

Janne Lise de Boer
Robert van der Ende

OPENBAAR MINISTERIE

Confiscation in The Netherlands

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Overview - confiscation in The Netherlands

- Confiscation in The Netherlands
- Confiscation under Regulation (EU) 2018/1805
- Forfeiture (verbeurdverklaring)
- Withdrawal from circulation (onttrekking aan het verkeer)
- Value confiscation measure (ontnemingsmaatregel)
- Freezing orders
- Asset tracing in execution phase

Confiscation in the Netherlands

Without court involvement ->

- Waiver of seized objects (116 CCP)
- Conditional dismissal criminal case
- Conditions to avoid criminal proceedings (art. 74 CC)
- Punishment order (art. 257a CCP)
- Written settlement (art. 511c CCP)

confiscation order court

- Forfeiture with seizure (art.33/33a CC)
- Forfeiture without seizure (art. 34 CC)
- Withdrawal from circulation (art. 36b/c CC)
- (Skimming) fine (art. 23 CC)
- Value confiscation measure (art. 36e CC)
- Victim compensation measure (art. 36f CC)
- Conditional sentence with victim compensation (art. 14a CC)

Confiscation under Regulation (EU) 2018/1805

- Forfeiture with seizure (art.33/33a CC)
- *Forfeiture without seizure (art. 34 CC)*
- Withdrawal from circulation (art. 36b/c CC)
- Value confiscation measure (art. 36e CC)

Forfeiture (Verbeurdverklaring)

- Punishment > decision object in verdict
- Object confiscation > Relation object – criminal offence
- Third party confiscation > third party acted in bad faith – or – unknown third party
- Forfeiture also possible if object has not been frozen
 - Object needs to be surrendered
 - Or payment of assessed value of the object
 - Alternative sanction: detention (ordered by court)

Withdrawal from circulation (Onttrekking aan het verkeer)

- Measure > decision object in verdict
- Object confiscation > Relation object – criminal offence
- Other conditions
 - uncontrolled possession is in violation of the law or contrary to public interest
 - Object needs to be frozen
- Ownership is no requirement
- Criminal conviction not requirement > criminal offence does need to be established
- Only form of NCBC in the Netherlands

Value confiscation measure (Ontnemingsmaatregel)

- Separate procedure next to criminal case > non-punitive measure
 - conviction in criminal case required
- Criteria:
 - criminal case: without reasonable doubt (2 means of evidence)
 - value confiscation procedure:
 - criminal offence?: “sufficient indications” (only if not without reasonable doubt, 1 mean of evidence is enough)
 - further: ‘plausible’
- Burden of proof:
 - Criminal case: public prosecutor
 - Value confiscation procedure: shared burden of proof: if an amount has been made plausible by the PP, it is up to the suspect to prove that the amount is lower or higher if he does not agree with that amount.

Value confiscation measure (Ontnemingsmaatregel)

- Value based confiscation
 - decision on proceeds of the criminal offence
 - decision on the payment order
 - no decision on the objects
- Extended confiscation
 - Calculation of proceeds per criminal offence > also other offences not part of the criminal conviction
 - Calculation of proceeds per period > unexplained wealth
- Third party confiscation
 - Object has been transferred to third party to avoid confiscation
 - Third party knew or could reasonably suspect this to be the case

Freezing orders

- 2 type of freezing orders:

94 CCP

- Without court authorization
- Aim: object confiscation
- Relation object – criminal offence
- Court decides on objects

94a CCP

- With court authorization
- Aim: value confiscation
- All assets (legal and illegal)
- No court decision on objects

Asset tracing in the execution phase

- Minister of Justice and Security responsible for execution
- CJIB acts on behalf of the Minister.

- In case of value confiscation measure
 - if insufficient assets are frozen; and
 - no voluntary payment by convicted.

- Possibilities
 - Information order Minister
 - National alert of payment order
 - Criminal execution investigation
 - Court authorization
 - Investigation by public prosecutor