of the requesting State or an equivalent instrument
is presented, except where the property concerned is not subject to seizure under the
law of one of the Contracting Parties. Property shall be handed over even without
presentation of an order for seizure if the request of the judicial authority competent
under the law of the requesting State shows that the necessary conditions exist for
seizure.

¹ Came into force on 30 January 1983, i.e., one month after the exchange of the instruments of ratification, which took place at Bonn on 30 December 1982, in accordance with article XVI (2).

² United Nations, *Treaty Series*, vol. 472, p. 185.

2. Rights of third parties and — without prejudice to paragraph 4 — of the requested State in property to be handed over under article 3 of the Convention or under this Agreement shall not be affected.

3. For the purpose of returning it to the rightful owner, in addition to the property referred to in article 3, paragraph 1, of the Convention, property acquired as a result of an offence or the proceeds of the sale thereof shall also be handed over, provided that

- (a) The property in the requested State is not required for judicial proceedings;
- (b) No rights in the property are asserted by third parties; and
- (c) The handing over does not conflict with any judicial decision.

Presentation of an order for seizure or of an equivalent instrument shall not be required.

4. The requested State shall not, when handing over property on the order of a judicial authority and the return of which it waives, assert any customs lien or claim *in rem* under the provisions of customs law or taxation law unless the owner of the property, being the party injured by the offence, is himself liable for payment.

Article V (ad article 4 of the Convention). The presence of parties to the case shall be permitted when letters rogatory are executed in the requested State.

Article VI (ad article 7 of the Convention). Direct service by mail of the documents referred to in article 7, paragraph 1, of the Convention shall not be permitted.

Article VII (ad articles 11 and 12 of the Convention). 1. The requested State may, in connection with the execution of a request for assistance, permit the presence of a person who is in custody in the territory of the requesting State during execution of the request. If it so permits, the competent authorities of that State shall keep him in custody for the duration of his presence in its territory. He shall be sent back to the requesting State immediately after the request for assistance has been executed, unless that State applies for his release. The foregoing shall apply *mutatis mutandis* to the transit of such a person in custody through the territory of one of the two States.

2. Article 12 of the Convention shall apply *mutatis mutandis* to the cases covered in paragraph 1.

Article VIII (ad article 14 of the Convention). 1. In addition to the information referred to in article 14, paragraph 1, of the Convention, requests for service of documents in respect of the proceedings and judicial decisions shall also specify the nature of the document to be served and the status of the recipient in the proceedings.

2. If, in urgent cases, requests for assistance are submitted at the instance of judicial authorities by the Federal Criminal Investigation Office of the Federal Republic of Germany (Interpol Wiesbaden) or by the Netherlands Ministry of Justice, Central Investigation Service (Interpol La Haye), the instructions from the judicial authority and, so far as possible, the file number shall be indicated in addition to the information specified in article 14, paragraph 1, of the Convention and in paragraph 1 above.

Article IX (ad article 15 of the Convention). 1. Unless otherwise provided by this Agreement, the judicial authorities of the two States may communicate directly with one another.

2. Requests for search or seizure, for the handing over of property and for the transfer or transit of persons in custody, and records of execution shall be transmitted through the Federal Minister of Justice or the Ministries of Justice of the *Länder (Landesjustizverwaltungen)* of the Federal Republic of Germany to the Netherlands Minister of Justice and vice versa. In urgent cases, duplicates of the requests may be transmitted simultaneously in the manner specified in paragraph 1 for the purpose of preparing the execution of assistance.

3. Administrative authorities responsible for prosecuting the offences referred to in article II, subparagraph (a), shall be entitled to submit requests for assistance. Such requests shall be addressed to those prosecuting authorities of the other State in whose jurisdiction the assistance is to be rendered.

4. Requests for the communication of information or extracts from judicial records in a criminal matter, including requests for the cancellation of entries in judicial records, shall be addressed to the competent judicial record authority of the Federal Republic of Germany or, if the person concerned was born within the European territory of the Kingdom of the Netherlands, to the *Officier van Justitie* in whose jurisdiction his birthplace is situated, and otherwise to the Netherlands Minister of Justice.

5. In cases involving the transmission of information in respect of traffic offences, written communication shall take place directly between the Federal Motor Vehicles Bureau of the Federal Republic of Germany and the Netherlands judicial authorities.

6. In cases involving the transmission of information from judicial records needed in a non-criminal matter, written communication shall take place between the Federal Minister of Justice of the Federal Republic of Germany and the Netherlands Minister of Justice.

7. In criminal matters which are being dealt with by the police and in which only inquiries or investigative measures are required, communication concerning assistance may take place directly between the Federal Criminal Investigation Office of the Federal Republic of Germany (Interpol Wiesbaden) and the Netherlands Ministry of Justice, Central Investigation Service (Interpol La Haye).

Article X (ad article 16 of the Convention). Requests for assistance and other documents shall be drawn up in the language of the requesting State.

Translations shall not be required.

Article XI (ad article 21 of the Convention). 1. An application for prosecution, required under the law of both States, which is submitted in due time by the injured party to a competent authority of the requesting State shall also be valid in the other State. If an application for prosecution is required only under the law of the requested State, it may be subsequently furnished within the legally prescribed period, which shall begin to run upon receipt of the request by the authority of the requested State competent to prosecute. This authority shall inform the competent authority of the requesting State without delay that an application for prosecution is required under the law of the requested State and by what date the application must be submitted.

2. The request shall be accompanied by:

- (a) Originals or certified copies of the records of the case, a synopsis of the facts and evidentiary material, if any;
- (b) A copy of the penal provisions which would be applicable to the offence under the law in force at the place of commission of the offence.

3. The requesting State shall be notified as soon as possible of the action taken on the request. Articles and original records of the case which have been transmitted shall be returned free of charge after completion of the proceedings, unless the return thereof is waived.

4. Where prosecution has been initiated in the requested State, the authorities of the requesting State shall take no further measures of prosecution or execution against the accused in respect of the same offence. However, they may continue or resume prosecution, if:

- (a) It has transpired that the competent authority of the requested State cannot complete the proceedings, in particular because the accused avoids prosecution or execution of the sentence, or that it has concluded the proceedings but has not adjudicated on the principal of the offence concerning which the request was made;
- (b) For reasons which subsequently became known, the requesting authority has withdrawn the request before the issue of a court order or sentence or before the beginning of the first-instance trial proceedings.

5. Any investigation conducted in either State in accordance with the provisions in force therein and any action involving suspension of prescription shall have, in the other State, the same force of law as it would have had if it had been conducted under the law of that State.

6. Correspondence in respect of the matters covered in article 21 of the Convention and in this article shall take place between the Federal Minister of Justice or the Ministries of Justice of the *Länder* (*Landesjustizverwaltungen*) of the Federal Republic of Germany and the Netherlands Minister of Justice.

7. Expenses incurred by the application of this article shall not be refunded.

Article XII (ad article 22 of the Convention). 1. Information from judicial records shall be exchanged at least once a quarter between the Federal Ministry of Justice of the Federal Republic of Germany and the Netherlands Minister of Justice.

2. Either State shall, on request, transmit to the other State copies of penal judgements in individual cases so as to enable the requesting State to determine whether domestic measures should be taken on the basis of the requested decision. Written communication in this connection shall take place between the Federal Ministry of Justice of the Federal Republic of Germany and the Netherlands Minister of Justice.

Article XIII (ad article 25 of the Convention). 1. This Agreement shall also apply to *Land Berlin*, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Kingdom of the Netherlands within three months from the date of entry into force of this Agreement.

2. This Agreement shall apply only to the European territory of the Kingdom of the Netherlands.

If the applicability of the Convention is extended to the Netherlands Antilles, the applicability of this Agreement may be extended to the Netherlands Antilles by an exchange of notes between the Contracting Parties.

Article XIV. 1. Provisions of multilateral agreements concluded for the purpose of supplementing the Convention or facilitating the implementation thereof shall, from the time they enter into force as between the Federal Republic of Germany and the Kingdom of the Netherlands, supersede the corresponding provisions of this Agreement.

2. The Contracting Parties shall, prior to the entry into force of multilateral agreements referred to in paragraph 1 above, determine by common agreement which provisions of such agreements are to replace similar provisions of this Agreement.

Article XV (ad article 29 of the Convention). If the Agreement is denounced by either of the Contracting Parties, such denunciation shall take effect, in respect of the relationship between the Contracting Parties, after a period of two years following receipt of the notification by the Secretary-General of the Council of Europe.

Article XVI. 1. This Agreement shall be ratified; the instruments of ratification shall be exchanged as soon as possible at Bonn.

2. This Agreement shall enter into force one month after the exchange of instruments of ratification.

3. This Agreement may be denounced in writing at any time; it shall cease to have effect six months after denunciation. It shall also cease to have effect, without being separately denounced, on the date on which the Convention ceases to apply as between the Parties to this Agreement.

DONE at Witten on 30 August 1979, in two originals, each in the Dutch and German languages, both texts being equally authentic.

For the Kingdom of the Netherlands:

J. DE RUITER

For the Federal Republic of Germany:

DREHER

H. J. VOGEL
