

“PLUCK-THEM” LEGISLATION CONFISCATION OF ILLEGAL ASSETS IN THE NETHERLANDS

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“In 2014 the Dutch public prosecutor has made off with 136 million euros of criminal’s money.

That is €50 million more than last year.

This means that last year was the most successful year since the new pluck-them law came into force in 1993.”

NEWSPAPER (NRC)

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“Time is money – Trade in watches

Criminals wear the most expensive and newest watches.



The watches are used by criminals for money laundering and as currency. (...) [6 October 2014, the police arrested] a businessman that sells exclusive watches all over the world. (...) Justice suspects him of money laundering and seizes assets worth more than 1 million euros: his house, a garage box, cash money and a few cars.”

LEGAL BACKGROUND CONFISCATION



- Originally from Law on Economic Crimes
- Introduced in the Penal Code in 1983
- Rediscovered in 1990s
- Reflection on criminal law & international initiatives
- 2011 Chain Programme: 'Taking away criminal assets 'more', smarter and more effectively'



RATIO PLUCK-THEM LAW / CONFISCATION



- Primarily: **crime should not pay**
 - Compensate victims
 - Replenish treasury
- Prevent money laundering
- Legitimate spending of public finances
- Protect integrity (legal) trade
- Complementary intervention to combat crime
- Break down status built through crime (exemplary function)
- Decrease feelings of insecurity and unsafety

RECENT EXAMPLES: NO MORE SMALL TIME CROOKS



- 2005: Building fraud
- 2012: Ballast Nedam (foreign corruption)
- 2013: KPMG related to Ballast Nedam
- 2013: Libor fraud (Rabobank)
- 2014: Settlement SBM Offshore (foreign corruption)
- Ongoing: Real estate fraud



TYPES OF CONFISCATION

- “Criminal asset-sanctions”
 - Penalty (article 9 Penal Code)
 - Forfeiture (article 33a Penal Code)
 - Confiscation a.k.a. “pluck-them” (article 36e Penal Code)
 - Compensation victim (i.e. article 36f Penal Code)
 - Confiscation settlement (511c Code of Criminal Procedure)
 - Transaction with financial conditions (article 74 Penal Code)
 - Administrative punishment with confiscation element
- Other sanctions
 - Dissolution of a legal entity
 - Removal of occupation / office (article 28 Penal Code)
 - Disciplinary possibilities
 - Other fiscal / civil / administrative possibilities

CONFISCATION AUTHORITIES



Previously: Bureau Confiscation (BOOM)

Currently: Confiscation is a matter of so-called **chain cooperation**:

- National Police
- Public Prosecution Service (OM), including former BOOM officers
- Special Investigation Services, most importantly: Fiscal Intelligence and Investigation Service and Economic Investigation Service (FIOD-ECD)
- Royal Marechaussee (Kmar)
- Tax and Customs administration
- Regional Information Expertise Centres
- Infobox Criminal and Inexplicable Assets (ICOV)
- Central Judicial Debt Collection Agency
- “Service Domains” (movable and immovable property)
- Financial Intelligence Unit Netherlands (FIU-NL)
- International: Asset Recovery Office (IRC/ARO)
- Courts (judges and investigating magistrates)



PERSONS SUBJECT TO CONFISCATION PROCEDURES



Article 94a PC offers the opportunity to seize assets in order to confiscate them after a final verdict. It is possible to seize assets from:

- the suspect (both natural persons and legal entities)
- a third party that keeps assets for the suspect (i.e. a bank)
- a third party that has received assets in bad faith in order to frustrate redress (i.e. a speedy divorce after which the car is suddenly transferred to the former spouse)

POSSIBLE ASSETS

Not just money, but also luxury goods, such as boats, cars, banking accounts, art, real estate, antiques and jewellery.



STAGES OF THE CONFISCATION PROCEDURE



Confiscation procedure is 'separated' from the criminal case.

1. Police traces and identifies whether the crimes have produced profits
 2. If so: start (criminal) financial investigation
 3. Establish estimate value is of the profits
 4. If possible: freezing/proprietary injunctions
 5. Judicial proceedings to prove assets are subject to forfeiture/confiscation
 6. Judge decides on (the extent of) the obligation of payment to the victim(s) / state (state collects for the victim)
 7. (Seizure,) management & disposal of assets
- ! The suspect is liable with his entire wealth
 - ! Pressure measure: custody
 - ! Evidentiary benchmark for step 1 and 3: **plausibility**



STRENGTHS

- Intuitively strengthened national authorities
- Legal room to manoeuvre and recurring evaluations to keep in touch with practice
- Possibilities to confiscate: also under third parties that have bad faith possession & reversed burden of proof in case of serious crimes
- Having specialists in “normal” criminal investigation teams, in stead of a separate branch
- Mechanism for review of confiscation / forfeiture
- Registration of assets
- Communication to the public about confiscation

WEAKNESSES



- (Too) many players in the field?
- Guarantees in law for transparency, integrity of the procedure
- Integrate human rights protection in the procedure
- Ease of finding registered assets by third parties (suspect's lawyer)
- Adequate mechanisms for collecting remaining forfeited assets / fines
- Problem (?): return on investment should be 1:3



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