

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

---

---

JAARGANG 1990 Nr. 11

---

---

A. TITEL

*Overeenkomst tussen het Koninkrijk der Nederlanden en de Verenigde Staten van Amerika over wederzijdse administratieve bijstand bij het uitwisselen van informatie op effectengebied;  
's-Gravenhage, 11 december 1989*

B. TEKST

**Agreement between the Kingdom of the Netherlands and the United States of America on mutual administrative assistance in the exchange of information in securities matters**

The Government of the Kingdom of the Netherlands and the Government of the United States of America;

Considering that the development of the internationalization of trading in securities requires increasing exchange of information between the supervisory authorities;

Have agreed as follows:

Article 1

*Definitions*

1. For the purpose of this Agreement:
  - a. the term "Competent Authority" means:
    - For the Kingdom of the Netherlands, the Minister of Finance or the Minister's designee.
    - For the United States of America, the United States Securities and Exchange Commission ("Commission") or the Commission's designee and other authorities designated by the United States Government.

- b. the term "securities business" means the business of:
- effecting transactions in securities for the accounts of others;
  - buying and selling securities for one's own account;
  - advising others, for compensation, either directly or through publications or listings, as to the value of securities or as to the desirability of investing in, purchasing or selling securities;
  - acting as an intermediary in making payments or deliveries or both in connection with transactions in securities or providing facilities for comparison of data representing the terms of settlement of securities transactions;
  - engaging on behalf of an issuer of securities in matters relating to the issuance, registration, exchange and transfer of such securities;
  - the management, promotion, offer or sale of any investment company or collective investment scheme; or
  - equivalent activities conducted by persons or entities.
- c. the term "securities exchange" means a market, including an over-the-counter-market, for shares, bonds, options and other securities which is recognized, regulated or supervised by the Competent Authorities.

2. For the purpose of this Agreement, the terms herein shall be deemed to be defined in accordance with the relevant laws of the jurisdiction of the Competent Authority of the Requesting State.

## Article 2

### *Scope of assistance*

1. Each Competent Authority undertakes, in accordance with the provisions of this Agreement, to provide the Competent Authority of the other Contracting Party with the greatest possible measure of mutual administrative assistance in obtaining and exchanging information relating to the administration and enforcement of the other's securities laws and regulations.

2. The assistance available under this Agreement includes but is not limited to:

- a. obtaining and providing information and documents by the Competent Authority of the Requested State;
- b. taking statements of persons by the Competent Authority of the Requested State; and
- c. conducting compliance inspections or examinations of securities businesses by the Competent Authority of the Requested State.

3. In particular, each Competent Authority shall give assistance to the other Competent Authority in obtaining and exchanging information that is relevant to the laws and regulations of the requesting Competent Authority concerning:

- a. the granting of licences, waivers or exemptions for the conduct of securities business;
- b. the observance of the laws and regulations applicable to securities business;
- c. the observance of the laws and regulations applicable to securities exchanges;
- d. the observance of the regulations of securities exchanges by their members,
- e. the observance of the laws and regulations applicable to any issuer of securities, or persons related, directly or indirectly, to such issuer, required to comply with any requirement regarding the disclosure of information; and
- f. the prevention and detection of securities fraud and other irregularities in connection with the offer, purchase or sale of any security.

### Article 3

#### *General principles*

1. All requests for information or assistance pursuant to this Agreement shall be made and executed through a Competent Authority for each Contracting Party. The Competent Authorities of the Contracting Parties shall communicate directly with each other for the purpose of carrying out the provisions of this Agreement. Notwithstanding these principles:

- a. each Competent Authority may communicate from its own territory with any person in the territory of the other Contracting Party who voluntarily agrees to provide the information or documents requested; and
- b. requests by a Competent Authority for information that is available from any public source in the territory of the other Contracting Party may be communicated on an informal basis without compliance with the terms of this Agreement.

2. The provisions of this Agreement will not give rise to a right, directly or indirectly, on the part of any person other than the Competent Authorities, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Agreement, without prejudice to the constitutional law of the Contracting Parties.

3. The Competent Authority of the Requested State may refuse to comply with a request for assistance on the grounds that:

- a. such compliance would prejudice the security or other essential public interests of the Requested State; or
- b. such compliance would interfere with an ongoing investigation being conducted by the Requested State.

## Article 4

*Requests for assistance*

1. Requests for assistance shall be made in writing and shall be reasoned. Requests shall be addressed to the contact officers, designated by the Competent Authorities.

2. Requests shall specify:

a. the information which is sought, the persons or entities which may be in possession of the information and the place where the information may be available;

b. a general description of the matter which is the subject of the request and the purpose for which the information is sought;

c. the reason for requesting the information;

d. the legal provisions relating to the matter; and

e. the desired time period for the reply and, in cases of urgency, the justification therefor.

3. In the event of urgency, requests for assistance and replies may be effected by summary procedures or by means of communication other than the exchange of written information, provided that all communications are confirmed in the manner prescribed in this Article.

## Article 5

*Execution of requests*

1. The Competent Authority of the Requested State shall deal with the request for assistance within a reasonable period.

2. Requests shall be executed in accordance with the laws and procedures of the Requested State.

3. The Competent Authority of the Requested State shall obtain the information requested by the Competent Authority of the Requesting State. The information shall be obtained in conformance with paragraph 2 and, in so far as it is reasonably possible to do so, in the form and pursuant to the procedures desired by that Authority, including statements of persons.

4. The Competent Authority of the Requested State shall, upon request, in so far as it is reasonably necessary to do so, conduct examinations of the books and records of a securities business or its custodian or agent.

5. At the time a request is being executed, the Competent Authority of the Requested State may permit the presence of persons designated by the Competent Authority of the Requesting State. Those designa-

ted persons shall be allowed to formulate questions to be asked at the execution of the request.

## Article 6

### *Permissible use of information*

The Competent Authority of the Requesting State may use the information supplied only for the use indicated in its request.

a. With respect to the use of information in criminal proceedings, prior approval of the Competent Authority of the Requested State shall be obtained;

b. With respect to all other uses of information, the Competent Authority of the Requesting State must inform the Competent Authority of the Requested State before using the information supplied for reasons other than those indicated in its initial request. The Competent Authority of the Requested State may oppose such other use only in cases where such use would not be in the interest of the administration and enforcement of securities laws and regulations or when the circumstances mentioned in paragraph 3 of Article 3 are applicable. Unless such opposition is made within fourteen days of the receipt of the notification of the intended use of the Competent Authority of the Requesting State, the information may be used in the manner specified in the notification.

## Article 7

### *Confidentiality*

1. Except as contemplated in Article 6, each Competent Authority will maintain the secrecy, to the extent permitted by law, of the request for assistance, the component parts of the request and the information gathered and provided pursuant to the request. Such secrecy may be waived, to the extent permitted by law, by the mutual agreement of the Competent Authorities of the Requesting and the Requested States.

2. When the Requesting Competent Authority has terminated the matter for which assistance has been requested under this Agreement, upon request of the Requested Competent Authority, it will return to the Requested Competent Authority, to the extent permitted by law, all documents and copies thereof and other material disclosing the contents of such documents not already disclosed in proceedings referred to in Article 6, or pursuant to paragraph 1 of this Article, other than material which is generated as part of the deliberative or internal analytical process of the Requesting Competent Authority.

## Article 8

*Effect on other Agreements*

1. Mutual cooperation in criminal matters between the Contracting Parties shall continue to be governed exclusively by the Treaty between the United States of America and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters of June 12, 1981.

2. Prior approval by the Competent Authority of the Requested State is required for the use in a criminal proceeding of information that previously has been exchanged under this Agreement.

## Article 9

*Costs*

1. If it appears that responding to an individual request for assistance under this Agreement will involve substantial costs being incurred by the Competent Authority of the Requested State, the Competent Authorities of both States shall establish a cost sharing arrangement before further effecting the request for assistance.

2. If, in general, the execution of this Agreement leads to costs being incurred mainly and substantially by one of the Competent Authorities, the Competent Authorities of the Contracting Parties concerned shall conclude a general cost sharing arrangement.

## Article 10

*Consultation*

1. The Competent Authorities will engage in consultations with respect to this Agreement with a view to improving its operation and to resolving any matters which may arise. In particular, the Competent Authorities will consult upon request in the event of:

- a. a refusal by one Competent Authority to comply with a request for information on the grounds set forth in paragraph 3 of Article 3; or
- b. a change in market of business conditions, or in the legislation governing the matters set forth in paragraph 3 of Article 2; or
- c. any other difficulty which makes it necessary or appropriate to amend or extend this Agreement in order to achieve its purposes.

2. The Competent Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this Agreement.

## Article 11

*Entry into force*

This Agreement shall enter into force on the first day of the second month following the date on which both the Contracting Parties have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with.

## Article 12

*Territorial application of the Agreement*

With regard to the Kingdom of the Netherlands this Agreement shall apply to the territory of the Kingdom of the Netherlands in Europe.

## Article 13

*Termination*

1. Any Contracting Party may at any time denounce this Agreement by means of notification to the other Party.

2. Such denunciation shall become effective six months after the receipt of the notification. If any Contracting Party gives such notice, this Agreement will continue to have effect with respect to all requests for assistance made before the effective date of such notification until the Competent Authority of the Requesting State concludes the matter for which assistance was requested.

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Agreement.

DONE in duplicate at The Hague this eleventh day of December 1989 in the English language.

*For the Government of the Kingdom of the Netherlands,*

(sd.) W. KOK

*For the Government of the United States of America,*

(sd.) RICHARD C. BREEDEN

---

D. PARLEMENT

De Overeenkomst behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan de Overeenkomst kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van de Overeenkomst zullen ingevolge artikel 11 in werking treden op de eerste dag van de tweede maand volgend op de dag waarop beide partijen elkaar schriftelijk hebben medegedeeld dat is voldaan aan de grondwettelijke vereiste procedures in hun onderscheiden landen.

Wat het Koninkrijk der Nederlanden betreft, zal de Overeenkomst ingevolge artikel 12 alleen gelden voor Nederland.

J. GEGEVENS

Van het op 12 juni 1981 te 's-Gravenhage tot stand gekomen Verdrag tussen het Koninkrijk der Nederlanden en de Verenigde Staten van Amerika aangaande wederzijdse rechtshulp in strafzaken, naar welk Verdrag wordt verwezen in artikel 8, eerste lid, van de onderhavige Overeenkomst, is de tekst geplaatst in *Trb.* 1981, 188; zie ook *Trb.* 1983, 134.

Uitgegeven de *negentiende* januari 1990.

*De Minister van Buitenlandse Zaken a.i.,*

R. F. M. LUBBERS