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STATE OF ANTI-CORRUPTION AND INTEGRITY  
IN THE NETHERLANDS, 2010

INTERNATIONAL & COMPARATIVE

MICHEL VAN HULTEN

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The final text is the responsibility of Dr. Michel van Hulten, Lector Governance at SAXION Academy for Governance and Law.

We all hope that this 3rd edition shows that all collaborators helped to make this edition of the document much better and more useful than earlier editions.

It is our intention to update this document in successive following years.

In the meantime the full text will be available on the internet for consultation. Go to *[www.corruptie.org](http://www.corruptie.org)*

This document is the revised, enlarged and third edition of what was earlier published on website *[www.corruptie.org](http://www.corruptie.org)* as the international part of State and Development of Fighting Corruption and Safeguarding Integrity in the Netherlands, 37 pp. (060731 rev 2 of 31 July 2006).



## FOREWORD

Among politicians and businessmen in the Netherlands, the general feeling is that integrity comes first in their business-like relationships. Corruption is something that goes on in the Third World. This perception is strengthened annually by Transparency International's publication of the so-called 'Corruption Perceptions Index' (CPI), which ranks the Netherlands, more often than not, among the top ten countries of the world in terms of integrity.

What do observers from their posts in international agencies see as the reality? Do they agree? The following documentation contains data and views from sources made available by UNODC, UN Global Compact, OECD, GRECO (Council of Europe), Transparency International, European Union, and others, which do not conform to the prevailing views held by Dutch politicians and businesspeople concerning their own integrity.

Corruption is more widespread and is more acceptable in business transactions than the image of the Netherlands as an honest country might lead one to assume.

Such observations from abroad encourage our continuing study of national Dutch sources in order to broaden the information base about corruption and integrity in the Netherlands. We intend also to contribute in the future to a more complete view of the socioeconomic reality of our country.

These studies will help us to know better what roles corruption and integrity play in Dutch society and its economy, and will assist in the fight against this socioeconomic plague, as well as help safeguard integrity. This, in turn, is important for all students of governance and for all those practitioners of governance in business and public administration who are confronted with practices that are not wanted but which should – at least – be understood.

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Governance & Law*

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## SUMMARY

This is the third edition of a review of the ways in which Dutch authorities and Dutch society organize their fights against corruption and attempt to safeguard integrity in the Netherlands, and in particular how these phenomena have developed since 1992.

This publication draws particular attention to the international context, treaties and conventions, and compares the Dutch situation and local developments with similar approaches, activities, and thoughts observed by others elsewhere.

The Dutch Government fosters the fight against corruption and tries to improve and safeguard integrity. Laws have been introduced and improved, and institutions developed to offer training on better implementation of rules and regulations, aimed at public officials and politicians at national, regional, and municipal levels, and particularly in the big cities. Controls have been instituted.

In this publication, data are used that have been collected and analyzed by the UN (UNCAC), UNODC, OECD, the anti-corruption arm GRECO of the Council of Europe, and the European Union.

Much attention is given to observations by private initiatives: the UNCAC Civil

Society Coalition, the UN Global Compact, Transparency International with its Corruption Perceptions Indices published since 1995, the Bribe Payers' Indices since 1999, the Global Corruption Barometer of 2009, and by lobbyists.

In reviewing all these sources, attention has been focused on data directly concerning the Netherlands.

This provides an overview of what outsiders have collected in terms of information about corruption and integrity in the Netherlands.

You will read the rather low official national corruption figures available in international resources, figures which have been used since 1992 by successive Dutch Ministers of Justice who seem to be convinced that these figures represent reality.

Moreover, Transparency International is also quoted as consistently rating the Netherlands among the ten least corrupt countries of the world. Nevertheless, not everyone shares this view, and some doubt whether these data reflect reality or rather reflect a reality which misses the point as corruption is ill-defined or too narrowly defined.



This document was prepared in the first instance by students and staff of the Academie Bestuur en Recht (School of Governance and Law) of SAXION Hogescholen (University Colleges of Applied Sciences) in Enschede, the Netherlands. The final text is the responsibility of Dr Michel van Hulten, Lecturer in Governance at SAXION School of Governance and Law.

We hope that this third edition reflects the reality of the many collaborators striving to make this edition of the document much better and more useful than earlier editions.

It is our intention to update this document at regular intervals.

The printed version will eventually be joined by an interactive website, see [www.corruptie.org](http://www.corruptie.org), enabling improvements to this text to be published as soon as they become available.

All readers are encouraged to help in improving this document by pointing out errors and contributing new information and research results that can help everybody better understand the nature of corruption in the Netherlands and what the Dutch do, and don't do, about it.

At SAXION, we will screen such inputs and contact authors before introducing such information into the document.

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## REGISTER

## ABBREVIATIONS

ABR	SAXION Academie Bestuur en Recht (School of Governance & Law)	CEO	Corporate Europe Observatory
ADB	African Development Bank	CERD	Convention on the Elimination of All Forms of Racial Discrimination
AFM	Authority Financial Markets	CICP	Centre for International Crime Prevention
AID	Algemene Inspectie Dienst (General information service)	CoE	Council of Europe
AMM	Annual Members Meeting (of Transparency International)	COP	Communication on Progress (Global Compact company report)
APRM	African Peer Review Mechanism	CoSP	Conference of the States Parties to the Convention (UNCAC)
BIBOB	Bevordering Integriteits Beoordelingen door het Openbaar Bestuur (Probity Law by the public administration, Facilitation of Integrity-Assessments by the Public Administration)	CPI	Corruption Perceptions Index
BIOS	Bureau Integriteitsbevordering Openbare Sector (National Office for Promoting Integrity in the Public Sector)	CRC	Convention on the Rights of the Child
BLOM	Bureau ter politiële ondersteuning van de Landelijke Officier van Justitie (specialized investigative police unit)	CSO	Civil Society Organization
BMZ	German Federal Ministry for Economic Cooperation and Development	ECD	Economische Controle Dienst (Economic Investigation Service and Economic Investigation Agency)
BOOM	Bureau Ontnemingswetgeving Openbaar Ministerie (Prosecution Service Criminal Assets Deprivation Bureau)	ECG	Export Credit Group (of the OECD)
BPI	Bribe Payers Index	EPAC	European Partners against Corruption (registration) zie Burson- Marsteller 270
CAC	Convention Against Corruption	EU	European Union
CARIN	Camden Assets Recovery Interagency Network	EVD	Economische Voorlichtings Dienst (Dutch Export Promotion Agency)
CEO	Chief Executive Officer	FIOD	Fiscal Intelligence and Investigation Service
		FIU	Financial Intelligence Unit (of the police)
		GCB	Global Corruption Barometer (of TI)
		GCO	(UN) Global Compact Office
		GET	GRECO Evaluation Team

GMC	Multidisciplinary Group on Corruption	OLAF	Europees Bureau voor Fraudebestrijding (European Anti-Fraud office)
GPAC	Global Programme against Corruption (of the UNODC)	PRI	Principles for Responsible Investment
GRECO	Group of States against Corruption (Council of Europe)	PRME	Principles for Responsible Management Education
GRI	Global Reporting Initiative	RR	Rijksrecherche ((Dutch National Police Internal Investigation Department)
ICCO	Interchurch Organization for Development Cooperation	SG	Secretary-General
IGAC	International Group for Anti-Corruption Coordination	SIOD	Sociale Inlichtingen- en Opsporingsdienst (Information and Investigation regarding work and income including human trafficking)
ILO	International Labour Organization	TI	Transparency International
KLPD	Korps Landelijke Politie Diensten (Netherlands Police Agency)	UK	United Kingdom
MDG	Millenium Development Goals	UN	United Nations
MOT	Meldpunt Ongebruikelijke Transacties (Unusual Transactions Reporting Office, the Dutch FIU)	UNCAC	UN Convention against Corruption
NCP	National Contact Point	UNDP	UN Development Program
NEPAD	New Partnership for Africa's Development	UNEP	UN Environment Program
NGO	Non-Governmental Organisation	UNICORN	Trade Unions Against Corruption
NIVRA	Koninklijk Nederlands Instituut van Registeraccountants (Institute of Accountants)	UNIDO	UN Industrial Development Organization
NORAD	Norwegian Agency for Development Cooperation	UNODC	UN Office on Drug Control and Crime Prevention
NTA	National Threat Assessment	UPR	Universal Periodic Review (of the UN Human Rights Council)
OAS	Organization of American States	USA	United States of America
ODCCP	Office of Drug Control and Crime Prevention	USD	US Dollar (also \$US)
OECD	Organisation for Economic Cooperation and Development	VNO-NCW	Confederation of Dutch Industry and Employers
OHCHR	Office of the UN High Commissioner for Human Rights		





# STATE OF ANTI-CORRUPTION AND INTEGRITY IN THE NETHERLANDS, 2010

## INTERNATIONAL & COMPARATIVE

### INTRODUCTION

1 Overwhelming evidence from various studies proves the integrity of the Netherlands as a country and of her population, inhabitants, consumers, producers, citizens. In line with this international recognition, the Dutch Government signed and ratified the *United Nations Convention against Corruption* (UNCAC) and works closely with the UNODC (United Nations Office on Drugs and Crime) that monitors the implementation of the tasks set out in the UNCAC.

As a Member of the OECD, equally actively is the Government implementing the OECD 1997-*Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

A Dutch National Contact Point has been established and Assessments have been carried out of the adequacy of the Dutch legislation to implement the OECD-Convention.

GRECO (Group of States against Corruption) established by the Council of Europe evaluates, through a dynamic process of mutual evaluation and peer pressure, the compliance with undertakings contained in the legal instruments of the Council of Europe to fight against corruption. GRECO monitors the level of compliance by countries of the

measures taken in the fight against corruption based on collecting information from the countries and on regular visits to all member-countries. Each time the GRECO reports about the Netherlands, these reports are rather positive, although some recommendations are given for further improvements in compliance.

2 Nevertheless, Government and society in the Netherlands want to fight corruption and to safeguard integrity more. Proof of this intention is the manifold institutions established in the Netherlands by the Government and by private initiative – profit-oriented as well as non-profit – aiming at improvement.

### DUTCH ADHERENCE TO INTERNATIONAL ANTI-CORRUPTION TREATIES

3 In the white paper 'Corruption-prevention' issued by the Dutch Government in 2006 due attention is given to the international treaties signed by the Dutch for fighting corruption and safeguarding integrity. Action together with other countries is important as it helps to develop international instruments for these policies, and as the eradication of corruption is of great importance for the world-order, balanced economic development and political stability.

4 The white paper opens with the statement that fighting corruption is one of the main concerns of the government. Integrity scores high on the governmental agenda as does the fight against corruption and fraud. Government has to be incorruptible and society has to be transparent. It is hardly possible for any government to be clearer about its intentions. The political will to fight corruption and to safeguard integrity is clearly established. Signing of the UN Convention against Corruption was a logical step.

#### UNCAC – UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

See for full text of the Convention:

[http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

5 The *UN Convention against Corruption* (UNCAC) has been adopted by the General Assembly of the United Nations on 31 October 2003. Per 18 May 2009 of the UN-Member-states 138 had signed plus the European Community, see: <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

The Netherlands signed on 10 December 2003. For the Netherlands the ratification/acceptance took place on 31 October 2006.

6 As the first legally binding, international anti-corruption instrument, this Convention provides a unique opportunity to mount a global response to the vast problem of corruption.

UNODC

7 Postal Address:

PO Box 500, A-1400 Vienna, Austria

Street Address: United Nations Office for Drug Control and Crime Prevention, Vienna International Centre, Wagramer Strasse 5 A-1400 Vienna, Austria

Tel.: (+43 1) 26060 0,

Fax: UNODC: (+43 1) 26060-5866,

Telex: 135612 unations vienna.

E-Mail: [unodc\\_hq@unodc.un.or.at](mailto:unodc_hq@unodc.un.or.at)

<http://www.unodc.org>

8 In charge of the implementation of the UNCAC is the UNODC-UN Office on Drugs and Crime. See for more information the website:

<http://www.unodc.org/unodc/en/treaties/CAC/index.html>

9 The United Nations Office on Drugs and Crime (UNODC) was established in 1990, in consequence to General Assembly Resolution 45/179 of 21 December 1990.

10 The UNODC is responsible for coordinated international action against illicit drug production, trafficking and consumption. The UNODC works together

with the Centre for International Crime Prevention (CICP) to form the Office of Drug Control and Crime Prevention (ODCCP), enabling the Organization to focus and enhance its capacity to address the interrelated issues of drug control, crime prevention and international terrorism in all its forms, see:

<http://www.unodc.un.or.th/about/> and <http://www.unodc.org/unodc/en/corruption/index.html>

The overall goal for the UNODC is to advance and facilitate drug control cooperation among countries in the region to achieve a sustained reduction in the production, trafficking and abuse of drugs. It is responsible for advising governments in the region on drug control matters and for assisting them in developing and implementing national drug control policies and programs.

The UNODC Headquarters is based in Vienna with field offices in twenty countries.

The Program acts as a catalyst and facilitator of international cooperation on drug control. This cooperation ranges from bilateral agreements on specific issues to multilateral regional arrangements.

The UNODC-tasks related to the UN Convention against Corruption came with the acceptance of the UNCAC in the UN General Assembly.

The UNODC Global Program against Corruption is a catalyst and a resource to help States effectively implement the provisions of the Convention, see:

<http://www.unodc.org/unodc/en/corruption/index.html>

It assists States with vulnerable developing or transitional economies by promoting anti-corruption measures in the public and private sector, including in high-level financial and political circles.

Everyone has a role to play, not only Governments, but also parliamentarians, businesses, civil society, the media and the average citizen. Corruption hurts us all, therefore fighting it is a shared responsibility, Antonio Maria Costa, UNODC Executive Director in his statement at the Bali Conference against Corruption held in January 2008.

To know more about the current UNODC anti-corruption campaign, visit

<http://www.unodc.org/yournocounts>

## UNCAC – THE CONVENTION

### Prevention

The first chapter in the Convention-document deals with prevention. It includes wide-ranging measures directed at both the public and private sectors. The measures proposed by the Convention include model preventive

policies, such as the establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties. Furthermore, States must ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. And once recruited, public servants should be subject to stringent codes of conduct.

In an attempt to prevent the laundering of corruption proceeds, the Convention proposes that States set up mechanisms to review suspicious transactions, analyze financial data and exchange information. Transparency and accountability in matters of public finance must also be promoted. For example, specific requirements should be established for the prevention of corruption in particularly critical areas of the public sector, such as procurement.

Citizens have the right to expect a high standard of conduct from their public servants. However, citizens also have to participate in preventing corruption themselves. For this reason, the Convention calls on countries to actively encourage and promote the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it.

## **17 Criminalization**

The Convention requires countries to criminalize a wide range of acts of corruption, if these are not already crimes under domestic law. For example, it calls for criminalizing bribery, embezzlement of public funds, money-laundering and obstruction of justice.

Moreover, the Convention contains a range of provisions to support criminalization. Among these are measures to promote cooperation between law enforcement agencies and other relevant bodies, and to encourage the development of standards and procedures to safeguard the integrity of private entities. The Convention also discusses the issue of transparency in the private sector.

## **18 Asset Recovery**

In a major breakthrough, countries agreed on asset recovery, which is stated explicitly as “a fundamental principle of the Convention.”

Identifying and recovering stolen assets is a major challenge. This is a particularly important issue for many developing countries where high-level corruption has eroded sorely needed public resources. Reaching agreement on this chapter involved intensive negotiations, as the needs of countries seeking illicit assets had to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought. Several provisions specify how cooperation and assistance will take place.

In particular, in the case of embezzlement of public funds, the confiscated property will be returned to the State requesting it; in the case of proceeds of any other offence covered by the Convention, the property will be returned provided that there is proof of ownership or that the country where the funds are located recognizes the damage to the requesting State; in all other cases, priority consideration will be given to the return of confiscated property to the requesting State, to the return of such property to the prior legitimate owners or to compensation of the victims.

Effective asset recovery provisions support the efforts of countries to redress the worst effects of corruption while sending a message to corrupt officials that there will be no place to hide their illicit assets.

### **International Cooperation**

Eliminating corruption would be next to impossible without certain laws and practices which apply to countries and governments all over the world. This is where the Convention against Corruption comes in.

With this Convention, countries have agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, asset recovery and the prosecution of offenders. The idea is to leave criminals nowhere to hide. Individuals will no longer be able to escape their home

countries and live without fear of prosecution. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court and to extradite offenders. Countries are also required to undertake measures that will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

### **IMPLEMENTATION MECHANISMS**

#### **Conference of the States Parties to the Convention (COSP)**

Pursuant to article 63 of the Convention, a Conference of the States Parties to the Convention (COSP) was established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation in areas such as mobilization of technical assistance, training, prevention, criminalization of anti-corruption activities and information exchange. The First conference meeting is held in late 2006, the Third one in Doha, Qatar, 9 – 13 November 2009.

#### **Netherlands' participation**

The Netherlands participated in all three Meetings of the Conference of the States Parties to the United Nations Convention against Corruption – (CAC/COSP), held respectively – the 1st one in King Hussein

Bin Talal Convention Centre, Dead Sea, Jordan, 10 to 14 December 2006, see Report:

<http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session1.html#report1>

and

– the 2nd one in Bali International Convention Center, Nusa Dua, Indonesia, 28 January to 1 February 2008. See Report:

<http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session2.html#report2>

– the 3rd Meeting in Doha, Qatar, 9–13 November 2009. See all documents:

<http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session3.html>.

The Netherlands is also an active participant in the three Working Groups established by the COSP on (1) Review of Implementation, (2) Asset Recovery, and (3) Technical Assistance.

In addition, UNODC's *Global Programme against Corruption* (GPAC), see

<http://www.unodc.org/unodc/en/corruption/index.html>,

will address the anticipated increase in demand for technical assistance once the Convention enters into force. This need is especially acute because of the broad mandate in the prevention chapter. The primary goal of the GPAC is to provide practical assistance and build technical capacity to effectively implement the Convention. The GPAC does this through global programs and specific country

projects. The GPAC currently has country projects in South Africa, Brazil, Colombia, Cambodia, Nigeria, and Kenya. *[Note that all projects are in countries of the South!]*.

UNODC acts as a secretariat for the International Group for Anti-Corruption Coordination (IGAC, see

<http://www.igac.net/>),

a body made up of multilateral organizations, international financial institutions, oversight bodies and non-governmental organizations.

The IGAC is dedicated to strengthening international anti-corruption coordination and collaboration in order to avoid undue duplication and to ensure effective and efficient use of existing resources, using systems already in place at the regional and national level. It provides a platform for exchange of views, information, experiences and "best practice"; on anti-corruption activities for the purpose of enhancing the impact of these activities, including support for the UN Convention against Corruption.

### Who pays IGAC?

IGAC is financially supported by the Netherlands (and by the Principality of Liechtenstein and Norway).

### 9 December

The International Day against Corruption, each year 9 December, should also be seen as an opportunity to rededicate

ourselves to fighting this crime. It is a day when we should all recognize that we are personally responsible for ending corruption.

## UNCAC CIVIL SOCIETY COALITION

### Address

UNCAC Civil Society Coalition (also known as the 'Coalition of Civil Society Friends of the UNCAC'), see:

<http://www.uncaccoalition.org/>

The Secretariat of the Coalition of Civil Society Friends of the UNCAC is hosted c/o Transparency International,

Alt-Moabit 96, 10559 Berlin, Germany

Tel. +49-30-3438 20-0,

Fax +49-30-3470 3912

### Composition

The UNCAC Coalition is a loose network of 128 civil society organizations in 47 countries (data as off 16 May 2009) committed to promoting and contributing to UNCAC ratification, implementation and monitoring.

Organizational: The Coalition is open to all non-profit civil society organizations. It aims to mobilize broad civil society support for UNCAC and to facilitate strong civil society action at national, regional and international level in support of UNCAC.

The Coalition is open to all organizations and individuals committed to these goals. The breadth of UNCAC means that

its framework is relevant for a wide range of Civil Society Organizations (CSOs), including groups working in the areas of human rights, labor rights, governance, economic development, environment and private sector accountability.

The CSO Coalition includes TI, UNICORN (trade unions against corruption), Christian Aid, Global Witness, Oxfam, Access to Info Europe, Affiliated Network for Social Accountability-East Asia-Pacific, Institute for Security Studies in South Africa and many others. See:

[http://www.uncaccoalition.org/index.php?option=com\\_content&view=category&layout=blog&id=19&Itemid=1&lang=en](http://www.uncaccoalition.org/index.php?option=com_content&view=category&layout=blog&id=19&Itemid=1&lang=en)

For more information about the Coalition of Civil Society Friends of the UNCAC see the website:

<http://www.uncaccoalition.org/community/>

It is not visible on the website whether Dutch organizations have signed up for membership of the Coalition.

### What can the UNCAC-Coalition do?

The United Nations Convention against Corruption (UNCAC) sets global standards that citizens and local civil society organizations can use to hold their governments to account. For example, it provides for:

- Fair and honest government recruitment – no cronyism to get government jobs!

- Open and competitive procurement – no under-the-table deals to win government contracts!
- Transparent and accountable public financial management – no siphoning off of public funds!
- Transparency in party finance – no secret or undue influence on elected officials through campaign contributions!
- Restrictions on public officials switching to the private sector – no more revolving door improperly influencing government decisions!
- High standards for the private sector including codes of conduct, accounting and auditing standards and transparency in ownership of companies – no more use of corporate structures to disguise corrupt transactions!
- Citizen's access to information – UNCAC Article 13 calls on governments to “ensure that the public has effective access to information” – no more hiding irregular government decisions from the public!
- Honest judiciary systems – no more undermining the justice system through corrupt influence!
- Banking information to be provided in criminal investigations – no more use of bank secrecy to cover the trail of laundered corruption monies and thwart pursuit of the corrupt!

The chapter on criminal offences covers bribery, embezzlement and money laun-

dering, among other issues. There is also a groundbreaking chapter providing the framework for the return of stolen assets and another section calling for technical and financial assistance to developing countries.

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DRAFT/28 April 2009

### **CSO Participation and Transparency in the UNCAC Review Mechanism**

Countering corruption requires involvement of both state and non-state actors. It also requires public access to information. This is recognized in Article 13 of the United Nations Convention against Corruption, which calls for the participation of civil society in the fight against corruption. Moreover, Articles 10 and 13 call for proactive government efforts to provide the public with access to information.

The importance of civil society participation and access to information should be reflected in the design of the inter-governmental review mechanism to be established for UNCAC. The spirit of Article 13 implies that civil society inputs should be taken into account in the review process and that reports and information relating to the review process should be made public.

The Convention specifically recognizes the importance of civil society participation in the fight against corruption and cannot offer less civil society participa-



tion in the review mechanism than other monitoring systems do.

- Monitoring systems for all other anti-corruption conventions include submission of written reports and dialogue with civil society and publication of relevant documentation
- Review mechanisms for many UN based and intergovernmental conventions provide a wide range of opportunities for civil society to participate.
- At a minimum CSO are allowed to submit written reports and make oral presentations.
- In addition, many of the processes proactively publish review documentation as the process progresses. And relevant documentation, including the final country reports, is made public.

The UNCAC review mechanism must reflect the best of existing standards on CSO participation to become a credible universal framework to prevent and fight corruption. States Parties should not backslide and provide a standard of participation inferior to that in other conventions. Exclusion of civil society or a poor level of involvement would demonstrate a lack of commitment to preventing and fighting corruption.

The survey of other monitoring systems below covers anti-corruption commitments of governments under six systems namely (listed chronologically from

oldest to most recently established):

- OAS Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (OAS Convention)
- OECD Working Group on Bribery monitoring of OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention)
- Council of Europe Group of States against Corruption (GRECO) monitoring of Council of Europe Conventions and other instruments (GRECO)
- ADB-OECD Initiative Steering Group monitoring of the ADB-OECD Action Plan for Asia-Pacific (ADB-OECD Action Plan)
- OECD Anti-Corruption Network for Eastern Europe and Central Asia monitoring of Istanbul Action Plan (OECD-CAN Istanbul Action Plan)
- NEPAD African Peer Review Mechanism (NEPAD-APRM)

It also covers a range of other Conventions and their review processes including (also listed chronologically):

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- The United Nations Convention against Torture (Convention against Torture)
- The United Nations Convention on the Rights of the Child (CRC)
- The UN Human Rights Council's Universal Periodic Review (UPR)

## **'What needs to happen?'**

Transparency International issued on 30 April 2009 a 'Call for governments to do the right thing and to do it now!' under the title 'What needs to happen'.

QUOTE from this 'Call':

'2009 is a big year for the UN Convention against Corruption (UNCAC), the first truly global convention to fight corruption. 140 of the world's governments are due to decide an UNCAC review mechanism – a process for assessing whether governments are applying UNCAC standards to fight corruption'.

## **Statement prepared by TI and UNCAC Coalition**

[www.uncaccoalition.org](http://www.uncaccoalition.org)

United Nations Convention against Corruption (UNCAC), Intergovernmental Working Group on Review of Implementation, CSO Coalition Calls for Adoption of Effective Review Mechanism at the Third CoSP, Doha, November 2009

1. Corruption undermines democracy, the rule of law, human rights, civil liberties and sustainable development.
2. The UNCAC Coalition (the Coalition) believes that the United Nations Convention against Corruption (UNCAC), with its worldwide membership and comprehensive anti-corruption framework, is key to dealing effectively with global corruption.

3. The Coalition is convinced that UNCAC's success in reducing corruption on-the-ground will depend greatly on the adoption of an effective and participatory review mechanism at the next Conference of the State Parties (CoSP) in Doha, in November 2009.
4. Such a review mechanism is also vital for the success of UNCAC's landmark provisions on asset recovery and the assessment of countries' technical assistance needs, as well as for strengthening international cooperation and enhancing the responsiveness of governments to their citizens.
5. The Coalition underlines the importance of civil society and its engagement in any review process and reminds Governments of the commitments they have made to support civil society participation and to receive civil society inputs (UNCAC, Article 13; Rules of Procedure, Rule 17).
6. For these reasons, the Coalition considers that the review mechanism should be comprehensive, covering both mandatory and non-mandatory articles, and also:
  - supported by a well-resourced secretariat;
  - assisted by a group of independent experts;
  - based on tested review methods, including peer review and country visits;
  - participatory, involving civil society organizations and other stakeholders;

- transparent, resulting in published country reports with recommendations; and
- carried out in coordination with regional review mechanisms;
- funded from the regular UN budget or assessed contributions, supplemented as needed by voluntary contributions.

7. The Coalition hereby calls on Governments, meeting in Vienna in May 2009 as part of the Intergovernmental Working Group on Review of Implementation, to ensure that the necessary preparatory work is carried out, over the coming weeks and months, for an effective review mechanism to be adopted at the CoSP, in Doha, in November 2009.

8. Without an effective review mechanism, UNCAC will surely fail, with devastating consequences for the lives and livelihoods of citizens around the world and for the credibility of signatory Governments and the United Nations.

Ummah Fi Salam 11 May 2009

### 37 So what's missing?

This landmark convention will remain only a well intentioned effort unless an effective monitoring system is put in place. Governments should report on the progress they've made in implementing the standards and receive feedback on

how they're progressing. This is the lesson learned from other conventions.

### 38 What is needed for effective monitoring?

TI has come up with a set of Recommendations for an UNCAC Review Mechanism,<sup>1</sup> by Fritz Heimann and Gillian Dell, 2 April 2009, April 2009 © 2009 Transparency International. All rights reserved. ISBN: 9783935711197. See: TI\_recommendations UNCAC\_review\_eng[1].pdf.

### 39 Coalition Statement

The UNCAC Coalition made similar proposals in the Coalition Statement, which seeks a comprehensive review mechanism that is:

- Supported by a well-resourced secretariat
- Assisted by a group of independent experts
- Based on tested review methods, including peer review and country visits
  - Participatory, involving civil society organizations and other stakeholders
  - Transparent, resulting in published country reports with recommendations
  - Carried out in coordination with regional review mechanisms
  - Funded from the regular UN budget or assessed contributions, supplemented as needed by voluntary contributions.

1 [http://www.transparency.org/global\\_priorities/international\\_conventions](http://www.transparency.org/global_priorities/international_conventions)

Table Overview of TI-proposals for monitoring

TI and Coalition positions	Restrictive government positions
<b>Information Sources for Reviews</b>	
<p><i>Multiple information sources are needed, not only from governments.</i></p> <p>Governments are not the exclusive producers of quality information. Civil society and other non-governmental entities should be able to provide information and assessments.</p>	<p><i>Governments should be the only source of information for evaluating their own progress.</i></p>
<b>Country Visits for Reviews</b>	
<p><i>Country visits are necessary.</i></p> <p>Adequate information for credible assessments of actual performance can only be obtained through country visits. Review teams should visit countries to discuss actual implementation with responsible officials in a range of institutions.</p>	<p><i>Reviews should be limited to self-assessment forms.</i></p> <p>Reviewed countries may also be asked to supply supplementary information to a review team.</p>
<b>Transparency</b>	
<p><i>Publication of country reports.</i></p> <p>Transparency is a core value in the UNCAC: Self assessments and reports should be published online as soon as they are completed.</p>	<p><i>Country reports should not be published.</i></p> <p>The public should not have access to government self-assessments or to country reports by review teams. Overview reports comparing multiple countries –on region or theme– should be prepared by the conference secretariat to be published only after an inter-governmental meeting.</p>
<b>Organisation of Reviews</b>	
<p><i>Peer review teams should be supplemented by a panel of independent experts.</i></p> <p>Impartiality and fair treatment are key for an effective review process. Country reviews should be conducted by small review teams composed of government-appointed experts from two countries. Later, a small panel of independent experts should receive, assess and approve the reports.</p>	<p><i>Monitoring should be carried out by peer review teams, followed by general discussions in big meetings.</i></p> <p>Country reviews should be conducted by small review teams composed of government-appointed experts from two countries. Later, a large inter-governmental meeting should discuss overview reports and make general recommendations.</p>

## **Governments' restrictive positions**

Some governments have taken very restrictive positions regarding the terms of the review mechanism. These positions will block the achievement of the Convention's objectives. There is particular resistance by some governments to civil society inputs and publication of country reports resulting from the reviews. But many international conventions<sup>2</sup> with broad membership have open mechanisms to review the progress of countries in their implementation. In many treaty monitoring processes, governments publish reports on their own progress, civil society provides input in the review process, experts visit the countries to be reviewed and final reports and recommendations are published.

## **Overview of TI-proposals for monitoring**

On the previous page is an overview of TI proposals for monitoring that actually works and some of the restrictive government proposals.

TI is engaged in dialogue with governments to promote an effective UNCAC review mechanism. Governments party to the UNCAC have been provided with TI's latest recommendations for an UNCAC Review Mechanism<sup>3</sup>, and TI national chapters in many countries have

met with government officials to discuss priority issues relating to the review mechanism.

## **No Dutch initiatives**

As far as publicly known, there are no Dutch initiatives in these engagements, or participation in activities by Dutch organizations or persons.

## **No agreement (yet, September 2009) on UNCAC-implementation review mechanism**

Regretfully, TI-Berlin on 3 September 2009 had to report a severe setback in the UN-led fight against corruption as the talks just held in Vienna ended in a deadlock.

Seven days of government negotiations in Vienna have failed to resolve differences over the establishment of an implementation review mechanism for the UN Convention against Corruption (UNCAC).

Failure of the Vienna talks is a major setback as it casts serious doubt over the possibility of an effective mechanism to review the implementation of anti-corruption commitments at the summit meeting of the 137 parties to the Convention to be held in November 2009.

2 <http://www.transparency.org/content/download/43164/689326>

3 [http://www.transparency.org/content/download/42526/678066/file/TI\\_recommendations\\_UNCAC\\_revieweng.pdf/](http://www.transparency.org/content/download/42526/678066/file/TI_recommendations_UNCAC_revieweng.pdf/)

“Government leaders must resolve the present deadlock that derails efforts to implement international anti-corruption programmes, including attempts to regain stolen assets and achieve justice for victims of corruption,” said Cobus de Swardt, Managing Director at Transparency International (TI).

The credibility of UNCAC would be badly impaired because a review mechanism is essential to promote country implementation of the Convention’s requirements. These include the criminalisation of a wide range of acts including bribery, embezzlement of public funds, money-laundering and obstruction of justice. If appropriate legislation is passed and monitored, these acts are criminalised and the essential building blocks for more accountable states are set.

Signatory states recognise that a mechanism to review country implementation is necessary to make UNCAC successful. A large majority of governments supports an effective review mechanism, but a minority has blocked agreement on key features of the review process including civil society participation and transparency through publication of country reports.

TI announced that in cooperation with a broad international coalition of civil society organisations, it will closely follow developments and present constructive proposals in coming weeks.

This information has been received from TI-Berlin. It indicates for media follow-up to contact Gypsy Guillén Kaiser, tel: +4930343820662, Email: [press@transparency.org](mailto:press@transparency.org)

TI is worried about the lack of progress with regard to the implementation and monitoring of the UNCAC. The lack of a ‘Review Mechanism’ is deplored. No wonder that the Annual Members Meeting accepted the following motion in October 2009.

#### QUOTE

#### **Resolution on a UN Convention against Corruption review mechanism**

The Annual Members Meeting (AMM) of Transparency International (TI), held in Berlin on 17-18 October 2009, calls on the UN Conference of States Parties, convening on 9 November 2009 in Doha, Qatar, to establish an effective mechanism for review of implementation by governments of the UN Convention against Corruption.

This is essential to transform the Convention from words to actions and for it to start functioning as the central global framework for overcoming corruption.

We urge the Doha Conference to establish a review process that includes:

- Country visits by review teams from other governments;
- Non-governmental inputs from civil society, the private sector and other stakeholders;

- Transparent process, including reports and recommendations from country reviews and civil society inputs must be made public in a timely manner.

Without these three elements the review mechanism will not be effective and will lack public credibility.

The prolonged stalemate over the review mechanism must be brought to an end in Doha. The First Conference of States Parties held in 2006 agreed that “effective and efficient review of implementation of the Convention... is of paramount importance and urgent.” The G20 Leaders, meeting on 24 September 2009, called for the adoption of “an effective, transparent and inclusive mechanism for the review of implementation” in Doha.

The global economic crisis adds further urgency. The Convention’s innovative provisions – including preventive measures, international cooperation, technical assistance, and asset recovery – are vital to overcoming the problems that led to the crisis.

*Adopted 18 October 2009, Berlin*

END OF QUOTE

TI used this opportunity of meeting in Berlin to call upon Germany’s newly elected parliamentarians to take the country’s signature of the UNCAC one step further and ratify the convention.

QUOTE

**Resolution on Germany’s need to ratify the UN Convention against Corruption**

The Annual Members Meeting (AMM) of

Transparency International (TI), held in Berlin on 17-18 October 2009, calls upon the recently elected members of the German parliament to swiftly tighten the German criminal code regarding the bribery of parliamentarians to remove the main obstruction of Germany’s outstanding ratification of the United Nations’ Convention on Corruption.

*Adopted 18 October 2009, Berlin*

END OF QUOTE

## GUIDELINES ON COOPERATION BETWEEN THE UN AND THE BUSINESS COMMUNITY

45 Since mid 1990 more and more parties at national and international level break the taboo on corruption and its negation, and begin openly to discuss the issue as well as solutions how to safeguard integrity.

The UNCAC concluded in 2003, was only one of the results of this growing interest. Earlier already, in 2000, the Secretary-General of the UN proclaimed his Guidelines on how to work on this issue in closer relationship with the business community.

46 This resulted in the issuing of the Guidelines on Cooperation between the United Nations and the Business Community by the Secretary-General of the United Nations on 17 July 2000. See: <http://www.un.org/partners/business/otherpages/guide.htm>

## 47 Background for these guidelines

The background for these Guidelines as issued by the SG of the UN was formulated as:

1. The business community has played an active role in the United Nations since its inception in 1945. A number of UN organizations have a successful history of co-operating with business. Recent political and economic changes have fostered and intensified the search for collaborative arrangements.
2. The efforts of the Secretary-General to renew and reform the United Nations provide the overall rationale for closer cooperation and partnership between the United Nations and non-state actors, including the business community<sup>4</sup>. A broad policy framework for cooperation with the business community has been established, including through joint-statements<sup>5</sup>.
3. The relationship with the business community has become more important as the role of business in generating employment and wealth through trade, investment and finance has grown and as UN member states have increasingly stressed the importance of private investment in development.

4. The business community is increasingly appreciative of the role of the United Nations: Promoting peace and security, providing norms and standards in such diverse areas as trade laws, shipping, aviation, telecommunication, postal services and statistics; addressing issues of vulnerability, poverty, environmental degradation and social conflict. All of this is seen as helping provide a stable and favorable framework for business and development.

## 48 These guidelines define “business” as “for-profit enterprises”

Efforts to work with the business community must be seen in the proper institutional context. The United Nations is a global institution accountable to its member states. Non-state actors play an important role in the pursuit of UN goals. Drawing on the expertise and capacities of the business community is increasingly necessary to achieve these goals. Cooperation with business can take many forms, such as advocacy, fund-raising, policy dialogue, humanitarian assistance and development cooperation. The purpose of these guidelines is to facilitate the formulation and imple-

4 See Action 17 of the report of the Secretary-General to the General Assembly on UN reform (document A/51/950) *Renewing the United Nations: A Programme for Reform*.

5 Joint statements between the Secretary-General and business representatives of the International Chamber of Commerce as well as major speeches by the Secretary-General and heads of UN organizations are posted on the UN/Business website: [www.un.org/partners/business](http://www.un.org/partners/business).



mentation of co-operation between the United Nations and the business community in a manner that ensures the integrity and independence of the Organization.

Revision of the UN-Business Guidelines  
A Working Group was established in 2008, chaired by the Deputy Secretary-General, to update the UN-business guidelines to better reflect the shared experiences of the Organization in collaborating with the private sector.

The revised guidelines, to be released in 2009, will help to increase the scale, effectiveness and accountability of UN-business engagement, while ensuring the Organization's integrity. The updated guidelines will help advance the implementation of the Global Compact across the UN System.

## UN GLOBAL COMPACT

### Nine principles

At the World Economic Forum in Davos on 31 January 1999, UN Secretary-General Kofi A. Annan challenged world business leaders to “embrace and enact” a set of nine universal principles within their sphere of influence in the areas of human rights, labor standards and the environment, see page 37 below.

### The 10th principle

In 2004 was added the 10th principle: Businesses should work against corruption in all its forms, including extortion and bribery.

### What is the UN Global Compact?

The Global Compact, as suggested by the Secretary-General in 1999<sup>6</sup>, provides an overall value framework for co-operation with the business community. The principles of the compact (see §68) are based on intergovernmental agreements and at the same time are relevant for business. UN organizations should use them as a point of reference when choosing a business partner.

Formally launched in July 2000, the UN Global Compact is both a policy platform and a practical framework for companies that are committed to sustainability and responsible business practices. As a leadership initiative endorsed by chief executives, it seeks to align business operations and strategies everywhere with ten universally accepted principles in the areas of human rights, labor, environment and anti-corruption.

### Corporate Citizenship in the World Economy

Never before in history, has there been a greater alignment between the objectives of the international community and

6 See [www.unglobalcompact.org](http://www.unglobalcompact.org)

those of the business world. Common goals, such as building markets, combating corruption, safeguarding the environment and ensuring social inclusion, have resulted in unprecedented partnerships and openness between business, governments, civil society, labor and the United Nations.

The United Nations Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labor, environment and anti-corruption.

(see: <http://www.unglobalcompact.org> for reports of board meetings and list of members of the board).

The UN Global Compact is the world's largest corporate citizenship and sustainability initiative. Since its official launch on 26 July 2000, the initiative has grown to more than 6200 participants, including over 4700 businesses in 120 countries around the world. Another source mentions 'more than 3,000 business participants'. Whatever the real number is, the total is dwarfed by the more than 68,000 transnational corporations in existence, with more than 800,000 subsidiaries and by millions of small and medium-sized enterprises at the national level.

Active listed participating companies from the Netherlands number 40, see

page 37–38, the latest update on the GCO-website of 7 November 2008.

Active financing by Dutch enterprises, see page 39–40.

It is a network-based initiative with the Global Compact Office and six UN agencies at its core:

- Office of the United Nations High Commissioner for Human Rights (OHCHR)
- International Labour Organization (ILO)
- United Nations Environment Programme (UNEP)
- United Nations Industrial Development Organization (UNIDO)
- United Nations Development Programme (UNDP)
- United Nations Office On Drugs and Crime (UNODC)

And three business-initiatives:

- The Principles for Responsible Investment (PRI)
- The Principles for Responsible Management Education (PRME)
- Global Reporting Initiative (GRI).

The Global Compact *Annual Report 2008*, page 39 quite frankly states that the 10th principle is the most difficult one to implement.

'The integration of the 10th principle into the corporate responsibility agenda in 2004 sent a signal worldwide that business shares responsibility for eliminating corruption. While progress

has been made in the intervening years, respondents to our 2008 survey identify anti-corruption as the most difficult one of the Global Compact issue areas to implement. A majority of surveyed companies do include aspects of corruption within overall corporate codes of conduct, yet only a minority are taking necessary steps to tackle the issue, including recording instances of corruption, having sanction systems in place to deal with branches, and establishing hotlines for anonymous reporting of corrupt practices. Less than two in ten survey respondents require suppliers to have anti-corruption policies.'

For the full text of the UN Global Compact 2008 Annual Review, see

[http://www.unglobalcompact.org/docs/newsevents/9.1\\_news\\_archives/2009\\_04\\_08/GC\\_2008AR\\_FINAL.pdf](http://www.unglobalcompact.org/docs/newsevents/9.1_news_archives/2009_04_08/GC_2008AR_FINAL.pdf)

See also for information: *Handbook of Transnational Economic Governance Regimes* by Christian Tietje & Alan Brouder, LEIDEN • BOSTON 2009, 1073 pages, ISBN 978 90 04 16330 0. Chapter *UN Global Compact* by Johanna Braun and Ingo Pies, p. 253–265. Copyright 2009 by Koninklijke Brill NV, Leiden, the Netherlands.

Private companies or for-profit organizations are encouraged to sign up to the UN Global Compact to pursue their anti corruption efforts, see:

<http://www.globalcompact.org>

The total budget of the UN Global Compact Office (GCO) was in 2007 US\$ 2.9 million, with Trust Fund contributions from the governments of Denmark, France, Germany, Italy, the Netherlands, Norway, Spain, Switzerland and the UK.

However, the Dutch Government is not among the governments that contributed in 2008 to the Global Compact Trust Fund that enables to pay for the core activities of the Global Compact. Contributors in 2008 are China, Denmark, Finland, France, Germany, Italy, Republic of Korea, Norway, Spain, Sweden, Switzerland and the United Kingdom.

\$1.1 million in private sector contributions were raised in 2008, helping to fund a number of important programs and events through the Foundation for the Global Compact.

Through a wide spectrum of specialized work-streams, management tools, resources, and topical programs, the UN Global Compact aims to advance two complementary objectives:

- Mainstream the ten principles in business activities around the world
- Catalyze actions in support of broader UN goals, including the Millennium Development Goals (MDGs).

By doing so, business, as the primary agent driving globalization, can help

ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere and contribute to a more sustainable and inclusive global economy.

The UN Global Compact is not a regulatory instrument, but rather a purely voluntary initiative that relies on public accountability, transparency and disclosure, to complement regulation and to provide a space for innovation.

It does not police or enforce the behavior or actions of companies. Rather, it is designed to stimulate change and to promote good corporate citizenship and encourage innovative solutions and partnerships.

The Global Compact is not a performance or assessment tool. It does not provide a seal of approval, nor does it make judgments on performance.

The UN Global Compact seeks to combine the best properties of the UN, such as moral authority and convening power, with the private sector's solution-finding strengths and resources, and the expertise and capacities of other key stakeholders. The initiative is global and local; private and public; voluntary, yet accountable.

### Communication on Progress (COP)

Participants are also expected to publish in their annual report or similar corporate report (e.g. sustainability report) a

description of the ways in which they are supporting the Global Compact and its ten principles. This is known as the Communication on Progress (COP). The Global Compact believes that this sort of openness and transparency encourages good practices by participants.

Business participants are required to annually submit a COP on the UN Global Compact website and to share the COP widely with their stakeholders. The COP is an important demonstration of a participant's commitment to the UN Global Compact and its principles, and as such a violation of the COP policy will result in the change in a participant's status and eventually in the delisting of the participant. As of March 2009, nearly 1,000 companies have been delisted.

The COP-format is flexible, but it must contain three important elements:

- A statement by the CEO (or equivalent) expressing continued support for the Global Compact,
- a description of practical actions, and
- a measurement of outcomes.

See for details on COP:

<http://www.unglobalcompact.org/COP/index.html>

### The Ten Principles of the United Nations Global Compact

The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core

values in the areas of human rights, labor standards, the environment, and anti-corruption:

*Human rights*

Principle 1 Businesses should support and respect the protection of internationally proclaimed human rights; and Principle 2 Make sure that they are not complicit in human rights abuses.

*Labor*

Principle 3 Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;  
Principle 4 the elimination of all forms of forced and compulsory labor;  
Principle 5 the effective abolition of child labor, and  
Principle 6 the elimination of discrimination in respect of employment and occupation.

*Environment*

Principle 7 Businesses are asked to support a precautionary approach to environmental challenges;

Principle 8 undertake initiatives to promote greater environmental responsibility; and  
Principle 9 encourage the development and diffusion of environmentally friendly technologies.

*Anti-corruption*

Principle 10 Businesses should work against corruption in all its forms, including extortion and bribery.

69 The ‘Ten Principles’ as published by the United Nations Global Compact Office, October 2008. Contact information: UN Global Compact Office. United Nations, DC2–612, New York City, NY 10017, USA, [globalcompact@un.org](mailto:globalcompact@un.org)  
[www.unglobalcompact.org](http://www.unglobalcompact.org)

**Dutch companies listed with the UN Global Compact Office**

Participant search results, 40 companies from the Netherlands, business participants only, active only (update 7 November 2008). See:  
[http://www.unglobalcompact.org/ParticipantsAndStakeholders/search\\_participant.html](http://www.unglobalcompact.org/ParticipantsAndStakeholders/search_participant.html)

Table paragraph 69

Participant	Type	Sector	Country	Joined
Aequator Groen & Ruimte	SME	Support Services	Netherlands	2009/03/19
Akzo Nobel nv	Company	Pharmaceuticals & Biotechnology	Netherlands	2004/10/01
Amsterdam RAI	Company	General Industrials	Netherlands	2008/07/23
ASN Bank	SME	Financial Services	Netherlands	2007/08/31
Atradius NV	Company	Financial Services	Netherlands	2008/07/02

<b>Participant</b>	<b>Type</b>	<b>Sector</b>	<b>Country</b>	<b>Joined</b>
BCD Travel B.V.	Company	General Industrials	Netherlands	2008/02/19
Cinop Advies BV	SME	Support Services	Netherlands	2005/12/01
Corio N.V.	Company	Real Estate Investment & Services	Netherlands	2008/08/07
Deloitte the Netherlands	Company	Support Services	Netherlands	2008/05/05
DHV Group	Company	Construction & Materials	Netherlands	2008/07/28
Dprint GmbH	SME	Media	Netherlands	2008/11/12
DSM N.V.	Company	Chemicals	Netherlands	2007/07/13
EADS NV	Company	Aerospace & Defense	Netherlands	2003/06/17
ECORYS Nederland B.V.	SME	Support Services	Netherlands	2009/05/06
Essent N.V.	Company	Gas, Water & Multiutilities	Netherlands	2007/02/11
Fortis Bank Nederland	Company	Banks	Netherlands	2009/01/26
Fujitsu Siemens Computers (Holding) B.V.	Company	General Industrials	Netherlands	2005/07/07
Heineken N.V.	Company	Beverages	Netherlands	2006/01/19
Helios MPPD BV	SME	General Industrials	Netherlands	2006/07/13
ING Group	Company	Financial Services	Netherlands	2006/12/20
Kempen Capital Management NV	SME	Financial Services	Netherlands	2008/10/05
KLM Royal Dutch Airlines	Company	Aerospace & Defense	Netherlands	2006/07/28
Koninklijke Philips Electronics N.V.	Company	Technology Hardware & Equipment	Netherlands	2007/03/06
myBAS.com B.V.	SME	Software & Computer Services	Netherlands	2007/06/12
Oce N.V.	Company	Support Services	Netherlands	2003/01/03
Rabobank Group	Company	Financial Services	Netherlands	2002/09/23
Randstad Holding nv	Company	General Retailers	Netherlands	2005/04/20
Rhenus Air B.V.	SME	Industrial Transportation	Netherlands	2006/05/04
Royal Dutch Shell plc	Company	Oil & Gas Producers	Netherlands	2000/07/26
SABIC Innovative Plastics	Company	Chemicals	Netherlands	2009/01/12
Saybolt International	Company	Oil & Gas Producers	Netherlands	2002/11/12
SNS REAAL	Company	Life Insurance	Netherlands	2008/12/15
Tendris	SME	Financial Services	Netherlands	2009/05/06
The Value Agency	SME	Support Services	Netherlands	2008/07/14
Thieme GrafiMedia Group	Company	Media	Netherlands	2007/08/06
TNT N.V.	Company	Industrial Transportation	Netherlands	2003/02/10
USG People NV	Company	General Industrials	Netherlands	2008/04/04
Witteveen Bos	Company	Support Services	Netherlands	2005/05/18
Wolters Kluwer	Company	Media	Netherlands	2009/03/26
World Forum Convention Center	SME	General Industrials	Netherlands	2008/05/14

## **Foundation for the Global Compact**

The Foundation for the Global Compact, a new non-profit entity, was launched in New York, on 19 April 2006 to help fund the work of the United Nations Global Compact – the world's largest voluntary corporate citizenship initiative. The Foundation is to be the official private-sector fundraising vehicle of the Global Compact Office.

The launch was announced by Sir Mark Moody-Stuart, the Foundation's inaugural Chairman. Contributions to the Foundation, whose creation was fore-shadowed as part of a comprehensive review of the Global Compact conducted in 2004–2005, are entirely voluntary. They help the Global Compact Office to raise awareness of the Global Compact and to support the implementation of its principles in business practice. In particular, resources provided by the Foundation will be used to defray the costs of recurring Global Compact activities such as outreach (especially in developing countries), publications, translations, and the development of practical tools – thereby helping to ensure the sustainability and reach of the initiative, and to scale up its worldwide impact.

## **Fundraising rules**

The fundraising strategy is to seek broad-based contributions from the nearly 3,000 participants and other

stakeholders engaged in the initiative. It is hoped that the call for voluntary contributions will raise USD 1,000,000 per year.

To safeguard the Global Compact's integrity, funds raised through the Foundation will not be used to pay the salaries of Global Compact staff. The Foundation will also not exert any influence on Global Compact Office strategy and operations.

## **Operators**

The Executive Head of the Global Compact Office is Georg Kell.

The Foundation's operations are steered by a three-member Board of Directors headed by Sir Mark Moody-Stuart, who was from 1998–2001 chairman of the Royal Dutch/Shell Group of companies. The other directors are James V. Kearney, Senior Partner of Latham & Watkins LLP, and Professor Oliver F. Williams, Director of the Business Ethics Centre at Mendoza College, University of Notre Dame.

## **Dutch companies contributing to the Foundation:**

On 18 May 2009 information asked from the secretariat by e-mail.

After quite some hesitation and exchange of e-mails, information was obtained by e-mail received on 13 August 2009 from the secretariat of the Foundation about financially contributing Dutch companies in 2008.

Table Dutch companies contributing to the Foundation *(Data received directly from the Secretariat)*

Participant ID	Company Name	Join Date	Sector	Super Sector
2602	Essent N.V.	11/02/07	Gas, Water & Multiutilities	Utilities
3621	Heineken N.V.	19/01/06	Beverages	Food & Beverage
4392	Koninklijke Philips Electronics N.V.	06/03/07	Technology Hardware & Equipment	Technology
6008	Royal Dutch Shell plc	26/07/00	Oil & Gas Producers	Oil & Gas
8773	SNS REAAL	15/12/08	Life Insurance	Insurance
6965	TNT N.V.	10/02/03	Industrial Transportation	Industrial Goods & Services

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More information about the Foundation, including current funding priorities and how to donate, is available at [www.globalcompactfoundation.org](http://www.globalcompactfoundation.org).

For more information on the UN Global Compact, visit [www.unglobalcompact.org](http://www.unglobalcompact.org).

Media Contact:  
Karen Newman +1-917-297-2210,  
[info@globalcompactfoundation.org](mailto:info@globalcompactfoundation.org)

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### Follow-up in the Netherlands of the UNCAC

The ratification of the UN Convention against Corruption by the Netherlands came rather late as the Dutch government wanted to produce an omnibus Bill that would implement several anti-corruption related international instruments, rather than take a piecemeal approach to implementing its international obligations in this regard. Moreover, this allowed the minister of Justice to ratify and to introduce new national legislation practically speaking at the same time.

77

The corresponding changes in the Dutch law extended the application of the Dutch rules against corruption from the bribing of domestic public servants and bribing a domestic judge, to ‘persons in the public service of a foreign state or an international law organization’, ‘former public servants’, ‘persons anticipated to become a public servant’ and ‘judges of a foreign state or an international organization’.

78

Added was also that the offence of bribing is committed independently from the fact whether the bribing takes place to obtain an act or omission, in breach or not in breach, of official duties of the public servant, including from now on also ‘services’ rendered to the public servant.

79

Penalties were increased for imprisonment from 2 to maximum 4 years, and for fines to a maximum of €45,000. Interesting is that the law gives the judge the discretionary power to sentence politicians with two more years than the maximum penalty for public servants. This was a specific request by Parliament.



## OECD ANTI-BRIBERY CONVENTION, 1997

### Address

OECD–Organisation for Economic Cooperation and Development

Directorate for Financial and Enterprise Affairs

Mr. Patrick Moulette, Head of the Anti-Corruption Division

Tel. +33-1 4524 9102

Fax +33-1 4430 6307

2, rue André-Pascal, 75775 PARIS Cedex 16, France

Website: [www.oecd.org](http://www.oecd.org)

e-mail: [patrick.moulette@oecd.org](mailto:patrick.moulette@oecd.org)

[other names in OECD-office:

Jonathan Coppel, OECD, Lead Manager NEPAD–OECD Africa Investment Initiative, Nicola Ehlermann–Cache, Anti-Corruption Division].

### List of Reports on the Netherlands

For a list of OECD-reports on the Netherlands, on topic Fighting Corruption, see: [http://www.oecd.org/topicdocumentlist/0,3448,en\\_33873108\\_33873626\\_1\\_1\\_1\\_1\\_37447,00.html](http://www.oecd.org/topicdocumentlist/0,3448,en_33873108_33873626_1_1_1_1_37447,00.html)

More details regarding recent concerns of OECD about promoting governance integrity can be found in the agenda and papers of the conference Building a Clearer World: Tools and Good Practices for Fostering a Culture of Integrity (Paris, 2009), see: <http://www.oecd.publicgovernanceforum.org>

## Introduction

Text from the OECD-website:

‘Corruption threatens good governance, sustainable development, democratic process, and fair business practices. The OECD is a global leader in the fight against corruption, taking a multidisciplinary approach to combating corruption in business via the OECD Anti-Bribery Convention, taxation, development aid, and governance in its member countries and beyond.’

Regional anti-corruption programmes help the OECD reach out globally to curb corruption.

The permanent OECD-URL to collect information is:

[www.oecd.org/corruption](http://www.oecd.org/corruption)

## 1997–OECD Anti-Bribery Convention

The OECD has assumed a leading role in preventing international bribery and corruption. The 1997 OECD Anti-Bribery Convention was the first global instrument to fight corruption in cross-border business deals.

The major instrument developed by the OECD is the *1997–Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, see: [http://www.oecd.org/document/21/0,3343,en\\_2649\\_34859\\_2017813\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/21/0,3343,en_2649_34859_2017813_1_1_1_1,00.html).

For ratification status as of March 2009, see: list of countries at <http://www.oecd.org/dataoecd/59/13/40272933.pdf>.

85 The Netherlands signed the OECD–Convention on December 17, 1997, and deposited the Instrument of ratification on January 12, 2001. Entry into force of the OECD–Convention: 13 March 2001.

The implementing Dutch legislation entered into force on 1 February 2001. See: [www.oecd.org/dataoecd/40/59/2739921.pdf](http://www.oecd.org/dataoecd/40/59/2739921.pdf), Staatsblad 2000, nr. 616, Law of 13 December 2000 with regard to criminal offence and misdemeanor while in public office, and for the ratification and implementation of some international agreements regarding the fight against fraud and corruption.

86 The OECD brings expertise from across the organization to the fight against corruption. Key programs aim to:

- Combat the supply side of bribery
- Prevent bribery through export credits
- Deny tax deductibility of bribes
- Promote responsible business conduct
- Prevent corruption in the public sector
- Improve governance through development assistance.

87 In order to combat corruption globally, the OECD and its project partners have established specialized websites for many of their regional anti–corruption programs, respectively the key OECD anti–corruption documents. These are easy to find via

[http://www.oecd.org/about/0,3347,en\\_2649\\_37447\\_1\\_1\\_1\\_1\\_37447,00.html](http://www.oecd.org/about/0,3347,en_2649_37447_1_1_1_1_37447,00.html) →

88 The OECD Anti–Bribery Convention establishes legally binding standards to criminalize bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. The 30 OECD member countries and eight non–member countries – Argentina, Brazil, Bulgaria, Chile, Estonia, Israel, the Slovak Republic and South Africa –have adopted this Convention. The Convention was signed on 17 December 1997 and entered into force 5 February 1999.

#### 89 **OECD/OCDE, Directorate for Financial and Enterprise Affairs,**

*The Netherlands: Phase 2, Report on the application of the Convention on combating bribery of foreign officials in international business transactions and the 1997 recommendation on combating bribery in international business transactions*, report approved and adopted by the Working Group on Bribery in International Business transactions on 15 June 2006, 80 p. See:

[www.oecd.org/document/14/0,2340,en\\_2649\\_201185\\_37000014\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/14/0,2340,en_2649_201185_37000014_1_1_1_1,00.html)

#### 90 **Report TI: Enforcement of OECD Anti–Bribery Convention still deficient despite progress**

See in the next paragraph the Dutch international ranking amidst OECD–countries as it is given in the report by Fritz Heimann and Gillian Dell, (26 June 2006), *TI Progress Report: Enforcement of the*

*OECD Convention on Combating Bribery of foreign public officials*, 20 p. See: [http://www.transparency.org/news\\_room/in\\_focus/oecd\\_progress](http://www.transparency.org/news_room/in_focus/oecd_progress)

#### QUOTE

Only a third of OECD member states have taken significant enforcement action under the OECD Convention on Combating Bribery of Foreign Public Officials, according to a report issued today by Transparency International (TI). Two-thirds of 31 signatory countries surveyed have achieved little or no enforcement since the Convention came into force in 1999.

TI's 2006 Progress Report on the Enforcement of the OECD Convention singles out five countries that play a major role in international trade – Canada, Italy, Japan, the Netherlands, and the United Kingdom – where the lack of enforcement is a particular concern.

“Governments must continue to ratchet up enforcement if the OECD Convention is to remain credible,” said Huguette Labelle, Chair of Transparency International. “This requires a visible demonstration of political commitment to take forceful action against companies that bribe to win business abroad.”

Twelve of the 31 countries surveyed have taken significant enforcement action, compared to eight of the 24 surveyed last year. Prosecutions have substantially increased in the United States and France compared to 2005, and prosecutions are also

underway in Belgium, Bulgaria, Denmark, Germany, Hungary, Korea, Norway, Spain, Sweden and Switzerland.

Because most major multinational companies have their headquarters in OECD signatory states, more effective enforcement of the Convention would help close the taps on the supply-side of international corruption. Signatory countries account for about two-thirds of world exports of goods and services.

“Efforts by developing countries to tighten their anti-corruption regimes will be undermined if multinationals continue to bribe with impunity. The cost of corruption in developing countries is immeasurable, and international bribery helps to fuel it,” said Akere Muna, Vice Chair of Transparency International’s Board of Directors.

“OECD governments know this well,” he continued. “As donors, they want to establish stringent anti-corruption criteria for poor countries. But as exporters and investors, they undermine good governance and development when they allow their companies to bribe in those countries. No more double standards!”

“The OECD must maintain a strong and fully funded monitoring programme beyond 2007,” Labelle added. “Without monitoring there is a serious danger that the Convention would unravel, as there would be no pressure on governments that take little or no

enforcement action. This would be a serious setback in the fight against international corruption.”

Other actions to promote enforcement include centralisation of responsibility for foreign bribery enforcement, along with adequate staffing and resources; greater public awareness-raising; whistleblower protection; and improved accounting and auditing standards. OECD countries must adapt their law enforcement systems to the growing complexity and transnational nature of corruption.

“OECD government officials responsible for promoting international trade must convey to national companies that bribing foreign government officials is not a business strategy, it’s a crime,” stated Fritz Heimann, TI’s Senior Advisor on Conventions. “There is still a widespread belief among those officials and companies that all possible means for obtaining market share, including corruption, are legitimate in a global business world. The OECD Convention was developed to combat this belief.” Consistent action by all OECD governments is essential.

The Progress Report surveyed the enforcement performance of 31 of the 36 signatory countries, based on information provided by TI national experts in each country and following extensive consultations with

government officials and other qualified professionals. This is TI’s second Progress Report; the first was issued in 2005.

#### U N Q U O T E

See also *The OECD Convention on bribery: a commentary*. By Mark Pieth, Lucinda A. Low and Peter J. Cullen. a groundbreaking analysis of the OECD Convention, Cambridge University Press, <http://cambridge.org/us/law>

## 91 What is said about the Netherlands in 2006?

The report carries a table that lists foreign bribery prosecutions and investigations for 2005 and 2006 for the 31 participating countries. The Netherlands scores none, while she has a share of 3.43% in 2005 world trade, which makes the zero score highly unlikely.

## 92 Overall trend

Although there is now significant foreign bribery enforcement<sup>7</sup> in over 1/3 of the 31 countries covered by this report (an increase to twelve countries from eight in TI’s 2005 report) there is as yet little or no enforcement in almost 2/3 of the countries covered.

‘At today’s limited levels of enforcement, much of the international business community is not yet convinced that foreign

7 The use of the word ‘Enforcement’ in the Report refers to prosecutions and investigations. Significant enforcement refers to two or more prosecutions in a country with more than 2% of world exports and one or more prosecutions in a country with a smaller share of exports.

bribery laws must be obeyed. Enforcement must increase substantially'. This general statement is followed by the conclusion that there is little or no enforcement in five countries that play a major role in international trade and that there are no prosecutions in Japan, the Netherlands and the UK. There is only one prosecution in Italy and one in Canada, the latter a minor case.

93 Among the recommendations, we read: Governments must increase enforcement substantially in 2/3 of the countries covered. That will require clear demonstration of political will to prosecute foreign bribery and strengthening of enforcement systems. It is particularly urgent that Japan, the UK, Italy, the Netherlands and Canada meet their commitments under the OECD Convention, because they play a major role in international trade.

### 94 **No prosecutions**

The facts are that in fourteen of thirty-one countries there have been no foreign bribery prosecutions in 2005 and 2006, compared with fourteen of twenty four countries last year: None in the Netherlands, and in Argentina, Australia, Czech Republic, Estonia, Finland, Greece, Japan, Mexico, New Zealand, Portugal, Slovak Republic, Turkey and the United Kingdom.

### 95 **No investigations**

And there are eleven countries where there are apparently no foreign bribery

investigations: None in the Netherlands, and in Argentina, Austria, Belgium, Bulgaria, Czech Republic, Estonia, Korea, Mexico, New Zealand, Slovak Republic.

The Netherlands figure also in the list of countries without adequate public access to information about foreign bribery prosecutions, together with: Austria, Argentina, Czech Republic, Ireland, Italy, Japan, Poland, Portugal, Spain, Turkey, the United Kingdom

On the other hand,

The Netherlands have already a centralized office for foreign bribery enforcement and do not rely on local prosecutors with also large caseloads of domestic crime.

On this issue, the TI expert in the Netherlands reports that the National Criminal Investigation Service is the centralized national office for investigating allegations of foreign bribery. If an investigation leads to prosecution, this prosecution is done by the Central Prosecutors' Office. That office has a capacity of 6 full-time persons for the investigation of the bribing of foreign public officials. Since June 2004, there is a team "Fighting foreign corruption".

### 96 **Satisfactory/unsatisfactory**

The TI expert in the Netherlands contributing to this TI-Report judged in his assessment of his country the situation

#### *As unsatisfactory*

- Number of staff and other resources in relation to caseload and volume of foreign trade,
- Government's efforts to provide publicly-known and accessible procedures for reporting foreign bribery allegations,
- Whistleblower protection in the public and in the private sector.

#### *As satisfactory*

- Government efforts in the last year to create public awareness that foreign bribery has become a crime,
- Accounting and auditing requirements intended to prevent practices for hiding foreign bribery,
- Effectiveness of corporate anti-bribery compliance programs.

And he found no significant inadequacies in the legal framework for foreign bribery prosecutions.

#### **Conclusion: strengthen government enforcement**

For ten countries the TI-Report concludes for a need to strengthen the organization of government enforcement. Among them also the Netherlands, and Argentina, Australia, Czech Republic, Italy, Japan, Poland, Portugal, Turkey and the United Kingdom.

'It is very difficult to bring foreign bribery prosecutions because they are expensive, time-consuming, and require

specialized staffing. Such staff includes forensic accountants, anti-money laundering experts, and lawyers experienced with mutual legal assistance procedures for obtaining evidence from abroad. Marshalling the needed resources is particularly difficult where responsibility for foreign bribery prosecutions is decentralized. Local prosecutors swamped with large caseloads are understandably reluctant to take on foreign bribery prosecutions.'

#### OECD GUIDELINES

##### **The Guidelines**

([www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines)) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in a variety of areas including voluntary recommendations to multinational enterprises in all the major areas of business ethics, including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.

Adhering governments have committed to promote them among multinational enterprises operating in or from their territories.

The instrument's distinctive implementation mechanisms include the operations of National Contact Points (NCP), which are government offices charged with promoting the Guidelines and handling enquiries in the national context. Adhering countries comprise all 30 OECD member countries, and eleven non-member countries (Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Peru, Romania and Slovenia).

### **Dutch National Contact Point**

(<http://www.oesorichtlijnen.nl/english/ncp-national-contact-point/>)

The guidelines state that every OECD member state is required to set up a National Contact Point (NCP). The NCPs have two main purposes:

- Familiarising enterprises with the guidelines and promoting their application (providing information)
- Handling questions and allegations from organisations and private citizens regarding violations of the guidelines by enterprises.

### **Tasks of the NCPs**

- Collecting experiences with applying the guidelines (practical examples)
- Consulting with representatives from employer organisations, employee organisations and civil society organisations (stakeholders)
- Handling questions from other NCPs and governments of non-OECD member states

- Preparing for national and international discussions on the OECD guidelines
- Submitting an annual report to the OECD Investment Committee.

### **Address**

For any questions about the OECD guidelines, contact:

#### **NCP Secretariat**

Netherlands Ministry of Economic Affairs  
Tabe van Hoolwerf / Jan van Wijngaarden  
PO Box 20101 (ALP N/104)  
2500 EC The Hague, the Netherlands  
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+31 (0)6 5268 9425

### **Investment Committee**

The Investment Committee has oversight responsibility for the Guidelines which are one part of a broader OECD investment instrument – the Declaration on International Investment and Multi-national Enterprises. See:

[http://www.oecd.org/document/24/0,3343,en\\_2649\\_34889\\_1875736\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/24/0,3343,en_2649_34889_1875736_1_1_1_1,00.html)

## OECD Declaration and Decisions on International Investment and Multinational Enterprises

The Declaration consists of four elements (each underpinned by a Decision by the OECD Council on follow-up procedures:

- The Guidelines for Multinational Enterprises are recommendations on responsible business conduct addressed by governments to multinational enterprises operating in or from adhering countries. Observance of the Guidelines is supported by a unique implementation mechanism: adhering governments – through their network of National Contact Points – are responsible for promoting the Guidelines and helping to resolve issues that arise under the specific instances procedures.
- National Treatment: A voluntary undertaking by adhering countries to accord to foreign-controlled enterprises on their territories treatment no less favourable than that accorded in like situations to domestic enterprises.
- Conflicting requirements: Adhering countries shall co-operate so as to avoid or minimise the imposition of conflicting requirements on multinational enterprises;
- International investment incentives and disincentives : adhering countries recognise the need to give due weight to the interest of adhering countries affected by laws and practices in this field; they will endeavour to make measures as transparent as possible.

Download full text of the Declaration and Decisions in pdf or word file format, see: [http://www.oilis.oecd.org/oilis/2000doc.nsf/LinkTo/NT00002BE6/\\$FILE/00085743.PDF](http://www.oilis.oecd.org/oilis/2000doc.nsf/LinkTo/NT00002BE6/$FILE/00085743.PDF)

In addition, the Guidelines are complemented by commentaries which provide information on and explanation of the Guidelines text and implementation procedures. Finally, clarifications provide interpretations of how certain provisions of the Guidelines should be understood, as a result of deliberations by the Investment Committee.

## The new OECD Guidelines introduced in 2006

Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage. In particular, enterprises should:

1. Not offer, nor give in to demands, to pay public officials or the employees of business partners any portion of a contract payment. They should not use subcontracts, purchase orders or consulting agreements as means of channeling payments to public officials, to employees of business partners or to their relatives or business associates.
2. Ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents



employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities.

3. Enhance the transparency of their activities in the fight against bribery and extortion. Measures could include making public commitments against bribery and extortion and disclosing the management systems the company has adopted in order to honour these commitments. The enterprise should also foster openness and dialogue with the public so as to promote its awareness of and co-operation with the fight against bribery and extortion.
4. Promote employee awareness of and compliance with company policies against bribery and extortion through appropriate dissemination of these policies and through training programs and disciplinary procedures.
5. Adopt management control systems that discourage bribery and corrupt practices, and adopt financial and tax accounting and auditing practices that prevent the establishment of “off the books” or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.
6. Not make illegal contributions to candidates for public office or to political parties or to other political organizations. Contributions should

fully comply with public disclosure requirements and should be reported to senior management.

### **Tax deductibility of bribes paid**

March 2003, Update on the Implementation of the OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials.

### **A problem in the Netherlands**

Tax deductibility of bribes paid, is still a problem in the Netherlands, not understood by the Dutch public. The relevant tax laws do not expressly deny tax deductibility of bribes paid to foreign public officials. Instead they deny the tax deductibility of expenses related to ‘crimes’ where there has been a conviction by a Dutch court, or a settlement by payment of a fine, etc. with the Dutch prosecutor to avoid criminal prosecution. Given that so often it is difficult, if not impossible to prove whether a bribe is paid, which makes a conviction impossible, this makes – although not in principle but in real life practice – the paying of bribes abroad in fact tax deductible.

On 9 February 2001, the Dutch Council of Ministers approved the intention of the State Secretary of Finance to prepare a Bill amending the fiscal treatment of bribes. Pursuant to this Bill, tax officials would be able to refuse the deduction of certain expenses where they are reasonably convinced based on adequate

indicators that the expenses consist of paid bribes (in the Netherlands or abroad), thus removing the requirement of a conviction. The Government intended to “make haste” with this process, and the Dutch authorities believed that it was possible to pass the Bill by the end of that year.

The concerned Working Group of the OECD considered in its comments on the Dutch situation that the situation was not in conformity with the spirit of the 1996 Recommendation on tax deductibility and is not in line with the present situation of the other Parties to the Recommendation. It welcomed the legislative initiative and urged the Netherlands to make the necessary amendment as soon as possible. As we now know, this ‘welcome’ came too early as tax deductibility still exists.

Report approved and adopted by the OECD-Working Group on Bribery in International Business Transactions of 17 December 2008, page 21/22:

Text of issue for follow-up:

‘8. The Working Group will follow up on the issues below, as practice develops in order to assess:

a) given the recent entry into force of the new law prohibiting the tax de-

ductibility of bribes to foreign public officials, whether its application in practice allows for the effective implementation of the 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials (Revised Recommendation, Paragraph I, II and IV; 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials).’

### Export credits

Another important sector vulnerable for bribery of foreign officials is the market-instrument of export credits, estimated at some \$US 60 billion per year.

All OECD-countries have an interest in combating this kind of bribery for its importance for investors’ confidence and for the world market.<sup>8</sup>

### OECD Countries Strengthen Measures to Deter Bribery in Export Credits

12/05/2006 – OECD countries have agreed to step up efforts to avoid giving official support to export contracts that are tainted by bribery. Government-backed export credit agencies provide about \$US 60 billion in loans and loan guarantees annually to finance exports for projects around the world.

<sup>8</sup> See:

OECD Countries strengthen Measures to Deter Bribery in Export Credits

[http://www.oecd.org/document/4/0,2340,en\\_2649\\_37447\\_36681348\\_1\\_1\\_1\\_37447,00.html](http://www.oecd.org/document/4/0,2340,en_2649_37447_36681348_1_1_1_37447,00.html)

The new agreement<sup>9</sup> is the latest step in OECD countries' efforts to combat bribery in export credits and builds upon experience following an Action Statement issued in 2000 on anti-bribery measures, including measures such as requiring "non-bribery" certifications from exporters.

The new agreement calls for greater due diligence when an exporter appears on the debarment list of the World Bank or other major multilateral financial institutions or if an exporter or their agent is under charge in a national court or has been convicted for violation of laws against bribery of foreign public officials of any country within the last five years. When appropriate, this scrutiny may lead to the suspension of applications and/or denial of support/loss of cover. The agreement also requires law enforcement authorities to be notified whenever there is credible evidence of bribery in an export credit transaction.

The Chairman of the OECD's Export Credit Group (ECG), Nicole Bollen, said: "This agreement complements the OECD's Anti-Bribery Convention and sends a clear message that the export credit community is stepping up its fight against bribery in international business transactions."

For further general information, those interested are invited to contact Michael Gonter, OECD's Export Credit Division (tel. + 331 45 24 18 22).

## **The Netherlands and export credits**

With regard to export credits, the Working Group on Bribery in International Business Transactions observed for the Netherlands, in its Report of 17 December 2008, page 10:

At the end of 2006, the Action Statement on Bribery and Officially Supported Export Credits was strengthened and transformed into an OECD Recommendation (TD/ECG(2006)24). The Netherlands has fully implemented the Recommendation in early 2007. All required statements have been included in application forms and insurance policies. In addition, the Ministry of Finance has issued a description of the procedures to be followed by Atradius DSB in carrying out the Recommendation.

The Netherlands is in some respects more stringent than required. For instance, in case of agent commissions, due diligence is exerted in case of payments below 5% of the total credit amount. In case agent commissions are over 5% of the total credit amount or more than € 4.5 million, the amount will

9 2006 *Action Statement on Bribery and Officially Supported Export Credits* agreed by the Members of the Working Party on Export Credits and Credits Guarantees; 9 May 2006. TD/ECG(2006)11.

[http://www.oilis.oecd.org/oilis/2006doc.nsf/LinkTo/NT00000DD6/\\$FILE/JT03208704.PDF](http://www.oilis.oecd.org/oilis/2006doc.nsf/LinkTo/NT00000DD6/$FILE/JT03208704.PDF)

have to be specified, and enhanced due diligence will be applied. In the latter case, the transaction has to be submitted to the Ministry of Finance for review and approval. A formal procedure has been put in place for reporting credible evidence of bribery to Public Prosecution.

## OECD—MONITORING OF THE CONVENTION

As a consequence of the OECD Anti-Bribery Convention, a program to assess whether member-countries apply this legislation has been put in place. In two phases the adequacy of a country's legislation to implement the Convention is assessed (the phase one country-report for the Netherlands is dated February 2001). The phase 2 questionnaire has been answered and the on-site visit of an examining party took place from 29 January to 3 February 2006. The report on country performance has been issued (see below §123, including recommendations).

### Phase-1 country report for the Netherlands

The phase-one country-report for the Netherlands (33 pages), with a reaction of 4 pages by the OECD-Working-Group concerned, are available on the website [www.oecd.org/document](http://www.oecd.org/document): '*Review of implementation of the convention and 1997 recommendation*'. This document gives the 'Steps taken by the Netherlands to implement and enforce the Convention on

Combating Bribery of Foreign Public Officials in International Business Transactions'.

The Report deals with the offence of bribery itself, the responsibility of legal persons, sanctions, jurisdiction, enforcement, Statute of limitations, money laundering, accounting, mutual legal assistance, extradition, and responsible authorities.

### Small facilitation payments

Text on 'small facilitation payments' taken from the Netherlands Phase 2 follow-up report on the implementation of the phase 2 recommendations, this report was approved and adopted by the Working Group on Bribery in International Business Transactions on 17 December 2008.

<http://www.oecd.org/dataoecd/61/59/41919004.pdf>

#### *Text of recommendation 4*

4. With respect to the offence of foreign bribery, in order to prevent misinterpretations of the offence that are contrary to the Convention, the Working Group recommends that the Netherlands take appropriate measures to further clarify the application of the law in relation to small facilitation payments and the information in the 2002 Directive on Investigation and Prosecution of Corruption of Officials. (Convention, Articles 1, 5; Commentary 9).

*Answer from the Dutch side:*

Actions taken as of the date of the follow-up report to implement this recommendation: Strictly speaking facilitation payments are as a matter of fact also liable to punishment. The Public Prosecution Department, however, deems it not expedient to pursue a stricter investigation and prosecution policy on tackling bribery of foreign public servants than the policy required under the OECD Convention. This means that acts which can be qualified in terms of the OECD Convention as 'facilitation payments' will not be prosecuted. The factors that can be taken into account to decide whether or not to initiate a case, have been adjusted and reduced for reasons of clarity.

Factors that count against prosecution:

- It concerns acts or omissions which the public servant in question was already obliged to perform by law. The payment may not interfere with competition in any way whatsoever.
- The gift must be entered in the company's records in a transparent way, and must not be concealed.
- It concerns, in absolute or relative sense, small amounts.
- It concerns payments to junior public servants.
- The gift must be entered in the company's records in a transparent way, and must not be concealed.
- The making of the gift must be the initiative of the foreign public servant.

If one or more of these conditions are not answered, than the one who bribed the public official abroad, is punishable under article 178a WvSr.

120 The Working Group of the OECD was rather satisfied with the contents of this self-evaluation, but was critical of the 'small facilitation payments' the Dutch authorities wanted to allow also in the future, which are defined as 'small payments to low level public officials for the purpose of inducing them to do something that is not in contravention of their public duties'. 'The Dutch business world is convinced that transactions would be harmed without these 'peanut-payments'.

On this issue, the Phase 2 report of the OECD reads

'In many cases [i.e. codes of conduct of Dutch multinational corporations] these policies explicitly forbid facilitation payments.

Companies' representatives explained that it was simpler to categorically prohibit facilitation payments than to try to establish functional definitions and thresholds that clearly differentiate them from bribery.'

121 **Phase-2 country report for the Netherlands**

On 17 December 2008 the OECD Working Group on Bribery in International Business Transactions ap-

proved and adopted the *Netherlands phase 2 follow-up report on the implementation of the phase 2 recommendations*. Application of the Convention on Combating Bribery of foreign public officials in international business transactions and the 1997 revised recommendation on combating bribery in international business transactions.

### Summary of phase-2 follow-up report

From this 'phase 2 follow-up report' is taken the following summary. Those who want to read the full text of this report are advised to visit the website:

<http://www.oecd.org/dataoecd/61/59/41919004.pdf>

### OECD – Directorate for Financial and Enterprise Affairs

Report approved and adopted by the Working Group on Bribery in International Business Transactions on 17 December 2008. See for the full report: <http://www.oecd.org/dataoecd/61/59/41919004.pdf>

### THE NETHERLANDS: PHASE 2 FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS

Application of the convention on combating bribery of foreign public officials in international business transactions and the 1997 revised recommendation on combating bribery in international business transactions.

## SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

### a) Summary of Findings

1. In October 2008, the Netherlands presented its written follow-up report, outlining its responses to the recommendations adopted by the Working Group on Bribery at the time of the Netherlands' Phase 2 examination in June 2006. The Working Group welcomed the information provided by the Dutch authorities in the course of this exercise and recognized the Netherlands' significant efforts to implement the recommendations by the Working Group. The Working Group considers that the Netherlands has fully implemented 13 out of the 18 recommendations made during the Phase 2 examination, while 4 recommendations have either been partially or not implemented. One recommendation has been abandoned as it is considered no longer relevant.
2. As of October 2008, no foreign bribery cases had been brought before the Dutch courts. Nevertheless, the prosecution authorities have concluded out-of-court transactions with seven companies for paying kickbacks in the context of the Oil-for-Food Program in Iraq, although the offence charged was the violation of sanctions legislation and not the foreign bribery offence. In addition, the Netherlands reported that 12 feasibility

investigations and 3 preliminary investigations are underway in alleged foreign bribery cases, and that 4 requests for mutual legal assistance have been sent out in respect of a foreign bribery offence.

3. The Netherlands has taken a number of initiatives to raise awareness of and improve training on the foreign bribery offence. In particular, efforts have been made to ensure that adequate information and training on foreign bribery issues is provided to staff of Dutch government departments and public agencies involved with Dutch enterprises operating abroad, such as the Dutch Export Promotion Agency, EVD, the ministries for Foreign Affairs and Economic Affairs, and the Tax and Customs Administration. These ministries and agencies, in turn, have developed awareness raising programs targeted at the private sector, in coordination with Dutch business associations. In addition, specific attention has been paid to raising awareness of the foreign bribery offence among the accounting and auditing professionals, given their specific role in the detection and reporting of foreign bribery.

In this respect, the Code of Conduct for Auditors and Accountants has been clarified to clearly include bribery as a reportable fraud, and regular meetings occur between the Dutch Ministry of Finance and the accountants and auditors' oversight bodies to address the issue of foreign bribery.

4. With regard to Working Group recommendations to improve the reporting and detection of foreign bribery, the Netherlands has taken important steps to broaden the possibilities for reporting in the public sector. Both the Instructions for the Investigation and Prosecution of Corruption Offences in Public Office Committed Abroad (a Directive addressed to the Dutch police and prosecutors) and the Foreign Service Code of Conduct attempt to interpret broadly the Dutch legislation to encourage reporting of foreign bribery offences by Dutch public servants. The Foreign Service Code of Conduct goes so far as to put in place detailed guidelines on when and how to report suspected foreign bribery instances. Nevertheless, the Working Group regretted that Dutch legislation is still not explicit regarding the obligation to report all suspicions of foreign bribery, including where the foreign bribery is committed by a private person. The Working Group noted the announcement made by the Netherlands that steps would be taken to address the Working Group recommendations, also based on an evaluation to be carried out within the Netherlands. On related issues concerning reporting, the Netherlands has taken specific measures to improve reporting by the tax administration, by issuing specific instructions and providing training to tax officials on the subject. Regarding related money laundering reporting, steps have been

taken to ensure a better flow of information between the law enforcement and the reporting entities, that adequate feedback is provided, and that all professions, including accountants, are duly aware of their reporting obligations under the anti-money laundering system.

5. The Netherlands has also adopted important measures concerning the investigation and prosecution of foreign bribery. In particular, Instructions for the Investigation and Prosecution of Corruption Offences in Public Office Committed Abroad were adopted in June 2007 by the Board of Procurators General and addressed to the Public Prosecutors' Offices and the Rijksrecherche (the Dutch National Police Internal Investigation Department). These Instructions have clarified the competence and coordinating role of the Rijksrecherche in foreign bribery investigations. In this respect, the Netherlands have provided a significant increase of EUR 1.2 million in 2008 to the Rijksrecherche's budget for the investigation of corruption, including foreign bribery. A further increase of 0.6 million is planned for 2009. The Instructions also outline the proactive approach which the Rijksrecherche may take in opening foreign bribery investigations, and enumerate various sources which may trigger a foreign

bribery investigation, including media reports, mutual legal assistance requests from other countries, as well as reports from Dutch diplomatic missions and whistleblowers. Importantly, the Instructions clarify the approach of the Public Prosecution Department to small facilitation payments: these payments, while they constitute, strictly speaking, a criminal offence under the Dutch Penal Code, will not be prosecuted, assuming they meet certain factors listed in the Instructions (for instance, small amounts, recorded in the company's accounts, made at the initiative of the foreign public official).

6. Notwithstanding the significant progress achieved through these Instructions, the Working Group noted that some of the content is still cause for concern and may be interpreted contrary to the Anti-Bribery Convention. For instance, the Instructions focus on corruption offences "committed abroad", whereas the bribery of a foreign public official may occur abroad but also within Dutch territory. Of most concern to the Working Group, however, is the list of criteria to be taken into account "in assessing whether situations are eligible for investigation and prosecution". This list could pose problems in respect of compliance with article 5 of the Convention,<sup>10</sup> in that it includes factors

10 Article provides that "investigation and prosecution of the bribery of a foreign public official [...] shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved."



such as the involvement of senior (foreign) public servants or politicians, and the potential impact on the reputation of the Dutch trading and political interests if a suspicious case is not investigated. The list also refers to factors which should not necessarily be relevant, such as the investigation and prosecution efforts on the part of the foreign country involved. The Working Group welcomed and encouraged the Netherlands' expressed intention to make the necessary amendments to the Instructions.

7. With respect to the treatment of foreign bribery cases by the Dutch courts, training sessions on foreign bribery were held in 2007 and 2008 and attended by judges. Concerning the Working Group's recommendation to increase fines for legal persons convicted of foreign bribery, the situation has not evolved since Phase 2 and the maximum fine applicable to a legal person for the most serious foreign bribery offence is still EUR 670 000. The Netherlands reiterated its view that the combination of fines and confiscation measures currently applicable is sufficient. The Working Group however continues to consider that the financial penalty applicable to legal persons does not amount to sufficiently effective, proportionate and dissuasive sanctions. Furthermore, given that no foreign bribery cases have been adjudicated before Dutch courts to date, the Working Group considers that it cannot

be satisfied at this point that confiscation measures would effectively compensate the low level of financial sanctions applicable to legal persons in the Netherlands.

8. In relation to the related money laundering offence, the Working Group was satisfied by the statistics compiled and provided by the Netherlands.
9. Finally, where the Netherlands Antilles and Aruba are concerned, the Working Group acknowledges that the Kingdom of the Netherlands in Europe has pursued its efforts to encourage these territories to ratify the Convention. The Working Group regrets, however, that no significant step towards ratification has been accomplished by these territories, and encourages the Netherlands to maintain contacts in this regard.

#### b) Conclusions

10. Based on the findings of the Working Group on Bribery with respect to the Netherlands' implementation of its Phase 2 recommendations, the Working Group concluded that the Netherlands has fully implemented recommendations 1(a), 1(b), 2(b), 2(c), 2(d), 2(e), 3(a), 3(b), 3(c), 3(e), 4, 5(b), and 6; that the Netherlands has partially implemented recommendations 2(a) and 7; and that recommendations 3(f) and 5(a) have not been implemented. Furthermore, the Working Group is of the view that

recommendation 3(d) is no longer relevant, given investigations underway in the Netherlands.

- 11 The Working Group invited the Netherlands to report orally, within one year after the written follow-up examination, i.e. by October 2009, on the implementation of the four recommendations that the Group considers to be not yet satisfactorily implemented.

[END OF QUOTE]

## **Recommendations and their follow-up**

The original recommendations 2(a), 3(f), 5(a) and 7, repeated in the above conclusions, had not or only partially been implemented. They are given below again with the Dutch reaction.

## **Detection and reporting**

Text of recommendation 2a: (partially implemented): With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that the Netherlands:

Clarify the obligations of public servants to report suspicions of crimes, including foreign bribery, to Dutch law enforcement or prosecution authorities and raise awareness among public servants about their obligations, and the mechanisms and reporting channels available to fulfill these obligations  
Revised Recommendation, Paragraph I).

## ***Answer from the Dutch side:***

The obligation of public servants to report suspicions of crimes, particularly foreign bribery, has been clearly outlined in a legally binding instruction of Public Prosecution. The Ministry of Justice is conducting research on the application of the article concerning the obligation to report crimes for public servants, including foreign bribery (Art. 162 Criminal Prosecution) and will advise Parliament this fall on steps to be taken in order to raise awareness among civil servants and its importance for whistleblower protection

In 2008 an evaluation has been carried out on whistleblower protection in the public sector. The Ministry of Interior and Kingdom Relations will report to Parliament this fall with suggestions how to deal with the outcome of this evaluation. Measures are envisaged to strengthen protection of the whistleblower.

The European Directive on Awarding Public Contracts obliges contract authorities to exclude a company from participation in a public contract in case a company has been convicted of corruption. In the new Dutch bill on awarding public contracts tenderers will be obliged to obtain a Certificate of Good Behaviour for Legal Persons in order to be allowed to participate. (Infringements concerning competition, collusion, will also be dealt with.) The Certificate of Good Behaviour

for Legal Persons will be a new instrument for legal persons to demonstrate their integrity. This certificate is issued by the Minister of Justice to confirm that there is no evidence that would preclude the legal person concerned from participation in public tendering procedures.

## 126 Investigation and prosecution

Text of recommendation 3f: (Not implemented) With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that the Netherlands:

Review and amend the 2002 Directive on Investigation and Prosecution of Corruption of Officials, issued by the Dutch Board of Procurators General, to ensure that the information contained therein may not be interpreted contrary to the Convention and the bribery offences in the Dutch Penal Code (Convention, Article 5; Commentary 7; Commentary 27; Revised Recommendation, Paragraph I, II).

### *Answer from the Dutch side:*

As stated earlier a new directive (see Annex 1: Instructions on the Investigation and Prosecution...) has been issued on foreign bribery in complete conformity with the OECD Convention.

## 127 Sanctions

Text of recommendation 5a: (not implemented) With respect to adjudication by courts and sanctions for foreign bribery,

the Working Group recommends that the Netherlands: Increase the maximum levels of monetary sanctions for legal persons, and compile statistical information on fines imposed by the courts to allow for adequate assessment of whether sanctions are proportionate, dissuasive and effective in practice (Convention, Article 3.1).

### *Answer from the Dutch side:*

Actions taken as of the date of the follow-up report to implement this recommendation:

Shortly before the OECD examination of the Netherlands in 2005 the applicable fines have been increased. In view of the fact that additional punitive means (i.a. confiscation of all proceeds, sanctions including imprisonment of natural persons involved the same case) are at the disposal of judges, it is for the time being considered that sanctions are sufficiently effective, proportionate and dissuasive.

In addition a draft bill has been sent to parliament on 20 March 2008, which will raise the fine applicable to the corruption offences of Sections 177a and 178a, first paragraph, of the Penal Code from the fourth (€ 16,750) to the fifth category (€ 67,000) (see Kamerstukken II, 2007/2008, 31 391, no. 2). The draft bill also broadens the possibility of imposing a professional disqualification in the event of active bribery of public officials (Sec-

tions 177, 177a, 178 of the Penal Code). Although there is no denying that for all crimes the level of sanctions in the Netherlands is generally lower than in many other OECD Member States with the above changes sanctions are proportionate, dissuasive and effective in practice.

## **Antilles and Aruba**

Text of recommendation 7: Given the economic role of the Netherlands Antilles and Aruba, the Working Group strongly recommends that the Netherlands in Europe continue to encourage Aruba and the Netherlands Antilles to adopt the necessary legislation in line with the principles of the Convention and Revised Recommendation, and assist them in their efforts, within the rules governing their relationship, and report to the Working Group on these processes on an ongoing basis (Convention Article 1).

### *Answer from the Dutch side:*

The relationship of the various parts of the Kingdom of the Netherlands is presently under discussion at a political level. In 2009 Bonaire, St. Eustatius and Saba will become public bodies of the Netherlands, while on the other hand Curacao, St. Maarten and Aruba will each become independent countries within

the Kingdom of the Netherlands. In this process of political rebuilding, special attention is being paid in programmes of good governance and strengthening of security, to (international treaties on) integrity and fighting corruption. The Netherlands offer (financial) assistance in order to strengthen good governance in the Netherlands Antilles.

In this framework the islands strengthen their “checks and balances”, conduct integrity programmes and improve financial management and control. Recently in the Netherlands Antilles, corruption cases have been brought to court which have led to convictions. This demonstrates the willingness of authorities in Netherlands Antilles to combat corruption.

In June 2006, the government of Aruba informed the Minister of Justice that the implementing legislation for the OECD Convention had almost been finalized. The Minister of Justice will bring this recommendation to the attention of his colleagues of the Netherlands Antilles and Aruba in the Council of Ministers for the Kingdom of the Netherlands. The adoption of legislation to ratify the OECD Convention, remains an autonomous affair of both Netherlands Antilles and Aruba.

## COUNCIL OF EUROPE

GRECO, Groupe d'Etats contre la corruption – Group of States against corruption.

### Introduction

The website of the Council of Europe's GRECO [http://www.coe.int/t/dghl/monitoring/greco/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/default_en.asp) – opens with the following statement:

#### **'The Fight against Corruption: a Priority for the Council of Europe'.**

'Ever since antiquity, corruption has been one of the most widespread and insidious of social evils. When it involves public officials and elected representatives, it is inimical to the administration of public affairs. Since the end of the 19th century, it has also been seen as a major threat in the private sphere, undermining the trust and confidence which are necessary for the maintenance and development of sustainable economic and social relations. It is estimated that hundreds of billions of Euros are paid in bribes every year.'

### Address

Council of Europe, in particular GRECO  
Groupe d'Etats contre la corruption,  
Group of States against corruption.  
Greco Secretariat, Directorate General I –  
Legal Affairs, Department of Crime  
Problems, F-67075 Strasbourg Cedex  
Tel. +33-3 8841 3043  
Fax +33-3 9021 5073  
e-mail: [webmaster.greco@coe.int](mailto:webmaster.greco@coe.int)  
[http://www.coe.int/t/dghl/monitoring/greco/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/default_en.asp)

### Membership

Membership in GRECO is not limited to Council of Europe member States. Any State which took part in the elaboration of the enlarged partial agreement, may join by notifying the Secretary General of the Council of Europe. Moreover, any State which becomes Party to the Criminal or Civil Law Conventions on Corruption automatically accedes to GRECO and its evaluation procedures. Currently, GRECO comprises 46 member States (45 European States and the United States of America).

The Netherlands joined GRECO in 2001. See for all GRECO Reports, as well as their corresponding Compliance Reports and additions, GRECO's homepage: <http://www.coe.int/greco> → *Evaluations* → *the Netherlands*.

### GET – GRECO Evaluation Teams

GRECO evaluates, through a dynamic process of mutual evaluation and peer pressure, the compliance with undertakings contained in the legal instruments of the Council of Europe to fighting against corruption. Greco monitors the level of compliance by countries of the measures taken in the fight against corruption based on collecting information from the countries and on regular visits to all member-countries. The reports contain recommendations in order to improve their level of compliance. For this document, the Evaluation Reports

made by Greco Evaluation Teams (GET) in 2003, 2005 and 2007 have been studied and used.

The GRECO reporting is appreciated in the Netherlands as it involves officials from the government as sources of information but also other officials representing local government, Chambers of Commerce, business and their organizations, the Institute of Accountants (NIVRA), the media, and an NGO as Transparency International Dutch chapter. For the second round of evaluation in 2005 the organizations which have not been consulted, or at least are not mentioned as consulted partners, are the trade-unions, the universities (in particular institutions and teachers in the field of ethics, police-sciences, forensic ac-

counting, corruption and integrity), the building industry, and the Dutch Association of Journalists.

### LEGAL STEPS

#### Signatures, ratifications, entries into force

In 1994, the Ministers of Justice of the Council of Europe's (CoE) member States recommended that corruption be addressed at a European level. The Committee of Ministers of the CoE adopted the Criminal and the Civil Law Conventions on Corruption and later the Additional Protocol, see

<http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?PO=NET&MA=43&SI=2&DF=&CM=3&CL=ENG>

No.	Title	Opening of the treaty	Entry into force	E	N	C
173	Criminal Law Convention on Corruption Signature:                      Ratification or                      Entered into 29/6/2000      accession: 11/4/2002      force: 1/8/2002	27/1/1999	1/7/2002	X	X	X
174	Civil Law Convention on Corruption Signature:                      Ratification or                      Entered into 13/7/2007      accession: 17/12/2007      force: 1/4/2008	4/11/1999	1/11/2003	X	X	X
191	Additional Protocol to the Criminal Law Convention on Corruption Signature:                      Ratification or                      Entered into 26/2/2004      accession: 16/11/2005      force: 1/3/2006	15/5/2003	1/2/2005	X	X	X

Notes: Convention(s) and Agreement(s) opened to the member States of the Council of Europe and, where appropriate, to the : E. : European non-member States – N. : Non-European non-member States – C. : European Community. See the final provisions of each treaty. Source: Treaty Office on <http://conventions.coe.int>

137 The Netherlands ratified the Criminal Law Convention on Corruption (ETS 173) on 11 April 2002. It entered into force in respect of the Netherlands on 1 August 2002. The Netherlands has made reservations to Article 12 (trading in influence) and Article 17 (jurisdiction). These reservations will be discussed in further detail below. The Netherlands has limited the territorial application of the Convention to the Kingdom of the Netherlands in Europe. The Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) was ratified on 16 November 2005 and entered into force in respect of the Netherlands on 1 March 2006. The reservations the Netherlands has made to the Convention also apply to the Additional Protocol. The territorial application of the Additional Protocol is also limited to the Kingdom of the Netherlands situated in Europe.

### 138 **Model Code of conduct for public officials**

Model code of conduct for public officials, Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials (adopted by the Committee of Ministers at its 106th Session on 11 May 2000). See: [http://www.coe.int/t/dghl/monitoring/greco/documents/Rec\(2000\)10\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Rec(2000)10_EN.pdf)

### 139 **Funding of Political Parties and Elections**

Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in

the funding of political parties and electoral campaigns (Adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' Deputies). See:

[http://www.coe.int/t/dghl/monitoring/greco/general/Rec\(2003\)4\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/general/Rec(2003)4_EN.pdf)

### ADDITIONAL LEGAL INSTRUMENTS ADOPTED BY THE COUNCIL OF EUROPE

140 The Twenty Guiding Principles against Corruption (Resolution (97) 24); [See:

[http://www.anticorruzione.it/Portals/altocommissario/Documents/Atti%20internazionali/risoluzione%20\(97\)%2024%20COE.pdf](http://www.anticorruzione.it/Portals/altocommissario/Documents/Atti%20internazionali/risoluzione%20(97)%2024%20COE.pdf)]

### Q U O T E

#### **COMMITTEE OF MINISTERS RESOLUTION (97) 24 ON THE TWENTY GUIDING PRINCIPLES FOR THE FIGHT AGAINST CORRUPTION**

(Adopted by the Committee of Ministers on 6 November 1997 at the 101st session of the Committee of Ministers)

#### **The Committee of Ministers,**

Considering the Declaration adopted at the Second Summit of Heads of State and Government, which took place in Strasbourg on 10 and 11 October 1997 and in pursuance of the Action Plan, in particular section III, paragraph 2 “Fighting corruption and organised crime”;

Aware that corruption represents a serious

threat to the basic principles and values of the Council of Europe, undermines the confidence of citizens in democracy, erodes the rule of law, constitutes a denial of human rights and hinders social and economic development;

Convinced that the fight against corruption needs to be multi-disciplinary and, in this respect having regard to Programme of Action against Corruption as well as to the resolutions adopted by the European Ministers of Justice at their 19th and 21st Conferences held in Valletta and Prague respectively;

Having received the draft 20 guiding principles for the fight against corruption, elaborated by the Multidisciplinary Group on Corruption (GMC);

Firmly resolved to fight corruption by joining the efforts of our countries,

AGREES TO ADOPT THE 20 GUIDING PRINCIPLES FOR THE FIGHT AGAINST CORRUPTION, SET OUT BELOW:

1. to take effective measures for the prevention of corruption and, in this connection, to raise public awareness and promoting ethical behaviour;
2. to ensure co-ordinated criminalisation of national and international corruption;
3. to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence,

protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations;

4. to provide appropriate measures for the seizure and deprivation of the proceeds of corruption offences;
5. to provide appropriate measures to prevent legal persons being used to shield corruption offences;
6. to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society;
7. to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks;
8. to ensure that the fiscal legislation and the authorities in charge of implementing it contribute to combating corruption in an effective and co-ordinated manner, in particular by denying tax deductibility, under the law or in practice, for bribes or other expenses linked to corruption offences;
9. to ensure that the organisation, functioning and decision-making processes of public administrations take into account the need to combat corruption, in particular by ensuring as much transparency as is consistent with the need to achieve effectiveness;
10. to ensure that the rules relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary



- measures; promote further specification of the behaviour expected from public officials by appropriate means, such as codes of conduct;
11. to ensure that appropriate auditing procedures apply to the activities of public administration and the public sector;
  12. to endorse the role that audit procedures can play in preventing and detecting corruption outside public administrations;
  13. to ensure that the system of public liability or accountability takes account of the consequences of corrupt behaviour of public officials;
  14. to adopt appropriately transparent procedures for public procurement that promote fair competition and deter corruptors;
  15. to encourage the adoption, by elected representatives, of codes of conduct and promote rules for the financing of political parties and election campaigns which deter corruption;
  16. to ensure that the media have freedom to receive and impart information on corruption matters, subject only to limitations or restrictions which are necessary in a democratic society;
  17. to ensure that civil law takes into account the need to fight corruption and in particular provides for effective remedies for those whose rights and interests are affected by corruption;
  18. to encourage research on corruption;
  19. to ensure that in every aspect of the fight against corruption, the possible connections with organised crime and money laundering are taken into account;
  20. to develop to the widest extent possible international co-operation in all areas of the fight against corruption.

## 14.1 First Evaluation Round, Reports

GRECO adopted the Evaluation Report on the Netherlands (Greco Eval I Rep (2003) 1 E final) at its 13th Plenary Meeting (24–28 March 2003) [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1\(2003\)1\\_Netherlands\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2003)1_Netherlands_EN.pdf)

- First Compliance Report on the Netherlands. Adopted by GRECO at its 22nd Plenary Meeting (Strasbourg, 14–18 March 2005). [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoRC1\(2004\)13\\_Netherlands\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoRC1(2004)13_Netherlands_EN.pdf)
- Addendum to the Compliance Report on the Netherlands. Adopted by GRECO at its 32nd Plenary Meeting (Strasbourg 19–23 March 2007). [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoRC1\(2004\)13\\_Add\\_Netherldans\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoRC1(2004)13_Add_Netherldans_EN.pdf)

[the typo in the name of the ‘Netherlands’ is authentic but does not prevent to find the right document at the Internet].

All GRECO evaluation reports become public once the authorities of the country concerned express their agreement to the lifting of the report’s confidentiality.

## 14.2 Objective of Evaluation Report

The objective of this First Evaluation Report was to evaluate the measures adopted by the Dutch authorities, and wherever possible their effectiveness.

The report describes the situation of corruption in the Netherlands, the general anti-corruption policy, the institutions and authorities in charge of combating it – their functioning, structures, powers, expertise, means and specialization – and the system of immunities.

This description is followed by a critical analysis of the situation, assessing, in particular, whether the system in place in the Netherlands is fully compatible with the undertakings resulting from the General Principles of GRECO and the Council of Europe.

## Positive conclusion

The First Evaluation Report ended with a rather positive conclusion about corruption and integrity in public life in the Netherlands:

## IV. CONCLUSIONS

97. The Netherlands appears to belong to the group of those GRECO members that are least affected by corruption. According to the more recent official statistics, only few cases of corruption have been detected over the last past years. There is a general perception among the representatives of the Dutch State authorities that corruption is not a major problem in the country. And the perception of the danger represented by corruption has even increased in the Dutch civil society because of some recent cases/allegations involving corruption and/or corruption related offences.

## Seven recommendations (2003)

Most interesting are the seven recommendations made by GRECO to the Netherlands in order to improve its level of compliance with the General Principles under consideration.

‘Para. 98.

- i. that the authorities responsible for formulating anti-corruption policies adopt a more pro-active approach towards the phenomenon of corruption in order to combat it more efficiently;
- ii. develop more detailed statistics, targeted research and analysis, in order to measure more clearly the extent of the corruption phenomenon in the country;
- iii. consider applying whistle blowing regulations for all public sector entities (at central, regional, and municipal level) in order to harmonise regulation in this field and avoid setting double standards; and to consider the legal situation with regard to relation between Article 162 of the Code of Criminal Procedure and the order of 7 December 2000;
- iv. that the Public Prosecution Service, police forces, the Rijksrecherche and the FIOD-ECD, develop a strategy to establish a fluid channel of communication with the private sector;
- v. that the police and public prosecutions services working in the anti-corruption

field receive regular specific anti-corruption in-service training and that the number of staff be increased.

It also recommended to intensify the initial and in-service training of police officers and public prosecutors with regard to the legal bases and practice of public procurement and to improve their knowledge in this area;

vi. that, especially in the light of the most helpful comprehensive guidance given in the new Directive “on the investigation and prosecution of corruption of officials”, the Public Prosecution Service ensures in practice that investigations are pursued as fully as possible to enable the prosecution authorities to take an appropriate and fully informed decision on whether to initiate or continue a prosecution;

vii. to consider the possibility to create - within the major district courts – specialized panels of judges who should be available to preside over the most complex and serious cases related to economic crime offences.’ [...]

And a further recommendation:

100 ‘Finally in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of the Netherlands to present a report on the implementation of the above-mentioned recommendations before 30 September 2004.’

## 125 Follow-up to recommendations

One week later than requested, on 8 October 2004, the authorities of the Netherlands submitted their report on the measures taken to follow the recommendations. The Dutch opinion, together with the assessment by GRECO was published in the Compliance Report of 2005.

GRECO was rather satisfied as the recommendations i, ii and iii had been ‘dealt with in a satisfactory manner’, and iv and v had been ‘partly implemented’. Additional action in the Netherlands and information to be supplied to GRECO was requested, and dealt with in the Addendum to the Compliance Report dated 21 March 2007.

126 Among the recommended actions that had been taken was the creation of a specific Internet-site for integrity issues in the public sector: *www.integriteitoverheid.nl*, webmaster BIOS – Bureau Integriteitsbevordering Openbare Sector. (National Office for Promoting Integrity in the Public Sector, see details in Part II National).

147 Recommendation iv had asked to ‘develop a strategy to establish a fluid channel of communication with the private sector’.

The Dutch had answered referring to ‘the creation of an anti-corruption task force which would be composed of relevant investigative and prosecution authorities and representatives of the private sector’.

In the Addendum the Dutch could report that: ‘the anti-corruption task force is now fully operational and has met 6 times so far. The meetings of the task force provide a much appreciated forum for exchange of knowledge and information between representatives of the private sector, the government and the relevant investigative and prosecution services and has a positive impact on the development of anti-corruption policies.’

### **Composition of the Dutch task force**

In footnote 1 of the report is given the composition of the task force as ‘representatives of the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of the Interior and Kingdom Relations, the Ministry of Finance/Fiscal Information and Investigation Service and Economic Investigation Service and Economic Investigation Agency (FIOD/ECD), Rijksrecherche, the Prosecution Service, police, provinces (Interprovinciaal Overleg), municipalities (Vereniging van Nederlandse Gemeenten), Chambers of Commerce (Vereniging van Kamers van Koophandel), the Confederation of Dutch Industry and Employers (VNO-NCW), KPMG Integrity and Investigation Services, academia (Vrije Universiteit), Samenwerkingsverband Integriteit en Werk and Transparency International.

[Remarks about the Task Force:

1. At the time of the publication of the Addendum, March 2007, this task force could still be described in the

way as quoted in the previous paragraph. However, since September 2007, when the latest meeting of the task force was held, ‘this much appreciated forum for exchange of knowledge and information’ has never been in session again.

2. From the composition of the task force are missing the Association of Investigative Journalists, the Trade-Unions, national whistleblowers-organisation(s).]

### **Second Evaluation Round, Reports**

- GRECO adopted the Second Round Evaluation Report (Greco Eval II Rep (2005) 2E) on the Netherlands at its 25th Plenary Meeting (Strasbourg, 10–14 October 2005).

*[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2\(2005\)2\\_Netherlands\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2(2005)2_Netherlands_EN.pdf)*

- Compliance Report on the Netherlands. Adopted by GRECO at its 34th Plenary Meeting (Strasbourg, 16–19 October 2007).

*[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2007\)7\\_Netherlands\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2007)7_Netherlands_EN.pdf)*

GRECO had decided that the 2nd Evaluation Round would deal with:

1. Proceeds of corruption,
2. Public Administration and corruption,
3. Legal persons and corruption.

## Ad 1, Proceeds of corruption

Since 1996, in the Netherlands a special *Prosecution Service Criminal Assets Deprivation Bureau* (Bureau Ontnemingswetgeving Openbaar Ministerie, BOOM) had been set up. In 2005 a new 'Directive on Special Confiscation' was issued by the Board of Procurators General.

The purpose of BOOM is to deprive criminals from the proceeds of their criminal activities, and to share information with colleagues in the Netherlands and abroad (notably CARIN – Camden Assets Recovery Interagency Network).

From the Compliance Report of the Second Round, we learn that the authorities of the Netherlands have reported that the Directive on the Investigation and Prosecution of Corruption of Officials, which previously did not refer to the seizure and confiscation of the proceeds of corruption, has recently been amended and entered into force in August 2007. It underlines that a financial investigation should always be part of an investigation into corruption offences, and refers to the possibility to use confiscation in active bribery cases.

Moreover since the Second Round Evaluation the BOOM has been reorganized and its number of staff increased from 22 in 2005 to 48 in 2006 and 61 in 2008.

The amount of confiscated assets has increased from € 11.070.820 in 2005 to € 17.540.860 in 2006 and € 23.4 million in 2008.

The amount of seized assets has increased from approximately € 40 million in 2002 to € 60 million in 2006 and € 110 million in 2007

In the second report (2005) special attention is given to the 'proceeds of corruption' and their confiscation. It is remarkable to note that in general the total number of cases in which confiscation was adjudicated reached 1.069 in 2001, 1.270 in 2002, and 1.591 in 2003, whereas the number of settled cases of corruption in which confiscation was adjudicated reached only 5 of 45 corruption cases in 2001, respectively 7 of 63 in 2002, and 6 of 95 in 2003. The confiscation of illegally obtained profits or advantages amounted to only € 126,010.

The GET concludes with regard to 'proceeds of corruption' (see point 24 onwards in the Second Round Report):

### **Analysis (from the 2nd Round Evaluation Report)**

In general, the Dutch system aimed at depriving offenders of the proceeds of corruption is efficient, with a comprehensive legal framework and a set of institutions responsible for dealing with various aspects of the matter. [...] Existing legislation in this area is supple-

mented by the new ‘Directive on Special Confiscation’, issued in 2005.<sup>11</sup> [...] An efficient system providing interim measures (search, seizure, mandatory handover of documents and records) is in place [...] Special criminal financial investigations have been introduced. [...] More power is given to prosecutors with regard to effecting search and seizure. [...] The appropriate tools are in place for effective international co-operation.

Notwithstanding this generally positive consideration of the regime, the GET is of the opinion that the system may still be improved. [...] There appears to be insufficient sensitivity on the part of the prosecuting authorities to the value of seizure and confiscation measures as a tool for the repression of crime in general and corruption in particular.

The ‘Directive on Special Confiscation’ urges the prosecutors to take action only as long as the amount of proceeds at stake exceeds 500 Euros. Moreover, prosecutors may choose not to initiate the special criminal financial investigation [...] but in case of profits amounting to more than 12.000 Euros. [...] These finan-

cial thresholds may be functioning as a disincentive to a wider use of such measures. [...] The GET recommends to take measures to promote the wider use of seizure/confiscation schemes.

157 As for money laundering, the GET appreciates the effective current reporting system which includes an elaborate and comprehensive set of indicators. Unusual transactions are sent by the reporting entities to the MOT (the Dutch FIU) which processes them (using the assistance of the BLOM – specialized investigative police unit) and sends the suspicious transactions, whenever necessary, to the police. The GET was informed that the police (including the BLOM) are overburdened by the large number of reports they receive and are unable to deal effectively and timely with all of them. [...] The situation could be improved by assigning to the Police units more specialized officers to deal with the reports. Additionally the specific, regular training within the Police should be continued. In view of the above, the GET observes that

11 Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, see: <http://ue.eu.int/uedocs/cmsUpload/directiveonmoneylaundering.pdf>

12 This study was completed and sent to Parliament in August 2005, Public Corruption in the Netherlands, Extent, Nature and Criminal Investigations, summary in English, pages 151–154 in the original Dutch publication *Corruptie in het Nederlandse Openbaar Bestuur, omvang, aard en afdoening*, by L.W.J.C. Huberts en J.M. Nelen, Vrije Universiteit Amsterdam, 2005, xviii and 165 p. The political follow-up of this study-report was the Governmental white paper ‘Nota Corruptiepreventie’, [Corruption prevention] Tweede Kamer der Staten-Generaal, Vergaderjaar 2005–2006, 30 374 nr. 2, KST91693, ISSN 0921–7371, 26 pp.

more specially trained staff should be assigned to the relevant police units, in particular the BLOM, to process suspicious transactions and reports. The staff concerned should also be provided with appropriate training on anti-money laundering procedures and techniques.

## 158 **ad 2. Public Administration and corruption**

The Report describes the situation in 12 paragraphs:

- Definitions and legal framework,
- Anti-corruption policy,
- Transparency,
- Control of Public Administration,
- Recruitment,
- Rotation,
- Training,
- Conflicts of interest,
- Codes of conduct/Ethics,
- Gifts,
- Reporting Corruption,
- Disciplinary Proceedings.

Followed by an analysis:

### QUOTE

In the Netherlands, both public authorities and civil society believe that corruption is not a major problem. The GET was pleased to see that the authorities of the Netherlands remain, however, aware of the potential dangers of corruption. They also recognise that as a result of some past cases of illegal and dishonest activities within the public administration which had attracted considerable public attention, the image of the public ad-

ministration has deteriorated. During the visit, the representatives of the Dutch authorities more directly involved in anti-corruption policies underlined the need for continuous pro-active and preventive actions with regard to integrity. A number of government agencies initiatives designed to prevent corruption and heighten awareness of the threats it incurs for public administration were presented to the GET. Against the background of the Netherlands's traditionally low corruption rates, the GET was impressed by efforts that are nevertheless sustained to prevent corruption. These actions are aimed at enhancing integrity standards at all levels of public administration and at furthermore limiting opportunities for misbehaviour/ wrongdoing of civil servants. Considerable attention is paid to all components related to the integrity of civil servants, objectivity and transparency of their decision-making, including coherent audit and repressive mechanisms.

The GET examined, inter alia, the following statutory texts which had been adopted in recent years: Whistleblower Regulations (2001), Integrity within the Civil Service - a guide for audit - and Guide for Integrity Audits (2002), Guidelines for Integrity Projects (2003), the Public Administration and Police Integrity Policy Document (2003), and the BIBOB Act (Promotion of Integrity Assessment by the Public Administration) (2004). The GET was informed of the preparation by the Ministry of Justice of a new "policy document on corruption"<sup>12</sup> clearly setting out the various parties involved, the measures taken to

combat corruption and the operation of the various processes. This document is focusing on a set of anti-corruption measures, which will support both the preventive and repressive aspects of the anti-corruption policy. It was said to be finalized by the end of September 2005. [See footnote 12]. The GET was also informed that draft amendments to the Civil Servants Act had been submitted to Parliament for consideration, which contain provisions addressed to all public administration organizations aimed, *inter alia*, at:

- pursuing a policy of integrity in order to stimulate proper behavior by civil servants,
- establishing a Code of Conduct,
- reporting each year on integrity policing and on the application of the Code of Conduct,
- establishing an obligation for all civil servants to take on oath of office.

As regards the system for identifying conflicts of interest and ensuring impartiality, the GET noted that there is no general legislation or rule addressing conflicts of interest in the Netherlands. However, there are provisions focusing on outside activities and employment, financial interests and post public employment restrictions. The GET also noted that, with regard to provisions dealing with financial interests, a few civil servants who hold positions with a potential risk to generate a financial conflict of interest are obliged to make financial statements. However, information provided by the civil servants concerned is not reviewed.

In the GET's opinion, prohibiting certain outside activities and requiring asset disclosure helps to prevent conflicts of interest; these measures do, however, not fully address the issue. In this context, the GET considers that further measures are needed in order to establish a set of clear standards for preventing possible conflicts of interest. During the visit, the GET found that written standards or clear guidance to civil servants on the actions they should take in those circumstances where a private interest or activity is not prohibited (such as spouse's employment or teaching) but could, on occasion, conflict with their official duties, was not known by the officials concerned. Therefore, the GET recommends to issue guidelines for use by civil servants when confronted with situations where personal/financial interests or activities may lead to a question of conflict or partiality with regard to the civil servant's actual duties and responsibilities.

The GET noted that no code of conduct or ethical guidelines exist for public administration in general. During the evaluation visit, the GET was told that a proposal for amending the Civil Servants Act in order to include an obligation for all public organisations to draw up a code of conduct for civil servants was under consideration. The representatives of the Dutch authorities met by the GET were not able to clearly indicate when the amendments to the Civil Servants Act would be adopted. The GET recommends to make sure that all public organizations adopt their own code of conduct for civil servants.



## 159 **ad 3. Legal persons and corruption, Reports**

The Report describes the situation as:

- Definition of legal persons,
- Registration and transparency measures,
- Limitations on exercising functions in legal persons,
- Liability of legal persons,
- Sanctions,
- Tax deductibility and fiscal authorities,
- Accounting Rules,
- Role of accountants, auditors, and legal professionals,

160 Followed by an analysis (quoted):

Pursuant to Article 28 of the Dutch Criminal Code (Deprivation of Rights), “a person found guilty may be deprived “, inter alia, of his/her right to hold an office and to exercise “specific professions”, including acting in a leading position in legal persons. However, according to the replies to the questionnaire provided by the Dutch authorities before the visit and information obtained during the visit, this provision has never been used to disqualify persons holding managerial positions in legal persons. The Dutch authorities stated that this is mainly due to the fact that “there are no specific regulations to ensure the effective application of the sanctions” and that the existing provision (Article 28CC) “is not clear enough”. At the time of the on-site visit a draft law was under con-

sideration providing for, inter alia, penal and civil provisions on disqualification of people holding managerial positions in legal persons. The GET recommends to ensure that the regime of disqualification from exercising specific professions is effective in practice in respect of persons acting in a leading position in legal persons.

The liability of a legal person is not dependent on the conviction of a physical person. Criminal proceedings against a physical person suspected of an offence and against the legal person may run in parallel. The criminal liability of legal persons covers, among others, active bribery and money laundering. Trading in influence, which is also included in the scope of Article 18 of the Criminal Law Convention on Corruption, is however not a criminal offence under Dutch law : the Netherlands has made a reservation in this regard at the time of ratification.

A legal person can also be held liable in cases where the offence is due to a lack of supervision or control by a natural person having a leading position within the legal person. Dutch legislation on corporate liability appears to meet the standards of Article 18 of the Criminal Law Convention on Corruption.

In the GET’s view, the existing legal framework concerning corporate liability provides effective tools for combating corruption, notably by speeding up and simplifying the procedure for imposing sanctions on a legal per-

son and making it impossible for the legal person to cover up its responsibility or pass it on to third parties. However, the GET is doubtful whether the penal sanctions envisaged for cases of active bribery and money laundering constitute adequate and effective deterrents for legal persons or copy-cat criminals. The legally prescribed maximum penalty of 450,000 Euros may indeed have the potential of hitting medium-sized companies hard. However, as far as global corporations with an annual turnover of several hundred million euros are concerned, the aforementioned maximum penalty may not constitute a proportionate sanction nor be dissuasive as required by Article 19 of the Criminal Law Convention on Corruption. Therefore, the GET recommends to consider to increase the penal sanctions for legal persons in order to be sure that the sanctions are effective, proportionate and dissuasive.

The existing general rule is that bribes are not deductible in the Netherlands. Tax payers are prohibited from deducting bribes from tax, the precondition being that a criminal conviction has been imposed on the (physical or legal) person concerned or the payment of a fine has been agreed between the person concerned and the public prosecutor's office in order to avoid criminal proceedings. The GET was informed that a bill, already adopted by the House of Representatives and pending before the Senate, will empower tax authorities to refuse the deductibility even before the criminal conviction is pronounced.

In the GET's opinion, tax authorities are sufficiently well trained to be attentive to tax implications of corruption offences. In addition, they are under a legal obligation to report suspected cases of money laundering to the competent body (the MOT – Unusual Transactions Reporting Office) and also to report to the relevant law enforcement agencies, notably to the FIOD-ECD (Fiscal Intelligence and Investigation Service), suspected cases of corruption.

The GET finds that infringements of the accounting obligations – intentionally creating or using false documents or omitting to record payments - are established as criminal offences liable to criminal sanctions (fine or imprisonment). This is in compliance with Article 14 of the Criminal Law Convention on Corruption.

The “Disclosure of Unusual Transactions Act” and the Koninklijk Besluit (Royal Decree) of 24 February 2003, which entered into force on 1st June 2003, provide that “everyone who in the course of its/their profession provides a service is obliged to disclose unusual transactions undertaken or to be undertaken in connection to this service without delay to the Meldpunt Ongebruikelijke Transacties (the Dutch FIU)”.

This includes “persons and institutions” such as accountants, tax advisers and other persons or institutions who in the course of their professions provide certain fiscal and economic services, such as auditors. Besides, auditors have the obligation to report to the

management of the audited corporation any suspicious case of fraud and corruption, and if no “appropriate measure” is taken, the auditors have to report the case to the competent law enforcement agencies.

The GET was informed that in 2004, 54 unusual transaction reports were filed by auditors with the MOT, of which 28 were sent by the MOT to the police as being indicative of suspicious transactions.

## **CONCLUSIONS (of the second round of evaluations)**

In general, the system in place in the Netherlands aimed at depriving offenders of the proceeds of corruption is efficient, with a comprehensive legal framework and a set of institutions responsible for dealing with various aspects of the matter. Legislation in this area is supplemented by the new “Directive on Special Confiscation”, issued in 2005.

Value confiscation is possible and the confiscation of instrumentalities/proceeds found in the possession of a third party is also addressed. Moreover, an efficient system providing for interim measures (search, seizure, mandatory hand-over of documents and records) is also in place. Notwithstanding this generally positive consideration of the regime, the system may still be improved notably by promoting a wider use of the existing seizure and confiscation schemes and by increasing the level of the fine applicable to Article 177a and 178 paragraph 1 of the Criminal Code in order to place these provi-

sions - dealing with some specific cases of corruption - within the overall system of provisional measures, special criminal financial investigation and, subsequently, confiscation.

As regards public administration and corruption, despite the fact that in the Netherlands corruption is not considered to be a major problem, the public authorities remain, however, aware of the potential dangers of corruption and consider that it is important to adopt a continuous pro-active and preventive attitude with regard to integrity in public organisations.

A number of government agencies have been adopting initiatives designed to prevent corruption and heighten awareness of the threats it incurs for public administration. These actions are aimed at enhancing integrity standards at all levels of public administration and at furthermore limiting opportunities for misbehaviour/wrongdoing of civil servants.

However, further measures are needed in order to establish a set of clear standards for preventing possible conflicts of interest. As far as the issue of legal persons and corruption is concerned, the Dutch legislation on corporate liability appears to meet the standards of the Article 18 of the Criminal Law Convention on Corruption. On the other hand, the existing system of deprivation of rights and of sanctions for legal persons need to be revised.

## 162 Recommendations

In view of the above, GRECO addresses the following recommendations to the Netherlands:

1. to take measures to promote the wider use of seizure/confiscation schemes;
2. to increase the level of the fine in relation to Articles 177a and 178 paragraph 1 of the Criminal Code from fourth to fifth category in order to place these provisions within the overall system of provisional measures, special criminal financial investigation and, subsequently, confiscation;
3. to issue guidelines for use by civil servants when confronted with situations where personal/financial interests or activities may lead to a question of conflict or partiality with regard to the civil servant's actual duties and responsibilities;
4. to make sure that all public organisations adopt their own code of conduct for civil servants;
5. to ensure that the regime of disqualification from exercising specific professions is effective in practice in respect of persons acting in a leading position in legal persons;
6. to consider to increase the penal sanctions for legal persons in order to be sure that the sanctions are effective, proportionate and dissuasive.

Moreover, GRECO invites the authorities of the Netherlands to take account of the observation (paragraph 27) in the analytical part of this report.

Finally, pursuant to Rule 30.2 of the Rules of procedure, GRECO invites the authorities of the Netherlands to present a report on the implementation of the above-mentioned recommendations by 30 April 2007.

## 163 Third Evaluation Round, Reports

GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:

- Theme I – *Incriminations*: Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption, Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
- Theme II – *Transparency of party funding*: Articles 8, 11, 12, 13b, 14 and 16 of

Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and – more generally – Guiding Principle 15 (financing of political parties and election campaigns).

See for 3rd round reports:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp)

## 164 Report on Incriminations

GRECO adopted the Third Round Evaluation Report (Greco Eval III Rep (2007) 8E) on the Netherlands at its 38th

Plenary Meeting (Strasbourg, 9–13 June 2008) Theme I, Incriminations (ETS 173 and 191, GPC 2)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2007\)8\\_Netherlands\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2007)8_Netherlands_One_EN.pdf)

## Report on Transparency of Party Funding

GRECO adopted the Third Round Evaluation Report (Greco Eval III Rep (2007) 8E on the Netherlands at its 38th Plenary Meeting (Strasbourg, 9–13 June 2008) Theme II,

Transparency of Party Funding

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2007\)8\\_Netherlands\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2007)8_Netherlands_Two_EN.pdf)

The GET met with officials from the following governmental organisations: the Ministry of Justice, Public Prosecution Service, National Police Internal Investigations Department (Rijksrecherche) and the judiciary. Moreover, the GET met with a criminal defence lawyer and representatives of academia and the Dutch chapter of Transparency International.

## Definitions and sanctions

The ‘Incriminations Report’ opens with definitions and clarifications of concepts used, such as ‘active bribery’ (promising, offering or giving) and ‘passive bribery’ (request or receipt, acceptance of an offer or promise), ‘domestic public official’, ‘undue advantage’ (material and imma-

terial and also including services). Gifts do not have to have a monetary value. This implies that all gifts, including customary gifts of little value (for example representational gifts) potentially fall within the scope of the provisions on bribery.

*The Instruction for the Investigation and Prosecution of Corruption of Public Officials in the Netherlands* (‘Aanwijzing opsporing en vervolging ambtelijke corruptie in Nederland’) reiterates the previous point by stating “as the law does not provide any hard limits, these instructions do not set any limits expressed in euros, on the one hand because accepting/soliciting gifts with a value of – for example – € 50, on more than one occasion may be deserving of prosecution, on the other hand because a relatively small, single bribe leading to an official act would render the case, in the eyes of society, deserving of prosecution”.

Other concepts clarified are ‘directly or indirectly’, ‘for himself or herself or anyone else’, ‘to act or refrain from acting in the exercise of his or her functions’, ‘committed intentionally’.

Later in the report attention is also drawn to the territoriality principle in the Dutch Criminal Code: Dutch criminal law applies to anyone who commits an offence in the Netherlands.

Sanctions are detailed as imprisonment, fines, deprivation of certain rights such as the occupation of a specific public office or public office in general, or in the military and as trustee, confiscation. The maximum sentences for active and passive bribery are comparable with those applicable to other serious financial and economic offences and, in the case of passive bribery, other offences involving 'abuse of office' or 'malfeasance in office'.

### Foreign(ers)

Following an amendment of the Dutch Criminal Code in 2001, bribery of foreign public officials and persons working in the public service of an organization governed by international law, has been criminalized by making the general provisions on bribery of public officials as well as the specific offences involving judges also applicable to foreign officials/judges. The elements of the offence and applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of members of foreign public assemblies, members of international parliamentary assemblies, judges and officials of international courts.

### Trading in influence

The Incriminations-report is very clear with regard to a reservation made by the Netherlands. Trading in influence is not an offence as such in the Netherlands. To

this end, the Netherlands made a reservation to the Convention, which states "In accordance with Article 37, paragraph 1, the Netherlands will not fulfill the obligation under Article 12".

### Article 12, Trading in influence

The full text of this article 12 of the Criminal Law Convention on Corruption, European Treaty Series – No. 173, Strasbourg, 27.I.1999, is:

### Article 12 – Trading in influence

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

See: <http://conventions.coe.int/Treaty/en/Treaties/Word/173.doc>

### Dutch position

The Dutch authorities maintain that certain forms of influence (whether financial

or not) over decisions of public officials or politicians may be lawful, for instance where representatives of interest groups perform lobbying activities. It is only when the lobbying or the attempt to exert influence results in holding out the prospect of specific advantages to public officials who are involved in the decision-making process, that the bounds of propriety are overstepped.

The Dutch authorities contend that at that moment the regular bribery provisions – whether or not in the form of an attempt or in combination with the forms of participation set out in Articles 47 and 48 Criminal Code – come into play, which leads the Dutch authorities to conclude that these provisions already sufficiently provide for adequate protection against unauthorized and actual exertion of influence on the administrative system and no separate offence needs to be established in order for this to be a criminal offence. (See also later p. 107–113, EU-Register of interest representatives, “Lobbyists”).

### **Civil society opinion**

The representative of civil society, on the other hand, was clearly in favor of the introduction of such an offence, although she did not provide the GET with examples of criminal conduct which could presently not be prosecuted in the absence of a provision on trading in influence in the Dutch Criminal Code.

As regards the argument of the Dutch authorities that to regulate this issue would encroach upon legitimate lobbying and free speech, reference is made to the Explanatory Report to the Convention (paragraph 65) which states that “the acknowledged forms of lobbying do not fall under the notion of ‘improper’ influence which must contain a corrupt intent by the influence peddler”.

### **Recommendation: criminalize trading in influence**

As the establishment of trading in influence as a criminal offence permits the authorities to reach the close circle of officials, or the political party to which they belong, and to tackle so-called ‘background corruption’, the GET recommends to consider criminalizing trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) and thus withdrawing or not renewing the reservation relating to this article of the Convention.

### **Analysis by the GET**

Greco Evaluation Team responsible for the third Round reports. (Quote – but shortened from the original text of the analysis in the Report).

The Netherlands appears to have a pragmatic and flexible approach to anti-corruption legislation. [...] The GET welcomes the fact that [...] not one of the interviews held by the GET left it with the impression that the bribery provisions were significantly defi-

cient. This substantiated the GET's view that the Dutch criminal provisions on corruption are on the whole in line with the requirements of the Criminal Law Convention on Corruption [...]. However, this is not to say that there are no issues of concern.

[...]

The provisions on bribery in the public sector, although not always employing the exact terminology used in the Convention and the Additional Protocol, cover all types of acts of active bribery (promising, offering or giving) and passive bribery (request or receipt, acceptance of an offer or a promise). [...] The GET furthermore found it convincingly clear that the provisions cover material and immaterial advantages, direct and indirect bribery, as well as third party beneficiaries.

[...]

Moreover, the GET commends the Dutch authorities for a particularly strong feature of the provisions on passive bribery: the inclusion of the words 'reasonably suspecting' in articles 362 to 364 CC, which ensures that a public official will also be held liable if it can be established that s/he should have understood that s/he received an advantage to do or omit to do something in return. In addition, the GET welcomes the extended applicability of the main provisions on bribery of public officials to also include persons whose appointment as public official is pending as well as former public officials.

## **Public official**

The GET examined in detail the concept of public official in Dutch law. In this re-

gard, the GET also took into account that the Dutch offence of bribery in the private sector is much narrower in scope (see on this issue §§183–185 below) than public sector bribery (and attracts only a maximum sentence of one year's imprisonment, compared to two or four years' imprisonment for public sector bribery). Given the fact that boundaries between the private and public sector are often and increasingly blurred, the GET wanted to make sure that the concept of public official as it is used in the Dutch Criminal Code unequivocally meets the requirements of Article 1 of the Convention.

In this context, the GET noted that the Criminal Code contains no explicit definition of what is to be considered a public official. The GET was informed, however, that it was not unusual in the Dutch criminal law system that certain concepts are not defined in the law. According to the Dutch authorities, by leaving room for interpretation of these concepts to the courts, a certain amount of flexibility of the Criminal Code is guaranteed, which avoids frequent amendments of the law. [...]

Turning to the interpretation of the concept 'public official' deriving from case law, the GET took note of the standard set by a Supreme Court judgment of 1911, which provides that a public official is "anyone who has been appointed by the public authorities to a public po-



sition, in order to perform a part of the duties of the state and its bodies". In a more recent case (1995) the Supreme Court ruled in a similar way that public officials are "those who have been appointed under supervision and responsibility of the government to a position which has a public character to perform part of the tasks of the State or its bodies". The GET was provided with a number of examples of cases (not necessarily corruption cases) in which a person, whose relationship to the public sector was indirect, was deemed to be a public official for the purpose of the Criminal Code – for example a tram driver employed by a privatized public sector company or a security officer of a university. However, a few interlocutors cast doubt on the clarity of who is or is not a public official.

180 Although the GET found that the concept of public official as interpreted by the courts appeared to encompass the functions mentioned in Article 1 of the Convention (and would – as indicated above – pursuant to the explanatory memorandum to the ratification documents also include the functions mentioned in the Additional Protocol), it did agree with some of its interlocutors that the scope of this concept is unclear. In this regard, it had some particular concerns that a person might not be aware that s/he was considered to be a public official for the purpose of the Criminal

Code. In the view of the GET, this could also have a bearing on the guilt of the giver of the advantage, if s/he does not realize that the recipient is to be considered a public official under the Criminal Code and has no reason to think that the receiver of the advantage would not disclose this to his/her employer (which is the crucial element for determining the guilt of a person under the provisions on private sector bribery).

Although it was stressed by the Dutch authorities that ignorance of the law would not be a defense, the GET was also made aware of instances in which courts deemed the extent of the defendant's knowledge as to his/her or another's status as a public official a relevant factor in deciding on the guilt of the person concerned. These particular cases were relatively clear-cut in that the bribe-taker was a person in a relatively high-ranking position, carrying out duties generally regarded as public. However, if a person working for a private company carrying out a task, which is public in nature, does not occupy such a high-ranking position, the situation could very well be less straightforward. The GET took note of the argument of the Dutch authorities that the disadvantage of providing a further clarification of the concept of 'public official' in the law could outweigh its advantages, as providing a clarification in the law could have an inhibiting effect on the development of case-law (cf. a court may be more

readily inclined to judge that the bribe-taker is not a public official if his/her function does not correspond with the definition provided by the law in a strict sense).

### **Recommendation: define ‘public official’**

Nevertheless, despite the sympathy the GET has for these arguments, the GET also considers that public tasks are now so often performed by private entities and the fact that – unlike the other examples mentioned above of undefined legal concepts – whether someone is a public official (or not) may have a bearing on the guilt of the parties concerned. The GET therefore finds that it should be analyzed if – despite the aforementioned disadvantage – there is a need, for the sake of legal certainty, to define the groups of persons/functions, which would be covered by the term ‘public official’ in the provisions on bribery in the Criminal Code. Therefore, the GET recommends to analyze if there is a need, for the sake of legal certainty, to clarify which functions are covered by the notion of ‘public official’ in articles 177, 177a, 362 and 363 of the Criminal Code.

[...]

### **Causal link between act and advantage**

The GET discussed at length the extent to which a relationship between the advantage and act needed to be established, also in light of the remarks of a few interlocutors that the courts may ask

for a causal link between the two to be demonstrated [...]

The Dutch authorities pointed out that the [...] words “reasonably suspecting” have been included in articles 362 to 364 CC, which unequivocally establish that a public official will also be held liable if it can be determined that s/he should have understood that s/he received an advantage to get him/her to do or omit to do something in return.

In addition, the Dutch authorities have referred to a judgment [...] that bribery “is not just limited to situations in which there is a direct relationship between the gift/promise on the one hand and the concrete act in return on the other hand. It also encompasses situations in which a gift is provided or a promise made to a public official to form and/or maintain a relationship with the public official with the aim of obtaining preferential treatment.” Considering that the judgments of the Supreme Court guide the lower courts in their interpretation of the law, the GET trusts that this case further clarifies the extent to which a direct causal link between the bribe and a specific act needs to be demonstrated in practice.

### **Bribery in the private sector**

Turning to bribery in the private sector, the GET was surprised to note how differently this offence was formulated compared to bribery in the public sector. While that in itself would not pose particular problems, crucial elements of the

offence which are covered by the provisions on public sector bribery, seem to be excluded from article 328ter CC on bribery in the private sector.

Elements such as ‘request’ or ‘acceptance of an offer’ are not covered as regards passive bribery (article 328ter, paragraph 1, CC), an ‘offer’ is not included in the provision on active private sector bribery (article 328ter, paragraph 2, CC) and the notion of ‘service’ which has been included in the provision on public sector bribery is absent from article 328ter CC.

The Dutch authorities met on-site explained that it was widely accepted that the elements present in the provisions on public sector corruption would by analogy also be applicable to the private sector offence. Other interlocutors, however, cast some doubt on this assertion by indicating that although this would be true regarding identical elements in the provisions on public and private sector bribery (for example, the meaning of the concept ‘gift’), it would perhaps not go as far as filling in elements of the offence which are not already included in the relevant provision.

[...]

Nevertheless, the GET is of the opinion that the terminology currently used in article 328ter CC leaves significant room for improvement.

[...]

## **Recommendation: align private and public bribery**

In short, the GET takes the view that any doubts as to the scope of the provision on private sector bribery and – more in particular – the extent to which certain conduct and key elements prescribed by Articles 7 and 8 of the Convention are covered by article 328ter CC, must be removed. Therefore, the GET recommends to amend the provision on private sector bribery aligning it more closely to the provisions on public sector bribery, to ensure that it is fully in line with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).

## **Territorial jurisdiction**

The GET was pleased to note the broad provision on territorial jurisdiction in the Netherlands by application of the principle of ubiquity as well as article 6 CC which establishes jurisdiction over passive public sector bribery committed by Dutch public officials (not necessarily being Dutch nationals) abroad. However, the GET found the other provisions on jurisdiction rather complicated.

The same can be said of the reservation the Netherlands has made to the Convention, which took the GET some time to untangle, but which was regarded by the authorities met on-site to be more of a clarification than a reservation. Whereas – as already indicated above – the Netherlands has jurisdiction as regards passive bribery by Dutch public of-

ficials abroad, the reservation establishes that Dutch jurisdiction over active and passive bribery offences committed by Dutch citizens abroad is subject to dual criminality. The GET received assurances that the dual criminality requirement was interpreted broadly, whereby courts would look at whether the nature of the behavior in question was criminal in the Netherlands rather than whether it would be formulated in exactly the same manner in the foreign jurisdiction. [...]

### **Recommendation: abolish dual criminality**

In light of the fact that the GET was not provided with any justification why a dual criminality requirement would need to be maintained for corruption offences, the GET recommends to consider abolishing the dual criminality requirement for corruption offences committed abroad and thus withdrawing or not renewing the reservation made to Article 17 of the Criminal Law Convention on Corruption (ETS 173).

### **Low sanctions**

As regards sanctions, in comparison to many other GRECO member states, the

level of sanctions for certain bribery offences appears to be rather low (one year for private sector bribery, two years for public sector bribery not involving a breach of duty), even when taking into account that the courts can impose a fine in addition to a term of imprisonment (see paragraph 35 above) as well as 'ordinary confiscation'. As expected, the sanctions are even lower in practice, upon taking mitigating circumstances<sup>13</sup> into account. More importantly, however, is that the sanctions for corruption offences cannot in all cases be said to be of a relatively equal level to that of other comparable offences under Dutch Criminal Law. For example, the maximum sanction for embezzlement (article 321 CC) is three years' imprisonment, for fraud (article 326 CC) four years' imprisonment and for embezzlement of funds while holding a public office (article 359 CC) six years' imprisonment.

The GET has doubts as to whether the existing sanctions for private sector bribery are dissuasive enough to meet the requirements of the Convention and would also find it advisable if due consideration is given to raising the level of

<sup>13</sup> Mitigating circumstances taken into consideration by the court are not only that the person concerned would be a first time offender, but also that the offence had been committed a long time ago, the public body for which the offender worked did not seem to regard the promulgation and strengthening of ethical standards a matter of priority (cf. District Court Utrecht, 22 November 2005, LJN: AU6581), the offender had to give up his position/status as a public official (cf. District Court Rotterdam, 15 December 2004, 10/000130-02), the case had generated a large amount of publicity and/or disciplinary sanctions had already been imposed on the offender (cf. District Court Roermond, 14 April 2004, LJN AO 7566).

sanctions for public sector bribery not involving a breach of duty, to bring it more in line with the sanctions for other (comparable) offences. In this regard, the GET also wishes to stress that corruption does not only represent a mere economic offence, but “threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice”, as outlined in the preamble to the Convention.

### **Recommendation: increase sanctions**

Therefore the GET recommends to increase the sanctions for private sector bribery (article 328ter of the Criminal Code) and to consider increasing the sanctions for public sector bribery not involving a breach of duty (articles 177a and 362, paragraph 1, of the Criminal Code), ensuring that the sanctions for these offences are effective, proportionate and dissuasive in practice, as required by Article 19 of the Criminal Law Convention on Corruption (ETS 173).

### **Netherlands Antilles and Aruba**

Finally, the GET took note of the declaration of the Netherlands contained in the instrument of its acceptance of the Convention and the Additional Protocol in which the territorial application of the Convention and its Additional Protocol is restricted to the Kingdom of the Netherlands in Europe: the Convention and Additional Protocol thus do not apply to the Netherlands Antilles and Aruba.

Article 34 of the Convention explicitly allows states to specify the territory to which the Convention shall apply. Nevertheless, the GET was not made aware of the reasons why the Netherlands Antilles and Aruba had not acceded to the Convention and the Additional Protocol.

The GET merely notes that the *Civil Law Convention on Corruption* (ETS 174), which was recently ratified by the Netherlands, is also applicable to the Netherlands Antilles (but not Aruba) and that other Council of Europe Conventions, such as the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (ETS 141), apply to both the Netherlands Antilles and Aruba. In view of this, and also considering the priorities formulated by the current Dutch government to work together with Aruba, Curacao, Sint Maarten, Bonaire, Sint Eustatius and Saba on an administration that is efficient, transparent and upright and the process of political reform currently underway in the Kingdom, the GET would find it advisable that efforts are made to ensure that the legal provisions on corruption in all countries of the Kingdom of the Netherlands comply with the requirements of the Convention and the Additional Protocol.

Therefore, the GET recommends to give high priority, in the process of political reform currently underway in the Kingdom of the Netherlands, to bringing

the legislation of all countries of the Kingdom into line with the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191).

## CONCLUSIONS (OF THE GET)

Overall, the Dutch legal framework for the criminalization of corruption complies with the standards of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191).

It is clear that the relevant provisions on public sector bribery (articles 177, 177a, 362 and 363 of the Criminal Code) cover the different types of corrupt behaviour laid down in the Convention and the Additional Protocol, the required categories of functions, material and immaterial advantages, direct and indirect bribery, as well as third party beneficiaries.

With the 2001 amendments to the Criminal Code a particularly strong feature was included in the provisions on passive public sector bribery with the words “reasonably suspecting”, which ensure that a public official can also be held liable if it can be established that s/he should have understood that s/he received an advantage to do or omit to do something in return. In turn, the legal provisions seem to be broadly interpreted by prosecutors and judges alike and the case-law built up underscores the

broad scope of the provisions under evaluation.

Nevertheless, a limited number of issues were identified, which would warrant further attention.

This concerns, in particular, the provision on private sector bribery in article 328ter of the Criminal Code, which would benefit from amendments, ensuring that it is fully in line with the requirements of Articles 7 and 8 of the Convention and to avoid any confusion in practice as to the extent to which certain corrupt conduct is covered by this article. Furthermore, as regards public sector bribery, the Netherlands is urged to analyze whether there is a need, for the sake of legal certainty, to clarify the term ‘public official’ as used in articles 177, 177a, 362 and 363 of the Criminal Code. Moreover, the Netherlands is called upon to reconsider its position concerning the reservations it has made to Articles 12 and 17 of the Convention, concerning trading in influence and jurisdiction respectively. The Netherlands is also asked to increase the sanctions for private sector bribery and to consider increasing the sanctions for public sector bribery not involving a breach of duty to ensure that these are effective, proportionate and dissuasive in practice.

Finally, in light of the importance of a congruent fight against corruption

across the Kingdom of the Netherlands, attention is drawn to the need to give high priority to bringing the legislation of all countries of the Kingdom into line with the Convention and the Additional Protocol in the process of political reform currently underway.

## Recommendations of the GET to the Netherlands

In view of the above, GRECO addresses the following recommendations to the Netherlands:

- i. to analyze if there is a need, for the sake of legal certainty, to clarify which functions are covered by the notion of 'public official' in articles 177, 177a, 362 and 363 of the Criminal Code;
- ii. to amend the provision on private sector bribery aligning it more closely to the provisions on public sector bribery, to ensure that it is fully in line with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 90);
- iii. to consider criminalizing trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) and thus withdrawing or not renewing the reservation relating to this article of the Convention (paragraph 91);
- iv. to consider abolishing the dual crimi-

nality requirement for corruption offences committed abroad and thus withdrawing or not renewing the reservation made to Article 17 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 92);

- v. to increase the sanctions for private sector bribery (article 328ter of the Criminal Code) and to consider increasing the sanctions for public sector bribery not involving a breach of duty (articles 177a and 362, paragraph 1, of the Criminal Code), ensuring that the sanctions for these offences are effective, proportionate and dissuasive in practice, as required by Article 19 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 93);
- vi. to give high priority, in the process of political reform currently underway in the Kingdom of the Netherlands, to bringing the legislation of all countries of the Kingdom into line with the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191) (paragraph 94).

In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the Netherlands to present a report on the implementation of the abovementioned recommendations by 31 December 2009.

# TI – TRANSPARENCY INTERNATIONAL

## THE GLOBAL COALITION AGAINST CORRUPTION

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### INTRODUCTION

197  
Transparency International (TI)<sup>14</sup> defines itself as

‘the global civil society organization leading the fight against corruption that brings people together in a powerful worldwide coalition to end the devastating impact of corruption on men, women and children around the world.’

Transparency International (TI) has broadened its focus over the years. In 1993, its goal was to combat corruption in international business transactions. Because of this rather limited focus, TI’s activity was essentially restricted to so-called ‘grand corruption’.

By 1994, petty corruption had been added to its mandate, and the restriction of tackling only corruption in international business transactions was lifted. In subsequent years, the subject of corporate ethics was added to TI’s remit.

In the early years, emphasis was placed firmly on corruption in developing countries. Later, corrupt practices in developed economies attracted much more attention. However, of the 32 country reports in the Global Corruption Report 2007, only three are European states: Czech Republic, Romania, and the UK; the remainder are developing countries. TI opposes (in a decision of the Membership meeting of 28 October 2007) the use of so-called ‘facilitating’ or ‘expediting’ payments, the purpose of which is to expedite or secure the performance of routine governmental actions, although the OECD Anti Bribery Convention as well as numerous other conventions and laws allow them to be made to foreign public officials. (The Dutch Government is not outspoken firmly against these). The inclusion of petty and local corruption in TI’s pro-

<sup>14</sup> www.transparency.org. See also *Handbook of Transnational Economic Governance Regimes*, edited by Christian Tietje & Alan Brouder, 1073 pages, Chapter *Transparency International* by Michel van Hulten, p. 243–252. Martinus Nijhoff Publishers, Leiden/Boston, © 2009 Koninklijke Brill NV, Leiden, the Netherlands. <http://www.brill.nl>.



gram of action was needed as the small sums that ordinary people in many countries of the world have to pay daily to the policeman, the nurse, the schoolteacher, affect their lives directly.

Although the problem of international business and grand corruption is of greater importance, and therefore attracted most attention by the TI founders, it does not mobilize the people. This explains also the name changes of TI over the years in its subtitles: In 1993 the name used was 'Transparency International ... the coalition against corruption in international business transactions.' In the biography of Peter Eigen on the TI website, the organization was later described as 'an NGO promoting transparency and accountability in international development'. In the Annual Report of 1999 we read: 'Transparency International, the coalition against corruption'. In June 2007: 'Transparency International is the global civil society organization leading the fight against corruption.'

### TI indices, surveys, and other tools

TI seeks to provide reliable qualitative and quantitative diagnostic means regarding levels of transparency and corruption ('scores'), at global as well as on regional and local levels. From three of these we will show the results for the Netherlands. Those readers that want to see the full reports on the scores of

countries quantifying the extent of corruption of all countries included in those respective reports published since 1995, they are advised to visit the TI website home page: [www.transparency.org](http://www.transparency.org) → *surveys and indices* →

## CORRUPTION PERCEPTIONS INDEX (CPI)

### Introduction

The annual TI Corruption Perceptions Index (CPI), first released in 1995, is the best known of TI's tools. It has been widely credited for putting TI and the issue of corruption on the international policy agenda. The CPI ranks now more than 150 countries in terms of perceived levels of corruption, as determined by expert assessments and opinion surveys.

### Doubts

A growing number of researchers doubts the quality and validity of the methodology used for calculating the scores per country which are subsequently used to rank the countries from least to most corrupt (that is from 10 to 1). The ranking attracts global attention every year: did a country climb on the list? This is particularly important, as these rankings influence aid-allocation decisions by several governments, and investment decisions by companies. In particular the bias in the choice of surveys and of respondents means that poor countries inevitably end at the bottom of the list.

Neither the TI Board nor the International Secretariat in Berlin, seems to take the criticism seriously. For more on these methodological problems, go to [www.corruptie.org](http://www.corruptie.org) and see the report: Ten Years of Corruption (Perceptions) Indices 1995–2005: Methods – Results – What Next?

### Indices of Perceptions

The research on data which lead to the corruption scores are no more than studies of the perceptions of people from a very small part of society: mostly trade-businessmen who make judgments on the basis of their daily experiences. In

1995, this was acceptable as not much research had yet been done. In 2009 we dispose of scores of studies dealing with qualifying and quantifying corruption. Their outcomes could be used. If anyone would be satisfied with using only ‘perceptions of the prevalence of corruption’ instead of facts, the least that should be done is to include also the perceptions of women, consumers, the sick and the poor, the powerless, public officials, elected politicians, minorities, the old and the young, blue-collar-workers, and investigative journalists. All of these, as well as francophone and lusophone sources, are missing.

YEAR	SCORE	RANK	Remarks
1995	8.69	9	
1996	8.71	9	
1997	9.03	6	
1998	9.0	8/9	Ex aequo with Norway 9
1999	9.0	8	
2000	8.9	9	
2001	8.8	8	
2002	9.0	7/8/9	Ex aequo with Luxembourg 8 and Canada 7
2003	8.9	7	
2004	8.7	10	
2005	8.6	11/12	Ex aequo with UK 12
2006	8.7	9/10	Ex aequo with Australia 9
2007	9.0	7/8	Ex aequo with Switzerland 8
2008	8.9	7/8	Ex aequo with Iceland 7
2009	8.9	7/6	Ex aequo with Finland 6

Table CPI 1995–2009 for the Netherlands

Despite these cautionary remarks, we look at the data for the Netherlands from 1995 till 2009, because they are also used in Dutch politics to substantiate the claim that the country is not corrupt and that bribing is not recognized as a 'management tool' needed for purposes of competition inside the country or abroad. It should be repeated again and again, that this is not the conclusion of the CPI researcher Professor Johann Graf Lambsdorff of Passau University in Germany. It is not facts that deliver the scores, but it is perceptions that do.

It is clear from this table that the perceptions held overseas concerning the integrity of the Dutch are high. The 'scores' fluctuate between 8.6 and 9.0, not far off the maximum score of 10.0. The ranking position results from comparing scores and ordering countries accordingly. If scores are equal, alphabetical order is used in their table. TI gives shared rankings to countries that end up with equal scores although this can be too difficult for some parts of the media, which likes to present individual ranks. The effect is apparent when we compare the situations in 2007 and 2008. Although the Netherlands shared 7th and 8th places with another country in each year, in 2007 the Netherlands was seen as coming 7th, in front of Switzerland, but 8th in 2008, behind Iceland, on alphabetical grounds. As such, adopting the name Holland, would have improved the Netherlands' standing in 2008!

BRIBE PAYERS' INDEX – BPI  
2008–2006–2002–1999

## Introduction

Feelings worldwide were that the CPI was unbalanced as it stresses too much the receivers of bribes and that therefore developing countries score in the lower echelons on integrity.

## Bribe takers – bribe payers

Much blame has been apportioned over the years to the bribe takers – those who pocket the wealth and take advantage of the influence and authority that corruption affords them. And, indeed, bribe takers must be exposed, prosecuted and appropriately punished. The systems that breed this behavior require holistic reform, so that bribes are not demanded in the first place.

TI believes it is also critical to shine a spotlight on the bribe payers – whose supply of bribes, irregular payments and other forms of influence-buying fuel the machinery of corruption.

Therefore the Bribe Payers' Index (BPI) was introduced as a counterbalance to the CPI. It measures the supply side of corruption, i.e. the propensity of leading exporting firms to bribe abroad while being 'clean' at home. To date, the BPI has only been conducted in 1999, 2002, 2006 and 2008.

[http://www.transparency.org/policy\\_research/surveys\\_indices/bpi](http://www.transparency.org/policy_research/surveys_indices/bpi)

## **BPI-2008**

The rank-order of the countries in the following table is the one that resulted in 2008. Other country-names (additional in the other years) have been inserted following the order of their scores. To enable comparisons the results of the TI-published previous BPI's have been given as well.

(For 2008 see: 2008\_BPI\_report\_final\_08\_12[1].pdf, ISBN: 978-3-935711-10-4).

## **Ranking of 22 leading exporting countries**

TI's 2008 BPI ranks 22 leading international and regional exporting countries by the tendency of their firms to bribe abroad. The combined global exports of goods and services and outflows of foreign direct investment of these 22 countries represented 75 percent of the world total in 2006. The 2008 BPI is based on the responses of 2,742 senior business executives from companies in 26 developed and developing countries, chosen by the volume of their imports and inflows of foreign direct investment.

## **Respondents from 26 countries strong in importing FDI and goods**

The 2008 Bribe Payers Survey is a survey of senior business executives: 2,742 respondents in 26 countries, representing 54 percent of the world import flows in 2006 of Foreign Direct Investments and import of goods. Interviews include a wide range of questions about the nature, scope and impact of bribery and corruption.

The 2008 Bribe Payers Survey was designed and commissioned by Transparency International and implemented on behalf of Transparency International by Gallup International Association, which was selected by TI through a competitive public tendering process.

From the BPI 2008 list of 22 countries, business executives from the 26 countries surveyed were asked to select up to five countries with which they have had the most business contact when working in their region during the past five years. Only these countries were then evaluated.

0.6 percent of respondents answered the question for more than five countries and their responses were also used for the analysis as they did not alter results.

## **Financing of the surveys**

The 2008 Bribe Payers Survey and the 2008 Bribe Payers Index are made possible by support of Ernst & Young, the German Federal Ministry for Economic Cooperation and Development (BMZ) and the Norwegian Agency for Development Cooperation (NORAD). Transparency International's Secretariat, notes that it does not endorse an organization's or a company's policies by accepting its financial support, and does not involve any of its supporters in the management of its projects. For more on Transparency International's sources of funding, see [www.transparency.org/support\\_us](http://www.transparency.org/support_us).

## 213 Questions asked

The two questions on which the 2008 BPI draws are:

‘In your principal lines of business in this country, do you have business relationships (for example as a supplier, client, partner or competitor) with companies whose headquarters are located in these countries listed above?’ Respondents are presented a list of names of the 22 countries.

Then, for each country selected, respondents had to score the country on a 5-point scale system (from 1=never to 5=almost always) answering the following question:

‘How often do firms headquartered in (country name) engage in bribery in this country?’ The average number of countries rated by each respondent was four.

## 214 Coverage and timing of fieldwork

The Bribe Payers Survey was conducted in 26 countries: Argentina, Brazil, Chile, the Czech Republic, Egypt, France, Germany, Ghana, Hungary, India, Indonesia, Japan, Malaysia, Mexico, Morocco, Nigeria, Pakistan, the Philippines, Poland, Russia, Senegal, Singapore, South Africa, South Korea, the United Kingdom and the United States.

The fieldwork for the survey was conducted between 5 August and 29 October 2008.

## 215 Hypocrisy

The following ‘table with scores and ranks’ is in need of at least one additional cautionary remark that comes straight from Transparency International. This warning was published with the 2006-BPI<sup>15</sup>.

There is no reason to think that the warning is less valid for the results in 2008.

### QUOTE

Perhaps the most significant finding regarding the comparison of assessments by respondents in LICs [Low Income Countries] and OECD countries is the apparent double standard employed by foreign companies in the two groups. While the scores for companies from the majority of countries tend to be considerably higher in the OECD than in the full sample, their performance falls when looking at scores in LICs. Thus it would seem that many foreign companies do not resort to bribery while operating in the ‘developed’ world, where institutions are strong and there is a significant threat of legal retribution for illegal activities. However, in LICs, many of which are characterised by poor governance and ineffective legal systems for dealing with corruption, it appears that many companies resort to corrupt practices. The result is that the countries least equipped to deal with corruption are

15 Transparency International, Bribe Payers Index (BPI) 2006, Analysis Report, Release date: 4 October 2006, Policy and Research Department, TI – International Secretariat, page 10:

hardest hit, with their anti-corruption initiatives undermined. This helps trap many of the world's most disadvantaged people in chronic poverty.

The greatest difference in score when looking at responses from OECD countries and from LICs relates to companies from the United Arab Emirates.

Responses from OECD countries give these companies a score of 7.9. Taking account of assessments by LICs, it falls 2.6 points to just 5.3. Similar changes in behaviour are evident for the majority of the countries covered in the BPI. The deterioration of companies' behaviour of the worst performing countries in the BPI – India, China and Russia – when operating in LICs is also alarming. India stands out with a score of just 3.6, a fall of 1.9 points from its score in the OECD countries.

END OF QUOTE

## TI-conclusion

The TI-conclusion is: This apparent tendency for companies to let standards slip when working in countries with less stringent regulations than their home countries is alarming, and underlines the need for governments to take responsibility for the way their companies do business abroad as well as at home.

For the Netherlands no detailed reporting at this point has been published. We must do with the more general remark about OECD-countries behavior.

## Table with scores and ranks

Scores range from 0 to 10, indicating the likelihood of firms headquartered in these countries to bribe when operating abroad. The higher the score for the country, the lower is the likelihood of companies from this country to engage in bribery when doing business abroad, data for 2008, 2006, 2002 and 1999.

## TI concluded in 2008

Most of the world's wealthiest countries already subscribe to a ban on foreign bribery under the OECD Anti-Bribery Convention, a crucial international legal instrument that focuses on the supply side of international bribery. Nevertheless, there is little awareness of the convention among the senior business executives interviewed in the Bribe Payers Survey.

## Business executives unfamiliar with OECD-Convention

While the Convention's enforcement has been inconsistent across OECD countries, it remains a primary reference point for the fight against international bribery. It is therefore both a surprise and a concern for TI that three-quarters of senior business executives participating in the 2008 Bribe Payers Survey indicated that they were not at all familiar with the OECD Anti-Bribery Convention – with the least familiarity of all indicated by respondents from Western Europe and the United States.

Country/Territory	Rank				BPI-score			
	08	06	02	99	08	06	02	99
Belgium	1	9	6	8	8.8	7.22	7.8	6.8
Canada	1	5	5	2	8.8	7.46	8.1	8.1
Netherlands	3	8	6	6	8.7	7.28	7.8	7.4
Switzerland	3	1	2	5	8.7	7.81	8.4	7.7
Sweden		2	2	1		7.62	8.4	8.3
Germany	5	7	9	9	8.6	7.34	6.3	6.2
UK	5	6	8	7	8.6	7.39	6.9	7.2
Japan	5	11	13	14	8.6	7.10	5.3	5.1
Australia	8	3	1	2	8.5	7.59	8.5	8.1
Austria		4	4	4		7.50	8.2	7.8
France	9	15	12	13	8.1	6.50	5.5	5.2
Portugal		16				6.47		
Singapore	9	12	9	11	8.1	6.78	6.3	5.7
USA	9	9	13	9	8.1	7.22	5.3	6.2
Spain	12	13	11	12	7.9	6.63	5.8	5.3
UAE		14				6.62		
Hong Kong	13	18	15		7.6	6.01	4.3	
Israel		18				6.01		
Sth Africa	14	24			7.5	5.61		
Malaysia		25	15	15		5.59	4.3	3.9
Sth Korea	14	21	18	18	7.5	5.83	3.9	3.4
Saudi Arabia	22					5.75		
Taiwan	14	26	19	17	7.5	5.41	3.8	3.5
Turkey		27				5.23		
Italy	17	20	17	16	7.4	5.94	4.1	3.7
Brazil	17	23			7.4	5.65		
India	19	30			6.8	4.62		
Mexico	20	17			6.6	6.45		
China	21	29	20	19	6.5	4.94	3.5	3.1
Russia	22	28	21		5.9	5.16	3.2	

It was also surprising that senior business executives from higher income countries were less familiar with the Convention than those from lower income countries: 79 percent as opposed to 68 percent respectively were 'not at all familiar' with the Convention.

Furthermore, respondents from foreign-owned companies showed less knowledge than those from domestically-owned firms: 67 percent as opposed to 77 percent respectively were 'not at all familiar' with the Convention.

### **The Netherlands**

For the Netherlands we can look at some detailed data in the BPI-report 2008, based on the answers by respondents to the question of 'how often do firms headquartered in the Netherlands engage in bribery?'

If related to 'high ranking politicians or political parties', than bribery was confirmed by 4% of the respondents. If related to 'low-level public officials' in order to 'speed things up', than it was 7%, and 'use of personal and familiar relationships on public contracting' was confirmed by 5%.

The BPI-2008 results confirm once more that enterprises from the Netherlands score rather good and always among the first ten, with scores between 7.4 and 8.7 out of a maximum of 10.

### **BPI-1999**

The first TI-Bribe Payers Index (BPI) ranked 19 leading exporting countries in terms of the degree to which their companies are perceived to be paying bribes abroad. On behalf of TI, it was Gallup International Association (GIA) in 1999 that conducted 779 in-depth interviews with private sector leaders in 14 emerging market economies. These combined to account for over 60% of imports of all emerging market economies, namely India, Indonesia, Philippines, South Korea, Thailand, Argentina, Brazil, Colombia, Hungary, Poland, Russia, Morocco, Nigeria, South Africa. The survey was conducted from April to July 1999. The BPI was published by TI on October 26, 1999.

The Netherlands' score was 7.4, rank 6.

The 779 interviews included approximately 55 interviews in each country. About one third (230) of the respondents were senior executives, resident in emerging market countries, who are employed by major foreign companies and about one third (236) represent major national companies. Then, 84 of those questioned were top executives at chartered accountancies, 76 were at bi-national chambers of commerce, 78 were at national and foreign commercial banks, and 75 were at commercial law firms.

For only some of the questions detailed information is given per country.



- In the business sectors with which you are familiar, are there other means [besides bribery] by which some governments gain unfair business advantages for their companies?

Answer yes 69%, no 31%.

- What governments do you principally associate with these practices?

The Netherlands came out with 8%, lowest Switzerland with 6% and highest USA with 61%.

In the report TI stated:

Diplomatic or political pressures were seen by the survey respondents as the leading unfair business practice apart from bribery. In fact, today almost all countries use their foreign embassies, notably their commercial departments, to build and secure business opportunities. Some diplomatic services do this more effectively than others and some, notably from large industrial countries, have greater political access and influence, which may well strengthen the competitive positioning of their companies.

In the Netherlands it is confirmed government policy to instruct the embassies to be helpful to Dutch business. How far this help goes, and whether it becomes unfair, is unknown.

## **BPI-2002**

The Netherlands' rank in 2002 was 6 (ex aequo with Belgium), score 7.8 from among 21 exporters listed in the BPI

2002: Australia, Austria, Belgium, Canada, China, France, Germany, Hong Kong, Italy, Japan, Malaysia, Netherlands, Russia, Singapore, South Korea, Spain, Sweden, Switzerland, Taiwan, United Kingdom, USA, in addition to "this country" (the emerging market economy where the respondent is resident).

## **The Netherlands**

The basic question in the interview related to the likelihood of companies from the 21 leading exporting countries to pay bribes to senior public officials in the surveyed 15 emerging market countries. Outcomes are not given per country, except for the question:

Which three governments do you principally associate with practices such as diplomatic, political or financial pressure, commercial/pricing issues, tied foreign aid or threat to reduce foreign aid, tied defense/arms deals, favors/gifts to officials, tied scholarships/education/health care?

Lowest scores are for Sweden (<1), Australia, Austria and Hong Kong (1%), highest scores USA 58% and France 26%. The Netherlands: 3%.

## **BPI-2006**

From TI's press information:

Foreign bribery by emerging export powers "disconcertingly high".

Overseas bribery by companies from the world's export giants is still common, despite

the existence of international anti-bribery laws criminalizing this practice, according to the Transparency International 2006 Bribe Payers Index (BPI), the most comprehensive survey of its kind to date.

From 2006 onwards the number of countries and of interviewees in order to establish the Bribe Payers' Index grows considerably. The survey ranks 30 of the leading exporting countries according to the propensity of firms with headquarters within their borders to bribe when operating abroad. It is based on the responses of 11,232 business executives [of whom 3,198 of the 11,232 respondents surveyed (28 percent) did not offer an assessment on any country regarding the likelihood of their firms to bribe abroad]. The others, from companies in 125 countries, answered to two questions about the business practices of foreign firms operating in their country, as part of the World Economic Forum's Executive Opinion Survey 2006.

To assess the international supply-side of bribery, executives are asked about the propensity of foreign firms that do the most business in their country to pay bribes or to make undocumented extra payments. The survey is anonymous.

The non-response by 3,198 could reflect a lack of knowledge or an unwillingness to answer. The BPI 2006 was therefore calculated using the scores given by the

8,034 respondents who did offer an assessment of companies from at least one country.

## **Countries ranked in 2006**

The 30 economies ranked in the BPI are: Australia, Austria, Belgium, Brazil, Canada, China, France, Germany, Hong Kong, India, Israel, Italy, Japan, Malaysia, Mexico, the Netherlands, Portugal, Russia, Saudi Arabia, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Turkey, the United Arab Emirates, the United Kingdom and the United States.

These countries are among the leading international or regional exporting countries, whose combined global exports represented 82 percent of the world total in 2005.

## **The Netherlands**

The Netherlands rank 8 with a score of 7.28 (the Dutch share in global exports in 2005 is 3.4%).

Among the results, the Netherlands is classified in 'cluster 1': the countries from which companies are least likely to bribe when doing business abroad. The others are: Switzerland, Sweden, Australia, Austria, Canada, UK, Germany, Belgium, US, Japan. Nevertheless, the report says also that 'all countries in the survey show a considerable propensity to pay bribes'.

# TI-GLOBAL CORRUPTION BAROMETER (GCB)

[http://www.transparency.org/policy\\_research/surveys\\_indices/gcb](http://www.transparency.org/policy_research/surveys_indices/gcb)

## INTRODUCTION

The annual TI-Global Corruption Barometer (GCB, since 2003) is a public opinion survey that assesses the general public's perception and experience of corruption in more than 60 countries around the world, implemented on behalf of TI by Gallup International.

The Barometer was first established in 2003, so far yearly repeated except in 2008. The Netherlands have been included in all published 'Barometers'. The questions asked in the Barometer are not the same for each edition, so time comparisons are limited to questions that have been included in two or more editions.

The Global Corruption Barometer is a public opinion survey that assesses the general public's perceptions of corruption and experience with bribery. In most of the countries evaluated, the survey is carried out on behalf of Transparency International by Gallup International as part of its Voice of the People Survey. In other countries, TI commissions polling organizations to run the survey specifically for the Barometer.

The Barometer is designed to complement the expert opinions on public sector corruption provided by TI's Corruption Perceptions Index and the views of senior business executives on international bribery flows reflected in TI's Bribe Payers Index. It also aims to provide information on trends in public perceptions of corruption. The Barometer enables assessments of change over time; in terms of the institutions deemed to be most corrupt, the effectiveness of governments' efforts to fight corruption, and the proportion of citizens paying bribes.

## Global Corruption Barometer 2009

The 'Executive Summary' of the report is quoted in full length, and followed by specific findings for the Netherlands as reported in the full report<sup>16</sup>. Also reproduced here are the findings for the regional grouping of countries indicated as EU+ (EU-member states and Iceland, Israel, Norway and Switzerland) as this gives some more perspective to the Dutch data.

EU+ does not mean that all EU-countries are included. It is most interesting to see that France and Germany are not included in this research in 2009, no reason

<sup>16</sup> See: [global\\_corruption\\_barometer\\_2009\\_web\[1\].pdf](#)

given. Also missing are Belgium, Estonia, Latvia (while Lithuania is present), Slovakia, Slovenia and Sweden. The more so this is interesting as Belgium, France and Germany were present in the 2007 edition.

Transparency International's 2009 Global Corruption Barometer (the Barometer) presents the main findings of a public opinion survey that explores the general public's views of corruption, as well as experiences of bribery around the world. It assesses the extent to which key institutions and public services are perceived to be corrupt, measures citizens' views on government efforts to fight corruption, and this year (2009), for the first time, includes questions about the level of 'state capture' and people's willingness to pay a premium for clean corporate behavior.

## Findings

The 2009 Barometer interviewed 73,132 people in 69 countries and territories between October 2008 and February 2009. The main findings are aggregated in five conclusions:

1. Corruption in and by the private sector is of growing concern to the general public.

- The private sector is perceived to be corrupt by half of those interviewed: a notable increase of eight percentage points compared to five years ago.

- The general public is critical of the private sector's role in their countries' policy making processes. More than half of respondents held the view that bribery is often used to shape policies and regulations in companies' favor.

This perception is particularly widespread in the Newly Independent States, and to a slightly lesser extent in countries in the Americas, and the Western Balkans + Turkey.

- Corruption matters to consumers. Half of those interviewed expressed a willingness to pay a premium to buy from a company that is 'corruption-free'.

2. Political parties and the civil service are perceived on average to be the most corrupt sectors around the world.

- Globally, respondents perceived political parties as the single most corrupt domestic institution, followed closely by the civil service.

- Aggregate results, however, mask important country differences. In 13 of the countries sampled, the private sector was deemed to be the most corrupt, while in 11 countries respondents identified the judiciary.

3. Experience of petty bribery is reported to be growing in some parts of the world – with the police the most likely recipients of bribes.

- More than 1 in 10 people interviewed reported having paid a bribe in the previous 12 months, reflecting reported levels of bribery similar to those captured in the 2005 Barometer. For 4 in 10 respondents who paid bribes, payments amounted, on average, to around 10 per cent of their annual income.

- The countries reported to be most affected by petty bribery are (in alphabetical order): Armenia, Azerbaijan, Cambodia, Cameroon, Iraq, Liberia, Sierra Leone and Uganda.

- Regionally, experiences of petty bribery are most common in the Middle East and North Africa, the Newly Independent States and Sub-Saharan Africa.

- Although the police are most frequently reported to receive bribes worldwide, regional differences also emerge. In the Middle East and North Africa, the most bribe-prone institutions are reported to be those handling procedures related to buying, selling, inheriting or renting land. In EU+ countries these land services along with healthcare are most vulnerable to petty bribery. While incidences of petty bribery in North America appear to be very low, those that do occur are reportedly most frequent in interactions with the judiciary.

- Results indicate that respondents from low-income households are

more likely to pay bribes than those from high-income households when dealing with the police, the judiciary, land services and the education services.

4. Ordinary people do not feel empowered to speak out about corruption.

- The general public does not routinely use formal channels to lodge bribery-related complaints: three quarters of people who reported paying bribes did not file a formal complaint.

- About half of bribery victims interviewed did not see existing complaint mechanisms as effective. This view was consistent regardless of gender, education or age.

5. Governments are considered to be ineffective in the fight against corruption, a view that has remained worryingly consistent in most countries over time.

- Overall, the general public considers their governments' efforts to tackle corruption to be ineffective. Only 31 per cent perceived them as effective compared to the 56 per cent that viewed government anti-corruption measures to be ineffective.

- There were no major changes in recorded opinion on government anti-corruption efforts in 2009 when comparing those countries assessed in the last edition of the Barometer in 2007.

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The EU+ and Dutch data of 2009 (addition of some data from the 2007 Barometer).

Survey conducted by TNS–NIPO

Netherlands contact: Fleur Ravensbergen

e-mail: fleur.ravensbergen@tns-nipo.nl

Interview mode: on line survey (in other countries other modes have been used as telephone, face to face, web interview)

Sample type: national

Size: 1202

Fieldwork data: 5–10 November 2008

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The Barometer report–2009 mentions that the Netherlands is one of the countries where between 30% and 45% of the respondents is willing to pay more to buy from a corruption–free company.

The following information comes from Appendix D, tables 1–4 in the report.

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### **Institutions affected by corruption in the Netherlands**

To what extent do you perceive the following institutions in the Netherlands to be affected by corruption? (1: not at all corrupt, 5: extremely corrupt):

<b>Institutions</b>	<b>EU+</b>	<b>Netherlands</b>
Political parties	3.7	2.6
Parliament/Legislature	3.4	2.3
Business/private sector	3.4	3.1
Media	3.3	2.8
Public officials/civil serv.	3.4	2.7
Judiciary	3.1	2.3
Average	3.4	2.6

Consistently scores the Netherlands better than EU+, although the scores for the Netherlands are higher than most would expect. Outstanding is the ‘business/private sector’.

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### **Which sectors most affected?**

Which of these six sectors / organizations would you consider to be the most affected by corruption? (percentages)

<b>Sectors/organizations</b>	<b>EU+</b>	<b>Netherlands</b>
Political parties	32	9
Parliament/Legislature	11	5
Business/private sector	23	58
Media	9	10
Public officials/civil serv.	18	11
Judiciary	9	7

Remarkable is again the perception–score of the business world by others! In 2007 highest impact scored was with political parties, business/private sector, and media.

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### **Did you pay a bribe last year?**

In the past 12 months, have you or anyone living in your household paid a bribe in any form?

EU+: 5% or less of the interviewees, slightly less than the 6% in 2005. Younger people did so more than older people. Respondents from EU+ reported by a small margin that the health services were most affected by bribery. Netherlands: 1%, in 2007 this was reported as 2%.

Is your government's fight against corruption effective?

How would you assess your current government's actions in the fight against corruption?

Year 2009			
	ineffective	neither	effective
EU+	56	20	24
Netherlands	34	6	60

Year 2007			
	ineffective	neither	effective
EU+	60	12	28
Netherlands	51	11	39

The figures for 2007 and 2009 are quite similar for EU+, on the contrary it is remarkable to see the great differences for the Netherlands.

The future of corruption

An interesting question in 2007, not repeated in 2009, was: Do you think that in the next three years corruption will decrease, stay the same or will increase?

Percentage-results of the respondents:

Year 2007			
	decrease	stay the same	increase
EU+	18	24	58
Netherlands	8	19	73

How the Dutch confirm that their government's actions in the fight against corruption are effective (60), and have grown in effectiveness from 2007 to 2009 (39 → 60), and at the same time expect a rather strong increase in corruption in the next three years (73), is not explained.

## EU – EUROPEAN UNION

### INTRODUCTION

The world thinks that Europeans and European countries are rather free from corruption and that integrity reigns. In that perspective it is 'the South' which begins already in Southern Italy but which is in particular Africa, Latin America, the Arab world and Asia that are corrupt. Is that true? And how is that when the economy in Europe is in crisis like at this moment in 2009?

After reading the outcome of the recent poll by Ernst & Young reviewed below, the question remains loud and clear: 'what about Corporate Social Responsibility proclaimed by so many of our industries?'

### Survey shows bribery is ok (according to a press message)

Reuters Last updated 11:41 20/05/2009  
Fairfax Media

DUBIOUS: Company officials surveyed across Europe considered it would be acceptable to bribe clients to stay in business, a poll by Ernst & Young said.

'A quarter of company officials surveyed across Europe considered it would be acceptable to bribe clients to stay in business and beat the recession, a poll by Ernst & Young said.

The consultancy questioned 2,200 people in major companies in 22 European

countries. Half of those surveyed thought one or more types of unethical business behavior was acceptable.

"Making cash payments to win business, and even deliberately misstating financial performance to mask disappointing results were supported by alarmingly large numbers of respondents," David Stulb, Ernst & Young's global fraud investigation leader said in a statement.

Those who thought it was acceptable to give a cash bribe to keep a client rose to 38 percent in Spain, 43 percent in the Czech Republic and 53 percent in Turkey, Ernst & Young said.

Corporate fraud typically rises in recession as the masking effect of profits evaporates and the survey showed that senior management was more likely to condone unethical behavior than their underlings, the survey showed.'

### European Fraud Survey 2009 by Ernst & Young

This press message originates from a survey done by Ernst & Young and published as the *European fraud survey 2009. Is integrity a casualty of the downturn?*

'In 2006, Ernst & Young initiated a series of surveys of a broad range of employees at European companies that measure the perception of fraud risks and how management and board members are responding to the



challenges. The 2009 European fraud survey reflects the views of over 2,200 respondents - from the shop floor to the boardroom - in 22 countries.

It contrasts the views of Western Europe with Central and Eastern Europe and highlights a number of important themes, including the perceived depth of commitment of management to fraud risk mitigation and what employees expect from the regulators of their companies.'

### **'The findings are startling'.**

'There is a disappointing tolerance of unethical behavior. Making cash payments to win business, and even deliberately misstating financial performance in an effort to mask disappointing results, were supported by alarmingly large numbers of respondents.

Respondents question the integrity of their own senior management and board members with many believing them to be untrustworthy. They emphatically call for directors to be held accountable for lapses that allow corporate fraud to take place.

As a result of this mistrust of management, our research suggests that employees expect regulators to do more to protect them from wayward management and to ensure their business leaders are compelled to intensify their efforts to protect companies from fraud.'

### **Management worst?**

'Respondents in our survey suggest, far from meeting the challenge, management are in fact part of the problem. The respondents

overwhelmingly question the integrity of their leaders - and perhaps with good cause. Our survey reveals that many employees would accept fraud and corruption in the work place in order to survive the current economic storm and indeed senior management are even more likely than rank and file to condone activities such as cash bribes and financial statement fraud.'

[...]

'Our survey respondents believe the likelihood of fraud and corruption is set to rise further still.

- 55% of the respondents expect corporate fraud to increase over the next few years. [...]

Corporate responses to the downturn can create new opportunities for fraudsters if staff redundancies open gaps in financial controls.

- 36% of our respondents believe that normal policies and procedures are likely to be overlooked as staff redundancies are made.' [...]

'The tolerance of unethical behavior appears to be an unwelcome side effect of the pressure that employees are under.

- When asked whether they considered various types of unethical behavior to be acceptable to help a business get through the downturn 47% thought that one or more types of unethical behavior was acceptable.
- 25% of our respondents thought it was acceptable to make cash payments to win new business.

- 13% of senior managers and board members polled told us that misstating financial performance was justifiable in today's economic climate. [...] 'Unfortunately respondents consider it more than likely that management will succumb to temptation. More than two-thirds of our respondents agreed that management are likely to cut corners to meet targets when economic times are tough, with 30% agreeing strongly.'

## How do the Dutch fare according to this survey?

From the Dutch respondents only 31 percent (the lowest percentage among the 22 countries in the survey) expect an increase in corporate fraud in the next few years (Western Europe 54%). In line with this rather low expectation scored also the question 'did company's anti-fraud efforts increase in the last few years?' rather low among the Dutch respondents: 31 percent (Western Europe 43%).

Slightly lower than the overall percentage (more than two-thirds), the Dutch scored a trickle less with the qualification 'always/usually' 70% (Western Europe 68%) referring to the likeness of management to cut corners to meet targets.

## Address

The Ernst & Young Investigation & Dispute Services practice has global

reach. The country leader in the Netherlands is Angelique Keijzers, for more information [www.ey.com/fids](http://www.ey.com/fids) and +31-88 407 1812

## EU and UNCAC

All EU Member States are signatories to UNCAC, they are therefore required to implement it. Furthermore, the European Commission has suggested an initiative for an approach fighting corruption in the *Communication on corruption* CM (2003) 317 in 2003.

## Basic assumptions for EU approach

The reliability of the public administration can be guaranteed only when the guiding principles that govern working for the public administration are both explicit and known to all those involved. An ideal integrity policy would focus on the prevention of damage to integrity in a manner that offers scope for the individual responsibilities and requires civil servants to arrive at carefully considered decisions on specific integrity issues within society and administration. It appears that this is best done by including them in a Code of Ethics and Integrity rather than lay down regulations in administrative law.

The EU received a proposal from the Dutch Presidency which was accepted on 22 November 2004 by the Directors General responsible for Public Administration in the Member states and

the institutions of the European Union in their 43rd Meeting in Maastricht (NL): *Main features of an Ethics Framework for the Public Sector*.

(This document is available in English on [www.integriteitoverheid.nl](http://www.integriteitoverheid.nl) → *internationale aspecten* → *Europese Unie* → *Nederlands voorzitterschap* → *Main Features*).

## **Main features of an Ethics Framework for the Public Sector**

The main features can be summarized as:

### **1. General core values**

Principle of the rule of law; Impartiality/objectivity; Reliability/transparency; Duty of Care; Courtesy, and willingness to help in a respectful manner; Professionalism accountability.

### **2. Specific standards of conduct**

Handling information/confidentiality/freedom of speech; (Non-)acceptance of gifts or favors; Avoiding conflicts of interest; Use of public resources, equipment and property; Use of e-mail, intranet and internet facilities; Purchasing and contacting.

### **3. Implementing, promoting and stimulating integrity Recruitment; Training; Job mobility; Communication; Leadership.**

Methods and procedures to report – integrity related – offences

Confidential integrity counselor (CiC); Reporting procedure integrity breaches; Sanctions.

## **Catalogue of promising practices**

Also a *Catalogue of promising practices in the field of integrity, anti-corruption and administrative measures against organized crime* in the EU (November 2008) was commissioned by the Ministry of the Interior and Kingdom Relations of the Netherlands and compiled by the Utrecht School of Governance of Utrecht University. It contains 27 promising and inspirational practices relating to integrity, anti-corruption activities and administrative measures against organized crime. See: [http://www.publicgovernanceforum.org/downloads/documents/EU\\_Catalogus.pdf](http://www.publicgovernanceforum.org/downloads/documents/EU_Catalogus.pdf). Or go to: <http://www.integriteitoverheid.nl/contents/library/28/eucatalogus.pdf>

## **Register of Interest representatives ('Lobbyists')**

Official Commission documents give background information on the European transparency initiative (ETI) and the Register of Interest representatives. See: <https://webgate.ec.europa.eu/transparency/regrin/infos/officialdocuments.do>

## **Welcome**

Go to: <https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en#>

And read the welcome words of European Commissioner, Vice President of the European Commission Kallas:

'Welcome to the Register of Interest representatives!

By opening this voluntary Register, in the context of the European Transparency Initiative, the European Commission wishes to let citizens know which general or specific interests are influencing the decision-making process of the European Institutions and the resources mobilized to that end. Registrants have the opportunity to demonstrate their strong commitment to transparency and the full legitimacy of their activities. While registering, interest representatives commit themselves to the elements of the Code of Conduct.'

This website page offers direct access to interest representatives to register, update or prolong their registration as well as direct access for the public at large to all information available in the Register. It also offers the possibility to lodge a complaint related to a suspected violation of the Code of Conduct<sup>17</sup>.

The European Commission intends to experiment with this instrument for one year; a period in which to test the practicalities of the register and gain valuable practical experience for the future. Helpdesk: +32 22956028 or contact the register.

Search the register:

<https://webgate.ec.europa.eu/transparency/regrin/consultation/search.do;REGRIN-SID=QyP5KvXNMq6yzDkNC5dkGzx6wpypWsFVvZBy1lLmp3sJ84V7tLyLI-914643696?isComplaint=true&reset=true>

## Statistics from the register

Statistics from the register on interest representatives<sup>18</sup>

On 18 June 2009, there were 1596 interest representatives in the register.

See: [https://webgate.ec.europa.eu/transparency/regrin/consultation/search.do?reset=](https://webgate.ec.europa.eu/transparency/regrin/consultation/search.do?reset=true) They are from the following (sub)categories:

*Professional consultancies/law firms involved in lobbying EU institutions: 102*

- law firm: 7
- public affairs consultancy: 55
- independent public affairs consultant: 28
- other (similar) organisation: 12

*«in-house» lobbyists and trade associations active in lobbying: 908*

- company: 222
- professional association: 537
- trade union: 44
- other (similar) organisation: 105

<sup>17</sup> See for the Code of Conduct:

<https://webgate.ec.europa.eu/transparency/regrin/infos/codeofconduct.do?locale=en#en>

<sup>18</sup> From the Code of Conduct: "Interest representation" activities for which registration is expected are defined as "activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions".

NGO / think-tank: 436

- non-governmental organisation/ association of NGOs: 355
- think-tank: 28
- other (similar) organisation: 53

*Other organisations: 150*

- academic organisation / association of academic organisations: 26
- representative of religions, churches and communities of conviction: 4
- association of public authorities: 31
- other (similar) organization: 89

If you google in the search-facility of the 'Register on interest representatives' answering 'the Netherlands', 'all fields' (i.e. all fields as distinguished in the previous point), and 'all fields of interest', followed with the keyword 'Integrity', the score is '0'. If followed by keyword 'corruption', the score is again '0'.

If followed by 'transparency', the score is '3' for the three following Dutch organizations (all data quoted from the website).

If we omit the country-name 'the Netherlands', the score with 'integrity' is still '0'. With 'corruption' the score becomes '7', and with 'transparency' becomes '87'.

'Integrity' and 'corruption' apparently are not regular household words in Brussels. Not in general, and certainly also not for Dutch organizations.

## ICCO

Interchurch Organization for Development Cooperation

Identification number in the register: 0012356498-17. Estimated costs to the organization directly related to representing interests to EU institutions in that year: € 50,000 – € 100,000

### Mission Statement of ICCO

ICCO's mission is to work towards a world in which people live in dignity and prosperity, a world where poverty and injustice are no longer present.

ICCO's work consists of financing activities which stimulate and enable people, in their own way, to organize dignified housing and living conditions. ICCO is active in countries in Africa and the Middle East, in Latin America and the Caribbean, and in Asia, Oceania and Eastern Europe.

ICCO has its roots in the Dutch Protestant-Christian churches and is partner in various national and international collaborations. Furthermore, ICCO will co-operate with anyone who shares its ideals.

### Financial overview ICCO for the year: 2007

Total budget: € 153,000,000

Of which public financing: € 129,200,000

- from European sources: € 11,100,000
- from national sources: € 118,100,000
- from local/regional sources: –

From other sources: € 23,800,000

- donations: € 23,800,000
- contributions from members: –

## Corporate Europe Observatory

Identification number in the register: 5353162366-85

Estimated costs to the organization directly related to representing interests to EU institutions in that year: € 100,000 – € 150,000.

CEO is a European-based research and campaign group targeting the threats to democracy, equity, social justice and the environment posed by the economic and political power of corporations and their lobby groups.

Corporate Europe Observatory is strongly committed to transparency. We consider this register seriously flawed and inadequate as a tool to provide EU lobbying transparency and we urge the European Commission to replace it with a credible EU lobbying transparency register. Such a register should include names of individual lobbyists and provide precise and comparable financial information on lobbying. For more information, see [www.alter-eu.org](http://www.alter-eu.org)

In 2007 Corporate Europe Observatory ran campaigns and conducted research on the following issues. Of those named, I quote: – corporate political influence at EU level.

Information on Corporate Europe Observatory's expenses and income related to interest representation activities:

Expenses:

Corporate Europe Observatory's expenses for interest representation activities in the year 2007 amounted to € 119.000. These expenses were calculated according to the guidelines that will be published by the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) mid-September.

Income

Grants 295.397: composed of (a) other contribution 13.546, (b) donations 4.084,

Total: € 313,027.

(c) Credit interest 2.221, and (d) lectures and guided tours 183, Total: 2.404.

Total income: € 315,431.

In 2007 grants income was received from these funders:

Humanitarian Group For Social Development 49.800

Isvara foundation 99.965

Joseph Rowntree Charitable Trust 29.301

Christian Aid 15.214

Sigrid Rausing Trust 73.292

RH Southern Trust 7.506

Polden Puckham Foundation 10.820

UCI 9.500

## Dow Belgium

Identification number in the register: 38235121060-73

Estimated costs to the organization directly related to representing interests to EU institutions in that year: € 600,000–650.000. ('Payments to associations or

other third parties who are also subject to reporting within the scope of the transparency initiative are not included in this estimation to avoid double counting'). With annual sales of \$58 billion and 46,000 employees worldwide, Dow is a diversified chemical company that combines the power of science and technology with the "Human Element" to constantly improve what is essential to human progress.

### About Dow Europe

As one of The Dow Chemical Company's five major geographic regions, Europe with \$19.6 billion sales (2007) has long been a significant contributor to the Company's global success. Since its European launch in 1952, the region provides the Company with ever-more opportunities for strategic growth. Dow in Europe has 14,000 employees, which corresponds to more than 30% of the Company's employees worldwide. Dow is present in 24 European countries with more than 50 manufacturing locations and 34 commercial offices. Ninety per-cent of the products Dow sells in Europe are made in Europe.

Subject of the main interest representation activities performed by the organisation: Policies related to Chemicals and Health, Energy and Climate Change, Environment Policies, Sustainable Development Policies including Sustainable Production and Consumption, Security Policy, Transportation and Logistics Policies, Crop Protection Policies and Biotechnology.

If we change the search criteria and look for all entities registered solely on the word 'corruption', we find 7 organizations, 1 consultancy from Brussels, and 6 NGOs from Croatia, France, Italy, Poland and UK and one European, namely TI.

Estimated costs to these organizations directly related to representing interests to EU institutions in either 2007 or 2008 are listed as > € 50,000 (and mostly donations) by the Croatian NGO, to < € 1 million in the case of the consultancy firm. One of the NGOs is listed twice, once with a budget of three-quarters of a million Euros, once with a budget of € 1,000.

### Lobbying is difficult to define

How difficult it is to define 'lobbying'<sup>19</sup>

19 The European green paper European Transparency Initiative, Brussels, 3.5.2006, COM(2006)194 final, defines in chapter II. TRANSPARENCY AND INTEREST REPRESENTATION (LOBBYING)

#### 1. Definitions and basic framework

For the purposes of this Green Paper, "lobbying" means all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions.

Accordingly, "lobbyists" are defined as persons carrying out such activities, working in a variety of organizations such as public affairs consultancies, law firms, NGOs, think-tanks, corporate lobby units ("in-house representatives") or trade associations.

becomes clear looking at what these participants describe as their activities. For instance, TI notes in the register under 'Estimated costs of lobbying':

'Following the guidelines of the EU Civil Society Contact Group and the Alliance for Lobbying Transparency and Ethics Regulation in the EU, TI has calculated that it is for the financial year 2008 (the Office only opened in 2008) spending an estimated 170 000 Euro on activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions.'

However, the Polish Batory Foundation, one of those organizations that register as 'NGO/lobbyist' notes (to explain its spending level on 'costs of lobbying' as zero?):

'No lobbying activity performed. As a public benefit organization registered in Poland we are involved in consultancy of different legal acts concerning the non-profit sector as well as civil society development.'

### **Burson-Marsteller**

Burson-Marsteller, an international consultancy company, writes to have spent on 'costs of lobbying' in the financial year: 2007, share of turnover related to representing interests to EU institutions on behalf of clients: total turnover: € 6,963,000.

This figure is followed by an extensive explanation: Burson-Marsteller Brussels has tried to take a very responsible approach to its ETI registration. Outlined below are the details of the approach taken. To determine our total turnover linked to lobbying the EU institutions we:

1. started with our total fee revenue from 2007
2. deducted all revenue generated by services completely unrelated to the EU institutions (e.g. Belgian public relations or an Olympic candidate city campaign) or which involved absolutely no contacts with any official or politician of an EU institution
3. deducted revenue generated by lobbying EU Member State governments where it was distinctly identifiable as such (as we understand the Commission has said this is not covered by the register).

The resulting figure became our total lobbying revenue for the purposes of the register. Given the absence of detailed rules from the European Commission, we have had to make judgments in many cases about what was and was not EU lobbying – especially when we do both EU lobbying and other kinds of work for clients. Generally, we have imposed a very wide interpretation of what should be considered lobbying. If we were helping a client to engage with the EU institutions on an issue, we have generally counted all our efforts as lobbying (preparation, intelligence gathering,



strategic advice, implementing contacts, etc.) even if some aspects of the work could be excluded from registration based on informal guidance provided by the European Commission.

Consequently, we believe we have reported more revenue from lobbying than a strict interpretation of such guidance might require.

We have also excluded from our list of clients those for whom we have worked exclusively on EU competition cases, as the Commission has suggested a specific exclusion for them. In the interest of transparency, it was our intent to list the website of all our clients. Due to space limitations in the register, the following

websites could not be included above:

- Exiba – the European Extruded Polystyrene Insulation Board Association:  
[www.exiba.org](http://www.exiba.org)
- ICCR – the International Chair on Cardio-metabolic Risk:  
[www.cardiometabolic-risk.org](http://www.cardiometabolic-risk.org)
- Robert Amsterdam, international legal counsel to Mikhail Khodorkovsky:  
[www.amsterdamandperoff.com](http://www.amsterdamandperoff.com)

No wonder that it is so difficult to find Dutch entities among the lobbyists in Brussels? [See also Burson-Marsteller's *Guide to effective lobbying in Europe 2009*, see [www.bursonmarsteller.com/Innovation\\_and\\_insights/blogs\\_and\\_podcasts/BM\\_Blog/Lists/Posts/Post.aspx?ID=143](http://www.bursonmarsteller.com/Innovation_and_insights/blogs_and_podcasts/BM_Blog/Lists/Posts/Post.aspx?ID=143)]

## EU – EUROBAROMETER

### SPECIAL EUROBAROMETER 291

(QUOTED)

The attitudes of Europeans towards corruption, fieldwork: November – December 2007,

[http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_291\\_sum\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_291_sum_en.pdf)

Interviews were conducted face-to-face in the twenty-seven Member States of the European Union in respondents' homes, in their national language<sup>3</sup>, between November 9 and December 14, 2007, in Denmark the interviews were completed on 16 January 2008.

### Conclusion

This study has focussed on public perceptions about (the existence of) corruption in the Member States of the European Union and has also examined the extent to which citizens feel corruption exists within the institutions of the European Union. Finally, the study has analysed who Europeans believe are responsible for preventing and fighting corruption. The analysis reveals that, overall, corruption in the European Union Member States is perceived to be widespread with three out of four citizens expressing the view that it is a major problem in their country. However, it is important to stress that large country variations lie behind the European average.

If corruption is now perhaps thought to be somewhat more widespread than it was in 2005, it is seen to be less extensive in the European Union institutions, and the different actors of civil society and politics are less often thought to be corrupted.

Corruption is found at every political level: 77% of Europeans feel it is widespread in national institutions, 75% feel it is widespread in local institutions and 73% believe it exists in regional institutions.

Furthermore, citizens are most inclined to believe that national politicians are corrupt (46%), followed by officials awarding public tenders (43%) and officials issuing building permits (42%).

However, just as in 2005, organised crime is seen as the main culprit with over half of Europeans believing that it is the cause of corruption (54%).

The study points to a sense of cynicism about the judicial system in a number of Member States. As in autumn 2005, only around a third of Europeans feel that there are enough successful prosecutions in their country to deter people from giving or taking bribes (32%).

This finding is in sharp contrast with the expectations of citizens as 57% consider that responsibility for preventing and combating corruption lies with the police

and judicial systems; however, citizens are even more likely to place this responsibility with their national governments (59%). Furthermore, the study shows that many Europeans regard fighting crime as a responsibility of citizens themselves (41%).

As noted, the study reveals a more positive public opinion than in 2005 about the existence of corruption in the European Union. Nonetheless, two out of three Europeans believe that there is corruption in the institutions of the European Union, a proportion which is down from 71% in 2005. As in 2005, around a quarter of citizens are of the view that the European Union should have the responsibility for preventing and fighting corruption (26%).

Finally, the survey attempted to measure the extent to which respondents themselves took part in “corrupt” activities. As to be expected, the personal reporting of corruption on this type of official survey is very low: only 8% of people interviewed declared that they had been asked to pay a bribe over the last 12 months (7% in 2005).

### **Data for the Netherlands**

44% of the Dutch agreed that corruption is a major problem in their country (EU-average 75%), 45% (not necessarily the same!) agreed that there are enough successful persecutions in the Netherlands

to deter people from giving or receiving bribes (EU-average 58%). And 60% of the Dutch believe that corruption exists in the EU-institutions (EU-average 66%). The data on personally giving or receiving a bribe did not allow specifying the result per country, numbers per country were too low.

### **Parliamentary question and answer**

The European Commission presented the Eurobarometer survey on the attitudes of Europeans towards corruption (released on 30 October 2008). This provoked a written Parliamentary Question which Herbert Boesch, PSE- Member of the European Parliament and Chair of the Budget Control Committee, submitted on 12 February 2009 to the European Commission (after having consulted with TI Brussels Office. The reporting comes from Jana Mittermaier, Head of Brussels Office Transparency International, [mittermaier@transparency.org](mailto:mittermaier@transparency.org).

*Subject: Eurobarometer survey on the attitudes of Europeans towards corruption*

The European Commission Eurobarometer survey on the attitudes of Europeans towards corruption (released on 30 October 2008) reveals that, overall, corruption in the European Union Member States is perceived to be widespread with three out of four citizens expressing the view that it is a major problem in their country.

Moreover, EU citizens' trust in public institutions at every political level (i.e. national, local and regional) is very low. Another research source, the Transparency International Corruption Perception Index 2008, shows that the fight against corruption in the EU is more important than ever.

The broad decline of EU Member States' scores (e.g. United Kingdom, Bulgaria, Finland, Italy, France and Portugal) and the high profile scandals in the public as well as private sectors in some EU Member States point to the fact that anti-corruption measures should be made a priority.

- How will the European Commission react to the concerns of EU citizens? What are the concrete future steps to fight corruption in the EU and to rebuild the trust of EU citizens?
- Will anti-corruption become a priority for 2010–14 in the area of Freedom, Security and Justice?
- Will the EU introduce a 'Verification Mechanism' (like in Bulgaria and Romania) for every new EU Member State to ensure that anti-corruption reforms continue as part of an ongoing process after accession?
- For how long does the Commission think it is important to maintain the Verification Mechanism in Bulgaria and Romania, and in particular the sanctions in Bulgaria?

- The European Community has ratified the United Nations Convention against Corruption. How will the Convention be implemented?
- Are there plans to improve the existing legislation in the area of Freedom, Security and Justice to increase judicial and police cooperation in the fight against corruption and simplify cross-border prosecutions?

Questions answered by the European Commissioner for Justice and Home Affairs, Jacques Barrot:

The Commission is aware that corruption is a major concern of the EU citizen. The Eurobarometer survey the Honourable Member refers to will therefore be repeated so that the Commission can be kept abreast of trends and where needed act within the limits of its powers. Whether or not there is a need for strengthening the EU's anti-corruption framework will be carefully considered in the context of the upcoming 'Stockholm Communication', launching a debate on the Justice and Home Affairs (JHA) priorities for 2010–14.

The European Community indeed ratified the most comprehensive global instrument to fight against corruption, the United Nations Convention against Corruption (UNCAC). Before the next Conference of State Parties in fall 2009, the Commission will have to carry out a review of the existing community legis-

lation in the field of corruption and assess to which extent it is compliant with the Convention. This exercise does not allow the Commission to assess the national legislation of EU Member States, and the way they implement the provisions of the Convention. This being said, the Commission is promoting the ratification and effective implementation of UNCAC by those Member States which didn't ratify it yet.

The Commission set up the Cooperation and Verification Mechanism at the moment of the accession of Bulgaria and Romania to smoothen their accession to the EU and at the same time to safeguard proper functioning of the European policies and institutions. Both countries still had progress to make, among others, in the area of the fight against corruption. The decision on the Cooperation and Verification Mechanism does not fix a timeframe for the mechanism, but says that the mechanism will be repealed when all the benchmarks set under the mechanism will be satisfactorily fulfilled.

The Cooperation and Verification Mechanism was specifically set-up for the accession of Bulgaria and Romania. Until now, there have been no discussions in this respect concerning current candidate countries. [This exchange is published on the European Parliament website:

[http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2009-0872+0+DOC+XML+V0//EN&language=EN\]](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2009-0872+0+DOC+XML+V0//EN&language=EN)

## 274 EPAC – EUROPEAN PARTNERS AGAINST CORRUPTION

EU's National Police Oversight Bodies and Anti-Corruption Authorities

### Address

c/o BIA – Federal Bureau for Internal Affairs

Austrian Federal Ministry of the Interior  
Herrengasse 7, A-1014 Wien, Austria

Tel. +43-(0)-1-531 26 -0

Fax: +43-(0)-1-531 26 -5790

<http://www.epac.at>

## 275 Oversight institutions

The EPAC-website is a handy tool to find all addresses of oversight bodies in the 27 countries of the EU plus OLAF and observer-countries Albania, Croatia, Montenegro, Norway, Serbia. Details of those organizations are included under the same headings as in the next paragraph. For some countries, there are two as in France or five as in Poland. For the Netherlands, the EPAC-site mentions only the 'Rijksrecherche'.

However, in the Netherlands there are more oversight and investigative bodies. Most important among these is the Authority Financial Markets (AFM), the independent supervisory authority for the savings, lending, investment and insurance markets. Others missing include, the SIOD (information and investigation regarding work and income in-

cluding human trafficking); FIOD (fiscal investigation); AID (general information service); the Royal Marechaussee (a police organization with a military status); KLPD Netherlands Police Agency, see a.o. the *National Threat Assessment 2008, Organised crime* (English version, 250 pp).

This NTA is a practical reference work for anyone interested in certain forms of, and trends in, organized crime in the Netherlands. Among all these, and there are some more, most likely the Rijksrecherche (RR) handles most and worst cases. The RR has the expertise, shares information with the others and collaborates with the other services.

### **Rijksrecherche**

The EPAC-website shows for the Netherlands relevant information on the Rijksrecherche, of which the Dutch name is given in English as National Police Internal Investigation Department. [This is the formal, always used and official translation of the name of this police or-

ganization. Literally speaking, this is not fully correct as the Netherlands do not dispose of a 'National Police Force' and as the Rijksrecherche is an independent police entity].

The following is copied from the EPAC-website (with some updates received from the Rijksrecherche), the same information is presented for all other oversight bodies listed in the 27 EU Member States.

### **EPAC Information and Links**

Through [www.EPAC.at](http://www.EPAC.at) → Downloads: many documents regarding the fight against corruption are easy in reach, among others UN Conventions, Declarations and Resolutions, INTERPOL Global Standards to combat corruption, TI-reports, OECD Convention and Recommendations, Council of Europe and GRECO conventions, Resolutions and Documents, EU and EPAC documents. Through [www.EPAC.at](http://www.EPAC.at) → Links: it is also easy to get access to various anti-corruption websites.

National Police Internal Investigation Department (Rijksrecherche)

Head of department (February 2007): H.G. TRIP (Director)

PoC: J.J. (Han) VAN DUREN  
(Head of Operational Supporting Staff – Deputy Head of Operations)

Address: Kanonstraat 4, NL-2514 AR The Hague  
P.O. Box 16424, NL-2500 BK The Hague  
THE NETHERLANDS

Telephone: +31 70 3411 240

Fax: +31 70 3411 242

Mobile: +6 533 11 962

E-Mail: h.vanduren@rijksrecherche.nl

Homepage: www.rijksrecherche.nl

The organisation is subordinated to: Ministry of Justice  
Board of Procurators-General  
(Head of the Prosecution Department)

The organisation reports to: Board of Procurators-General  
(Head of the Prosecution Department)

Core tasks: Criminal investigation of corruption

Powers and tasks:

- Investigative powers
- Recommendation/ consultation powers

The organisation has competence for:

- Cases relating to criminal law matters
- Drafting (preventive) proposals for structural improvements

The following institutions, or bodies are subject to the organisation's

All public servants, including police, and all others competencies/ tasks: that are connected to cases under investigation

Date of foundation: 1996

Headcount (1st September 2004): 125 (100 of them are detectives)

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