



Strasbourg, 18 March 2005

Public
Greco RC-I (2004) 13E

First Evaluation Round

Compliance Report on the Netherlands

Adopted by GRECO
at its 22nd Plenary Meeting
(Strasbourg, 14-18 March 2005)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on the Netherlands at its 13th Plenary Meeting (24-28 March 2003). This Report (Greco Eval I Rep (2002) 8E) was made public by GRECO, following authorisation by the authorities of the Netherlands, on 7 May 2003.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of the Netherlands submitted their Situation Report (RS-Report) on the measures taken to follow the recommendations on 8 October 2004.
3. At its 13th Plenary Meeting (24-28 March 2003), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Estonia and Iceland to provide Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Mari-Liis LIIV on behalf of Estonia and Ms Ragna ARNADOTTIR on behalf of Iceland. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of the Rules of Procedure, at its 22nd Plenary Meeting (14-18 March 2005).
5. Under Article 15 para. 6 of the GRECO Statute and Rule 30.2 of the Rules of Procedure, the objective of the RC-Report is to assess the measures taken by the authorities of the Netherlands and, wherever possible, their effectiveness in order to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

6. It was recalled that GRECO in its Evaluation Report addressed 7 recommendations to the Netherlands. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended 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.*
8. The authorities of the Netherlands have reported that they have addressed recommendation i. in different ways:

Firstly, in 2003 a "Document on integrity policy for public administration and police" (*Nota integriteitsbeleid openbaar bestuur en politie*) was approved by the Parliament. It contains an overview of the situation of the integrity policies within the public administration and the police in the Netherlands and a list of actions ("policy intentions") to be taken to improve integrity in the public sector. All these "intentions" have already been implemented:

- the Civil Servants Act has been amended to introduce a number of integrity measures addressed to the relevant staff and organisations (the disclosure of outside activities, a compulsory notification requirement in respect of financial interests, the obligation for the authorities to introduce whistle blowing regulations; new statutory provision on protection of civil servants who report in good faith);

- guidelines for Integrity Projects that authorities can use to identify vulnerable areas within their organisations have been drafted and issued to all Public bodies;
- a guide for confidential integrity counsellors has been drafted and issued to all Public bodies;
- a specific Internet site for integrity issues in the public sector has been created (www.integriteitoverheid.nl);
- the Minister of the Interior and Kingdom Relations carried out an integrity policy study, the results of which were submitted to the Parliament;
- as for 2004, integrity audits are being carried out within all ministries.

Secondly, at the end of 2003 an anti-corruption action plan was prepared, which contains notably proposals a) to conduct research on corruption and b) to formulate an anti-corruption policy document that identifies clearly the different organisations involved in the anti-corruption policies and the functioning of the various processes of prevention, investigation and prosecution. The objective of this document is twofold: to describe the current preventive and repressive measures against corruption in place and to provide a blueprint for the future. The anti-corruption policy document will be completed by mid 2005.

9. GRECO took note of the information provided by the authorities of the Netherlands and in particular that a “document on integrity policy for public administration and police” (*Nota integriteitsbeleid openbaar bestuur en politie*) has been adopted and that measures envisaged in the document have been implemented. The authorities of the Netherlands might wish to provide GRECO with additional information regarding the implementation of measures foreseen in the anti-corruption action plan.
10. GRECO concludes that recommendation i has been dealt with in a satisfactory manner.

Recommendation ii.

11. *GRECO recommended to develop more detailed statistics, targeted research and analysis, in order to measure more clearly the extent of the corruption phenomenon in the country.*
12. The authorities of the Netherlands have reported the following with regard to research, analysis and statistics in the field of corruption. First, at the request of the Ministry of Justice, research aimed at looking into the nature and the extent of corruption within the public service is underway. It consists of four sub-projects: i) existing knowledge and understanding of the corruption phenomenon in the country, ii) survey on its extent, iii) the nature of corruption and iv) an analysis of prosecution activities in the field of corruption. The results of this research should be available in the first half of 2005. Secondly, at the request of the National Police Internal Investigation Department (*Rijksrecherche*), an analysis of all cases of corruption registered by the Department between 1998 and 2000 was conducted and the results were published¹. Thirdly, the Fiscal and Economic Crime Service (FIOD/ECD) has conducted research on corruption in the private sector. The research is completed and as a result the FIOD/ECD is investigating 35 cases. Moreover, over the past four months a research called “National Threat Assessment on serious or organised crime in the Netherlands” has been conducted. One of the items in the assessment is corruption. Finally, as regards statistics, since February 2001 all public prosecutors’ offices have to report cases of corruption they are dealing with to the coordinating committee (*Coördinatiecommissie*) of the *Rijksrecherche* (CCR), which acts as a central data collecting agency. In addition, the Public

¹ H. Neelen and A. Nieuwendijk: *Geen ABS, analyse van Rijksrechercheonderzoeken naar ambtelijke en bestuurlijke corruptie, 2003.*

Prosecution Service has its own central database system (COMPAS) in which all cases reported to the prosecution authorities, including corruption, are recorded. According to the authorities of the Netherlands, the combination of information provided by the two systems (CCR and COMPAS) will make available a clear picture of the corruption phenomenon in the country.

13. GRECO took note of the information provided by the authorities of the Netherlands and, in particular, of the fact that research and studies have been carried out in different fields of criminal justice, including on the subject of the prevention of and the fight against corruption. However, GRECO considered that the most relevant study on corruption in the public service, as requested by the Ministry of Justice, is not finalised yet. The authorities of the Netherlands might wish to provide GRECO with additional information regarding the progress made in respect of this study.
14. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

Recommendation iii.

15. *GRECO recommended to 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 the relation between Article 162 of the Code of Criminal Procedure and the order of 7 December 2000.*
16. The authorities of the Netherlands have reported that an amendment to the Civil Servants Act entered into force on 1 May 2003, which provides, *inter alia*, that administrative organisations have to draft their own whistle blowing regulations applicable within the scope of their authority. Given the quite high degree of autonomy that local government agencies enjoy in the Netherlands in drafting regulations, each local authority will draft its own rules on this matter. However, the authorities of the Netherlands have reported that this process is being carried out under the umbrella of local authorities organisations (such as the IPO, “Association of Dutch Provinces” and the VNG, “Association of the Dutch Municipalities”), providing a guarantee with regard to the uniformity of rules adopted and to conformity with central government regulations on whistle blowing.
17. The authorities of the Netherlands have also reported that in the process of implementation of the amendment to the Civil Servants Act referred to above, the regulation related to the legal status of public servants is being modified at central level, and the whistle blowing regulation is also going to be amended. The amendment will include a provision in the whistle blowing regulations clarifying the relationship between Article 162 of the Code of Criminal Procedure and the whistle blowing regulations.
18. GRECO acknowledged that the authorities of the Netherlands have given consideration to both concerns expressed in Recommendation iii., notably by amending the Civil Servants Act, which provides that central and local authorities have to prepare whistle blowing regulations. This amendment includes also a provision aiming at clarifying the relationship between Article 162 of the Code of Criminal Procedure and the whistle blowing regulations. The authorities of the Netherlands might wish to provide GRECO with additional information regarding the concrete implementation of the measures introduced by amendments to the Civil Servants Act.
19. GRECO concludes that recommendation iii has been dealt with in a satisfactory manner.

Recommendation iv.

20. *GRECO recommended that the Public Prosecution Service, police forces, the Rijksrecherche and the FIOD-ECD (Fiscal Information and Investigation Service and Economic Investigation Agency), develop a strategy to establish a fluid channel of communication with the private sector.*
21. The authorities of the Netherlands have reported that under the auspices of the Minister of Justice an anti-corruption “platform” (task force) has been set up. The platform aims at promoting common actions to fight corruption through the optimisation of exchange of knowledge and information. The “platform” will be composed not only of government representatives but also of representatives from the scientific community, the corporate sector and non-governmental organisations. Moreover, since this initiative will bring together representatives of the private sector and of the relevant investigative and prosecution authorities, the expectation is that communications between these sectors will be optimised. The platform’s first meeting will take place on 5 April 2005. In addition, the Ministry of Economic Affairs has prepared an information brochure for the corporate sector on the consequences of activities carried out in violation of the regulations on integrity in businesses.
22. GRECO took note of the fact that the Ministry of Economic Affairs has prepared an information brochure for the corporate sector on the consequences of activities carried out in violation of the regulations on integrity in businesses. It also noted that an anti-corruption task force composed of, *inter alia*, relevant investigative and prosecution authorities and representatives of the private sector has been set up. GRECO acknowledged that the creation of the task force shows significant progress towards the compliance with recommendation iv. However, this task force has not yet met. Consequently, GRECO considered that it will only be possible to evaluate whether the concern expressed in recommendation iv. (to establish a fluid channel of communication between the private sector and the Public Prosecution Service, police forces, the Rijksrecherche and the FIOD-ECD) has been completely addressed once the task force is fully operational.
23. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

24. *GRECO recommended that the police and public prosecution 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.*
25. The authorities of the Netherlands have reported the following:
 - As regards the first part of the recommendation (give regular specific in-service training to the police and public prosecution services on anti-corruption matters) and the third part (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): the Public Prosecution Service has proposed to the Training and Study Centre for the Judiciary (*Stichting Studiecentrum Rechtspleging*) that a course on the subject of anti-corruption measures be included in the training sessions for judges and prosecutors. The course should address issues such as the legal framework (specific sections of law, treaties, conventions and case law),

tendering legislation, investigative practice, financial investigations and forensic accountancy. This project is under consideration. Concerning the training of police officers, following a substantial reorganisation of the training system within the police, a police training council (*Politie Onderwijs Raad*) was created at the beginning of 2003. Among other things, the council advises the Minister of Justice and the Minister of the Interior and Kingdom Affairs on the structure and content of police training. The two Ministers in question have asked the council to advise them on the implementation of the recommendations made by GRECO with regard to the training of police officers.

- As regards the second part of the recommendation (increase the number of staff) : over the last years, financial and economic crime has been a recurrent subject of discussion in the Netherlands, in particular with regard to the question of as to whether or not more resources should be allocated to combating fraud and corruption. A motion was tabled to this end and, in August 2003, the Minister of Justice submitted a detailed letter to the Parliament on this matter, setting out an opinion on the investigation and prosecution of financial and economic crimes and describing the role played by the authorities and agencies involved in this field. The conclusion drawn was that even though progress was needed in the methodology to be adopted in order to better face the problems related to fighting fraud, corruption and financial and economic crime, it should be realised through an improvement of the quality of the work carried out in this field and the strengthening of the organisation, rather than through any increase in existing resources. The authorities of the Netherlands have also reported that in connection with the budgetary situation, additional investment will only be possible to a very limited extent in the years ahead. Therefore, additional (re)deployment for the prosecution of financial and economic offences could only be achieved by a shift within the existing resources, which would be detrimental to the investigation and prosecution of other forms of serious crime.
26. GRECO took note of the information provided by the Dutch authorities. As regards the first and the third parts of the recommendation, it acknowledged that some measures related to the in-service training of prosecutors and police officers are under consideration. Nevertheless, GRECO noted that no change has been made or measure implemented in this regard since the adoption of the First Evaluation Round Report on the Netherlands, on 28 March 2003. Concerning the second part of the recommendation, it recognised that budgetary restrictions can be considered a valid reason for not further increasing resources of investigative agencies specialised in economic crime and corruption offences. The authorities of the Netherlands might wish to provide GRECO with additional information on whether and/or how they have addressed the concern expressed in the conclusion of the letter submitted by the Minister of Justice to the Parliament – namely that “an improvement in the approach taken to the resolution of fraud and financial and economic crime (...)” is required.
27. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

28. *GRECO recommended 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.*

29. The authorities of the Netherlands have reported that the Directive “on the investigation and prosecution of corruption of officials” leaves little room for exercising the prosecutorial discretion in order to justify a failure to start and pursue the prosecution of cases of public corruption. They have also reported that currently there is a “zero tolerance approach” with regard to investigating and prosecuting corruption in the Netherlands. This has been clearly affirmed by the Minister of Justice in a declaration made before the Parliament. Subsequently, the chair of the board of Procurators-general has stated that corruption has to be considered as a top priority for the Public Prosecution Service and instructed the prosecutors to prosecute all cases in which corruption is involved. The authorities of the Netherlands have also underlined that this means that there is hardly any room for prosecutors to not investigate/prosecute or to stop the investigation on corruption. Moreover, each local public prosecution office has its Rijksrecherche-prosecutor, who is a prosecutor specialised, *inter alia*, in corruption matters. Every case of corruption must be reported to this special prosecutor who will decide whether further intelligence/investigation is needed. In addition to the Directive, the prosecutors are making more and more use of other tools to improve their pro-active approach vis-à-vis corruption cases: for example, the crime audits that have already been completed and the findings of the Parliamentary Committee of Inquiry into Construction Fraud. These tools are considered to be extremely useful insofar as they will support the prosecuting services in identifying which sectors and functions within the public administration are the most vulnerable to corruption.
30. GRECO took note of the information provided by the authorities of the Netherlands and concludes that recommendation vi has been implemented satisfactorily.

Recommendation vii.

31. *GRECO recommended to consider the possibility to create - within the major district courts - specialised panels of judges who should be available to preside over the most complex and serious cases related to economic crime offences.*
32. The authorities of the Netherlands have reported that the Minister of Justice has requested the Council for the Administration of Justice [*Raad voor de Rechtspraak*] to provide an opinion on this recommendation. The Council is the body responsible *inter alia* for maintaining the links between the Minister of Justice and the courts and representing them in political and social fora. In response to the Minister’s demand, the Council agreed that complex financial and economic criminal proceedings do indeed require special judicial expertise. It added that this expertise could only be achieved through extensive experience with various complex financial and economic criminal cases. Since the number of complex financial and economic criminal cases is limited in the Netherlands, few courts have the opportunity to develop this expertise. Given the small number of corruption cases and other complex financial and economic criminal cases brought before courts each year, some form of concentrated proceedings-completion is needed, in a limited number of courts. In the opinion of the Council, the decree on locations of legal proceedings and associated proceedings [*Besluit nevenzittings- en vestigingsplaatsen*] – which entered into force in 2004 – could be used to achieve this concentration. Agreements will be made per category of financial and economic criminal cases as to which court will conduct the proceedings in question. This will depend on the expertise available in individual courts. The authorities of the Netherlands also reported that the so-called “mega cases” (cases that require more than three days of court capacity) are distributed among the various courts by the mega case co-ordination centre [*Coördinatiecentrum megazaken*]. In the case of financial and economic criminal law, mega cases share the same characteristics as complex financial and

economic criminal cases and, as such, demand the same knowledge and skills. When distributing mega cases, the co-ordination centre will bear in mind the expertise available in individual courts.

33. GRECO notes that the issue raised in this recommendation has been subject to consideration both at Government and judiciary levels and concludes that recommendation vii has been implemented satisfactorily.

III. CONCLUSIONS

34. **In view of the above, GRECO concludes that the Netherlands has implemented satisfactorily or dealt with in a satisfactory manner the vast majority of the recommendations contained in the First Round Evaluation Report.** Recommendations vi and vii have been implemented satisfactorily and recommendations i, ii and iii have been dealt with in a satisfactory manner. Recommendations iv and v, have been partly implemented.
35. GRECO invites the Head of the delegation of the Netherlands to submit additional information regarding the implementation of recommendations iv and v by 30 September 2006.