Evaluation Report on the Netherlands on Mutual Legal Assistance and Urgent Requests for the Tracing and Restraint of Property [(1)]

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(1) The Netherlands has decided, pursuant to article 9 (2) of the Joint Action adopted by the Council on 5 December 1997, to release this report to the public

1. INTRODUCTION

1.1. The Netherlands is the second Member State to be evaluated following the adoption on 5 December 1997 of the Joint Action establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime.

1.2. The evaluation team consisted of: Ms Linda Saunt (UK), Mr Jürgen Kapischke (D) and Mr Anders Ikander (S). This team, accompanied by two members of the General Secretariat, visited the Netherlands for 5 days from 14 to 18 September 1998.

1.3. The programme of the evaluation team is attached as Annex A. A list of the persons met during the evaluation visit, and from whom information was received, is as Annex B.

1.4. Following these meetings, the evaluation team prepared this report, with the assistance of the Council Secretariat, based on the observations and conclusions of the experts in the team. The principal purpose of this report is to evaluate the application and implementation at national level in the Netherlands of Union and other international acts and instruments of co-operation in criminal matters, and the resulting legislation and practices at national level, having particular regard to cases which involve organised crime, and also with regard to urgent requests for the tracing and restraint of property in such cases.

1.5. The report initially describes the system for providing and requesting mutual legal assistance in the Netherlands. The report then describes the system for tracing and restraining property, and finally evaluates the effectiveness of all these systems in the Netherlands in the fight against organised crime.

2. ORGANISATION AND OPERATION OF MUTUAL LEGAL ASSISTANCE IN THE NETHERLANDS [(2)]

2.1. Legal basis

2.1.1. The system in the Netherlands for both the provision and the obtaining of mutual legal assistance with every EU country is governed by a **treaty**. Legal assistance therefore takes place on the basis of the treaty in question. In the cases of countries with which there is no treaty, international legal assistance takes place solely in accordance with national legislation. The Netherlands ratified the 1959 Strasbourg Convention, the Schengen Agreement, and the Benelux Treaty on Mutual Legal Assistance and Extradition.

2.1.2. The handling of requests for legal assistance to the Netherlands is also governed by Articles **552h to 552s of the Code of Criminal Procedure**. The articles are applicable to requests for legal assistance made by authorities in a foreign state in connection with a criminal case which are addressed to a specified or unspecified judicial or police body in the Netherlands insofar as other legislation is not applicable.

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(2) This part of the report relies to a great extend on the answers given by the Netherlands to the questionnaire contained in 6439/98 CRIMORG 30.

Where the request is based on a treaty, the action sought will, as far as possible, be taken on it (Article 552k(1)). [(3)]

The request has to be reasonable (in its form and/or the type of legal assistance sought).

If use of coercive measures is sought, the request has to be treaty based (Articles 552n and 552o).

2.1.3. The **Police Records Act and Decision** are also applicable. The Police Records Act lays down provisions governing the supply of personal data held by the police. [(4)] The Police Records Decision lays down provisions implementing the Police Records Act.

2.1.4. Also of relevance are the **Guidelines for the application of Article 552i of the Code of criminal procedure by the Public Prosecution Service** (adopted by the Board of Prosecutors General on 23 November 1994 and published in the Official Journal). The purpose of these guidelines is to set out cases in which the police can of their own accord carry out requests for legal assistance and hence also supply information, cases in which such co-operation requires the involvement of the Public Prosecution Service, and specific cases in which co-operation is not possible. The guidelines are binding on the authorities to which they are addressed.

2.2. Specific features of the system in the Netherlands

2.2.1. *The principle of reciprocity*

Even though the principle of reciprocity is not a legal requirement in the Netherlands, it does play a part in the provision of international legal assistance.

For example, one factor in considering whether to make a request in the Netherlands is that states usually provide one another with legal assistance on a reciprocal basis. That point is of significance because making a request for legal assistance may give the state approached the impression that reciprocity can be offered (in part) for the legal assistance sought, and this may attract a return request for which assistance can not be given. The Ministry of Justice has placed great emphasis on the principle of reciprocity in the developments which have taken place in recent years. Several of the problems that the Netherlands had experienced as a requesting state were attributed to the fact that they themselves had experienced difficulties in giving assistance.

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(3) Even if there is no treaty basis for the request (which is not the case for EU countries) it may be acted on (Article 552k(2)), provided that this does not conflict with any legal provisions, or with an instruction given by the Minister of Justice.

(4) The Netherlands indicate that a careful balance is struck between protection of the data subject's privacy, on the one hand, and the need for the Netherlands police and also foreign police forces to have access to information from police records for the purposes of their duties.

2.2.2. *Dual criminality*

As a general rule, dual criminality is not required.

An important exception to this principle, however, is that the Dutch authorities require dual criminality in cases of search and seizure.

Evidence against a criminal may be seized in cases where, if the offence had been committed in the Netherlands, that offence could give rise to extradition to the requesting state (Article 552o(2)).

This last requirement only applies to non-Schengen countries (for Schengen countries the only requirement being dual criminality - Article 51 of the Convention applying the Schengen Agreement).

Some problems arise in the Netherlands, if the use of some compulsory measures is requested by a foreign authority. Compulsory measures which are not mentioned in the legal provisions governing legal assistance, cannot be applied, even in cases of dual criminality. The most important examples of this are fingerprinting and DNA testing. Changes are under way to address these difficulties.

2.2.3. *Special provisions in Dutch legislation*

It is possible, under letters rogatory, to take steps which can be taken in a criminal investigation in the Netherlands only under tightly specified circumstances. In the case of letters rogatory, those circumstances do not need to be considered (e.g. whether it is a flagrante delicto offence, or one for which pre-trial detention is permitted under Article 97 of the Code for criminal procedure). Action can be taken by the Netherlands because a foreign country formally so requests.

However, as mentioned above, only those compulsory measures mentioned in the law may be applied.

> Under Article 552o(4) of the Code of Criminal Procedure, the investigating judge may make use of the compulsory measures listed in that article in accordance with the requirements of national law, save as otherwise stipulated by a treaty. **(5)**

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(5) Article 552o provides that the letters rogatory, under the conditions mentioned by this Article shall have the same consequences in law as an application for the opening of a preliminary judicial examination in the Netherlands insofar as it concerns:

a) the powers of the investigating judge in relation to suspects, witnesses and experts to be examined by him and those in relation to ordering the delivery or transfer of evidence, entering and searching premises, seizure of evidence, and tapping or recording of date not destined for the public, conveyed through the telecommunications infrastructure or through telecommunications systems used to provide services to the public;
b) the powers of the public prosecutor;
c) the rights and obligations of the persons to be examined by the investigating judge;
d) the assistance of counsel;
e) the duties of the registrar.

If a request does not have to be granted under the relevant treaty or where there is no treaty basis for it, the Minister of Justice may decide, in view of domestic policy (*ordre public*), that the request is to be rejected.

The Netherlands also considers that refusal of legal assistance has to be an option if the seriousness (or remoteness in time) of the offence is not commensurate with the relative seriousness of the procedural step by means of which legal assistance can be provided. In practice the Netherlands seem to have received an important number of requests in what -according to Western-European standards - are to be considered as minor cases.

It also considers that the request might have to be rejected on account of the time-barring of prosecution or enforcement of sentence, under the Netherlands' law, in view of the age of the case.

Finally, in special cases, it may be desirable for the Netherlands not to provide legal assistance, because to do so would mean helping to enforce rules at variance with its own legal concepts or where a criminal conviction is deemed inappropriate.

2.2.4. *Disclosure*

In accordance with Article 552o(1) of the Code of Criminal Procedure, the rules of that code concerning judicial preliminary inquiries are applicable mutatis mutandis.

Under these rules the suspect has to be notified as soon as possible that he is subject of a preliminary inquiry and kept informed of the progress of that inquiry.

Under Articles 30 and 51 of this Code, the suspect and his legal adviser are entitled, upon request, to view the case papers.

The investigating judge or the public prosecutor may nevertheless deny them such access if the interests of the inquiry so require.

Articles 125f and 125g in conjunction with Articles 30 and 51 of the Code make it possible in principle for the suspect and his legal adviser to find out that his telephone has been intercepted. For the sake of effectiveness of that compulsory measure, however, the interception of data communications and the results of it are still on occasion kept secret.

2.3. <u>The role of the central point or unit</u>

For the Netherlands, the central points and units for the transmission and receipt of letters rogatory are:

- the Office for International Legal Assistance in Criminal Matters at the Ministry of Justice
- the Public Prosecution Service's National Office in Rotterdam
- the National Criminal Intelligence Service.

2.3.1. *The Office for International Legal Assistance in Criminal Matters ("The Office")*

a) The Office does not deal only with requests for mutual legal assistance, but also with other issues such as requests for extradition, transfer of criminal proceedings and transfer of enforcement of criminal sentences.

It scrutinises, on behalf of the Minister of Justice, requests for mutual legal assistance made by judicial authorities abroad and in the Netherlands.

It also gives rulings on behalf of the Minister of Justice.

It assists the Netherlands' judicial authorities in carrying out the duties assigned to them by treaty and by law.

It advises and supports the Public Prosecution Service and the judiciary in the fight against international crime. It also engages in policy-making in this area. **(6)**

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(6) Core tasks of the Office, as described by the Netherlands authorities:

1. Provision of international legal assistance:
   The aim is to handle requests for legal assistance efficiently and effectively. It checks incoming requests for mutual legal assistance not only against treaties, legislation and policy, but also relevant court rulings.
   Particularly since the entry into force of the Convention applying the Schengen Agreement, the public prosecution service and the investigating judges have acquired powers of their own in combating international crime. They can seek advice and assistance from the Office.

   The Office also identifies particular weaknesses in the system, and provides authorities and individuals with case-related information.
   It further falls to the Office to appraise the relevant treaty, legislative and policy rules in terms of practice and to initiate new policy or new legislation and regulations in the field of international legal assistance.

2. Supply of information:
   Practical examples are: organising courses for members of the Public Prosecution Service and police officers, issuing a manual for international legal assistance in criminal matters, establishing a database of information on foreign legislation and procedures.
   The Office gives oral and written answers to questions from all parties involved in mutual legal assistance, and supplies, upon request, information material.

3. Policy:
   The Office frames and shapes policy on mutual legal assistance, both of its own accord, and at the request of departmental management or the Public Prosecution Service.
   It gauges policy against practice and where necessary makes policy adjustments.

   It initiates new or amended legislation, regulations and treaties, and participates in international negotiations for the establishment of new international conventions.

4. Co-ordination:
   The Office acts as the central co-ordinator between all parties involved, facilitates the activities of all links in the chain, and advises them. It plays also a co-ordinating role for the sectors involved in policy-making.

b) Organisation and facilities:

The Office has a staff of 20 persons for all the duties it has to carry out, and is divided into an implementation section and a policy section.

The implementation section (9 people) is divided in 3 geographical units, according to language.

The policy section employs two people. Furthermore there is a secretariat with a staff of six, providing administrative support services.

Each staff member has a networked computer, which gives access to the records of requests, and to which every staff member can add data. Use is also made of the in-house library. Funding is available for training courses, travel etc.

2.3.2. *The Public Prosecution Service#s National Office ("The National Office")*

As a rule, requests for legal assistance may be sent directly to the district public prosecutors' offices. By law it is laid down that the public prosecutor decides how the request for legal assistance is to be dealt with. Either the public prosecution service, the police or the investigating judge executes a request for legal assistance. To keep an overview, the coordination of the execution of requests for mutual legal assistance, has to be with one single authority, the public prosecutor. Therefore, the Netherlands authorities do prefer that requests be sent directly to the public prosecutor.

Requests should, however, also be submitted to the Public Prosecution Service's National Office, particularly where no territorially competent region is known (as yet), where a number of regions are involved, or where action requested is a matter for one of the departments of the National Criminal Intelligence Service. For instance, involvement of the National Office is required in case of cross-border surveillance. The National public prosecutor for cross-border surveillance at the National Office is allocated as the central authority. To this end, he uses the National Coordination Point Cross-border Surveillance (LCGO). All requests for cross-border surveillance ex Article 40 Schengen Agreement are to be made with the LCGO. If the district is identified where the cross-border surveillance operation is to end, the request shall be forwarded to the district concerned by the LCGO. If no district is identified, the National public prosecutor at the National Office will deal with the request himself. In both situations the National public prosecutor may decide to deploy a Schengen surveillance team.

The National Office has nationwide competence. In international assistance it works with the various departments of the NCIS.

The National Office has competence to carry out requests for legal assistance on its own. For this purpose it has authority over the National Criminal Investigation Team or LRT (Landelijk Recherche Team). This covers: (a) major requests for assistance, (b) urgent requests in which it is not clear which district has competence or (c) requests assigned by the Minister of Justice to the LRT because of political or other important reasons.

If the district in which the operation will take place has been identified, the case is to be submitted to the local Public Prosecution Service (unless the case falls under (a) or (c)).

In such cases, the National Office cannot take action on its own but has to pass the case to the competent district office once the district has been identified.

2.3.3. *The National Criminal Intelligence Service (NCIS)*

The NCIS has a staff of about 600 people. About 100 of them work (in part) on international legal assistance.

The following departments of the NCIS are of relevance for mutual legal assistance:

- the national cross-border surveillance co-ordination centre;
- the national under-cover police work co-ordination centre;
- the maritime information centre;
- the international information exchange section (including the Europol Netherlands desk);
- the Interpol National Central Bureau.

The main objectives of the departments are to facilitate and promote interchange of mutual legal assistance in the following ways: to provide for one-stop "shopping", to provide for an overview of all requests, both incoming and outgoing, to ensure uniformity in treatment, and to co-ordinate incoming and outgoing requests at a central point.

2.3.4. *Liaison Magistrates*

The Netherlands has exchanged liaison magistrates with France. The experience is that these magistrates can indeed help speed up the handling of international letters of request and generally improve the efficiency of the process.

The role of the liaison magistrate can be described as follows:

- act as an intermediary between judicial authorities in the requesting and requested state;
- advice on the form and contents of letters rogatory sent to and from the Netherlands;
- establish personal contact between involved magistrates;
- provide information on comparative law;
- follow bilateral discussions on judicial and police co-operation.

Liaison magistrates carry out their duties in co-operation with the police liaison officers in France and the Netherlands.

2.4. How the system works in practice for outgoing requests

2.4.1. Both public prosecutors and investigating judges are empowered to issue letters of request.

2.4.2. Where no treaty is applicable, the requests are sent solely through diplomatic channels, involving the Ministry of Justice and of Foreign Affairs.

2.4.3. Under Article 15 of the European Convention on Mutual Assistance in Criminal Matters (in urgent cases), the Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters, and the Convention on the Schengen Agreement, the request can be sent directly from the issuer to the judicial authorities in the state applied to. Where direct transmission is not possible, the public prosecutor and/or the investigating judge passes the request to the Office for International Legal Assistance in Criminal Matters at the Ministry of Justice. The Office then sends the request to the foreign authority.

2.4.4. The request is drawn up by the public prosecutor or the investigating judge, who have access to a computer programme for drafting letters of request (KRIS). [(7)] The public prosecutor/investigating judge has to provide translations of both the request and the relevant legal provisions.

2.4.5. Requests for mutual legal assistance are recorded in a computer system at the Office at the Ministry of Justice. This system is based on the name of the suspect.
At the level of the public prosecutor and the investigating judge (at the district courts) requests form part of an overall criminal case and only the criminal case as such is registered. It is therefore not possible to provide statistics in respect of outgoing letters of request.

2.5. How the system works in practice for incoming requests

2.5.1. The public prosecutor plays the key role in the system and decides how a request for legal assistance is to be dealt with and hence whether responsibility for further performance of legal assistance lies with the police, the Public Prosecution Service or the investigating judge.

Requests may also be carried out by the Fiscal Information and Investigation Service, the National Police, and some other special investigation units (General Inspectorate and Economic Inspectorate) where the assistance sought relates to the specific investigating duties of those units (e.g. tax offences).

All other individuals or bodies receiving a foreign request for legal assistance should in principle forward it without delay to the public prosecutor competent for the district in which the action requested is to be performed, or in which the request was received.

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(7) This programme provides for information on the legal system, applicable treaties and practice, and ensures a large degree of uniformity and consistency in all outgoing requests from the Netherlands. The system even allows for translation of relevant legal provisions into four EU languages (English, French, German and Spanish). For more information on this system, see under 2.9.1.

Police may handle requests for legal assistance on their own, when only information is requested and this can be obtained without the use of coercive measures.

The Public Prosecution Service retains responsibility for the steps taken by the police in the course of international legal assistance.

2.5.2. A letter rogatory can arrive in the Netherlands through different channels: the Office for Mutual Assistance in Criminal Matters at the Ministry of Justice, the Public Prosecutors' National Office, Police channels (Europol, Interpol, direct contacts between investigators,...), or directly to the local competent prosecutor's office or investigating judge at district level.

Once the competent public prosecutor has received the request for legal assistance, it is recorded on a case-related basis (built on the name of the suspect) , either at the Public Prosecution Service or (Article 39 Schengen) at the regional police force.

After the request has been assessed, the public prosecutor applies to the investigating judge, where necessary, for the use of coercive measures. (Article 552n Code of Criminal Procedure).

If there is no need for the use of coercive measures, upon receipt of the request, the public prosecutor assesses what investigative steps are required, and, where appropriate, assigns implementation to an investigation police unit.

In several of the 25 police regions in the Netherlands, including the major cities Amsterdam, Rotterdam, Maastricht, Haarlem and The Hague, there are co-ordinating offices for dealing with international requests. As a rule, these offices operate merely as co-ordinating centres, but, if staff in the area concerned cannot be released, the co-ordinating offices can carry out the request.

Once the results have been returned to the public prosecutor, he, where legally necessary with court authorisation, submits the results to the Ministry of Justice, or directly to the requesting authority.

The procedure should be carried out in accordance with the "Step-by-Step Guide to the procedural and administrative conduct/standard of international legal assistance at district public prosecutors' offices". The use of this guide is required by instructions issued to the Public Prosecution Service, establishing policy frameworks for the Public Prosecution Service. The guide is issued by the Board of Prosecutors General and adherence to the guide is mandatory. However, non-adherence is not subject to a sanction.

2.6. Facts and figures about the recent operation of MLA

2.6.1. The Netherlands does not as yet have any computerised national recording system. However, since more and more requests are sent directly between judicial authorities under the Schengen Agreement, the need has been recognised for a system in which all authorities involved in mutual legal assistance register incoming requests on a uniform national basis.

Such a system is currently being developed. The first phase will record all incoming letters of request. Outgoing letters of request might be incorporated at a later stage, if the system proves performing.

At present each authority deals with the recording of international requests in its own way.

2.6.2. Some statistics are available at the Office for International Legal Assistance in Criminal Matters for outgoing and incoming requests.

The Office uses a programme, known as JUDISIR, recording a variety of details of a case, and each step taken in the course of a request where the Ministry of Justice is involved. This represents only about 10 % of the incoming requests.

2.6.3. Almost all requests concerning Schengen Countries are sent out directly, and are therefore only reflected in the Office's statistics to a very limited extent.

2.6.4. At district level, the Public Prosecution Service in the 19 districts record the incoming requests. The outgoing requests are as yet only registered in the criminal case file itself. In other words, it is very difficult to obtain statistics about outgoing requests unless the name of the suspect is known.

2.6.5. At Annex C is an overview of outgoing and incoming requests at the Office, and a global list of incoming requests at district level. (Attached is also a list of incoming requests for the district of Arnhem, a town close to the German border.)

2.7. <u>The training provided to those who are currently using MLA</u>

2.7.1. *Members of the Office for International Legal Assistance in Criminal Matters*

Staff dealing with international letters of request have received a university education (lawyers) or higher vocational education (legal assistants). They are also given practical on the job training.

Further they attend a 2 day course on international legal assistance in criminal matters, run by the Judiciary Study Centre Foundation. This course comprises lectures by experts on extradition, transfer of proceedings, enforcement of foreign criminal judgments, letters rogatory and international requests from and to countries for confiscation assets of crime. This course is also given to public prosecutors and (investigating) judges.

Furthermore, the Office is divided into units by countries and provides, if desired, for cluster-related language tuition for personnel. Resources are available for further specific training courses, such as short training periods with the Public Prosecution Service etc.

2.7.2. *District Public Prosecutors' Office*

Specific courses on topics such as international legal assistance in criminal matters (two days), and mutual legal assistance (1 day) are run by the Judiciary Study Centre Foundation.

There is also a course in confiscation of assets under criminal law.

These courses are obligatory for trainee judges and prosecutors, and optional for others.

The training provided for supporting administrative staff is practical "on-the-job" training, being given as necessary on an in-house basis by a public prosecutor or his clerk. Such administrative staff also have an opportunity to follow relevant courses at e.g. the course on international legal assistance for police officers at the Criminal Investigation Academy in Zutphen (2 day course).

It is also possible to provide language tuition for those dealing with international legal assistance.

2.7.3. *National Criminal Intelligence Service*

People responsible for handling requests are given in-house training. This involves a 3 day course designed to provide some legal understanding in dealing with requests for legal assistance.

The NCIS also arranges for language courses for its staff, both in-house and outside.

2.7.4. *Police*

The police are provided with training in legal assistance. The Netherlands Police Academy runs a course in international criminal law for one term for its full-time students (training as senior officers). The Criminal Investigation College (for detectives and inspectors) pays considerable attention to courses relating to international legal assistance. The National Police Selection and Training Institute, which provides basic police training, also includes tuition on international police matters.

2.7.5. *Future strategy*

As a rule, there are separate training schemes or courses for members of the Public Prosecution Service and for the police.

However, in view of increasing joint action against organised crime, the Netherlands Police Academy and the Judiciary Study Centre Foundation were commissioned by the Ministry of Justice to devise a course in law enforcement strategies for combating organised crime. That five day course includes coverage of international legal assistance in criminal matters and international confiscation of assets of crime.

2.8. Guidance and compliance

2.8.1. Various arrangements and guidelines exist to ensure that requests for legal assistance are satisfactorily carried out or issued.

2.8.1.1. Firstly, the Office for International Legal Assistance in Criminal Matters has drawn up a Manual for international legal assistance for use by legal practitioners [(8)], including a description of the procedure to be followed for requests for mutual legal assistance.

It lists all relevant provisions, such as treaties applicable and Netherlands legislation. All points to be considered with regard to requests for legal assistance are discussed in depth.

The annexes to the Manual include a procedural outline drawn up by the Public Prosecution Service's Working Party on International Legal Assistance: the "Step-by-step Guide to the procedural and administrative conduct/standard of international legal assistance at district public prosecutors' offices".

Copies of the Manual should normally be available at every district public prosecutor's office, every law court and every investigating judge's chambers.

2.8.1.2. Guidelines have also been drawn up by the Board of Prosecutors General for the application of Article 552i of the Code of Criminal Procedure by the Public Prosecution Service and the supply of information by the police in the course of mutual legal assistance in criminal matters.

These guidelines establish cases in which the police can carry out requests for legal assistance of their own accord, cases in which such co-operation requires the involvement of the Public Prosecution Service and specific cases in which co-operation is not possible.

The guidelines instruct the police and the Public Prosecution Service how to act. They are binding and published in the Official Journal.

2.8.1.3. In addition, a booklet entitled "Schengen in practice" has been issued (edited by the Office for International Legal Assistance in Criminal Matters), providing extensive practical information on the significance for the Public Prosecution Service of the new arrangements under the Convention applying the Schengen Agreement and the legislation implementing it.

2.8.1.4. Mention should lastly be made of the planning and allocation papers for 1998 and 1999 from the Board of Prosecutors General. Those papers highlight the importance of international legal assistance. In so doing, they establish frameworks to guide public prosecutors' offices and national departments in drawing up the international legal assistance section of their annual plans.

They require public prosecutors' offices to arrange for prompt handling of requests received for legal assistance in general and for proper drawing up and full documentation of outgoing requests for legal assistance. Public prosecutors' offices should also ensure sufficient capacity and should each assign one officer responsibility for co-ordinating work on carrying out requests for legal assistance. The papers are to be considered as instructions.

(8) The Manual for international legal assistance in criminal matters falls into five parts (on the subjects of extradition, ancillary legal assistance, transfer of criminal proceedings, transfer of enforcement of criminal sentences and international co-operation in confiscating proceeds of crime).

2.8.2. *Contact with requesting authority*

As yet no specific guidelines have been given in this respect by the Board of Prosecutors General to practitioners. [(9)]

2.8.3. *Urgent requests*

2.8.3.1. There are no arrangements for assigning priority to requests for legal assistance. Priority treatment is given on an ad hoc basis, with efforts being made to accommodate urgency as far as possible in close liaison with the police and the investigating judge.

2.8.3.2. For incoming requests, classification as urgent is not automatically accepted. Most incoming requests are stamped "urgent"! A case is assessed urgent on consideration of the nature of the request and the explanation given in it.

If the Dutch Authorities consider that a request is urgent (in this respect "Dutch standards" are considered as the criterion), the police force carrying it out is asked to attend to it straight away. In such a case implementation is expedited by the use of fax machines and the telephone and are drawn to the personal attention of those who are to carry them out, pointing to the urgency of the requests.

A request received as non-urgent may still be treated as urgent if such treatment is asked for and the reason for the urgency also explained.

Urgent requests come higher on the list of priorities and are therefore dealt with more quickly. Urgent cases relating to organised crime are not treated any differently from other urgent requests.

The Netherlands' authorities indicate that there have been instances of implementation of urgent request which have been delayed. Shortage of capacity (at all levels, but especially in the judiciary and in the police) may be one reason why a request for legal assistance cannot be promptly carried out.

Non-urgent requests are recorded upon receipt and attended to as soon as possible (as a rule, from 1 to 3 weeks after receipt). The maximum length of time taken to carry them out may extend to a few months; this depends on what is requested.

The planning and allocation papers for 1998 and 1999 instruct the Public Prosecution Service to arrange for the smooth handling of incoming requests for legal assistance. They also set out the efforts expected of the Public Prosecution Service.

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(9) If there is a liaison magistrate in place, such contact is made primarily by way of liaison magistrates. Contact does also take place by way of Interpol. Problems in contacting the requesting authority arise mainly where a request for legal assistance has been submitted via a central source and thus not by the authority which actually compiled the request. Specialist knowledge of the substance of the request, however, is often to be found at the latter authority. The lists of addresses and geographical lists exchanged between Schengen countries have brought a very great improvement in this respect. Those lists contain the addresses and the telephone and fax numbers of the appropriate authorities in the Schengen country in question.

It is generally possible to reach agreement on the urgency of a request with the requesting authority. Negotiations regarding urgency are rare and, where held, conducted by telephone. The Netherlands indicate that in most cases the problem (e.g. a number of priorities all at once) can be explained and agreement reached on the time within which the request is to be dealt with. There are, however, no guidelines on how to act in these cases.

2.8.3.3. In the case of outgoing requests, the central authorities give priority to the forwarding of urgent requests for legal assistance.

2.9. Monitoring

The Netherlands has at present a variety of (non-computerised) monitoring systems for international requests for legal assistance. However, it has already developed and is still developing several computer programmes in these fields .

2.9.1. *Computer Programme for drafting international letters of request (KRIS)*

The National Criminal Intelligence Service, working with the Ministry of Justice (Office for International Legal Assistance in Criminal Matters), has developed the criminal legal assistance know-how computer programme, called KRIS.

The programme has been in existence since 9 March 1995 and is very extensively disseminated among the police and judiciary (Public Prosecution Service and investigating judges). It is widely known. The programme serves as an aid to the police and judiciary in requesting legal assistance from a foreign country. It has two purposes, being usable (1) for reference purposes and (2) in preparing a request for legal assistance.

KRIS is issued on diskette, which contains a great deal of information about mutual legal assistance and treaties in this area. A simple system of options shows which treaties are in force for each country and what particular requirements are applicable to the step to be taken for each country. The text of treaties is readily consultable. **(10)** The request itself can be generated by means of the programme. Requests for legal assistance drawn up using the programme always automatically include precise references to the treaties applicable. As a standard feature, it also makes allowance, for each step to be taken, for the requirements laid down by treaty and by legislation. For users' convenience, the Netherlands criminal law provisions applicable are attached as an annex to the request generated by the programme. It is also possible to extract an English, French, German, and Spanish translation of those provisions.

Consistent use of KRIS has improved the standard of outgoing requests for legal assistance, taken as a whole. Uniformity in requests also makes them readily recognisable, so that colleagues in the state to which they are addressed tend to know what is expected of them.

The system is regularly updated, the current version in use being the third.

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(10) Taking the example of phone-tapping, not only does the programme answer the question of whether a telephone can be intercepted by way of legal assistance, but it also for a number of countries, including Germany and Belgium, shows under what conditions, imposed by those countries' national law, this is possible.

2.9.2. *National uniform recording system for handling international requests for legal assistance*

The Dutch authorities state that the combating of (cross-border) crime makes it necessary for the Netherlands to handle international requests for legal assistance in a professional way. They believe that it is important to arrive at a clear policy for dealing with all requests and to organise police and judicial co-operation in a readily comprehensible manner. As a result of a number of developments in the organisations most involved with international requests for legal assistance (viz. the Public Prosecution Service, the National Criminal Intelligence Service, the regional police forces and the Office for International Legal Assistance in Criminal Matters at the Ministry of Justice) in recent years, it has been decided to introduce a national uniform recording system for handling international (incoming) requests for legal assistance.

This will show how the scope (in the Schengen context and under the European Convention on Mutual Assistance in Criminal Matters) for direct exchange of requests between the various countries' public prosecution services is being used. There will be national records kept, giving rise to uniform monitoring of progress and a nationwide overview of incoming requests.

Requests for legal assistance will be input into the national uniform recording system for handling international requests for legal assistance by the organisation at which the request is received. In many cases the organisation receiving the request for legal assistance is also the organisation responsible for dealing with it but, where this is not the case, the national uniform recording system has computerised facilities for assigning responsibility to the correct organisation.

The objectives of the system are (1) to raise the standard **(11)** of handling of requests for international legal assistance and (2) to make such requests more manageable **(12)**.

Once the national uniform recording system is operating, the international legal assistance coordination centres for the district public prosecutors' offices (including the Public Prosecution Service's National Office) and for regional police forces, the NCIS and the Office for International Legal Assistance in Criminal Matters will all be linked up with the central computer.

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(11) The standard of handling of requests for international legal assistance can be raised by means of uniform recording of international requests for legal assistance so as, inter alia, to prevent duplication in recording them and duplication in dealing with them. The standard is also raised by national availability of the records so that the police and judiciary throughout the country can see the various requests for legal assistance made with regard to the same individual.

(12) International requests for legal assistance can be made more manageable by providing monitoring of progress; target completion dates for a legal assistance request can be entered and the national uniform recording system for handling international requests for legal assistance has various facilities to assist the organisation(s) concerned in dealing with the request by the deadline set. Scope for policy information, e.g. for revealing significant trends, showing workload or pinpointing weaknesses in handling, will also make requests for international legal assistance more manageable.

The recording system does not provide any substantive information regarding requests for legal assistance. However, it will be fairly easy to extract from the data recorded national and regional policy information on figures and trends, e.g. broken down by source country of legal assistance requests. Information can also be obtained on matters such as workload, average processing times, etc.

The planning and allocation paper for 1998 has already notified public prosecutors' offices of the intended implementation of the national uniform recording system and of how to proceed. They have now been asked to make advance arrangements for it.

The "Step-by-step Guide referred to earlier is to be amended to cover interaction with the national uniform recording system.

The recording system is expected to come into operation in late 1998 to assist in the process of providing legal assistance. A trial period will first be held at a number of organisations.

The Dutch authorities indicate that work is at present under way on many fronts on improving the standard of international legal assistance provided by the Netherlands to foreign countries. Organisational changes are being made accordingly in many districts of police regions in order to centralise the (coordination of) handling of requests for legal assistance.

There is not as yet any computerised national monitoring system nor a computerised system as regards progress in carrying out requests for legal assistance.

The person who drew up the request for legal assistance issues a reminder to the foreign country either directly or via the Office for International Legal Assistance in Criminal Matters. Some public prosecutors' offices have a computerised system, while most monitor by manual means. Upon receipt of the resulting material, a check is made (at present manually) on whether it tallies with the assistance sought from the foreign authorities.

Under the system by means of which incoming requests for legal assistance are recorded, a note is made, after implementation, that the request has been carried out or dealt with. From this it is possible to work out the interval between receipt and the sending back of the response.

Cases referred to the police by the public prosecutor's office for action are at present monitored (by computerised or manual means) by the person at the public prosecutor's office assigned responsibility for the request for legal assistance. After a reasonable length of time without any response from the implementing authority, a reminder is normally issued, either by telephone or in writing, urging that the request be dealt with.

In accordance with the "Step-by-step Guide to the procedural and administrative conduct/standard of international legal assistance at district public prosecutors' offices", time limits have been set for carrying out requests for legal assistance . Use of that guide is required of public prosecutors' offices by the planning and allocation paper for 1998. In addition, the planning and allocation paper for 1999 sets a national standard for dealing with incoming requests for legal assistance. **(13)**

Public prosecutors' offices do not have any system for checking on the progress of requests sent to other countries for implementation. They do have a system showing the fact that a request has been sent and to whom it was sent.

The authorities in the Netherlands attempt to obtain interim and final reports from the state approached. It is intended in the future to extend the national uniform recording system to outgoing requests for legal assistance.

The process of dealing with outgoing or incoming requests classified as urgent is monitored. Monitoring of outgoing requests is conducted by or on behalf of the public prosecutor at whose request and for whose case the legal assistance is sought. Monitoring of incoming requests is mainly attended to by the clerk assigned responsibility for international legal assistance at the public prosecutor's office or by the Office for International Legal Assistance in Criminal Matters.

In particularly serious cases of official negligence, disciplinary measures may be taken against those who fail to respond appropriately in carrying out requests for legal assistance. Where implementation is assigned to an investigation unit, imposition of a disciplinary measure may be suggested to the authority under which the implementing official comes by the head of the public prosecutor's office.

The central authorities oversee the carrying out of incoming requests for legal assistance, insofar as requests are not made directly to the competent authorities (this is, however, only about 10 % of the requests). The central authorities firstly monitor progress in carrying out requests and if necessary issue a reminder to those carrying them out and secondly check on the substantive results of carrying out incoming requests for legal assistance. With the advent of the national uniform recording system for handling international requests for legal assistance, monitoring and supervision of incoming requests will actually be possible on a more formal basis.

2.10. Rights of appeal **(14)**

Under Articles 552p(4) and 552a of the Code of Criminal Procedure, the suspect has a number of opportunities to appeal. These opportunities to appeal are also available to entitled parties.

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(13) e.g. ancillary legal assistance involving the use of coercive measures with court consent has to be dealt with within 3 months and ancillary legal assistance without the use of coercive measures within 2 months.

(14) The Dutch legislation uses the wording "beklag", which could be translated in English as "(rights to) complain". However, the Dutch authorities and the evaluation team agreed to use in this report the concept of "appeal" (in Dutch "Beroep"), as this was the wording that was used in the questionnaire.

An appeal can be lodged against the investigating judge's intention to hand over to the public prosecutor reports of hearings held by him and of other steps taken by him, e.g. such as inspection, entry, searching of premises and seizure.

An appeal may also be lodged against the investigating judge's request and/or the legal assistance officer's application for court authorization to hand over evidence against a person or data carriers to the public prosecutor for supply to the requesting state. Such an appeal may be based on different grounds, such as: (1) the seizure of the evidence, (2) the use of that evidence, (3) the absence of an order for its return as well as (4) the "consultation or use" of data stored in a computer system (and secured when searching premises) and (5) that of data gathered at the PTT (a Netherlands corporation operating the postal and telephone services).

Finally the entitled parties in question who have their habitual residence in the Netherlands, have another opportunity to lodge an appeal. This opportunity results from Art. 552p Code of Criminal Procedure.

Under Article 552p of the Code of Criminal Procedure, the court will authorise the handing over of the evidence seized to the public prosecutor only with the proviso that the material is to be returned once used as required for the purpose of criminal proceedings. The entitled parties in question may appeal against the possible omission of such a proviso from any authorising court order.

The investigating judge is empowered to require the Netherlands State (in practice, the public prosecutor), in handing over material to the requesting authorities, to impose certain conditions on the use of data carriers obtained by exercising "any criminal justice powers". The conditions imposed may not, however, be appealed against.

An appeal may be lodged either at the district court of the public prosecutor concerned or at the court for the district of the investigating judge involved in carrying out the request for legal assistance.

The appeal ruling is open to further appeal by the Public Prosecution Service within 14 days of the date of the ruling and by the appellant within 14 days of service of the ruling.

In all cases in which the appeal has been turned down, the evidence or data carriers may not be handed over to the public prosecutor until the appeal ruling is no longer subject to any further appeal. If evidence or data carriers are nevertheless handed over to the public prosecutor before that, he is not allowed to supply the material to the requesting authorities until the ruling has become irreversible. An appeal can thus be said to have suspensive effect.

According to the central authorities, only in a few cases has an entitled party appealed in writing against the possible handing over of evidence and data carriers to public prosecutors or to the requesting state.

No specific figure about the number of cases can be given, since appeals are not recorded. In the few known cases in which a formal appeal was lodged, this did not in the end prevent the carrying out of the request for legal assistance. The upshot was generally that the applicant obtained copies of the data seized, namely accounting records. An appeal can give rise to delay, ranging from around one or two months to 18 months (depending whether an appeal to a higher court and possibly a further appeal are lodged).

3. THE ORGANISATION AND OPERATION OF THE SYSTEM IN THE NETHERLANDS FOR TRACING AND RESTRAINING PROPERTY

3.1. Restraint by way of attachment (prejudgment seizure) [15]

3.1.1. *The Netherlands as the requesting state*

3.1.1.1. Restraint by way of attachment(prejudgment seizure) and letters rogatory

The purpose of the investigation is of considerable importance as regards the specific treaties applicable to a request for restraint, the requirements to be met by the request and the provisions of national law to be consulted.

The legal assistance to be requested may be designed to gather evidence in a criminal investigation or to enforce a sentence confiscating gains. As restraint by way of attachment (i.e. restraint to secure assets with a view to subsequent confiscation) can be ordered even while criminal inquiries are still at the investigation stage, it is possible that foreign legal assistance may at the same time be sought in order to gather evidence. A foreign state will often be asked first to take steps to establish the presence of proceeds of crime and then to order seizure of the assets found there. Such requests have to comply with both mutual legal assistance requirements and international confiscation law.

3.1.1.2. Tracing

Tracing investigations are designed to obtain information on the existence, location, extent and value of proceeds of crime. A variety of tracing methods may be used for the purposes of financial investigations, e.g. hearing witnesses, supplying information, carrying out surveillance and intercepting data communications. Since the aim of this is to gather evidence, the rules of mutual legal assistance are applicable.

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(15) In the questionnaire were used the definitions of "seizure" and "freezing" found in Article 1 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which is as follows: "freezing or seizure means temporarily prohibiting the transfer, conversion, disposition or movement of property, or temporarily assuming custody or control of property on the basis of an order issued by a court or competent authority".
The term "restraint by way of attachment" was used by the Netherlands' authorities in their answers to the Questionnaire. It is not used in the major conventions, but in order to avoid confusion, the exact phrase used has been incorporated in this Report. It refers only to freezing or seizure in anticipation of a later confiscation order. In common law jurisdictions particularly, the terms "freezing and seizure" have a wider meaning, but where it appears in this Report, the meaning applied by the Netherlands' authorities should be applied.

Most countries require a treaty if the use of coercive measures is requested. [16]

3.1.1.3. Restraint (seizure)

At this stage there is a distinction to be drawn between restraint (seizure) of property for purposes of evidence, and restraint of property by way of attachment (prejudgment seizure).

Tracing investigations may have shown the suspect to have acquired assets as a result of the offences for which he faces prosecution in the Netherlands. If those assets are located abroad, the appropriate authorities in the foreign state will have to be asked to order their seizure so as to prevent them from being disposed of or otherwise removed from the reach of the law in the meantime.

Restraint by way of attachment (prejudgment seizure) is requested from a foreign state for the purposes of enforcing a Netherlands' confiscation sentence in that state. Instead of the legal provisions on mutual legal assistance, it is therefore the legal provisions on mutual recognition of foreign criminal judgments which are applicable. It is a basic premise of the latter that the proceeds of penalties imposed in respect of assets (such as confiscation of proceeds of crime under Article 36e of the Criminal Code) accrue to the enforcing state. Prejudgment seizure is ordered in anticipation of the transfer of enforcement of the Netherlands confiscation order under Article 36e of the Criminal Code. Hence, a country will be willing to act on a request for attachment only if enforcement of the confiscation sentence can be expected to be transferred to it. This needs to be stated in the request for legal assistance.

Given the intention of eventually having assets confiscated in the state to which it is addressed, a request for restraint by way of attachment may, under the Vienna and Strasbourg Conventions and some bilateral treaties, be made at any stage of the criminal case, either before or after the Netherlands court has ordered confiscation.

3.1.2. *The Netherlands as the requested state*

Under the Criminal Sentences (Transfer of Enforcement) Act, the Netherlands is able to provide the following assistance: it can open a criminal financial investigation (which is an inquiry specifically designed to determine the extent of proceeds of crime, separately from the preliminary inquiry concerned with the offence and the offender), order restraint by way of attachment (prejudgment seizure) and enforce foreign confiscation rulings. The Netherlands' legislation also makes provision for taking over, at a foreign country's request, either the criminal proceedings as a whole or only the separate proceedings to bring about confiscation.

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(16) The Strasbourg Convention (1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime) and the Vienna Convention (1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances) contain mutual legal assistance provisions which may serve as a basis where the legislation of the state approached so requires. If there is no such treaty-based relationship with the country to be approached, the Public Prosecution Service has to consult the Office for International Legal Assistance in Criminal Matters. A request to a country with which the Netherlands does not have any legal assistance relationship is not doomed to failure from the outset, as a number of countries' legislation does not require a treaty basis.

3.1.2.1. Incoming legal assistance requests for the tracing of proceeds of crime

As long as the request is concerned with whether the suspect has benefited from proceeds of crime and, if so, with the value extend of them, mutual legal assistance provisions in particular are of relevance. Articles 552h to 552q of the Code of Criminal Procedure lay down rules for the gathering of evidence of the presence of proceeds of crime. If the use of coercive measures is requested, Article 552n(1) of the Code allows it. Articles 552n and 552o of the Code always require a treaty basis for the use of coercive measures at a foreign country's request.

Where a request for legal assistance involves making financial inquiries, it is possible, for the purposes of tracing the extent and location of proceeds of crime, to open a criminal financial investigation **(17)** under Article 13 of the Criminal Sentences (Transfer of Enforcement) Act (which refers to Articles 126 to 126f of the Code of Criminal Procedure). The request need not explicitly ask for the opening of a criminal financial investigation.

During the criminal financial examination the public prosecutor has competence to order prejudgment attachment of items without further judicial authorization (Articles 126 (3) and 126b (1) of the Code).

3.1.2.2. Incoming legal assistance requests for restraint by way of attachment

At national level, attachment is governed by Section 3 of Title IV in Book I of the Code of Criminal Procedure (Articles 94 to 119a). This includes provisions on attachment of movable property and property required to be registered, garnishment, protection of third parties, control of property attached, etc. Articles 552a to 552g of the Code also provide a special appeals procedure for entitled third parties. Since attachment at the request of a foreign state is ordered as stipulated by Netherlands law, the above provisions via the Articles 13-13f Criminal Sentences (Transfer of Enforcement) Act, are also applicable in international cases.

A request for legal assistance involving restraint by way of attachment may be granted by the Netherlands where this forms a preliminary to the request to take over enforcement of a foreign confiscation sentence. The Netherlands is able at any stage of a criminal case (investigation and enforcement) to order attachment at a foreign country's request, either in the course of a criminal financial investigation or otherwise.

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(17) The requirements for opening a criminal financial investigation under Article 13 of the Act are as follows:

- the request must be based on a treaty (the 1988 Vienna Convention, the 1990 Strasbourg Convention or one of the relevant bilateral treaties);
- the request must relate to a criminal offence punishable under Netherlands law by a grade-five fine (NLG 100 000) (Article 126(1) of the Code of Criminal Procedure);
- the offence must possibly have resulted in gains of some significance, (at least NLG 25,000) assessable in pecuniary terms (Article 126(1) of the Code). This will have to be clear from the request;
- the criminal financial investigation must be designed to identify proceeds of crime with a view to their confiscation (Article 126(2) of the Code).

3.1.2.2.1. *Restraint by way of attachment in the course of a criminal financial investigation*

At the request of a foreign state, a criminal financial investigation may be opened in the Netherlands under Article 13 of the Criminal Sentences (Transfer of Enforcement) Act where an investigation under way in the requesting state has not yet resulted in a confiscation order.

In the course of the criminal financial investigation, attachment under Article 94a(2) of the Code may be ordered for the purposes of securing the subsequent confiscation of gains (Article 13(3) of the Act). In order for attachment to be ordered, there must be good reason to expect the requesting state within the foreseeable future to make a request for transfer of enforcement of a confiscation sentence to be imposed there. This needs to be clear from the contents of the request for legal assistance.

Where the latter is not the case, the requesting state will further be required to give notice in writing that the Netherlands will in due course be offered a transfer of enforcement.

The investigating judge's authorization to open a criminal financial investigation empowers the public prosecutor to order attachment (Article 126b(1) of the Code of Criminal Procedure). No further authorization is thus required. If the public prosecutor deems this necessary, he calls on the investigating judge to search premises for purposes of seizure. Court authorization for searches of premises is not required in a financial investigation (Article 126b(3)(a) of the Code). During a criminal financial investigation, the investigating judge generally enjoys the same powers as in a judicial preliminary inquiry.

A criminal financial investigation is in principle a secret inquiry; the investigating judge is not required to allow the person under investigation or his legal adviser to be present at any investigative action to be taken by him (Article 126b(3)(d) of the Code).

A request under Article 13 of the Criminal Sentences (Transfer of Enforcement) Act has to be based on a treaty. **(18)**

3.1.2.2.2. *Restraint by way of attachment as a preliminary to transfer of enforcement of a foreign confiscation sentence*

Depending on the stage reached by the foreign criminal investigation, a request for restraint by way of attachment may be granted under Article 13a or Article 13b of the Criminal Sentences (Transfer of Enforcement) Act.

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(18) In order for restraint by way of attachment to be ordered in the course of a criminal financial investigation, that treaty must allow this possibility under circumstances in which confiscation has not yet been ordered in the requesting state. This requirement is fulfilled by the following treaties:
- the 1988 Vienna Convention;
- the 1990 Strasbourg Convention;
- the 1992 confiscation agreement between the Netherlands and the USA;
- the 1993 treaty between the Netherlands and the United Kingdom to supplement the Strasbourg Convention.

In the Netherlands, restraint by way of attachment may be ordered under Article 13a of the Act if the criminal investigation in the requesting state has not yet resulted in a confiscation order. **(19)**

At the stage after a confiscation sentence has been imposed in the requesting state, restraint by way of attachment may be ordered under Article 13b of the Act **(20)**.

For restraint by way of attachment domestically, the Public Prosecution Service's confiscation guidelines require provisionally estimated gains of at least NLG 10 000 to be involved in consideration of cost-effectiveness. The same level is requested for attachment ordered under Articles 13a or 13b of the Act, unless the requesting state explicitly asks for that step to be taken, explaining the need for it. The latter course of action necessarily involves prior consultation of the Office for International Legal Assistance in Criminal Matters.

3.1.2.3. Requests for transfer of property for the purposes of a foreign confiscation order

Article 13c of the Act stipulates that property restrained by way of attachment in the Netherlands (at a foreign country's request) may be transferred to the requesting state for the purposes of confiscation to be ordered there.

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(19) The requirements to be met by the request for legal assistance are as follows:

- the request must be based on a treaty (paragraph 1);
- the property to which the request relates must be confiscable in the requesting state;
- attachment must also be possible under the law of the requesting state if the underlying events occur within its territory (paragraph 2);
- the request must give sufficient reason to expect attachment subsequently to become convertible into actual seizure after transfer of enforcement of the confiscation sentence to be imposed in the requesting state (paragraph 4).
  If this is not clear from the request, the requesting state will be required, upon inquiry by the Netherlands, to give notice in writing that a transfer of enforcement will be offered at a later stage;
- Article 13a(3) of the Act stipulates that restraint by way of attachment at a foreign country's request is possible only if the conditions laid down in Article 94a of the Code of Criminal Procedure are fulfilled. This means that suspicion of a crime punishable under Netherlands law by a grade-five fine (NLG 100 000) is required.

(20) Pending transfer of enforcement to the Netherlands, confiscation can be granted under the following conditions:

- the request must be based on a treaty (paragraph 1);
- it must emerge from the information given by the requesting state that the Netherlands will be offered a transfer of enforcement of the confiscation sentence imposed (paragraph 2).

Here, too, if this is not clear from the request, the requesting state will be required, upon inquiry by the Netherlands, to give notice in writing that a transfer of enforcement will be offered at a later stage.

Property cannot be transferred (or funds remitted) until released from restraint, with court consent. [(21)]

3.1.2.3.1. *Appropriate authorities*

As a rule, the investigation judge is competent to order attachment and, where otherwise stipulated, the public prosecutor. [(22)]

3.1.2.3.2. *Appeals by entitled third parties*

Article 13e of the Act contains provisions allowing appeals by entitled third parties with regard to property restrained by way of attachment in the Netherlands. In the case of third parties who have already conducted appeal proceedings abroad, the Netherlands courts will observe the ruling in question and not open any fresh inquiry. An appeal by an entitled third party is inadmissible if there are also proceedings pending abroad to hear his appeal. This point will have to be considered in all cases.

3.2. General legal structure

3.2.1. Where an international request for legal assistance concerns tracing and restraint of property, the public prosecutor decides, under Articles 552i and 552j of the Code of Criminal Procedure, who is to carry this out. There are various options available, according to the type of procedural steps to be taken.

3.2.2. Where the use of coercive measures is not required, the public prosecutor instructs the other investigating agencies (usually the police) to investigate.

They report as soon as possible on the criminal offence detected by them or on their investigative action or findings (Article 152 of the Code). The public prosecutor may also take investigative steps himself. All of this also applies to investigative action in response to a request for legal assistance.

3.2.3. If the carrying out of a request for legal assistance does require the use of coercive measures, the public prosecutor passes an acceptable, treaty-based request to the investigating judge (Article 552n of the Code). Under Article 552o(1)(a) of the Code, the investigating judge enjoys the same powers as regards entry, searching of premises, seizure and interception of communications as he does for a judicial preliminary inquiry in a Netherlands criminal investigation (i.e. subject to the conditions laid down by national law).

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(21) The courts will authorise this only with the proviso that:

(a) surrender is conditional upon return of the property, even if confiscated in the foreign country, or

(b) the Netherlands is paid financial compensation for the transfer, the amount being determined by the Minister for Justice (paragraph 2).

This satisfies the basic premise under treaties that the state to which the request is addressed retains the property discovered within its territory. Only where the property is, upon transfer, handed over to entitled third parties (e.g. victims of the underlying criminal offence) may the Minister for Justice decide to waive compensation.

(22) On this point, see Articles 13a to 13d of the Act.

The investigating judge sends the request, accompanied by reports of the hearings held by him and of the other steps taken by him, back to the public prosecutor as soon as possible.

Evidence against anyone and data carriers seized by the investigating judge are, where court authorization is given, supplied to the public prosecutor (Article 552p(1) and (2) of the Code) for forwarding to the requesting foreign authority.

3.2.4. Article 552m of the Code stipulates optional grounds for refusal as regards political and tax offences which require a treaty as well as authorisation by the Minister for Justice. Authorisation is usually given after consulting the Minister for Foreign Affairs (political offences) or the Minister for Finance (tax offences).

3.2.5. If the evidence or information is held within a bank, it can be obtained without alerting the account holder beforehand. The investigating judge instructs the bank to keep the matter secret.

3.2.6. Banking secrecy is primarily a private-law matter, concerning the duty of banks and their staff not to disclose any information on their customers to third parties. The Netherlands' legislation allows a waiver of banking secrecy to be applied for in a limited number of cases, including criminal cases. In carrying out requests for legal assistance, the investigating judge may enjoin (order) the bank to hand over to him relevant material on a customer. In addition, where a bank itself is considered suspect, it is possible, upon application by the public prosecutor, for the investigating judge to carry out a search at the bank and seize evidence and/or information. Banks are required to comply with an order to surrender material to the investigating judge or to allow him to carry out a search.

3.2.7. Court authorisation to search premises does not entail any order to the investigating judge. Once authorization has been obtained, the investigating judge has to decide anew whether premises need to be searched and whether the authorization is to be acted on. The public prosecutor may in fact call for it to be acted on.

The authorisation procedure is conducted by a judge in chambers at the district court, being held *in camera*.

3.2.8. Where there is no need to search premises, the investigating judge decides, without court involvement, but upon application by the public prosecutor specifying the steps to be taken, to issue a restraint order. Under Article 105 of the Code the investigating judge may order seizable property to be surrendered. The party to whom the order is addressed is in principle required to comply with it. However, the order cannot be addressed to the suspect, but can be, for instance, a bank.

3.2.9. Restraint under Article 94a of the Code of Criminal Procedure (attachment for recourse) may be ordered by the public prosecutor (upon authorization in writing by the investigating judge) or by the investigating judge (upon application by the public prosecutor, under Article 103 of the Code). A foreign request for a restraint order is treated in the same way.

3.2.10. For confiscation of assets the Netherlands applies, under Article 36e of the Criminal Code, a system of confiscation by value. It is a feature of this type of confiscation that the property against which recourse is had does not need to be in any way related to the offence committed. Recourse may thus be had against all the assets of the person concerned, regardless of whether lawfully or unlawfully obtained.

3.2.11. Property may also be restrained in the hands of persons other than the suspect. There is an appeals procedure available for such persons.

3.2.12. There is a bilateral treaty between the Netherlands and the United Kingdom of Great Britain and Northern Ireland to supplement and facilitate the operation of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. There are no specific arrangements with other Member States in this area. A specific bilateral treaty has, however, been concluded with the USA.

3.2.13. Only the legal assistance requested can be provided."Fishing expeditions" are not allowed in the Netherlands.

3.2.14. Investigative action is taken where there is a reasonable suspicion that someone is guilty of a criminal offence. The mere possibility that a criminal offence might have been committed is not sufficient for that purpose.

3.2.15. Assistance with tracing is covered by rules of confidentiality

Where the public prosecutor applies to the investigating judge under Articles 552n and 552o of the Code for action to meet an international request for legal assistance, the rules for a judicial preliminary inquiry are applicable mutatis mutandis. This means that the investigating judge will allow the suspect and/or his legal adviser, upon request, to consult the case papers, save where the interest of the investigation dictates otherwise.

The foreign authorities have to explain those considerations. Case papers means everything added to the case file by investigators and prosecutors (including reports of investigative action). The person under investigation is not heard or informed regarding a request to restrain property. Up to the point at which the restrictive measure is actually taken, the person under investigation remains unaware of it.

The person whose property has been restrained becomes aware of this at the point at which a restraint notice is served or at the time of actual restraint of the property.

3.2.16. Urgent requests can be made by fax. Use of e-mail is not yet possible. Under no circumstances may a request be submitted orally. It is nevertheless possible (in urgent cases) for notice of a request for legal assistance to be given orally, so that preparations can be made straight away. As soon as the request is received in writing, it can then be acted on.

3.2.17. There are sometimes difficulties with requests for tracing where the request gives insufficient details of the property to be traced. No investigations can then be carried out. **(23)**

(23) The Netherlands were in such cases asked, for instance, to trace "a red Fiat Panda on the roads in Amsterdam".

3.2.18. There is no legal time limit for restraint laid down. Its continued application is subject to principles such as the requirements of proportionality, subsidiarity and sincerity of intentions. Secondly, restraint may continue only as long as the interests of criminal justice (which also include the foreign country's interests) dictate that property should not be returned. As no precise time limit can be placed on restraint in advance, the requesting state is not informed regarding one. Interested parties may, however, appeal in writing to the courts. Not until it becomes clear that there is an appeal by an interested party will the requesting state be contacted, for the hearing of that appeal, in order to obtain more detailed information on the desirability, for criminal justice purposes, of continuing the restraint in question.

Should restraint prove unjustified, the suspect can claim reimbursement of costs. In the case of justified restraint, the harm caused to the person whose property is restrained will be kept to a minimum. This may mean that, where a sizeable sum in cash is seized, it will be placed in a bank account held by the relevant district public prosecutor's office so as to pay interest claimable (around 3 %). Where funds held in a bank account are restrained, interest continues to accrue in the normal way.

3.2.19. Payment of certain expenses incurred in appeal proceedings under Article 552a of the Code of Criminal Procedure (for the return of restrained property or otherwise) may also be claimed, pursuant to Articles 591 and 591a of the Code (governing payment of legal costs and travel and accommodation expenses incurred in the preparation and hearing of a case).

In the case of confiscation, legal or other expenses in connection with restraint of property are met out of a central budget. Costs incurred in custody of property are borne by the Netherlands State.

3.2.20. Management of restrained property is governed by Articles 116 to 119a of the Code of Criminal Procedure and by the Restrained Property Decision.

Restraint of a business as such is not possible under the Netherlands' law. Only shares and assets of a company operating a business can be restrained.

Expenses incurred in custody and control (e.g. of shares) are payable by the custodian, this generally being an authority. The situation is no different in the case of legal assistance.

Seizure of livestock entails considerable problems. Looking after it is very time-consuming and requires expertise not available to custodians. The Public Prosecution Service may, moreover, where perishable or depreciable goods have been seized, authorise the custodian, for instance, to destroy them or dispose of them. If property seized is disposed of for valuable consideration, the proceeds remain subject to restraint (Article 117 of the Code of Criminal Procedure).

Restraint of immovable property abroad also gives rise to special problems such as management of it and the legal implications in the country concerned.

As of mid-1998 all property restrained by way of attachment is to be managed nationwide from a single central unit, supported by a computer system (CEBES, an acronym standing for attachment and enforcement restraint system).

3.2.21. Except for Schengen countries, it is sometimes unclear to the Netherlands Authorities to which authority (what address) a request should be sent. This arises particularly in urgent cases not requiring the involvement of the central authority.

3.2.22. Requests are as a rule rejected only if they do not fulfil the requirements under treaties and legislation, or where any of the grounds for refusal laid down therein are applicable (see Articles 2 and 5 of the European Convention on Mutual Assistance in Criminal Matters, Article 552l of the Code of Criminal Procedure, Article 18 of the 1990 Strasbourg Convention on Laundering, etc. and Articles 2 to 7 of the Criminal Sentences (Transfer of Enforcement) Act).

In the light of experience of transferring property abroad as evidence (namely works of art), the Netherlands may, before giving effect to a request for legal assistance, require guaranteed return. This stems from the fact that property transferred abroad has in the past been returned to the supposed rightful owner in the requesting state, leaving the Netherlands unable to meet its domestic legal requirement for the property to be returned to those in bona fide possession of it from whom it was seized. The upshot was that the Netherlands faced claims for damages.

The Public Prosecution Service knows of three further cases in which requests for tracing and restraint of property have been rejected. In one case, the balance of a bank account turned out to be small (excessively so). The sum involved was a few hundred guilders. In carrying out requests for confiscation, the Public Prosecution Service applies, as a general policy criterion, a minimum limit of NLG 10 000. In two other cases, seizure was requested for return to the party entitled and not for the purposes of establishing the truth. That is not permissible by law.

The Netherlands indicate that, generally speaking, a refusal is always explained, either orally or in writing. There are, however, no guidelines on this.

3.2.23. The delays arising do not relate to any particular cases, either with restraint to secure evidence or with restraint for confiscation purposes. It generally takes time, for instance, to sell a house seized. In another case it took a very long while for the authorities in the Netherlands to receive the foreign confiscation order from abroad, as required in the Netherlands in order to proceed with enforcement. Delays may also arise where property is seized from a party in bona fide possession of it. Bargaining is often first engaged in over
compensation from the rightful owner, before the property is "surrendered". This procedure may take time.

Under the Netherlands' law, a rightful owner may in some cases appeal to the courts against restraint of property in his possession. Owing to the possibility of then appealing against the court ruling, the actual handing over of property to the foreign country may be delayed.

3.3. Facts and figures about the recent operation of property tracing and restraint

Office for International Legal Assistance in Criminal Matters

The tables below show figures for confiscation cases. They only cover requests for confiscation alone; requests for more than one kind of legal assistance are not included. The requests mainly concern attachment of funds held in bank accounts.

Figures on requests to foreign countries for confiscation in 1997:

Country	1997
Belgium	5
France	1
Germany	2
Luxembourg	6
non-EU countries	7
Spain	10
United Kingdom	1
TOTAL	32

Figures on requests to the Netherlands for confiscation in 1997:

Country	1997
Denmark	1
Italy	1
Spain	1
non-EU countries	1
TOTAL	4

District public prosecutors' offices

The public prosecutors' offices questioned do not keep any statistics.

Requests for restraint mostly concern attachment of property of various kinds. The authorities in the Netherlands have as yet little specific experience of actual confiscation of property restrained. A number of examples can nevertheless be given: the international legal assistance officer at the Amsterdam public prosecutor's office knows of two international confiscation cases, for a total value of about NLG 1 million. They involve a US request (restraint of a bank account, for a value of USD 500 000) and a UK request (restraint of premises, for an eventual value of about GBP 50 000).

3.4. Any other legal problems which emerge in the evaluation

3.4.1. Practitioners have drawn the attention of the experts to the fact that the Netherlands' money laundering legislation does not cover the situation where the person who committed the predicate offence launders the money afterwards himself.

The Dutch authorities belive that this seldom happens. However, since the evaluation, the experts have been informed that legislation will shortly be enacted which will deal with this matter.
In these situations more factual information can be requested from foreign states in view of establishing the presence of dual criminality. For example, the suspect's activity can often be submitted under another penal provision than abroad and double punishability may still occur. This means that legal assistance can sometimes be rendered in such a case, but a representative of a Dutch court indicated to the evaluation team that he had to rule on several occasions that no assistance could be provided because of the principle of dual criminality.

3.4.2. Practitioners did consider it possible in theory to act on the request of a foreign state, which on the basis of information that a suspect has probably hidden important sums of money in the Netherlands, asks to verify if that identified person has a bank account, a safe, or any values in a Dutch bank. However, it seemed likely that in practice such a request would be refused.

4. EVALUATION OF THE EFFECTIVENESS OF THE APPLICATION AND IMPLEMENTATION IN THE NETHERLANDS AT NATIONAL LEVEL OF INTERNATIONAL UNDERTAKINGS AND SPECIFIC CONCLUSIONS/ RECOMMENDATIONS

4.1. General Comments

The Netherlands, until very recently, met a number of problems in affording other states mutual legal assistance in an efficient and speedy way. This was due not only to a lack of capacity, training and resources at all levels, but also to a lack of awareness of the necessity of fighting together international crime. A practitioner said that mutual legal assistance was considered to be "the unwanted stepchild of the Dutch justice system". This situation was particularly serious in view of the importance of legal assistance sought in the Netherlands, (the experts do not have access to statistics dating five years back but more than 25,000 incoming requests were recorded in 1997 and more than 23,000 in 1996), and its very central location in Europe. A measure of the magnitude of Dutch assistance to the rest of Europe is that about 150,000 Interpol requests were recorded in 1997.

Since 1994-1995 political awareness of the problems connected with mutual legal assistance has been growing and some important decisions have been taken and are under way to become implemented to improve the standards of mutual legal assistance.

The reasons for this policy change are many, but one important factor in the change was that the Netherlands realised that they, as requesting country, increasingly experienced problems in international mutual assistance. It therefore became a problem of such magnitude that policy-makers at senior level became personally involved in improving the system. An additional factor seems to be the personal involvement of the general prosecutors in the changes to the system.

The experts, however, stress that mutual legal assistance cannot only be seen as a question of reciprocity. The Netherlands, because of its central position in Europe, has also obligations in a "borderless Europe" and should take effective measures to ensure that mutual legal assistance functions as provided in the Treaties.

The first results of this new approach seem to be very positive, and the Netherlands has put in a great deal of new resources at all levels. The team of experts was very impressed by these changes. Moreover, they were met with personal dedication and enthusiasm by practitioners, both at the Ministry of Justice and among public prosecutors and police.

Many of the procedures we observed were such that delays could occur, although we were assured that such delays did not in fact happen.

The following can serve as examples of the recent changes:

- The Office for International Legal Assistance in Criminal Matters at the Ministry of Justice now employs 20 people, instead of 8 persons before. This number might still increase in the near future. Contact personnel at the Office can be reached at any time during working hours. Furthermore, the office has special linguistic, legal and country knowledge in the areas for which it is responsible. There is documentation showing the areas of jurisdiction of each one of the contact personnel and their availability and this seems to be well disseminated at international level.

- The Manual for international legal assistance was edited by the Office of International Legal Assistance in December 1995, after consultation with the Public Prosecution Service, and with 600 copies disseminated over the country in among police, public prosecutors and judges. A new chapter is planned on the confiscation of proceeds of crime. It is already available on CD-Rom.

- At the end of 1998, a booklet will be published in 5 languages to provide foreign practitioners with compact information on the main issues that could lead to avoiding misunderstanding the Netherlands' legal system and practices (this is a common initiative of the Office, the National Magistrates, and the Police).

- The Office has a page in the monthly magazine for public prosecutors, which allows it to give information to practitioners on new international instruments, jurisprudence, fast information etc.

- Regular ongoing training courses are offered both to newcomers and experienced persons in the areas of legal assistance, and for all the professional groups involved in issuing and executing letters of request. A 3 day course on international legal assistance for investigating judges is developed and will first be given in October 1998.

- All public prosecutors and investigating judges have computers; all public prosecutors can communicate via e-mail. A well developed computer network is also available at the Ministry of Justice.

- At the end of 1998 all authorities involved in mutual legal assistance will be able to be connected with the national registration system for incoming requests.

- Early 1997 at national level, a so-called 'Platform' (forum) was created for public prosecutors and public officials involved in mutual legal assistance, for exchanging information, experiences and advice on policies. It will normally meet 6 times a year.

The Platform comprises the Public Prosecution Service (including its National Office or LBOM), the National Criminal Intelligence Service and the Ministry of Justice. The police and Investigating Judges are so-called 'agenda members'. They receive the agenda for the meeting, may put forward agenda items and will also receive the minutes of the meeting. The new multidisciplinary approach seems to be bearing fruit.

- The International Co-operation Committee was recently introduced (May 1998). This committee consists of representatives of the Public Prosecution Service, the police, the Office for Mutual Assistance in Criminal Matters or BIRS, the National Office (LBOM) and the National Criminal Intelligence Service . The aim of this committee is to improve co-operation at the policy level and to co-ordinate. The committee puts forward proposals to change policies to the Board of Procurators General in the field of international co-operation on the basis of which the Board can establish national guidelines. For the time being, the committee focuses on improving mutual assistance in criminal matters. The Mutual Assistance Platform functions as an important sound-board in this respect.

- A so-called 'triangle' was set up between the 3 central authorities, being the Public Prosecution Service's National Office, the National Criminal Intelligence Service and the Office at the Ministry of Justice, which meets every 6 weeks since 1997, and is intended to improve communication between the different bodies dealing with international legal assistance.

- Special guidelines of the Board of Prosecutors General are under preparation on the urgent execution of international letters rogatory. These guidelines will indicate that normally a request should be carried out within two months after receipt.

- A computer aided service system on floppy disks (KRIS) has been created on a multidisciplinary basis involving a programme which has developed question schemes. It contains information on specific questions for mutual legal assistance, but also assists the drawing up of individual requests.

- In the Board of Prosecutors General one of the four members has particular responsibilities for all aspects of judicial co-operation in criminal matters. In June 1998 the Board hosted the first "Eurojustice Conference" in Noordwijk for Prosecutors General of all 15 Member States of the European Union.

- An opportunity for new police liaison officers and public prosecutors to attend a training session at the Office at the Ministry of Justice has been created and this improves the smooth co-operation between all authorities.

- Liaison meetings are held between the Dutch Prosecutors General and their counterparts in Germany and Belgium.

- LRT (a central police authority) began at the end of 1995 under the national police agency dealing with matters that cannot be dealt with by the 25 police regions. This authority is required to invest 25 % of its resources on international legal assistance. All this resulted in the beginning of 1996 in the development of the LRT terms of reference. The LRT has multidisciplinary teams of lawyers, accountants, police and other specialists as required. It is under the authority of the public prosecutor of the National Public Prosecution Office (LBOM) with whom there is close co-operation. The LRT is able to deal with major cases which require substantial resources.

At the time of the evaluation, the experts were informed of the allocation of a budget of 3 million NGL to improve futher legal assistance. Since the evaluation, the experts have been informed that the amount of 2.6 million NGL will be allocated annually for this purpose. In particular, it will be dedicated to hiring more staff and to training, both in police and judicial authorities, and to establishing joint teams of public prosecutors and police co-ordinating the execution of mutual legal assistance. Already five joint teams have been established since in different districts.

The Netherlands continue to improve the system, by employing more people, introducing new systems, specialised training programmes, computer assistance etc. The Dutch officials understand that the work is not finished, and they have concrete plans to further improve the quality of the legal assistance they offer. New legislation is on its way and more resources will be provided.

The need for central contact points 24 hour availability has been recognised and is being developed.

The experts detected a willingness amongst all persons they met (including at the most senior level) involved in mutual legal assistance to change the problematic situation the Netherlands has known in the (recent) past. The experts consider, however, that there could be a risk that the changes, for the time being, rely more on the enthusiasm of some individuals than on real changes to the system and that the practitioners on the field still might not have a consistent approach to the problems. This risk could, however, be overcome by the combination of additional resources and training which is being provided at present.

In many ways the new approach taken in the Netherlands could serve as an example for other EU Member States and merits careful examination by other Member States.

4.2. Regulatory framework

4.2.1. The Netherlands legislation provides for broad assistance to other countries, and seem to be in line with the requirements of the 1959 Strasbourg Convention on Mutual Legal Assistance in Criminal Matters. The legislation does not require dual criminality for most kinds of requests, except where search and seizure are requested. The Netherlands has already recognised the need for further legal changes to improve the possibilities of the assistance it can offer.

4.2.2. The Dutch authorities are preparing new legislation to make it possible to carry out fingerprinting and DNA analysis on the basis of letters of request. In practice, however, some districts seem to give assistance if fingerprinting is requested.

4.2.3. The public prosecutors will in the future have national competence, so that they can address themselves to the locally competent judges.

In case of a foreign request aimed at having criminal investigation activities carried out in view of seizure and taking provisional measures, this national competence already exists; in principle, competence has the public prosecutor in the district where the requested activity is to be performed. If activities need to be performed in more than one district, the public prosecutor of each district involved has competence to deal with the entire request (Art. 13f Criminal Sentences (Transfer of enforcement) Act).

Article 552j of the Code of Criminal Procedure will be modified in the near future. After the modified Article has taken effect, it will be possible that each public prosecutor in whose district some of the requested activities have to be performed has competence to deal with the entire request. This modification was deemed necessary for practical reasons. The modified Article is expected to take effect in March 1999. The modified Article 552j Code of Criminal Procedure is in line with the provision laid down in Article 13f Criminal Sentences (Transfer of enforcement) Act.

4.2.4. Legislation is also prepared concerning special investigative techniques, such as controlled deliveries, under-cover operations etc., which will include all new techniques. This will normally enter into force at the beginning of 1999.

4.2.5. The Ministry is examining if the Netherlands has to change the money laundering legislation which is currently based on the concept of "heling" (receiving stolen goods) to cover also the laundering by the person who committed himself the predicate offence. No date could be set for a change in this field.

4.2.6. An amendment to the law (Art. 2 Code of Criminal Procedure) is currently being prepared to enable the district court (and therefore the investigating judge) in Rotterdam to deal with all the cases whereever they occur in the Netherlands. Cases with a specifically regional background, however, may still continue to be handled by other courts. Practitioners were not clear if these legal changes would also apply for international letters of request.

4.2.7. Although the general framework of the Dutch legislation has made a favourable impression on the experts, some suggestions are made in this report to further improve it. Moreover, a number of legislative amendments are already under way.

4.2.8. In the Guidelines from the Board of Prosecutors General any specification urging the police to deal promptly with requests sent to them on the basis of Article 552i(2) seems to be missing.

4.2.9. Article 552p of the Code of Criminal procedure provides that the investigating judge "shall return the request to the public prosecutor *as soon as possible*,...". As to the public prosecutor, criteria such as "immediately" are used. The experts consider that it should be examined, if the criterion used for the investigating judge is adequate to speed up the execution of requests at court level. A change to a more stringent criterion than "as soon as possible" could help to reduce delays.

4.3. Areas for improvement

Although the general impression of the experts of the system in the Netherlands is very favourable (in particular once all measures have taken full effect), no system is so good that it cannot become better. The experts will therefore permit themselves to suggest some possible improvements to the Dutch system. In doing so, the experts realize that these suggestions are based on their experiences with other legal systems and traditions and that all of them might not fit into the Dutch legal system. However, a number of these suggestions are the results of their discussions with the judges, departments of public prosecution and police. Several of the suggestions made are of a minor nature but some may be considered to be of more fundamental importance. The experts have of course not considered resource implications in making these suggestions.

4.3.1. *The role of public prosecutors and investigating judges*

4.3.1.1. Under Netherlands' law and practice, it is mandatory that the investigating judge has to ask for court authorization before he can execute a search on premises. Only in financial criminal investigations, and in cases of "high" urgency, can he act without this prior authorization. The experts fail to see that there is a major difference between those situations and "normal cases" and would propose that the investigating judge be empowered to authorize searches in all cases. The changes in competence introduced already in the more recent legislation on financial investigations should become the general system for searches of premises. Moreover, this particular feature of the Dutch system as it exists now seems to be quite unique in the region. It would seem that such a change could contribute to reducing delays without impinging on individual liberties.

4.3.1.2. It seems to the experts (taking account of their background in different legal systems) peculiar, even special, that two bodies of the judiciary (the District Court and the investigating judge, belonging to that same District Court) have to decide in normal cases (not urgent or relating to financial investigations) whether premises can be searched. Even if the system operates efficiently in practice, as claimed by the prosecutors the experts met, this must create delays in a number of cases. In this context it should be noted that the possibility to carry out searches on the basis of "high" urgency does not seem to be used very often.

4.3.1.3. Furthermore, the investigating judge has to be physically present both at the start and at the close of the search, and has to decide which property has to be seized. All house searches in principle have to be carried out by the investigating judge. The investigating judges have 24 h duty on a given day, and most often the judge on duty travels from one place to another to start and close the searches, but does not need to stay present during the search. This seems to be an impractical system (although it seems not to cause too many problems in practice as the prosecutor is able to "freeze" the situation at the beginning of the search while waiting for the judge to arrive. In practice the prosecutor present is often a police officer having the rank of assistant prosecutor). One can ask what added value the presence of the investigating judge brings to the execution of the search, given the fact that he very often seems to act in a case belonging to one of his colleagues without knowing the case with all its features, and the decision on what to seize seems to be of a formal character. Moreover, the requirement of having the presence of the judge seems also to be of a formal character. The risk for delays or problems in execution of requests is even more evident in cases in which many investigating judges from different districts need to be involved , e.g. in large "organised crime operations". A change to the present system does not seem to impinge on individual liberties and could be justified on grounds of efficiency.
Given the fact that public prosecutors in the Netherlands seem to have the same legal training as investigating judges, it would seem natural that prosecutors could be authorised to decide on searches and seizures (provided that appeal possibilities exist to the Court). The experts realize, however, that such a proposal would upset the structure of the Dutch system and do not wish to make it a formal proposal. The experts appreciate that this is a radical approach, but invite discussions on the issue.

4.3.1.4. The experts note that while the prosecution services and police are reorganising the work on mutual legal assistance, and that this is carried out by means of guidelines given by the Board of Prosecutors General, the same is not true for the investigating judges, who belong to the district courts, and depend upon the priorities of each different court in the Netherlands. It seems e.g. difficult, especially in cases of organised crime, that investigating judges (often relatively young) only stay in office during 2 or 3 years before moving on to new tasks. This raises the problem of training and career of judges.

4.3.1.5. The Public Prosecution Service in Amsterdam handles 20 % of all incoming requests in the Netherlands but only 2 magistrates of the team of 11 investigating judges are dealing with requests for mutual legal assistance, and one of them only worked on a part-time basis. Furthermore, mutual legal assistance is only one of the many duties they have as investigating judges. This has as an immediate result that eg hearing of witnesses are planned 2 or 3 months after receipt of a request by the judge and that immediate action is only taken in very special cases. It was mentioned that house searches were normally executed within a week after receipt of the request. Albeit this can be seen to be a short delay, it can in practice lead to serious problems such as disappearance of the evidence.

One judge said that all rogatory letters were considered to be "in addition" to the normal work.

There seems to be an important question of prioritisation at Court level, and the experts suggest that the Amsterdam - and other - Courts, and all other competent authorities, examine this matter to assess the need for more capacity and resources for those working in international legal assistance. Indeed, unless all parts of the system (Ministry, Prosecution Service, Courts, Police) are given an equivalent level of resources, this would merely mean moving the problem from one authority to another.

4.3.1.6. In cases where the hearing of witnesses is requested, the investigating judge seems to have very limited possibilities to coerce an unwilling witness to appear before the court. In fact, he can only ask the police to bring the witness to the office by force if the witness did not answer a first convocation. This in practice, and especially in major cities, seems to create additional delays of 2 or 3 months (capacity of the police, agenda of the judge ...). The possibility should be considered to introduce a system of conditional fines on witnesses to persuade them to come to a hearing, unless they can show a justifiable excuse. It was said by a judge that a significant delay was caused by summoned witnesses who did not come to the hearing.

The foregoing does not apply if the request for hearing the witness is based on the Benelux convention on extradition and mutual assistance in criminal matters of 27 June 1962. Under Article 31, a witness can be summoned to appear. If the witness fails to meet his obligations, the penal provisions as provided for by the laws of the requested state in respect of witness failing to meet their obligations, shall apply to this witness. Under Article 444 of the Criminal Code, in the Netherlands a person called to appear as a witness, expert or an interpreter, who wrongfully fails to appear, is liable to a fine of the first category (NLG 500).

4.3.1.7. Specialisation for the processing of letters of request has already taken place in each public prosecutor's office, where a specialised public prosecutor and/or secretary have been appointed. The experts feel that there should be at least one prosecutor and judge in each District who has special expertise and is given appropriate training in this very complex area of law.

4.3.1.8. The experts were informed of certain practical problems in getting travel authorised if public prosecutors or police want to travel abroad. It seems that all the requests (pertaining to a case) for public prosecutors have to go through the prosecutor general or the chief public prosecutor. As for judges, the procedure was not well known. Because these authorisation procedures might create delays, the experts recommend that the whole system should be assessed.

The experts were informed that on 2 October 1997 the Board of Procurators General sent a letter to, among others, the chief public prosecutors and the LBOM about the applications for official journeys abroad, clarifying the procedure to be followed. When obtaining a mandate for an official journey abroad a distinction is drawn between case-related trips (outlined above) and trips not related to cases (e.g. seminars, conferences and excursions).

4.3.1.9. Public prosecutors and investigating judges have very useful practical knowledge and therefore it is important that they become more pro-active in international liaison and not leave this just to the Ministry. Initiatives such as Euro Justice, the Platform (Forum) and Triangle meetings are surely ways to improve involvement from these practitioners. It is obvious that since the Schengen Agreement has come into force the Office at the Ministry of Justice is dealing with only 10 % of the "Schengen related" requests and this will in the future probably even be less. Public prosecutors and judges should be encouraged by all means to be proactive and liaise with colleagues abroad.

4.3.1.10. Discussions with judges and prosecutors showed that they can only act within their local district. For measures required outside their district they need to call the locally competent judge or public prosecutor. This could lead to delays in mutual legal assistance.

4.3.2. *National Prosecution Office (LBOM)*

Under the current legislation the LBOM can only act where the territorially competent district is not known as yet, or where NCIS is competent. Once it is established which district is territorially competent, LBOM has to hand over the case to a local prosecutor. This means that LBOM can during a considerable time be involved in a criminal investigation, but then has to hand over the case. This seems to be a waste of resources and could cause delays, especially in difficult cases on organised crime. The experts feel that it should be considered if LBOM ought to be given the power to decide if a case should be dealt with at local or at national level. Consequently, the LBOM should also be given powers to act as prosecutors in the entire country.

It should be noted that the foregoing does not apply to requests for legal assistance carried out by the National Criminal Investigation Team (LRT). The LRT is allowed to operate nationwide. Also if it operates in one district only, the execution of the request for assistance is not transferred.

The experts consider that more should be done to promote awareness about LBOM to ensure that practitioners understand its role.

4.3.3. *Shortage of staff*

Even if the Netherlands have already increased considerably the number of people working in mutual legal assistance, there still seem to be a general shortage of staff, especially at the prosecutor's offices, the courts and the police forces. This still seems to be one of the main reasons for delays in mutual legal assistance.

The number of requests is increasing every year, and the regional police forces could meet important problems of capacity if they are requested to execute the international letters rogatory. For 1998 in the Arnhem district it is estimated that the number of letters rogatory will be 583 (prognosis).

Lack of capacity in the courts could lead in the future to important delays (see above). The Public Prosecution Service in Amsterdam already indicated to the experts that it will have problems for the next year in respecting the time limits set out by the Board of Prosecutors General.

For 1997 in the Amsterdam region, only 50 % could be sent for execution to a regional specialized police team, because of lack of capacity in this team (only 5 to 6 people). The regional team frequently has to refer letters rogatory to other colleagues for execution, and since every police force has its own priorities, this could cause delays. It seems that the Amsterdam Public Prosecution Service has already several times asked for an improvement to this situation, but so far nothing has happened.

The experts conclude that the situation causes delays and constitutes a waste of resources in many ways, e.g. it creates double work, if an organisation is too small and often has to call for assistance from other police departments. The experts suggest that the department for legal assistance within the Amsterdam regional police, as well as other similar teams, be reorganised and given the required personnel resources so that these departments can execute all legal assistance cases in the region (except for the cases where another police team is already involved in).

Due to, among other things, lack of capacity a budget of approximately 3 million guilders has been made available. It is not known yet how and where the money will be spent.

4.3.4. *Urgent requests*

Whether a request is urgent is decided at prosecutors or judges level according to "Dutch standards". If the authorities at central level consider that a request is not urgent, normally they will contact the requesting authority, but this is not a rule. It seems unclear whether this would apply also to the local level and no guidelines have been issued.

There are as yet no formal policies or guidelines available on how to act when delays in the execution of letters of request occur. This is left to the good will of practitioners and seems to depend too much upon personal initiatives. The experts would recommend that the Board of Prosecutors General examine this matter with attention.

A weak point in the legislation (Article 552p), as already indicated, seems to be the criterion set out for investigating judges to deal with requests *as soon as possible*.

The Netherlands indicate that most requests are marked urgent, and that they need to assess which requests have to be dealt with first. Although this could result from the way the Dutch were dealing with requests before, the experts feel that a requesting state should explain better why requests are urgent, otherwise the system might get blocked.

4.3.5. *Direct Communication*

Even though several international instruments allow for direct communication between judicial authorities (and thus also between judges), the investigating judges in the Netherlands, when they receive a request from a foreign colleague, have to send the request for registration to the prosecutor before they can act upon it. Although this transmission can be motivated for administrative reasons, it creates in itself delays in execution, and in particular where investigating judges and public prosecutors are not working within close distance to each other, or when they are absent on missions.

The Netherlands still experiences certain problems with other Member States of the Schengen Agreement, which continue to send letters rogatory through diplomatic channels or via the Ministry of Justice. This creates double work and delays in the execution of these requests.

Furthermore, incoming requests from Schengen countries are examined twice, first at the Ministry and then at the level of the Public Prosecution Office. Even if the competences of both bodies vary, the actual risk of double work and loss of time is obvious. The experts suggest that for requests from Schengen countries, the Ministry sends these at once and without further scrutiny to the competent local prosecutors office for handling. Where several offices are locally competent, one office should be able to deal with the entire request.

4.3.6. *Training and monitoring*

The Guidelines given by the Board of Prosecutors General, the Step-by-step Guide and the KRIS, must be welcomed. It should be ensured that these resources are made available to all concerned. It seems, for instance, that the Manual is not yet known by some investigating judges.

Beyond this, an increased "training" in regulations of legal assistance would be desirable, especially for judges. Such training, which is apparently already envisaged, should in particular stress the importance of mutual legal assistance.

At court level in Amsterdam, requests were not even registered in 1997, and much depends on the standards that each judge sets for himself. It was said by a judge that before becoming an investigating judge a one week training was received, but mutual legal assistance was only a very small part of the training. There was also a possibility to follow a special course on international law, but this was not obligatory.

4.3.7. *Openness in informing colleagues*

It was clear from various discussions the experts had with practitioners that the Netherlands will not be able to provide any information to law enforcement or judicial authorities abroad if a so-called embargo case is under way. Information about these sensitive, ongoing investigations is known only by the caseworkers. If a request for legal assistance concerns such a case, it would seem reasonable if instructions are given to the effect that oral contact is made with the requesting authority to explain that in the circumstances assistance is delayed. At present the policy seems to be simply not to respond.

It should be recalled that such a policy could create difficulties in a requesting state, where persons might be in custody awaiting the outcome of the request made to the Netherlands.

4.3.8. *Appeals*

Under the present legal provisions the possibilities of an appeal offer numerous opportunities to delay proceedings - at least in theory. The stages, time-limits and opportunities for appeal ought to be examined, with a view to reducing the opportunities to use the appeal system as a delaying tactic.

The situation in the Netherlands is that, if an appeal is lodged, the material can be handed over with the condition that the evidence cannot be used in a trial as long as the appeal is pending. This can in difficult cases, and taking into account all procedural steps, take up to two years. This opportunity could cause considerable delays with the criminal procedure in the requesting state. Although the experts note that this possibility has not been used in practice very often, the possibility exists and could be misused by organised criminals to avoid being prosecuted and convicted in the requesting state and undermine the effectiveness of mutual legal assistance.

4.3.9. *Asset tracing and seizure*

The examining judge may impose secrecy upon a bank as regards requests made by an examining judge or a public prosecutor. This can be derived from Art. 189 Criminal Code. Summarized, this article makes assistance rendered to criminals a punishable offence. A person who by intentionally making available data or information to third parties (read: client) prevents seizure of items that may serve to demonstrate unlawfully obtained gains, is punishable. This person is liable to a term of imprisonment of not more than 6 months or a fine of NLG 10,000 (maximum).

The experts posed the following question: "Is it possible for a state to request the Netherlands to investigate in all Dutch banks whether any bank accounts, safes or other valuables are held by Mr X. For the purposes of this question Mr X is fully identified and there is evidence that he has visited the Netherlands on several occasions with large sums of cash." The different practitioners to whom the experts posed this question were not unanimous about the possibility. Some practitioners thought that this was to be considered as a "fishing expedition", which is not possible in the Netherlands, while others referred to the important practical problems in executing such a request because the Netherlands financial institutions do not have a central desk that can be approached for this kind of information. The experts feel however, especially in view of Article 8 ("the existence") of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the

Proceeds of Crime, that the Netherlands should offer assistance in these cases, at least where the request concerns the tracing of proceeds of crime. A system should be created that makes it possible in a short period of time to find out if a certain person has an account, safe or valuables on his name in a bank in the Netherlands. This assistance should be given where the requesting state indicates that it has evidence that the suspected person has relevant connections with the Netherlands.

The Dutch system seems sometimes to be able to work less efficiently when it comes to confiscation. If a request is made for restraint by way of attachment [(24)] with a view to its confiscation at a later state, the prosecutor will have to send this request to the Ministry of Justice, which will assess if there are legal grounds for confiscation. The prosecutor could apply to the investigating judge for the opening of a financial investigation. If authorisation is given, the restraint order may be executed. If he decides that a criminal financial investigation is not required, he may order for the prejudgment attachment without the intervention of the investigating judge. There is a risk that, for instance, money on a bank account may have disappeared if this procedure is always followed.

The Dutch authorities however indicate that, in case of urgency, requests for prejudgment attachment may be sent directly to the judicial authorities, provided the convention concerned allows for this. If so, the Office for International Legal Assistance in Criminal Matters (BIRS) should receive a copy of the request. From the explanation received by the experts during the visit it seemed however that prosecutors would in all circumstances look for prior approval by the competent service at the Ministry of Justice before taking action. The experts wonder if this practice is in line with the provisions of Article 11 and, in the event of urgency, Article 24, 2 of the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime.

4.3.10. *Improvement of the computer network*

A nationwide computerised system is currently being developed making it possible to monitor at any time what stage of the proceedings an incoming request has reached.

The experts recommend that the same system should be extended to outgoing letters of request, to enable both practitioners and policy-makers to have a full view on the whole issue of mutual legal assistance. It would seem that such a system would in particular enable policy-makers to plan more carefully resource implications of mutual legal assistance and to assess trends. The statistics that are actually available do not allow for any monitoring of

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(24) In the questionnaire were used the definitions of "seizure" and "freezing" found in Article 1 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which is as follows: "freezing or seizure means temporarily prohibiting the transfer, conversion, disposition or movement of property, or temporarily assuming custody or control of property on the basis of an order issued by a court or competent authority".
The term "restraint by way of attachment" was used by the Netherlands' authorities in their answers to the Questionnaire. It is not used in the major conventions, but in order to avoid confusion, the exact phrase used has been incorporated in this Report. It refers only to freezing or seizure in anticipation of a later confiscation order. In common law jurisdictions particularly, the terms "freezing and seizure" have a wider meaning, but where it appears in this Report, the meaning applied by the Netherlands' authorities should be applied.

reasons for delays in mutual assistance. Even in the future, once the national registration system will operate, there will still be difficulties in assessing delays in outgoing requests. This is, however, a lesser problem to the Netherlands as they receive six times more requests than they send. However a good computer system should allow for a better understanding of the reasons for delays.

The departments of public prosecution and the judges should be given the opportunity of consulting corresponding data bases from other proceedings/requests, not only for reasons of internal registration but also for better co-ordination of the execution of the requests. According to information from practitioners, such a network only exists within the public prosecution offices, but is not available to the investigating judges. It was reported that one investigating judge - in order to receive information on a certain person - had to ask all his colleagues himself or request the public prosecutor to provide him with all relevant information.

It was reported that letters of request sometimes were "lost", and because of the absence of an adequate registration system, could not be traced. These problems would hopefully be solved with the advent of the new system.

4.4. Points of general interest

4.4.1. *Too many channels for transmission of requests*

Practitioners complain that there are numerous international and national bodies which function as "mailboxes". This fact causes a substantial amount of work. Especially within the framework of co-operation with other countries, it should be possible to decrease the number of contact places whenever a direct contact between judicial authorities is not possible, and, perhaps, create a central contact place. This is a question that should be examined by all Member States.

4.4.2. *Translation*

Translation of requests is a very important issue in all Member States, and it is obvious that if a high quality translation cannot be provided at short notice, this will delay considerably the execution of requests. The experts therefore recommend that all Member States should assess how to solve these problems. One way of dealing with them could be to have special clusters for translation and have more language courses for prosecutors and judges.

The Dutch authorities claim that translations can be provided very quickly (24 hours or less), but this is only done in very urgent cases. In other cases it might take several weeks. The court and the prosecution service do not have access to their own translation services, so that the quality of translation is not always guaranteed.

Translations into Dutch of letters of requests made abroad seem sometimes to be of poor quality, and even completely unreadable. If the Netherlands' authorities have to retranslate documents, it is clear that this creates delays. In one case (concerning Turkey) "death penalty" had been translated into "life time imprisonment".

The experts were informed that Spain very often translates requests made to the Netherlands into French and the quality of these translations seems to be very poor. These translations will often have to be redone. One wonders why Spain does not immediately translate into Dutch, if a translation is made anyway.

As to the use of languages, the Netherlands has made no declarations to the 1959 Council of Europe Convention, and in practice receives most requests in either Dutch, French, English or German. Most judicial authorities do not require any translation if the request is made in English or German. The United Kingdom seems to translate its requests always into an excellent Dutch, but the judicial authorities the experts met did not seem to need any translation at all for requests made in English.

Nevertheless the Dutch authorities indicate that in case of complicated requests for legal assistance, it is still recommended to enclose a Dutch translation of the request to facilitate the smooth and efficient execution of the request concerned.

4.4.3. *Specific problems with countries*

Problems have been reported especially about legal assistance with France, Spain, Portugal, Luxembourg, Turkey, and to a lesser extent (limited number of cases) Greece:

- Turkey is sending a significant number of requests to all Netherlands' competent authorities on - according to Western European standards - very minor cases. The danger exists that the system may become blocked due to the large number of these and other requests of a minor nature.

- With Spain, Portugal and Greece, some authorities had problems getting in contact with their colleagues, not only because of language problems, but also where liaison officers were trying to find information on specific cases.

- Spain, and according to some practitioners also France, were considered to be occasionally very slow in answering letters of request.

- The Netherlands have encountered difficulties in getting bank accounts restrained in Luxembourg, which insists that the request be signed by an investigating judge, even if the public prosecutor in the Netherlands is empowered to order this.

- The most common problem is that the letters of request do not always include the sending country's legislation, and sometimes even the name, address, phone number etc. of the authority making the request is omitted.

A general problem, relevant to all Member States, seems to be that numerous minor requests are sent. This fact risks blocking the entire system of mutual legal assistance, even if it is well organised, and may lead to important problems in dealing with important requests, such as in cases on organised crime. The experts recommend that this question be examined at the level of the European Union with a view to arriving at equitable solutions. As requests for mutual legal assistance are increasing in every Member State, this may in the medium or long term become an important factor in delays.

5. GENERAL CONCLUSIONS AND RECOMMENDATIONS

5.1. The experts found it appropriate to make a number of suggestions for the attention of the Dutch authorities. This should not detract from the fact that the experts were impressed by the legislation and the number and quality of initiatives taken by the Netherlands in the past three or four years, and by the enthusiasm of officials working on mutual legal assistance. The Netherlands should be encouraged to continue their efforts in this field and to share their experiences with other Member States.

The experts would like to summarize below their main recommendations, both directed to the Netherlands and to other Member States of the European Union, to further improve co-operation between judicial and law enforcement authorities.

5.2. The Netherlands and, where applicable, other Member States of the European Union

- could assess the way the prosecutors, investigating judges and courts and the police interact in the penal procedure, with a view to avoiding delays (see in particular 4.3.1.);

- could give more emphasis on treaty obligations, and ensure that the practice in the field is not reducing the commitments made by it internationally (see in particular what has been said under 4.3.9. on asset tracing and restraint by way of attachment, and under 4.3.5. on direct communication);

- could assess the training it is already offering, and give more attention and time to education and training towards international co-operation, especially to their prosecutors and judges (see in particular 4.3.2. and 4.3.6.);

- could integrate all professions, especially the judges, in the system they are setting up for providing a better assistance while maintaining judicial independence (see 4.3.10.);

- should ensure compatibility of information systems at national level (see 4.3.10. and 4.4.1.);

- should further increase the capacity of mutual legal assistance resources. This could be done by having more and better trained specialised prosecutors and judges available, and by increasing the number and the staff of regional co-ordination teams at police level; it should in general ensure that work in international cases becomes a priority at all levels (see in particular 4.3.1.7., 4.3.1.9., 4.3.3. and 4.3.6.);

- should provide its Board of Prosecutors General with the necessary means to continue the initiatives taken at European level amongst neighbouring countries and Euro Justice and encourage prosecutors and investigating judges to be more proactive in mutual assistance (see 4.3.1.9.);

- should assess all procedures and channels through which requests are sent, in order to avoid duplication and to speed up the handling of requests, both incoming and outgoing (see in particular 4.3.1., 4.3.2., 4.3.3., 4.3.4., 4.3.5.);

- should urgently consider drawing up criminal legislation concerning money laundering by the same person who committed the predicate offence (see 4.2.5.);

- should encourage persons involved in mutual legal assistance to participate in international programmes such as Falcone and Grotius (see 4.3.6.);

- should study the possibility of creating clusters of prosecutors and judges with specific training and expertise in mutual legal assistance (see 4.3.1.7., 4.3.6.);

- should improve the gathering and use of statistics on both incoming and outgoing requests (see 4.3.10.);

- should reduce the channels for transmission of request (see 4.4.1.);

- should study the possibility to have clusters of translation facilities for the most important languages of the European Union (see 4.4.2.).

5.3. The European Union

- should organise co-ordination between its Member States to provide for common European standards for drafting letters of request;

- should develop common principles of urgency between the Member States;

- should aim towards more compatible legislation concerning investigative activities in all European countries, and also develop common criteria on how information can be used e.g. harmonise the criteria for reporting suspicious transactions as there are too many gaps for criminals to exploit;

- should study the possibility of making available to all European practitioners a similar system to the Dutch KRIS;

- could promote the concept of the National Office for Public Prosecution Service established in 1995 to fight organised crime and CRI as a good initiative;

- should recommend to all Member States to allow direct contact between judicial authorities, which considerably improves practical co-operation;

- should develop one single, rapid and secure communication system for the transmission of all letters of request, and reduce the overload of channels as they exist now;

- should promote the possibility of direct questioning by the requesting authority in the presence of the authorities of the requested state, in order to further reduce duplication of work;

- should promote all possibilities for direct contact between the users of the system, especially between more specialised public prosecutors, judges and police officers;

- should commence discussions with a view to ensuring that a large number of requests in minor cases does not lead to congestion of the system and detract from dealing with serious cases such as organised crime.

ANNEX A

Programme of the Visit to the Netherlands

Monday 14 September 1998:

During the afternoon the experts and the two representatives of the Council's Secretariat met a first time to prepare the visit.

Tuesday 15 September 1998:

Visit to the Office for International Legal Assistance in Criminal Matters (BIRS) at the Ministry of Justice

Wednesday 16 September 1998:

Visit to the Prosecutor's Office in Amsterdam and the Regional Police Headquarters

Thursday 17 September 1998:

Visit to the Prosecutor's Office in Arnhem

Friday 18 September 1998:

Visit to the Office of the National Magistrates (LBOM) in Rotterdam
and meeting with representatives of NCIS and the National Investigation Team

ANNEX B

List of persons the expert team met

During the visit the team was accompanied by Ms Heijungs, Prosecutor's General Office, and Ms Van Kleef, BIRS.

Tuesday 15 September 1998: Visit to the Ministry of Justice

- Mr J. Demmink, Director General International Affairs
- Mr Mark Knaapen, Head of Office for International Legal Assistance in Criminal Matters (BIRS)
- Mr N. Ruyters, Assistant Head BIRS
- Ms M. Mos, Senior Legal Assistant at the BIRS
- Mr S. Rijpstra, Head of the Administration

Wednesday 16 September 1998: Visit to the Prosecutor's Office in Amsterdam

- Mr J. Vrakking, Head of the Prosecution Office
- Mr D. Aben, Prosecutor
- Ms S. De Groot, Senior Secretary
- Ms L. Castemiller, Senior Secretary
- Mr M. Sas, Senior Assistant
- Mr T. Van der Tol, Senior Assistant
- Mr R. Blekxtoon, Vice President District Court Amsterdam, and President of the Court for Legal Assistance
- Ms M. Leyten, Investigating Judge
- Mr J. Bos, Police, Team leader of the Co-ordination Team Mutual Legal Assistance of the Regional Police Amsterdam Amstelland (CIS)
- Mr A. Weijts, Police, Assistant Team leader, Member of CIS

Thursday 17 September 1998: Visit to the Prosecutor's Office in Arnhem

- Mr D. Steenhuis, Prosecutor General
- Ms L. Van Zanten, Head of the Prosecutor's Office
- Mr P. Frielink, Public Prosecutor
- Mr A. Dusamos, Investigating Judge
- Mr H. Bloemen, Senior Secretary
- Mr D. Bosma, Team leader Regional Police Gelderland-Midden, and one of his colleagues

In the evening visits to
- Mr Mark Knaapen
- Ms M. Mos

Friday 18 September 1998: Visit to the Office of the National Magistrates (LBOM) in Rotterdam

- Mr H. Holthuis, Head of the Office
- Mr Fr. De Groot, Public Prosecutor
- Mr L. Cramer, Secretary
- Mr H. Meijer, Secretary
- Mr W. De Bruin, Information Officer

- Mr P. Aalbersberg, Division Centrale Recherche Informatie (CRI)
- Mr A. Morsman, National Investigation Team

ANNEX C

Office for International Legal Assistance in Criminal Matters

The Office for International Legal Assistance in Criminal Matters at the Ministry of Justice uses a programme from the firm Siemens, known as JUDISIR (an acronym standing for judicial documentary information system for international legal assistance). This is a kind of progress chart, recording a variety of details of a case and every step taken in the course of a request for legal assistance in which the Ministry of Justice is involved. The Office is itself responsible for statistics from the Siemens system. Anyone there dealing with a request for legal assistance accordingly inputs data by way of the progress chart.
As regards Schengen countries it should be noted that almost all requests for legal assistance are sent out directly (i.e. not via the Ministry of Justice). Such requests are therefore only reflected in the Office's statistics to a very limited extent.

Statistics on requests to foreign countries for ancillary legal assistance:

Country	1995	1996	1997
Austria	12	8	9
Belgium	45	12	41
Denmark	12	11	13
Finland	0	4	1
France	110	39	35
Germany	109	28	24
Greece	2	4	7
Ireland	1	6	11
Italy	52	17	12
Luxembourg	21	17	20
Portugal	8	9	7
Spain	90	31	47
Sweden	15	4	11
United Kingdom	86	79	119
non-EU countries	525	304	380
TOTAL	1 043	561	696

Statistics on requests to the Netherlands for ancillary legal assistance:

Country	1995	1996	1997
Austria	203	200	152
Belgium	105	61	50
Denmark	46	36	36
Finland	5	12	13
France	677	528	235
Germany	103	46	64
Greece	1	1	24
Ireland	0	3	4
Italy	24	25	34
Luxembourg	27	1	4
Portugal	7	14	10
Spain	66	75	51
Sweden	10	8	13
United Kingdom	274	168	176
non-EU countries	857	1 722	1 265
TOTAL	2 405	2 900	2 131

Other statistics for 1997

Figures on the type of offence and the type of request are not broken down into outgoing and incoming requests for legal assistance, as that is not technically feasible.
The total requests by type of offence and by type of request in the tables below do not tally with the total outgoing and incoming requests for legal assistance. One reason for this is that, in requests for legal assistance seeking service of documents, the underlying offence is not always clear from the documents. No details of the offence are in that case entered in the system. In addition the table by type of request contains data excluding Hungarian and Czech requests for service, whereas such requests are in fact included in the table showing the total requests made to the Netherlands for ancillary legal assistance.

Type of offence	Number of requests
Property crime	471
Violence/life and limb	139
Public morality	37
Drugs	578
Road traffic	156
EC regulations	95
Requests for Confiscation	36
Environmental crime	2
Others	123
TOTAL	1 637

Type of request	Number of requests
Service (excl. Hungarian and Czech requests)	345
Police questioning	318
Judicial questioning	203
Sending of documents	151
Searching of premises	68
Seizure	72
Phone-tapping	10
Temporary transfer of detainees	10
Surveillance	31
Criminal records information	8
Requests for a number of steps in the same investigation	316
Others	48
TOTAL	1 580

District public prosecutors' offices

Public prosecutors' offices each have their own recording system (computerised or manual). Case-related data, e.g. requesting country, date of receipt, date on which dealt with, type of offence, person to whom request passed on, etc., are recorded so that it is possible to keep track of the handling of the case. The following table shows the approximate number of requests for legal assistance (excluding service) received by the Public Prosecution Service for the last three years. No figures are available for outgoing requests for legal assistance; the legal assistance aspect forms part of the overall criminal case pending and that aspect is not in itself separately recorded.

1995	1996	1997
18 100	20 500	23 900

National Criminal Intelligence Service

The National Criminal Intelligence Service does not keep any statistics on requests for legal assistance to be forwarded by it via Interpol, as the compiling of information on this is not at present feasible.

National Cross-Border Surveillance Co-ordination Centre

Partly at the request of the national public prosecutor, the National Cross-Border Surveillance Co-ordination Centre keeps statistics on incoming and outgoing requests for legal assistance involving cross-border surveillance.

Responsibility for keeping figures lies with that Centre itself, since it has an overall picture of incoming and outgoing requests and of any personnel and resources deployed, action taken on and outcome of such legal assistance.

The National Cross-Border Surveillance Co-ordination Centre keeps the following categories of statistics:

- incoming and outgoing requests for legal assistance;
- countries by or to which made;
- deployment of Schengen or regional surveillance teams;
- incoming requests passed on to a region;
- deployment of Schengen teams in regional cases;
- deployment of arrest teams.

Public Prosecution Service Arnhem

Incoming requests from 01.01. to 30.09.1998	**408**
- ancillary legal assistance (without the use of coercive measures, and notifications)	310
- with use of coercive measures (house searches, hearing of witnesses under oath, etc.)	68
- extradition	20
- transfer of execution criminal sentences	10

For the Arnhem district this will mean a probable number of 583 requests for mutual legal assistance in 1997.