Groupe d'Etats contre la corruption
Group of States against corruption

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Second Evaluation Round

Evaluation Report on the Netherlands

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Secrétariat du GRECO
Conseil de l'Europe
F-67075 Strasbourg Cedex

www.greco.coe.int
☎ +33 3 88 41 20 00

GRECO Secretariat
Council of Europe
Fax +33 3 88 41 39 55

I. INTRODUCTION

1. The Netherlands was the twenty-second GRECO member to be examined in the second Evaluation round. The GRECO evaluation team (hereafter referred to as the "GET") was composed of Mr Cezary MICHALCZUK, Prosecutor, Ministry of Justice, Poland; Mr Jan VIDRNA, Director, Department of the General Inspection, Ministry of Justice, Czech Republic; Mr Eberhard SIEGISMUND, Deputy Director General of the Judicial System Division, Ministry of Justice, Germany. This GET, accompanied by a member of the Council of Europe Secretariat, visited the Netherlands from 31 January to 4 February 2005. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval II (2004) 12E) as well as copies of relevant legislation and other documentation.

2. The GET met with officials from the following governmental organisations: Ministry of Justice, Ministry of Interior, Bureau Ontnemingswetgeving Openbaar Ministerie (BOOM), Justis, Public Prosecution Service, National Police Internal Investigations Department (Rijksrecherche), Office for Disclosure of Unusual Transactions (MOT), Ministry of Finance/ATB (audit supervision policy), Ministry of Finance, Tax authorities, State Audit (Algemene Rekenkamer), National Ombudsman, Ministry of Economic Affairs. Moreover, the GET met with members of the following non-governmental institutions: Association of Dutch Provinces (IPO) and Association of Dutch Municipalities (VNG), Chamber of Commerce, Confederation of Netherlands Industry and Employers (VNO-NCW), Institute of Accountants (NIVRA), Media, Transparency International NL (TI-NL).

3. It is recalled that GRECO at its 10th Plenary meeting (July 2002), in accordance with Article 10.3 of its Statute, agreed that the 2nd Evaluation Round would deal with the following themes:

   - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;[1]

   - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);

   - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Dutch authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to the Netherlands in order to improve its level of compliance with the provisions under consideration.

[1] The Netherlands ratified the Criminal Law Convention on Corruption on 11 April 2002.

II. THEME I – PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

5. In 2003, the legal provisions on confiscation were amended in the Netherlands and in 2005 a new "Directive on Special Confiscation" was prepared by the Board of Procurators General and sent to the heads of public prosecutors' offices to provide information to public prosecutors on the application of legislation on confiscation. Since 1996 a special Prosecution Service Criminal Assets Deprivation Bureau (*Bureau Ontnemingswetgeving Openbaar Ministerie,* BOOM) has been set up to give support to public prosecutors in the application of the legislation on confiscation.

6. In the Netherlands, there are two different schemes for confiscation, i.e. "ordinary" confiscation (*verbeurdverklaring* - Articles 33 and 33a of the Criminal Code, hereafter CC) and special confiscation (*ontneming*- Article 36e CC). Ordinary confiscation is a penal sanction applicable where a defendant has been convicted of "any criminal offence" (including corruption offences[2]) with respect to objects directly obtained from the criminal act, whether entirely or partly, or the instruments used or intended to be used to commit or prepare the offence. At the request of the Public Prosecution Service, the court may issue a "non-punitive order" for special confiscation consisting of the obligation for the offender to pay a sum of money to the State in relation to the illegally obtained profits or advantages arising from (i) the particular offence for which the offender was convicted (Article 36e, paragraph 1 CC); (ii) similar offences or offences other than those for which the offender was convicted, when there is "sufficient evidence" to assume that they were also committed by the offender (Article 36e, paragraph 2) or (iii) when the criminal financial investigation reveals that "it is likely" that illicit earnings were due to the commission of other criminal activity (Article 36e, paragraph 3)[3].

7. Ordinary and special confiscation have a discretionary character and are imposed upon request of the public prosecutor. The "Directive on Special Confiscation" states that public prosecutors shall submit "a demand for a confiscation order when the profits or advantages obtained are estimated at an amount of at least 500 Euros". Special confiscation is considered in principle as a separate proceeding from the main criminal investigation and may be initiated within two years following a conviction. However, in practice, investigation carried out in order to allow for a thorough financial investigation of the criminal proceeds often runs in parallel to the main criminal investigation and can be conducted with the assistance of the BOOM. Certain complex special confiscation cases are directly handled by prosecutors from the BOOM.

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[2] There are no specific criminal provisions on trading in influence in the Netherlands. The Netherlands made a reservation on this point with respect to the Criminal Law Convention on Corruption.

[3] **Section 36e**

1. At the request of the Public Prosecutions Department, the person who is sentenced for a criminal offence may, by separate decision of the court, be obliged to pay a sum of money to the State in confiscation of illegally obtained profits or advantages.

2. This obligation may be imposed on the person as referred to in subsection one who gained profits or advantages by means of or from the proceeds from the criminal offence as referred to in that subsection or from similar offences, or from offences that are punishable with a fine of the fifth category, and of which there is sufficient evidence that they have been committed by him.

3. At the request of the Public Prosecutions Department, a person who is sentenced for a criminal offence punishable with a fine of the fifth category and against whom, as a suspect of that criminal offence, a criminal financial investigation is conducted, may, by separate decision of the court, be obliged to pay a sum of money to the state in confiscation of illegally obtained profits or advantages, if, in view of that investigation, it is likely that offences or other criminal offences have in any way resulted in the convicted person having obtained illegal profits or advantages as well.

8. Both types of confiscation always require a prior criminal conviction: therefore, *in rem* confiscation is not allowed in the Netherlands and no plans for introducing it are envisaged. As previously noted, criminal proceeds arising from an offence other than that for which the offender was convicted may be subject to special confiscation when "it is likely" that the offence has been committed.

9. Value confiscation is possible according to the provisions laid out in Article 36e of the CC. Pursuant to case-law and to the criteria included in the "Directive on Special Confiscation", the exact economic advantage is assessed via a transaction-based calculation in cases of single criminal offences, or a cash statement, or a wealth comparison in case of several criminal offences. Illegally obtained profits or advantages are the value by which the wealth of the offender increased as a result of the offence as well as the profit arising from such increase in wealth (consequential benefit).

10. Pursuant to Article 94 Criminal Procedure Code (hereafter CPC) - together with article 33a paragraph 2 of the Criminal Code (ordinary confiscation) -, instrumentalities may also be confiscated from a third party[4] when "the person to whom they belong had knowledge of the fact that they had been obtained by means of the criminal offence or had knowledge of the purpose or use in connection with the offence, or might have reasonably suspected such provenance, use or purpose". In case of special confiscation, third party confiscation is possible if "the third party knew or should reasonably have suspected that the goods represent the proceeds of crime" (Article 94a paragraphs 3 and 4 CPC).Third parties may also be obliged to pay an amount of money equivalent to the criminal proceeds held.

11. As a general rule, the burden of proof cannot be reversed and therefore prosecutors have to prove that a particular asset has an illegitimate source. However, in specific special confiscation cases in which there is "sufficient evidence" or "it is likely" that the offender may have gained illicit advantage or profit through the commission of an offence different from the one for which he/she was initially convicted (Article 36e, paragraphs 2 and 3 CC – see footnote 3), the burden of proof shifts. In all cases of special confiscation, the amount to be confiscated is fixed in an "estimate" made by the court.

12. The confiscated assets go to the State unless there are claims of damages from victims of the offence in which case part of the proceeds may be used to recover the damages suffered (Article 36e, paragraph 6 CC). In order to make such a claim, the victim needs to be granted "civil party" status in the criminal proceedings. The victim may also choose to initiate a separate civil law action to claim relevant damages.

Interim measures

13. Articles 94 to 126f of the CPC regulate freezing and seizure of instrumentalities and proceeds of crime. Pursuant to these provisions, it is possible to seize "goods" (which include all properties and property rights), with a view to securing the obligation to return the proceeds obtained by the offender, in respect of criminal offences punishable with a fifth category fine (at least 45,000 Euros), including bribery (except in cases under Article 177a of the CC on active bribery of public officials not entailing a violation of an official duty and Article 178 n° 1 on bribery of a judge, which are sanctioned with a fourth category fine - 11,250 Euros). Seizure of proceeds can be

[4] This applies also to legal persons.

applied also to third persons. It is also possible to seize documents, information from financial institutions and data in computerised systems.

14. Article 94 and 94a CPC provide for freezing and seizure of proceeds of crime, in order to ensure the execution of a future confiscation order or payment of a fine. The seizure is carried out by the police on the basis of a suspicion that a criminal offence has been committed and is aimed at gathering evidence. In case of 94a, the seizure orders may be issued by a judge ("examining magistrate") acting either *ex officio* or upon request of the public prosecutor, or in the case of a special financial criminal investigation (SFO, see below) already authorised by an examining magistrate, directly by the public prosecutor. As for the management of seized property, the BOOM may decide the pertinent measures regarding (i) appointment of an administrator (usually the State Property Administration Office); (ii) payment of seizure costs from the State coffers; (iii) authorisation for alienation, destruction, abandonment or use for a different purpose other than the investigation; (iv) withdrawal of seizure.

Investigation on proceeds of crime

15. In addition to the normal financial investigations carried out during a criminal investigation, a special criminal financial investigation (*Strafrechtelijk Financieel Onderzoek*, hereafter SFO) may be initiated "where a preliminary investigation has shown the likelihood of illegally obtained profits or advantages amounting to at least 12,000 Euros**,** and where it is also expected that the profits or advantages obtained from the commission of the offence will exceed this amount" (Articles 126 to 126f CPC and Section 1 of the Directive on Confiscation). The SFO "shall be conducted by virtue of an authorisation from the examining judge" upon request of the public prosecutor in charge of the investigation, in case of suspicion of an offence carrying a fine of the fifth category. Its aim is to "determine the illegal profits or advantages obtained by the defendant in view of confiscation". During the SFO, the public prosecutor may seize objects, without further authorisation from the examining magistrate. He shall inform the BOOM and can ask for its support.

Statistics

16. As of 1 July 2004, the following tables illustrate the number of cases in which confiscation was adjudicated[5]:

Table 1: Number of cases in which confiscation was adjudicated

Year	No. of Confiscation	of which legal persons
2001	1069	30
2002	1270	57
2003	1591	76

[5] Statistics gathered by *Compas* (Dutch case registration system). The number of cases corresponds to the number of "suspects" whether physical or legal persons.

Table 2: Number of settled cases of corruption in which confiscation was adjudicated

Year	No. of cases	of which confiscation	of which legal persons	of which legal persons + confiscation
Active Bribery (articles 177, 177a and 178 Criminal Code)				
2001	19	-	1	-
2002	20	2	2	-
2003	41	-	-	-
2004	39	-	3	-
Passive Bribery (articles 362, 363 and 364 Criminal Code)				
2001	19	4	n.a	n.a
2002	31	3	n.a	n.a
2003	23	2	n.a	n.a
2004	-	-	-	-
Active Bribery in private sector (articles 328ter, second paragraph Criminal Code)				
2001	4	-	1	-
2002	5	-	2	-
2003	21	-	9	-
2004	3	-	-	-
Passive Bribery in private sector (articles 328ter, first paragraph Criminal Code)				
2001	3	1	-	-
2002	7	2	-	-
2003	10	4	1	1
2004	13	-	-	-

17. In the above-mentioned corruption cases, confiscation of illegally obtained profits or advantages amounted to 126,010.63 Euros. There are no comprehensive statistics available on the use of interim measures.

Money laundering

18. Articles 420bis, 420ter and 420quarter CC deal with money laundering offences. These provisions provide for an "all-crimes" approach and establish, *inter alia*, that *(i)* hiding or camouflaging the source, place, the source of the transaction or transfer of a good, or hiding or camouflaging the owner or the holder, knowing that the good – immediately or more distantly – originates from crime*;* and (ii) acquiring, possessing, transferring, converting a good or making use of a good, knowing that the good has proceeded – indirectly or directly – from a crime is punishable with 4 years imprisonment and a fine of 45,000 Euros. These sanctions can be increased to a maximum of 6 years in cases where the offence is committed "regularly" (Article 420ter) and reduced to 1 year when committed unintentionally (Article 420quater). Goods include all property and property rights. All corruption offences are predicate offences, even when committed abroad, provided that such offences are also punishable in the country where they were committed (dual criminality).

19. The "Disclosure of Unusual Transactions Act" obliges banks, stockbrokers, insurance intermediaries and life insurers, money transfer companies, currency exchange offices, credit

card companies, gambling casinos, dealers in high value items (*e.g.*, cars, art, ships, antiques, jewellery, precious metals and stones), as well as professionals such as lawyers, notaries, State agents, tax consultants, chartered accountants to report any transaction that may reasonably be assumed to constitute money laundering. A wide-range system of indicators, which vary depending on the type of entity concerned, are used to determine when transactions should be reported; they consist of both objective (mandatory) or subjective (discretionary) situations that may lead to notification of unusual transactions.

20. Unusual transactions (UTRs) should be filed with the *Meldpunt ongebruikelijke transacties* – MOT (the Dutch FIU), which is responsible of their further investigation and the subsequent notification of all suspicious transactions (STRs) to the investigating authorities, including a specialised investigative police unit (BLOM). Moreover, the MOT and the BLOM may work in close co-operation[6] through a special unit for mutual analysis of unusual and suspicious transaction reports (MBA-unit). STRs are recorded in an internal police internet system, i.e. the Intranet for Suspicious Transactions. In 2003, a total of 177,000 unusual transactions were reported to the MOT; 37,700 of them were considered to be suspicious and were subsequently notified to the police services.

Mutual legal assistance: interim measures and confiscation

21. Mutual legal assistance in criminal matters concerning interim measures and confiscation of proceeds of crime, including but not specifically dealing with corruption-related offences, is based on the general provisions of the CPC (Articles 552h to 552hh), the Act on Transfer of Enforcement of Criminal Sentences (Articles 13 to 13f, 31a and 51 to 55) and the applicable bilateral and multilateral international agreements.[7] National legislation permits Dutch judicial authorities to respond to requests for mutual legal assistance in broad terms. In particular, the Netherlands is able to provide the following assistance: (i) open a special financial criminal investigation (SFO), if the investigation in the requesting State has not yet resulted in a confiscation order (Article 13 of the Act on Transfer of Enforcement of Criminal Sentences[8] and Articles 126 and 126f of the Criminal Procedure Code); (ii) order seizure; (iii) enforcing foreign confiscation orders; and finally, (iv) taking over either the criminal proceedings as a whole or the separate proceedings to bring about confiscation.

22. There is no specific legislation concerning mutual assistance requests from the Netherlands to another State for the freezing and seizure of criminal proceeds; however, according to case law, foreign authorities may be asked to enforce coercive measures according to the conditions and procedural requirements provided by Dutch legislation. Seizure at the request of a foreign State

[6] As from January 2006, the MOT and the BLOM will be merged.

[7] The Netherlands is a party to the Council of Europe Conventions on Mutual Assistance in Criminal Matters (ETS No 30), the European Convention on the International Validity of Criminal Judgements (ETS No 70) and on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS No 141). It is also party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and two EU Conventions on Bribery, i.e., Convention on the Fight Against Corruption Involving Officials of the European Communities or Other Officials of Member States of the European Union and the Protocol to the Convention on the Protection of the European Communities Financial Interests.

[8] The requirements for opening a Special financial criminal investigation under Article 13 of the Act are as follows: (i) the request must be based on a Treaty (The 1990 Strasbourg Convention, the 2000 United Nations Convention against Transnational Organised crime or other relevant bilateral treaties); (ii) the request must relate to a criminal offence punishable under Dutch law with a fine of at least 45,000 Euros (Article 126(1) CPC); (iii) the offence must possibly have resulted in gains of some significance, assessable in pecuniary terms and clearly stated in the request (Article 126(1); (iv) the special financial criminal investigation must be initiated to identify proceeds of crime with a view to their confiscation (Article 126(2).

is governed by Articles 13-13f of the Act on Transfer of Enforcement of Criminal Sentences. It may only be granted when the foreign authority sufficiently justifies that the requested seizure is aimed at ensuring confiscation at a later stage.

23. The Minister of Justice (advised by the Public Prosecution Service) decides whether to grant a confiscation order pursuant to an international request. The Public Prosecution Service is responsible for enforcement of confiscation. There are two mechanisms in place to request international legal assistance concerning confiscation: (1) transfer of the execution of foreign judicial decisions, which is even possible for non-Dutch nationals as long as the proceeds subject to confiscation are located within the territory of the Netherlands. The applicable rules for confiscation are those provided by Dutch legislation (Articles 31a and 51 to 55 Act on Transfer of Enforcement of Criminal Sentences); (2) transfer of proceedings leading to confiscation (Articles 511b, 552t to 552w, CPC), which could consist of (a) transfer of proceedings merely relating to confiscation of illegally obtained profits or advantages, or could even relate (b) to transfer of the criminal proceedings as a whole.

b. Analysis

24. 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. Effective confiscation is secured by the provisions establishing the special confiscation scheme functioning separately or in parallel to the system of ordinary confiscation (see paragraph 6). The existing legislation in this area is supplemented by the new "Directive on Special Confiscation", issued in 2005. The creation of the BOOM (the BOOM was established in 1996) has additionally improved the situation due to its role in providing comprehensive, practical assistance to prosecutors with regard to application of confiscation legislation and handling highly complex cases. Value confiscation is possible under Dutch law 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 in place. It provides the law enforcement agencies and judicial authorities with useful tools for uncovering and "freezing" of objects, documents, financial information and computerised data especially in cases of urgency. In addition to main investigations, special criminal financial investigations have been introduced: the efforts of the investigators are focused exclusively on determining the profits obtained by the suspect ; more power is given to prosecutors with regard to effecting search and seizure ; and ask the BOOM's for specialist support. The appropriate tools are in place for effective international co-operation concerning both interim measures and confiscation. Concerning anti-money laundering mechanisms, the "all-crimes" approach, wide definition, clearly defined obligations levied upon particular chains of the reporting scheme and a comprehensive system of indicators, constitute a strong basis for the detection and investigation of laundering practices.

25. Notwithstanding this generally positive consideration of the regime, the GET is of the opinion that the system may still be improved. As regards the application of seizure/confiscation schemes, 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 (SFO – see paragraph 15) and, also in this case, only the "Directive" provides that the SFO should be carried out in case of profits amounting to more than 12.000 Euros. However, the provisions on ordinary confiscation may be applicable in these cases. These financial thresholds may be functioning as a disincentive to a

wider use of such measures. Additionally, due to information provided by the prosecutors during the on-site visit, the "Directive" is not followed in every case. Therefore, **the GET recommends to take measures to promote the wider use of seizure/confiscation schemes.**

26. The application of provisional measures (search, seizure) and the carrying out of the special financial investigation is dependent on the level of penalty (fine of the fifth category) applicable to the offence in question. Therefore, they cannot be used in cases under Articles 177a and 178 paragraph 1 of the CC, which entail a lesser penalty (fine of forth category). In the GET's view, excluding these provisions from the confiscation system makes it more difficult to deprive offenders of their proceeds. The information provided during the on-site visit indicates that Article 177a had been designed to deal with minor corruption cases committed by public officials. Yet, as the provision itself does not state any indication, it is possible that the offence in question may well involve also significant sums of money or other gains of high value. There is a potential risk of leaving such profits and advantages in the possession of the offender. The raison for this is that the confiscation mechanisms, under Articles 177a and 178 paragraph 1, may not work effectively as the provisional measure is often taken in order to secure payment of the future confiscation order. Therefore, **the GET recommends 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.**

27. 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 - specialised 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. As regards the BLOM, it is worth remembering that it is vested with a multitude of tasks, including making analyses and developing cases for the Public Prosecution Service and other Police units. The situation could be improved by assigning to the Police units more specialised 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 more specially trained staff should be assigned to the relevant police units, in particular the BLOM, to process suspicious transaction reports. The staff concerned should also be provided with appropriate training on anti-money laundering procedures and techniques.*

III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework

28. The Netherlands is a decentralised unitary state. This means that government organisations - within the context of formal legislation - have a large degree of autonomy, also with regard to the preventive anti-corruption (i.e. integrity) policy. This means that each individual government agency is primarily responsible for formulating, implementing and enforcing its own integrity policy. In the Netherlands, the civil service is divided into different sectors :
    - Central Government
    - Defence
    - Provinces (12)

- Municipalities (483)
- Police
- Judiciary
- Water Management Boards

Public administration comprises the members of the executive branch bound by the so-called "ministerial responsibility", *i.e*., accountability of governmental institutions to their respective legislative bodies. The Dutch Constitution, together with several legal acts such as the Provinces Act, the Municipalities Act, the General Administrative Law Act and the Civil Servants Act lay out the regulatory basis for civil servants, including general principles for "sound administration".

Anti-Corruption Policy

29. The Ministry of the Interior (and Kingdom Relations) plays a central role in coordinating integrity policies in the public sector. In this regard, the Ministry of the Interior is responsible for drafting legislation and providing support and assistance to other ministries and decentralised governmental bodies when setting up their own integrity policies. In 2003, it prepared the Public Administration and Police Integrity Policy Document, which lays down a number of preventive measures ("intentions") to ensure public integrity, and which, together with the relevant sanctions provided in the Criminal Code, is the main instrument for counteracting corruption. In addition, the Government is preparing a policy document focusing on anti-corruption measures of both a preventive and repressive nature. Its completion is planned for end of October 2005. In this context, it is worth mentioning that the Ministry of Justice is in the process of conducting a study aimed at assessing the current nature and scope of corruption in the country[9]. A website for specific integrity/anti-corruption issues has been created (www.integriteitoverheid.nl) and a Bureau for Ethics and Integrity stimulation integrity-related matters is to be established by the Ministry of the Interior in 2005.

30. An overall anti-corruption monitoring mechanism does not exist as yet in the Netherlands, but integrity audits are carried out. Within the framework of the Dutch policy on integrity, as laid down in the Public Administration and Police Integrity Policy Document, a specific integrity monitoring system (a Guide for Integrity Audits) has been developed by the Ministry of Finance (the Audit supervision policy department) in cooperation with the Ministry of the Interior. Since 2003, integrity audits have been carried out annually in the ministries. These audits are performed by (professional) auditors of the ministerial Audit Departments and the main subjects of assessment are: Organisation/culture, Administrative organisation/Internal control (AO/IC), Personnel policy and Security policy. The outcome of an integrity audit is sent to the competent authority in the ministry (Secretary General) who is responsible for taking measures to improve the areas which prove vulnerable. Under the supervision of the Ministry of the Interior an inventory has been carried out on the Integrity policy of the Public Sector (ministries, provinces, municipalities, water management boards and police) in 2004. The results of this inventory have been sent to the Parliament. The Netherlands Court of Audit (NCA) has conducted a survey with regard to the functioning of the integrity control system within the ministries at central Government level. [10]

Transparency

31. The Law on Publicity of Governmental Information (*Wet openbaarheid bestuur, Wob*) establishes the general right of any person to request information relating to a governmental issue; this right

[9] This study was completed and sent to Parliament in August 2005.

[10] After the visit, the authorities of the Netherlands informed the GET that the results of this survey had been published in April 2005.

is limited according to certain special clauses provided in Article 10[11]. The Dutch Government has a specific website to provide information on legal and policy documents (www.overheid.nl) and, in general, all administrative bodies have their own websites to post specific information on their activities. Finally, there is a general information desk for the central Government, which provides data upon request via telephone or e-mail (www.postbus51.nl). Persons who are refused access to governmental information may lodge a notice of objection with the authority that made the decision. The authority's decision may be appealed before the administrative courts (see paragraph 34 below).

32. Extensive public consultation is carried out at both central, regional and local levels for policy and legislative proposals. Specific advisory bodies (such as the Council of State) are established prior to the adoption of legislation in the Parliament. Public consultation always takes place at regional and local levels when dealing with decisions related to planning or environmental fields.

Control of Public Administration

33. Pursuant to the General Administrative Law Act, any person whose rights are affected by a (written) administrative *decision* could lodge a notice of objection with the authority that took the decision. The interested party is heard and a new decision taken, which can then be appealed before an independent administrative court at first instance (district courts) and a subsequent second instance body.

34. The General Administrative Law Act also lays down provisions on the procedure to be followed when dealing with complaints against the Administration. This "internal right of complaint" enables any person to lodge a *complaint* about the *actions* of an administrative authority with that authority. The interested party is heard and a decision is taken in the matter. An "external right of complaint" addressed to the Ombudsman exists under Dutch legislation in those cases where a person, who has lodged a complaint with an administrative authority, is not satisfied with the outcome. The Ombudsman's main task is to investigate – upon its own initiative or upon a complaint – the actions of civil servants of almost all administrative bodies in the country, including the administrative authorities of the provinces, municipalities and water boards. The Ombudsman's decisions are not binding and it is the administrative authority concerned that decides what action should be taken following the Ombudsman's decision. The Ombudsman sends an annual report to the Parliament. This report is made public and can be consulted on the Ombudsman website. According to the Dutch authorities, the Ombudsman does not have any

[11] According to Section 10, the disclosure of information pursuant to this act shall not take place insofar as:
- doing so might endanger the unity of the Crown;
- doing so might damage the security of the State;
- the data concerned relate to companies and manufacturing processes and were furnished to the government in confidence by natural or legal persons;
- personal data are involved as referred to in section 2, chapter 2, of the Protection of Personal Data Act, unless disclosure clearly does not violate personal privacy.

Nor shall disclosure of information take place insofar as its importance does not outweigh:
- the relations between the Netherlands and other states or international organisations;
- the economic and financial interests of the State, other bodies constituted under public law or certain administrative authorities;
- the investigation of criminal offences and the prosecution of offenders;
- inspection, control and supervision by administrative authorities;
- respect for personal privacy; the importance of the addressee being the first to access the information;
- the prevention of disproportionate advantage or disadvantage to the natural or legal persons concerned or to third parties.

specific competence in relation to the prevention and detection of corruption. In practice, citizens reporting corruption cases address their concerns directly to the police or the public prosecutor.

Recruitment

35. The Recruitment and Selection Decree (*Besluit werving en selectie)* contains provisions regulating the election of people who apply for a position within central government. Besides this decree, there exists legislation dealing with pre-employment screening which makes possible to assess the reliability of the candidates. At central government a standard three-tier screening, takes place prior to employment and is applied depending on the vulnerability of the position at stake: (i) a security screening is carried out if the position to be filled deals with State security or other serious State interests. It includes an assessment of previous employment records and hearings of employers; (ii) screening of criminal records takes place for positions requiring high levels of personal integrity or responsibility; (iii) certificates of good behaviour are requested for all other cases[12]. Criminal records are consulted for all of the aforementioned types of screening.

Rotation

36. There are no general provisions in place concerning periodical rotation of civil servants. However, on the basis of specific directives such rotation occurs in practice for certain positions that may be especially vulnerable to corruption, within the police (e.g., detectives in the criminal intelligence service, vice squad), Tax authority, customs or leading positions within central Government (Secretary Generals and Director Generals of the Ministries). Rotation within the aforementioned positions takes place every five years (extendible to seven years for the latter).

Training

37. There is no formal system of training for future civil servants with regard to integrity or ethics within the public administration. In-house information on integrity and ethics of civil service is provided immediately after the civil servant has been recruited. Awareness raising in the Dutch Public Administration consists firstly in an initial training programme which includes information related to requirements for being a (good) civil servant. At the end of this programme civil servants take an oath of office (before taking up office). In addition, there are special education and training programmes ("dilemma training") where practical cases involving civil servants in potential integrity breaches are presented. Civil servants holding positions that are especially vulnerable to corruption, like police officers and prison warders, receive special awareness training tailored to the specific circumstances of their job.

Conflicts of interest

38. There is no general legislation dealing with the issue of conflicts of interest in the Netherlands. However, there are provisions in the Civil Servants Act which aim at preventing some forms of possible conflicts of interest : the obligation to report any additional employment/outside activity that may endanger the public interest or the adequate performance of the public function (if the authorisation is granted, the additional employment/outside activity is recorded in a specific register held by each ministry[13], only the outside activities of top management officials, such as directors general and secretaries general, are subject to disclosure); civil servants who hold

[12] Examples of positions that can be screened are : category (i), staff who deal with classified documents (confidential, secret or top secret), ie a director general, his/her secretary and other members of his/her staff ; category (ii), police officers (prison) warders, courts' and Public Prosecution Service's staff; category (iii), all remaining staff.
[13] These records are not public.

positions in the public administration in which there is a potential risk to a *financial conflict of interest* (e.g. some specific positions within the ministries of Finance and Economic Affairs) are obliged to make statements on financial and other specific personal interests they might have to the relevant authority within the state organisation. The contents of these financial statements are not verified but the civil servant could be requested to provide further information.

39. There is no general legislation to limit or to prevent civil servants to move the private sector where they could possibly misuse their former contact network or specific knowledge. However, there are some rules in place to prevent former civil servants from being hired for a position related to their former public duties. The so-called 'Revolving door employment Regulation' prohibits former civil servants from being engaged as an external contractor during a period of two years after their resignation. In addition, the Ministry of Defence prohibits its civil servants from keeping contact with former colleagues as a business partner during a period of two years. In general civil servants are bound by confidentiality and official secrecy with respect to certain (classified) vulnerable information.

Codes of conduct/ethics

40. Although not compulsory, many governmental bodies have already an integrity code. A proposal to amend the Civil Servants Act in order to include an obligation for all public bodies to draw up a code of conduct for all civil servants is under consideration by the Parliament. This amendment is expected to come into effect at the end of 2005. The draft code of conduct in itself does not provide for sanctions; however, intentional and negligent breaches of the obligations established in the code or other relevant administrative regulations can be considered as cases of "neglect of duty" and, consequently, are subject to disciplinary measures. The severity of the disciplinary sanction may range from a written reprimand to dismissal.

Gifts

41. Civil servants are prohibited from accepting gifts and donations in connection with their duties. Furthermore, they should always report gifts to their hierarchical authority, who would then decide whether such a gift can be accepted or not. In such cases, the context under which the gift is offered and the value of the gift[14] are the two main factors that are considered. The code of conduct for central government contains further provisions on this matter.

Reporting corruption

42. According to Article 162 CPC, civil servants, including members of all public boards, as well as persons employed by semi-public legal entities are obliged to report serious criminal offence, including corruption, of which they learn in the course of performing their official duties to the police or Public Prosecutor. Failure to report may be considered a "neglect of duty" and may be subject to disciplinary measures. In addition, according to the 2001 whistleblower regulations, civil servants are obliged to report a suspicion of misconduct to their hierarchical superior, who is under the obligation to give a confirmation and immediately inform the competent authority. An investigation is then initiated and the whistleblower is informed on its outcome within a reasonable period of time.

43. Safeguards are provided under Dutch legislation to encourage good faith reporting: (i) if the relevant hierarchical superior is involved, the whistleblower may address the immediate superior

[14] The generally accepted rule is that the value of gifts should not exceed 50 Euros.

authority; (ii) if the whistleblower has some doubts on whether and how to report, he/she may consult a confidential integrity counsellor; and (iii) if the whistleblower disagrees with the decision of the hierarchical superior, or no information is provided in a reasonable period of time concerning the outcome of the relevant investigations of the reported suspicions, the whistleblower has the possibility to report to the Central Government Integrity Committee (as a second instance). In special occasions (iv) - if there are significant risks preventing the normal internal channels from reporting suspicions (e.g., one or more senior officials are involved in the suspected misconduct) - he/she may *directly* report to the Central Government Integrity Committee. This independent committee will assess whether the direct report is justified and will either investigate the case and report to the competent enforcement authority, or advise the whistleblower to report the suspicion via the regular internal channels. Pursuant to the Civil Servants Act, whistleblowers who report a suspicion of misconduct in good faith and according to the established procedures may not experience any negative consequence in the performance of their duties. Integrity counsellors are also protected from any prejudice connected to their advisory tasks concerning suspicions of misconduct.

Disciplinary proceedings

44. The competent administrative body is empowered to initiate all relevant investigations on violations of the obligations related to integrity matters, according to the provisions of the Civil Servants Act. Some governmental agencies, including the police, have their own integrity bureau to carry out internal investigations. If the integrity-related infringement constitutes a criminal offence, such as corruption or fraud, the offence must be immediately reported to the competent law enforcement authorities. In such cases, criminal investigations can only be carried out by officials from the police or the central Government Internal Affairs Division (*Rijksrecherche*). Disciplinary measures may be challenged by lodging a notice of objection with the authority that took the decision. The new decision can be challenged before an administrative court, and the court's decisions may be appealed.

45. Information on disciplinary offences and their corresponding sanctions is not centrally gathered and related statistics do not exist to date. Disciplinary and criminal proceedings may run in parallel and sanctions may be cumulated. Relevant documents supplied during the course of a criminal investigation (e.g., official police reports) may also be used in the disciplinary procedure.

b. Analysis

46. 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 administration 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.

47. 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" 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 finalised by the end of September 2005. 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 organisations aimed, *inter alia*, at :

- pursuing a policy of integrity in order to stimulate proper behaviour 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.

48. 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, as noted in paragraphs 38 and 39, 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.**

49. 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 organisations adopt their own code of conduct for civil servants.**

IV. THEME III – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

Definition of legal persons

50. The main legal persons in the Netherlands include the following categories: (i) *public limited liability companies (NV) and private limited liability companies (BV*[15]*).* Shares of NV and BV can be transferred, although transfers of the shares of a BV are subject to restrictions and the shares of a BV may not be offered for public subscription or trading ; (ii) *foundations* have no members and their purpose is to realise an objective stated in their articles of association by using capital allocated to such effect (profitability is not excluded, but there are certain restrictions in place concerning the effective allocation of profit); (iii) *association*s consist of a partnership of two or more people (members) with a common purpose and using the association's profits to that effect; (iv) *cooperatives* are used in cases where a number of persons seek to serve their individual, but similar interests, by combining their resources.

51. Certain requirements must be met to establish public limited liability (NV) and private limited liability (BV) companies, including a minimum starting capital, in money or other assets (45,000 Euros for NV and 18,000 Euros for BV, respectively), and a declaration of no objection provided by the Ministry of Justice. Criminal records of company founders and the first managing and supervisory directors are checked by the Department of Justice prior to granting the declaration of no objection. Associations, cooperatives, mutual insurance societies and European economic ventures are established on the basis of by their members' consent.

Registration and transparency measures

52. If all the above mentioned requirements are fulfilled, including the declaration of no objection, the notarial deed of incorporation can be executed and the legal person is established. After this establishment the legal person must be registered. Registration in the trade register of the Chamber of Commerce is mandatory for all the aforementioned types of legal persons, except for informal associations, because their articles of association rules are not set out in a notarial deed. The Chamber of Commerce is in principle obliged to register any company which request it. Registration can be refused in case of uncertainty about the identity of the person who signs the registration form (i.e. director of the company in the case of the NVs and BVs). Any relevant changes in the company*, e.g.*, change of director, must be reported within one week. Some common information is required for registration of all types of legal persons, including trade name and address, names of authorised trade agents and their relevant addresses and contact details, summary of business activities, and commencement date of business. In addition, NVs and BVs are also requested to provide personal data of directors and legal representatives, capital, personal data of shareholders and number of shares/quotas held. Information contained in the register of the Chamber of Commerce is partly accessible on the Internet whereas additional information can be requested (via the Internet) and, in this latter case, a small fee is to be paid.

53. There are no restrictions on legal persons to hold interests in another legal person. Although there are no restrictions on the number of accounts a company can hold in the Netherlands, since the identity of the ultimate beneficiary owner is to be registered for inspection purposes, cases of unusual multiple accounts may be investigated by the Unusual Transactions Reporting Office (MOT).

[15] At the time of the visit, there were 600,000 BVs in the Netherlands.

Limitations on exercising functions in legal persons

54. Criminal records of company founders and the first managing and supervisory directors are checked by the Ministry of Justice before granting the declaration of no objection required prior to the execution of the notarial deed of incorporation. According to Article 28 of the Criminal Code, "a person found guilty may be deprived from (…) holding office; (…) exercising specific professions", including acting in a leading position in legal persons. However, so far this provision has never been used to disqualify directors of companies. At the time of the on-site visit a draft law was under consideration providing for, *inter alia,* penal and civil provisions on disqualification of people holding managerial positions in legal persons.

Liability of legal persons

55. The Dutch Criminal Code provides for criminal liability of legal persons in its Article 51[16]. Legal persons can be held liable for bribery and money laundering offences. In addition, civil liability of legal persons is dealt with by the Civil Code. The term legal person is to be understood in its wider Civil Code definition**,** which refers to (i) the State, provinces, municipalities, water control corporations, all bodies, which pursuant to the Constitution, are empowered to issue regulations, and other bodies "empowered with part of the duties of government" pursuant to the law; (ii) associations, cooperatives, mutual insurance societies, companies limited by shares, private companies with limited liability and foundations.

56. Article 51 is interpreted in such a way that criminal liability may be assigned to the legal person notwithstanding that the natural person who perpetrated the offence is not convicted or identified. Criminal and civil liability of a legal person is not necessarily established as a consequence of liability proceedings against a physical perpetrator. Liability of a legal person is also applicable in case of lack of supervision by the natural person who has a leading position in the legal entity. The Dutch authorities stated that the fact that a legal person is convicted for a criminal offence does not exclude prosecution of the physical instigator of the offence.

Sanctions

57. Criminal sanctions for legal persons consist of fines of 45,000 Euros in cases of active bribery and money laundering (fifth category fine). Pursuant to Article 23 n° 7 CC[17], these fines may be increased when the category of the fine initially determined by law does not provide for an appropriate punishment. Accordingly, active bribery and money laundering may be sanctioned with a maximum fine of 450,000 Euros (sixth category fine). In addition, the Criminal Code provides that measures related to the seizure and confiscation regimes can also be applied,

[16] Article 51 (criminal liability)
1. Offences may be committed by natural persons and legal persons.
2. If an offence is committed by a legal person, criminal proceedings may be instituted and the punishments and other measures provided for by law may be implemented where appropriate:
    a. against the legal person; or
    b. against those who ordered the commission of the offence, and those who were in control of such unlawful behaviour; or
    c. against the persons mentioned under (1) and (2) together.
3. For the purpose of the application of the above paragraphs legal persons shall be deemed to include a unincorporated company, a partnership and a special fund.

[17] "When sentencing a legal entity, a fine may be imposed, if the category stipulated for the offence does not allow an appropriate punishment, to the amount of the category immediately above that category."

where appropriate, to legal persons. Moreover, Article 2:20 of the Civil Code provides for the possibility for the judge to wind up a legal person whose activities have infringed rules on public order.

58. As for 1 July 2004, the following statistics had been gathered by *Compas* (Dutch case registration system) for the past three years:

Table 3: Number of cases settled involving legal persons for corruption offences

Year	No. of cases[18]	No. of which legal persons
Bribery of civil servants (inc. judges) (articles 177, 177a and 178 Criminal Code)		
2001	19	1(conviction)
2002	20	2 (1 dismissal – 1 transaction)
2003	41	-
Bribery of non public servants (articles 328ter, second paragraph Criminal Code)		
2001	4	1 (transaction)
2002	5	2 (2 transaction)
2003	21	9 (2 dismissals – 3 transactions – 4 indictments)
Non public servants accepting bribes (article 328ter, first paragraph Criminal Code)		
2001	3	-
2002	7	-
2003	10	1 (indictment)

59. There are no records kept in the Netherlands especially for companies found liable for acts of corruption.

Tax deductibility and fiscal authorities

60. It is prohibited to deduct expenses linked to corruption offences where there is a conviction or the payment of a fine has been agreed with the public prosecutor ending the criminal proceeding. However, a draft bill is currently under consultation to amend the existing fiscal treatment of bribes so that criminal conviction is no longer a pre-requisite to prohibit deductibility and to provide tax inspectors with specific guidelines to develop their work accordingly.

61. Tax authorities must report to the Head of the FIOD-ECD (Fiscal Intelligence and Investigation Service) when confronted with cases of active and passive bribery. Since 1 January 2004, tax authorities report on money laundering suspicions to the Unusual Transactions Reporting Office (MOT). During the visit, the GET was told that, as a result of the findings of the Parliamentary

[18] The number of cases represents the number of "suspects" whether physical or legal persons.

Committee of Inquiry into Construction Fraud, tax authorities were carrying out an increasing number of investigations in relation to potential payments of bribes by construction companies.

62. Tax authorities are obliged to report suspicions/cases of corruption to the competent law enforcement authorities.

Accounting Rules

63. Pursuant to the Civil Code (Articles 2:10 and 2:24), administrative and accounting records are to be kept by all legal persons for seven years; the same time frame applies to book keeping obligations following termination of business activities. A similar period of time is established in Section 52 of the General Taxes Act for tax-related purposes. An extended time period of nine years is established in the VAT Act with respect to keeping of books and records concerning immovable property or legal rights to immovable property.

64. The use of false or incomplete information in accounting documents (including annual accounts and annual reports), along with the issue of double invoices, are offences according to the Criminal Code (Articles 225-227b for forgery offences and Article 326 and 336 for fraud, respectively). Furthermore, the Criminal Code establishes that in the event of bankruptcy of a legal person, destruction and hiding of accounting documents by the managing or supervisory director shall be subject to sanctions (Article 342). Additional provisions entailing criminal liability are included in the VAT Act for intentional failures to comply with bookkeeping and tax-related obligations. Civil liability provisions apply in case of false information in the financial report (Article 2:139 Civil Code)

Role of accountants, auditors, and legal professionals

65. There are no specific measures aimed at involving accountants, auditors and other advising professions in detecting corruption offences. However, while performing their accountancy, auditing, or advising functions auditors that suspect that a (fraud-related) offence has been committed, must report the suspicion to the management of the organisation and must ensure that the necessary remedial measures are effectively taken. If measures are not taken by the management bodies, the auditor is obliged to report the relevant suspicion to the law enforcement agencies and will immediately suspend approval of the audit report (Article 240 of the Netherlands Standards on Auditing). Since 1 June 2003, accountants, auditors and/or other advising professionals are obliged to report suspicions of money laundering according to the Disclosure of Unusual Transactions Act.

b. Analysis

66. 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 consideration 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.

67. 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.

68. 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 person 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, t**he 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**.

69. 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.

70. 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.

71. 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.

72. 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.

V. CONCLUSIONS

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

74. 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.

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

(i) **to take measures to promote the wider use of seizure/confiscation schemes** (paragraph 25);

(ii) **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** (paragraph 26)**;**

(iii) **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 sevant's actual duties and responsibilities (paragraph 48);

(iv) **to make sure that all public organisations adopt their own code of conduct for civil servants** (paragraph 49)**;**

(v) **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** (paragraph 66)**;**

(vi) **to consider to increase the penal sanctions for legal persons in order to be sure that the sanctions are effective, proportionate and dissuasive** (paragraph 68)**.**

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

77. 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.