



Brussels, 3.2.2014  
COM(2014) 38 final

ANNEX 19

**ANNEX**

**NETHERLANDS**

*to the*

**EU Anti-Corruption Report**

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## *THE NETHERLANDS*

### 1. INTRODUCTION — MAIN FEATURES AND CONTEXT

#### *Anti-corruption framework*

**Strategic approach.** Significant anti-corruption initiatives enhancing integrity have been taken in the Netherlands, such as a White Paper<sup>1</sup> from 2005 on corruption prevention, as well as legal and administrative reforms, most of which involved promoting integrity. For instance, in 2006, the Civil Servant Act and other laws governing municipalities were amended to provide a compulsory implementation of an integrity policy for civil servants. Another recent and significant example is the adoption of the Act on the Financing of Political Parties in 2013. The government's programme against financial and economic crimes (FINEC) was introduced to prioritise the fight against fraud, money laundering and corruption; however, a self-standing and comprehensive anti-corruption programme does not exist.<sup>2</sup> The focus of FINEC is on prevention, asset recovery, and improving coordination among the law enforcement agencies in charge of detecting and investigating these crimes.

**Legal framework.** The legal framework for fighting corruption is essentially in place. In the Third Round of Evaluations, all recommendations by the Council of Europe Group of States against Corruption (GRECO) concerning incriminations had been implemented by 2010;<sup>3</sup> progress has been slower for the recommendations on party funding. The most recent legislative reform related combating corruption was announced in July 2012; it would extend measures to fight financial and economic crimes.<sup>4</sup> The bill includes an increase in penalties for corruption and extends the statute of limitation for corruption. It also raises the maximum fine to 10% of an organisation's annual turnover. The Fourth Round of Evaluations of GRECO praised Dutch efforts to ensure public trust in public institutions, but voiced concerns about the lack of supervisory mechanisms for those measures that are in place; for example for declarations of interests by members of parliament.<sup>5</sup>

**Institutional framework.** While there is no dedicated agency for the prevention and fight against corruption, anti-corruption and integrity policies are central to the Dutch public administration both at national and local level, with a particular focus on prevention. An Office for the Promotion of Public Sector Integrity (BIOS) has the specific task of helping the public administration to draft and enforce anti-corruption policies.<sup>6</sup> For combating corruption, the Dutch police has had a highly specialised investigation service (National Police Internal Investigations Department — *Rijksrecherche*) since 1996. It reports to the Board of Procurators-General. It is responsible for investigating cases of corruption involving police officials, members of the judiciary and prominent public office-holders. More recently, it has also been given the task of investigating foreign bribery. GRECO recently pointed out that in the Netherlands, prevention of corruption among MPs, judges and prosecutors relies to a large

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1 Nota Corruptiepreventie — Rijksoverheid Kamerstukken 2005-2006, III, 30374 nr 2 and 6.

2 *Verzamelbrief financieel-economische criminaliteit* 12 July 2012. <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2012/07/12/verzamelbrief-financieel-economische-criminaliteit.html>; *Memorie van Toelichting Wijziging van het Wetboek van Strafrecht, het Wetboek van Strafvordering en de Wet op de economische delicten met het oog op het vergroten van de mogelijkheden tot opsporing en vervolging, alsmede het voorkomen van financieel-economische criminaliteit (verruiming mogelijkheden bestrijding financieel-economische criminaliteit)*. On 5th of July 2013 the actual law proposal was sent to the Second Chamber.

3 Third Evaluation Round; Compliance Report, adopted on 11 June 2010. GRECO RC-III (2010) 5E.

4 Ministerie van Veiligheid en Justitie (2012). *Verzamelbrief financieel-economische criminaliteit 12 July 2012. The bill has not been adopted; the Second Chamber provided its opinion on the 12th of November 2013.*

5 Corruption prevention in respect of members of parliament, judges and prosecutors, Fourth Evaluation Round, adopted on 21 June 2013. GRECO Eval IV Report (2012) 7E.

6 See more details below in the section on 'Integrity in public administration and of appointed and elected officials'.

degree on mutual trust, openness and public scrutiny, and commended their efforts on integrity.<sup>7</sup> As to the risks in practice, the Rijksrecherche carried out a strategic analysis of vulnerabilities that might increase the risk of bribery of civil servants in 2010.<sup>8</sup> It concluded that while reports of allegations of bribery were not evenly distributed in the civil service, the overall picture was positive — corruption was not widespread.

### *Opinion polling*

**Perception surveys.** While 61 % of Dutch people think that corruption is widespread in their country, this is below the EU average (76 %).

**Experience of corruption.** Only 9 % of the Eurobarometer 2013 respondents felt affected by corruption in everyday life (EU average: 26 %), and actual experience of petty corruption was almost non-existent at 2 % (EU average: 4 %).

**Business surveys.** The World Economic Forum's Global Competitiveness Report 2013-14 ranks the Netherlands as the eighth most competitive economy in the world out of 148 countries.<sup>9</sup> According to the 2013 Eurobarometer business survey,<sup>10</sup> only 24 % of the Dutch business respondents believe that corruption is a problem for their company when doing business in the Netherlands, as compared to an EU average of 43 %. Likewise, only 26 % of the Dutch respondents believe that the only way to succeed in business is to have political connections, as compared to an EU average of 47 %. Moreover, only 21 % of those who participated in public procurement in the past three years in the Netherlands reported that they were prevented from winning because of corruption, as opposed to the EU average of 32 %. On the Eurobarometer business survey, 24 % of business representatives felt that corruption was an obstacle to doing business in the Netherlands, while the same percentage of Dutch respondents said that nepotism and patronage were obstacles; this perception is considerably more positive than the EU average of 43 % and 41 % respectively.

### *Background issues*

**Private sector.** The Netherlands transposed Framework Decision 2003/568/JHA on corruption in the private sector and notified the Commission as early as in 2003 that, in its view, the Dutch Criminal Code already complied with the Framework Decision.<sup>11</sup> The Commission noted a number of potential legislative shortcomings in 2007 in the Netherlands' criminal legislation, as did GRECO in 2008. The Netherlands amended its provisions on corruption in the private sector in 2009, and GRECO acknowledged the improvement by declaring in 2010 that implementation of the Criminal Law Convention was satisfactory.<sup>12</sup>

**Law enforcement.** The 2013 Eurobarometer survey shows that only 5 % of the Dutch respondents claim that they have experienced bribery; another 3 % claimed they had witnessed such a case, and 36 % of the witnesses reported it. There seems to be public trust in law enforcement and the ombudsman, since around half of the respondents would report such a case to these institutions. Crime statistics only provide a partial picture since there is no

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7 Corruption prevention in respect of members of parliament, judges and prosecutors, Fourth Evaluation Round, GRECO Evaluation Fourth Report (2012) 7E: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)7\\_The\\_Netherlands\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)7_The_Netherlands_EN.pdf)

8 Rijksrecherche (2010). *Niet voor persoonlijk gebruik! Omkoping van ambtenaren in de civiele openbare sector*. Summary available from: <http://www.binnenlandsbestuur.nl/Uploads/Files/Document/6403.00.003-Rapport-1-.pdf>

9 [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2013-14.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf)

10 Flash Eurobarometer 374.

11 Commission Staff Working Document: Annex to the Report from the Commission based on Article 9 of the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector {COM(2007) 328 final}- Brussels, 18.6.2007; SEC(2007) 808.

12 Compliance Report on the Netherlands, Third Evaluation Round. GRECO RC-III (2010) 5E: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2010\)5\\_Netherlands\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2010)5_Netherlands_EN.pdf)

common system for recording corruption offences;<sup>13</sup> furthermore, many cases are dealt with under internal disciplinary procedures.<sup>14</sup> Nevertheless, a study confirmed that in nine out of ten cases, the prosecution of a suspect leads to a criminal conviction and that most people who are convicted for a corruption crime are sentenced to probation service or a fine.<sup>15</sup> In 2011 the guidelines for public prosecutors on how to identify and investigate public sector corruption were amended and fine-tuned.<sup>16</sup>

**Financing of political parties.** Despite the comprehensive legislative framework on political parties, rules on transparency of party funding and donations have been the subject of recent public debates. In the run-up to the elections in 2012, the media questioned the lack of transparency regarding the electoral campaign funding of one of the biggest political parties.<sup>17</sup> In its Second Compliance Report of 2013 concerning the financing of political parties, GRECO expressed its concern about the large number of recommendations that had been met only partially or not at all.<sup>18</sup> At the same time, it recognised that the new draft of the Financing of Political Parties Act<sup>19</sup> — still in preparation after several years — would significantly improve the degree of transparency of party funding in the Netherlands. The Act, drafted partly in response to earlier GRECO recommendations, was passed on 7 March 2013. It entered into force on 1 May 2013. The threshold for disclosure of donations is set at EUR 4 500, similar to that in the previous legislation criticised by GRECO. The threshold for anonymous donations is EUR 1 000. In June 2013, GRECO acknowledged that a number of additional recommendations had been implemented, with the exception of those concerning the thresholds on anonymous private donations, the accounts of local branches of political parties and the requirement of independent financial supervision.<sup>20</sup>

**Whistleblowing.** The 2010 Whistleblower Regulation for the public sector<sup>21</sup> introduced a reporting system and established a public integrity commission dealing with reports. Confidential treatment of the whistleblower's data is a fundamental element. Serious questions were however raised about its effectiveness in practice.<sup>22</sup> Until late 2013, the only whistleblower provision for the private sector was in the Dutch Corporate Governance Code, applicable to stock-listed companies.<sup>23</sup> In December 2013 the Dutch House of Representatives approved a bill (No 33.258) to protect whistleblowers from the consequences of their revelations.<sup>24</sup> The bill aims to protect them by creating a new organisation, under the office of the National Ombudsman, empowered to investigate cases in both the public and the private sectors.

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13 <http://www.binnenlandsbestuur.nl/bestuur-en-organisatie/nieuws/meer-corruptie-in-publieke-sector-geen-zicht-op.6261839.lynkx>.

14 The main reason for the public prosecution department to waive prosecution is that the civil servant's employer has taken disciplinary measures. Source: Public corruption and law enforcement, *H. Nelen*. In *Justitiële Verkenningen*, 2007.

15 Public corruption and law enforcement, *H. Nelen*. In *Justitiële Verkenningen*, 2007.

16 <http://www.om.nl/organisatie/beleidsregels/overzicht/opsporing/@156023/aanwijzing-opsporing-4/>.

17 <https://zoek.officielebekendmakingen.nl/stb-2013-93.html>.

18. In 2013, GRECO concluded that seven recommendations had been partly implemented, while six recommendations had not been implemented.

19 [http://www.eerstekamer.nl/wetsvoorstel/32752\\_wet\\_financiering\\_politieke](http://www.eerstekamer.nl/wetsvoorstel/32752_wet_financiering_politieke).

20 Third Evaluation Round; Interim Compliance Report, adopted on 21 June 2013. GRECO RC-III (2013) 8E.

21 Besluit van 15 december 2009, houdende een regeling voor het melden van een vermoeden van een misstand bij de sectoren Rijk en Politie (Besluit melden vermoeden van misstand bij Rijk en Politie).

<http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Publicaties/Downloads/Klokkenluidersregeling.pdf>.

22 Bovens, M. and Pikker, G. (2010). *Klokkenluidersregelingen: Nuttig maar Niet Afdoende*. p.38-47. In: Karssing, E, and Zweegers, M. (Eds). *Jaarboek Integriteit 2010*. Den Haag: Bureau Integriteitsbevordering Openbare Sector.

23 <https://docs.google.com/viewer?url=http%3A%2F%2Fwww.mccg.nl%2Fdownload%2F%3Fid%3D606>.

24 [http://www.eerstekamer.nl/wetsvoorstel/33258\\_initiatiefvoorstel\\_van\\_raak](http://www.eerstekamer.nl/wetsvoorstel/33258_initiatiefvoorstel_van_raak). The Senate will discuss the bill in January 2014.

**Transparency of lobbying.** In 2012 Parliament established a voluntary public register for lobbyists,<sup>25</sup> available online since 1 July 2012.<sup>26</sup> However, lobbying is not regulated by law at national, regional or local level, and the need for more transparency is shared by most political parties represented in Parliament.

## 2. ISSUES IN FOCUS

### *Integrity in public administration and of appointed and elected officials*

Integrity is one of the Dutch public administration's fundamental values. The Dutch anti-corruption policy is mainly but not exclusively focused on awareness raising and prevention. In a European Commission survey on corruption in the public administration, only 1% of respondents reported an incidence of corruption in interaction with the Dutch public authorities, while the EU average is 10%.<sup>27</sup>

There is a sophisticated administrative framework in place to prevent corruption-related offences in the public service, and the Dutch Civil Service Act incorporates basic rules on integrity policy. Codes of conducts are in place in most public administrations, as required by Dutch law. All rules applicable to prevent conflict of interests of civil servants are in detail described and explained in the Conflict of Interests Manual.<sup>28</sup> Those rules are supported by a self-assessment tool known as 'SAINT' (Self-Assessment INTegriteit) which was developed to assess risks and to self-assess the impact of the integrity policy of public bodies. The government has also made efforts to further enhance the impact of integrity measures: the academic research commissioned by the Ministry of Interior and Kingdom Relations is a confirmation of this effort.<sup>29</sup> The study pointed to certain shortcomings in the experience with integrity investigations in public authorities and in the knowledge of procedures to be followed in the event of allegations of a breach of integrity rules. It also raised concerns about the professional standards among staff conducting integrity investigations, and about upholding transparency standards. The study is planned to be discussed throughout 2014 with MPs, municipalities and professional associations so as to draw conclusions for action.

#### ***Good practice: one-stop shop for promoting and developing public sector integrity***

*Integrity, transparency and accountability are concepts that are proactively promoted in the Dutch public administration. The importance attached to public sector integrity and its further development is illustrated through a number of initiatives.*

*A central role is played by BIOS (the Office for the Promotion of Public Sector Integrity — Bureau Integriteitsbevordering Openbare Sector). BIOS encourages and supports the public sector in the design and the implementation of an integrity policy. Set up by the Ministry of Interior and Kingdom Relations, it operates as independent central office focusing on the*

25 Tweede Kamer der Staten-Generaal (2012), *Lobbyistenregister*.  
[http://www.tweedekamer.nl/over\\_de\\_tweede\\_kamer/lobbyistenregister/index.jsp](http://www.tweedekamer.nl/over_de_tweede_kamer/lobbyistenregister/index.jsp) (Assessed 1/10/12).

26 Register van lobbyisten in de Tweede Kamer (2012)  
[http://www.tweedekamer.nl/images/Formulier\\_lobbyisten\\_\(18\\_sept\\_2012\)\\_118-229467.pdf](http://www.tweedekamer.nl/images/Formulier_lobbyisten_(18_sept_2012)_118-229467.pdf).

27 Excellence in Public Administration for competitiveness in EU Member States, report prepared in 2011 – 2012 for the European Commission, DG Enterprise and Industry by Austrian Institute of Economic Research (WIFO), Vienna, Austria (overall responsibility); Centre for European Economic Research (ZEW), Mannheim, Germany; IDEAConsult, Brussels, Belgium. p. 140.

28 Bureau Integriteitsbevordering Openbare Sector (BIOS/CAOP), *Handreiking Belangenverstrengeling* July 2010.  
[http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Toolbox/Handreikingen/BIOS\\_Belangenverstrengeling\\_handreiking.pdf](http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Toolbox/Handreikingen/BIOS_Belangenverstrengeling_handreiking.pdf).

29 Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (2013). Toezeggingen en uitvoering moties integriteit in het openbaar bestuur; aanbieding rapport Tilburg University n.a.v. motie Heijnen c.s. 8 November 2013. p.5.

*promotion<sup>30</sup> of integrity (policy) in the public sector, at both organisational and strategic levels. BIOS has a variety of tasks, including knowledge, development, network and signalling functions: it acquires and develops integrity-related knowledge for the entire public sector and makes it available through meetings, lectures, courses and via its website. It also conducts research.*

*BIOS translates its know-how into practical models, methods, products, education and training directed to its target group. The bureau also supports public sector bodies in establishing and maintaining their integrity policies. It brings together experts to exchange knowledge through a variety of platforms (knowledge networks, conferences, learning communities and national meetings). BIOS acts as a central and independent office for integrity issues, identifying and critically analysing developments in the area by organising meetings for specific actors, drawing attention to integrity-related issues and conducting scientific research. On this basis, BIOS gives advice to the public sector.*

*BIOS also organises the annual National Integrity Day. This is meant to be a yearly stocktaking event where a variety of aspects related to public sector integrity are discussed, where challenges are identified, policies assessed and future developments tested through workshops and lectures. On that day, the Integrity Yearbook is published. It contains interviews and articles on various aspects of integrity as a key feature of good governance and is widely distributed, including online.*

The Netherlands has also adopted innovative methods to tackle corruption at local level. Many towns and communities have developed a toolbox for ethical behaviour and integrity for local and regional politicians and administrations. The importance of local tools to fight corruption was illustrated by the recent conviction for bribery, money laundering and fraud of a former provincial governor who was involved in planning and finance.<sup>31</sup> Overall, Dutch citizens are well aware of the behaviour they are entitled to expect from their elected local officials or public servants. They also have various means of reporting improper behaviour, as illustrated by the local integrity policy of the city of Amsterdam.

***Good practice: promoting integrity at local level — the integrity policy of the city of Amsterdam***

*Most if not all Dutch cities and communities have developed and are implementing a local integrity policy. In 2010 a study assessing this local integrity policy<sup>32</sup> noted that the number of detected cases of illicit practices had increased quite significantly from 135 per year in 2003 to 301 in 2010. Part of the explanation for this increase was better detection methods.*

*A part of the administration of the city of Amsterdam, the Integrity Office (Bureau Integriteit — BI) is a centre of expertise on integrity. It promotes integrity with the local political and administrative level, but also with service providers and businesses. BI supports all municipal units with the following services: advice, training, risk assessments, handling of disciplinary cases and legal advice, and integrity investigation; it acts as a contact point for people who want to report a breach of integrity rules. The staff of the office has extensive experience working for the municipality and is trained in integrity counselling. For example, they can*

30 For example through regular publications in which it reflects on various aspects of integrity policy. See for example: [http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Brochures/BIOS\\_Jaarboek\\_Integriteit\\_2012.pdf](http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Brochures/BIOS_Jaarboek_Integriteit_2012.pdf).

31 The Provincial Governor of Noord-Holland was sentenced to three years of imprisonment in December 2013 at first instance.

32 Integriteit van het lokale bestuur. Rapport, December 2010. Ministerie van Binnenlandse Zaken en Koninkrijksrelaties en de Vereniging van Nederlandse Gemeenten met de steun van het Nederlands Genootschap van Burgemeesters, de Vereniging van Gemeentesecretarissen en de Vereniging van Griffiers.

<http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2010/12/08/integriteit-van-het-lokaal-bestuur.html>.

*assist a department in formulating and implementing a tailor-made integrity policy, or provide coaching on how to apply the concept of integrity in specific questions or in work situations. BI risk analysts advise businesses, service providers and even other municipalities in the identification, control and reduction of integrity risks. Integrity breaches can be reported to the BI, which can conduct an internal investigation. If a department or service proposes a penalty to be imposed for a breach of integrity rules, it has to request an opinion from the BI's in-house lawyers. The purpose of this mandatory request is to ensure that the policy on penalties for such breaches is consistent.*

*The BI also operates an Integrity Hotline (launched in 1996 and hosted by the BI since 2001) which provides an insight into the type and number of integrity breaches that occur in Amsterdam. The data obtained through the hotline contribute to better mapping and pinpointing of problematic areas/sectors and to developing a prevention policy. The most recent figures available are for 2010, when the BI received 85 reports of suspected integrity breaches. This resulted in 21 investigations and 35 opinions on disciplinary measures. Nine employees were dismissed for serious breaches of integrity. The BI issued 30 opinions, and hundreds of staff received integrity training.*

While integrity is one of the most reliable pillars of the Dutch public administration, certain weaknesses have been detected in the integrity framework applicable to politicians, as illustrated by recent cases such as one concerning property fraud and corruption involving a pension scheme, in which a verdict was rendered in January 2012.

At some levels, there are no rules or correction mechanisms for conflicts of interest. One example is transparency and oversight of the financial and business interests of ministers and state secretaries.<sup>33</sup> Before their appointment, these interests need to be set aside and the prime minister informs the Second Chamber when this is done. There is, however, no transparency on how this is done, the current procedure being based on trust. Furthermore, Members of the States General are not subject to any restriction on the duties they may take up after their term of office, nor as regards their contacts with third parties.<sup>34</sup> The policy on 'revolving doors' is based on general guidance, focusing on avoiding the appearance that action while in office may have been inappropriate or that knowledge obtained in that office may have been dealt with incorrectly.<sup>35</sup>

Asset disclosure for members of parliament, ministers, state secretaries and senior officials has long been practiced, in that their public income has to be published. Still, disclosure of private, financial and business interests is considered a private matter, and therefore data on such assets and interests is not available.<sup>36</sup> There are no rules compelling MPs to declare potential conflicts of interest and/or barring them from holding financial interests or engaging in external activities. Members of the States General are not subject to any restrictions on accepting gifts. Members of the House of Representatives have to register gifts above EUR 50, as well as foreign travel at the invitation of third parties.<sup>37</sup> However, the register of gifts does not cover other benefits, such as hospitality or invitations to different kinds of events. There is no reporting obligation for members of the Senate, who are not obliged to report the income they earn from their other activities, nor gifts received, sponsored foreign

33 Rijksoverheid Kamerstukken 2010-2011, II, 32500 No 14.

34 Corruption prevention in respect of members of parliament, judges and prosecutors, Fourth Evaluation Round, GRECO Eval IV Report (2012) 7E  
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)7\\_The\\_Netherlands\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)7_The_Netherlands_EN.pdf).

35 Handboek voor aantredende bewindspersonen; <http://www.rijksoverheid.nl/documenten-en-publicaties/richtlijnen/2013/04/16/handboek-voor-aantredende-bewindspersonen.html>.

36 Wet openbaarmaking uit publieke middelen gefinancierde topinkomens; <http://www.wetboek-online.nl/wet/Wet%20openbaarmaking%20uit%20publieke%20middelen%20gefinancierde%20topinkomens.html>.

37 Article 150a, Rules of Procedure of the House of Representatives).

trips or other benefits. These points were raised by a recent GRECO evaluation, which found that the current registers were inadequate for bringing to light many potential or actual conflicts of interest.<sup>38</sup>

In practice, alleged conflicts of interest involving former ministers and state secretaries have been subject to discussions in Parliament and society. A recent revolving door case led to a motion by Parliament expressing the need to establish clearer rules.<sup>39</sup> However, the government did not follow up on this motion.<sup>40</sup>

### ***Foreign bribery***

Criminal investigations into foreign bribery are rare, as illustrated by the most recent OECD Report, adopted in December 2012.<sup>41</sup> The OECD commended the Netherlands for its efforts to raise awareness of the offence of foreign bribery in the public and private sectors, its measures to facilitate the reporting of foreign bribery and its efficient confiscation regime. Nevertheless, the OECD called upon the Netherlands to do more to enforce its foreign bribery laws. It pointed out that 14 out of 22 foreign bribery allegations had not prompted an investigation. The OECD subsequently issued a number of recommendations aiming at increasing the Dutch law enforcement capacity to investigate and prosecute foreign bribery in a more proactive manner. At the time of the OECD's Phase 3 Evaluation, the office of the National Public Prosecutor for Corruption, responsible for coordinating the prosecution of foreign bribery, was only staffed with two prosecutors. The OECD noted that law enforcement authorities must be adequately resourced to be able to effectively deal with the significant number of foreign bribery allegations requiring investigation. It also recommended that the Netherlands increase financial penalties for companies and organisations, as envisaged in a bill announced in July 2012,<sup>42</sup> and allow additional penalties for them, such as suspension from public procurement or other publicly-funded contracts.<sup>43</sup> According to the OECD, by late 2012 no penalties had been imposed on any companies for a foreign bribery offence.<sup>44</sup>

In Transparency International's Bribe Payers Index of 2011, the Netherlands was one of the highest-ranked among 28 of the world's largest economies according to the perceived likelihood of companies' resisting paying bribes abroad. Nevertheless, the same organisation noted in its 2012 progress report on the implementation of the OECD Anti-Bribery Convention<sup>45</sup> that there was only 'moderate' enforcement by the Netherlands, and it called for an 'improvement and strengthening of foreign bribery enforcement, increasing sanctioning for

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38 Corruption prevention in respect of members of parliament, judges and prosecutors, Fourth Evaluation Round, GRECO Eval IV Report (2012) 7E para 55.

39 In 2011 a former Transport Minister took up a senior position at KLM Royal Dutch Airlines right after he stepped down as a minister. The aviation business had previously been subject to his ministerial responsibility.

40 Slingerland, W., F. Eijkelhof, M. van Hulten, O. Popovych and J. Wempe (2012) '*National Integrity System Assessment Netherlands*', The Hague: Transparency International Netherlands pp. 78-79. <http://www.transparency.nl/wp-content/uploads/2012/05/TI-NL-NIS-report.pdf>.

41 <http://www.oecd.org/daf/briberyininternationalbusiness/Netherlandsphase3reportEN.pdf>.

42 Ministerie van Veiligheid en Justitie (2012). *Verzamelbrief financieel-economische criminaliteit 12 July 2012 [not yet adopted]*.

43 The maximum financial penalty for legal persons is 10 times the fine applicable to natural persons, i.e. EUR 780 000, but fines for different offences can be added together. Fines can also be combined with confiscation measures.

44 The OECD Third Round Evaluation Report (para 47) provides a detailed account of penalties applied in alleged bribery cases and notes that when companies were punished, it was mostly through out-of-court settlements, or for charges other than bribery. <http://www.oecd.org/daf/briberyininternationalbusiness/Netherlandsphase3reportEN.pdf>.

45 Exporting corruption? Country enforcement of the OECD anti-bribery convention. Progress report 2012 [http://www.transparency.org/whatwedo/pub/exporting\\_corruption\\_country\\_enforcement\\_of\\_the\\_oecd\\_anti\\_bribery\\_convention](http://www.transparency.org/whatwedo/pub/exporting_corruption_country_enforcement_of_the_oecd_anti_bribery_convention).



foreign bribery and expanding and institutionalising the cooperation between relevant institutions’.

Since then, a new version of the ‘Instructions for the investigation and prosecution of foreign corruption’ has been issued, listing the factors to be considered in determining whether a prosecution for bribery should be brought.<sup>46</sup> Economic and trade interests are no longer mentioned as factors in determining whether or not to prosecute for foreign bribery. All cases of foreign bribery need to be reported to the National Public Prosecutor on Corruption (*Landelijk Corruptieofficier van Justitie*) and the instructions refer to the general commitment of the Dutch authorities to fight foreign bribery. The public prosecutor may not take national economic interests into account. The impact of the amendments has yet to be assessed in practice, however.

Recognising the importance of fighting foreign bribery, several ministries (Security and Justice, MFA and economic affairs), together with business organisations representing small and medium-sized businesses and an organisation representing large companies (the VNO/NVW) published the report ‘Honest business, without corruption’ in October 2012.<sup>47</sup> It contains guidelines on what businesses can do when confronted with corruption abroad. The public prosecutor’s guidelines were amended in early 2013 to strengthen measures to curb corruption in foreign countries; however, whether it will result in more prosecutions remains to be seen. Furthermore, the Dutch government announced its intention to present a policy document to reflect recommendations by international organisations including the OECD.<sup>48</sup>

### 3. FUTURE STEPS

Integrity is traditionally highly valued in the Netherlands. There is strong public demand for transparency and accountability, both in the public and the private domain. The integrated approach to preventing and detecting corruption both at central and local level could serve as a model elsewhere in the EU. There is a strong collective understanding of the damaging effects of corruption, matched with continuous public pressure to maintain a high level of transparency and accountability. Evidence that foreign bribery is tackled adequately is, however, lacking despite the importance that Dutch firms play in worldwide trade.

The following points require further attention:

- Extending the rules on the assets and interests to **elected officials and members of government** and ensuring an effective and transparent verification system. Developing a framework for post-employment conflicts of interest.
- Focusing efforts on prosecuting both natural and legal persons for corruption in international business transactions, also by increasing capacity to investigate and prosecute **foreign bribery** in a more proactive manner. Considering broadening the range of sanctions and raising the level of fines applicable to legal persons.

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46 Aanwijzing opsporing en vervolging buitenlandse corruptie.

[http://wetten.overheid.nl/BWBR0032624/CIRDIV1344379/CIRDIV1344385/Tekst/geldigheidsdatum\\_19-12-2013](http://wetten.overheid.nl/BWBR0032624/CIRDIV1344379/CIRDIV1344385/Tekst/geldigheidsdatum_19-12-2013).

47 ‘Eerlijk Zakendoen, zonder corruptie’.

48 <http://www.rijksoverheid.nl/nieuws/2013/01/08/nederland-doet-meer-tegen-buitenlandse-omkoping.html>;

<http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2013/02/21/antwoorden-kamervragen-over-het-bericht-dat-nederland-laks-is-in-de-bestrijding-van-corruptie.html>.