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Second Evaluation Round

Compliance Report on the Netherlands

Adopted by GRECO
at its 34th Plenary Meeting
(Strasbourg, 16-19 October 2007)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on the Netherlands at its 25th Plenary Meeting (14 October 2005). This report (Greco Eval II Rep (2005) 2E) was made public by GRECO, following authorisation by the authorities of the Netherlands, on 10 November 2005.
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 implement the recommendations on 2 May 2007.
3. At its 26th Plenary Meeting (5-9 December 2005), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Georgia and Germany to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Tina BURJALIANI on behalf of Georgia and Mr Matthias KORTE on behalf of Germany. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of the Netherlands, to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

5. It was recalled that in its evaluation report GRECO addressed six recommendations to the Netherlands. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended to take measures to promote the wider use of seizure/confiscation schemes.*
7. The authorities of the Netherlands report that the Directive on the Investigation and Prosecution of Corruption of Officials, which previously did not refer to the seizure and confiscation of the proceeds of corruption, has recently been amended. The revised directive, which entered into force in August 2007, now underlines that a financial investigation should always be part of an investigation into corruption offences, to facilitate both the gathering of proof that a corruption offence has been committed and the execution of a possible future confiscation procedure. Furthermore, the directive outlines the applicability of the confiscation regime, how to make use of the Criminal Assets Deprivation Bureau of the Prosecution Service (*Bureau Ontnemingswetgeving Openbaar Ministerie*, hereafter *BOOM*) and refers to the possibility to use confiscation in active bribery cases. Further reference is made to the Directive on Special Confiscation. It is expected that with the introduction of these amendments confiscation will become a specific component of the fight against corruption.
8. Moreover, since the Second Round Evaluation of the Netherlands the *BOOM* has been reorganised and its number of staff has been increased.¹ This reorganisation and increase of staff of the *BOOM* has had a positive impact on the use of seizure and confiscation schemes. The amount of confiscated assets has grown from €11,070,820 in 2005 to €17,540,860 in 2006. Furthermore, the amount of seized assets has increased to approximately €60 million in 2006 (from approximately €40 million in 2002) and it is expected to reach €110 million in 2007. Finally,

¹ The number of staff of the *BOOM* increased from 22 in 2005 to 48 in 2006; in 2008 the number of staff of the *BOOM* will further grow to 61.

the *BOOM* is involved in a growing number of large and complex confiscation cases (approximately 100 cases a year).

9. GRECO takes note of the information provided and welcomes the measures taken by the Dutch authorities to promote the wider use of seizure and confiscation schemes.
10. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

11. *GRECO recommended 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.*
12. The authorities of the Netherlands report that this recommendation will be implemented in the context of the (partial) revision of the Criminal Code, the Criminal Procedure Code and certain other laws. The draft act concerning this revision will be submitted to the Council of Ministers in October 2007, after which it will be sent to the Council of State for advice.
13. GRECO takes note of the information provided. It has not been presented with the text of the planned amendments to the Criminal Code. As the amendments have, in any case, not yet entered into force, GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

14. *GRECO recommended 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.*
15. The authorities of the Netherlands state – as is also reflected in the Second Round Evaluation Report – that pursuant to article 125quinquies of the Civil Servants Act (hereafter: CSA) civil servants, at all levels of government, have the obligation to report additional jobs/positions, financial interests and securities transactions. Following GRECO's Second Round Evaluation Report, the obligation to report financial interests and securities transactions has been further elaborated on in the Civil Servants Regulation (*Rijksambtenarenreglement*), which is applicable to civil servants employed by the central government. Article 61a of this regulation now provides that each minister is to define the category of officials who carry out activities in which a conflict of interest or a risk of misuse of price-sensitive information could arise and who, consequently, should report financial interests, securities and security transactions, which could affect the interests of the service. The reports submitted are to be registered and it is possible to prohibit certain financial interests or security transactions which are considered to constitute a risk of an inappropriate performance of duties by the public official or would possibly negatively affect the functioning of the public body. The amended Civil Servants Regulation entered into force in March 2006 and its implementation will be assessed at the end of 2007.
16. The authorities of the Netherlands also stress that there is also already an obligation to report situations which are in principle not prohibited but which could lead to a conflict of interest (for example, spouse's employment, spouse's financial interests etc.). This obligation derives from the duty to act as a good civil servant pursuant to article 50 of the Civil Servants Regulation and

article 125ter of the CSA. To make civil servants (and managers) more aware of this rule and help them follow these regulations in practice guidelines are currently under preparation. These guidelines - which will be applicable to all civil servants and not just those employed by the central government - will outline how civil servants and managers are to deal with situations in which a possible conflict of interest may occur. It is expected that these guidelines will be finalised at the beginning of 2008.

17. GRECO takes note of the information provided. It welcomes that the obligation to report financial interests and security transactions has been further clarified (for civil servants employed by the central government) in the Civil Servants Regulation and that guidelines on conflicts of interest for all civil servants are currently being drawn up. GRECO would have appreciated more detailed information on the content of these guidelines, as they are the focus of this recommendation. In any case, as the guidelines have not entered into force yet, GRECO can only conclude that this recommendation has not been fully complied with.
18. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

19. *GRECO recommended to make sure that all public organisations adopt their own code of conduct for civil servants.*
20. The authorities of the Netherlands report that in March 2006 the amendments to the CSA entered into force. These amendments *inter alia* stipulate that all public bodies, whether a national, provincial or municipal body or a water management board, are to establish a code of conduct for their civil servants (125quater, CSA). In June 2004 an inventory was made of integrity policies in the public sector, which revealed that 80% of the governmental bodies (at national, provincial and municipal level, including water management boards and police forces) had adopted a code of conduct. In light of the obligation for all public bodies to adopt a code of conduct, as recently introduced in the CSA, this inventory will be repeated in the second half of 2007, the results of which are expected at the beginning of 2008. Furthermore, the Minister of the Interior in co-operation with the umbrella organisations of the provinces (*Interprovinciaal Overleg / IPO*) and the municipalities (*Vereniging van Nederlandse Gemeenten / VNG*) has issued a model code of conduct to provide guidance to public bodies (ministries, provinces and municipalities) for the adoption of their own code of conduct.
21. GRECO takes note of the information provided by the Dutch authorities. It welcomes the amendments to the CSA and the development of a model code of conduct. GRECO notes with satisfaction that there is now in the CSA an obligation on all public bodies to adopt a code of conduct. Although GRECO would have appreciated further details on how this obligation is to be enforced, it trusts that this will induce the 20% of public bodies which had not yet adopted a code of conduct in 2004 to do so now.
22. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

Recommendation v.

23. *GRECO recommended 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.*
24. The authorities of the Netherlands report that the disqualification sanction contained in article 28 of the Criminal Code is to be amended by the aforementioned Draft Act on the partial revision of the Criminal Code, the Criminal Procedure Code and certain other laws (see recommendation ii above). The draft amendment to article 28 of the Criminal Code intends to clarify the existing provision by specifying that a disqualification from exercising a profession includes the activities of the managers of legal persons. Furthermore, if adopted as foreseen, the draft amendments to the Criminal Code will also include explicit references to the amended article 28 in the provisions on the different offences, including the provisions on corruption. These draft amendments will be submitted to the Council of Ministers in October 2007, after which they will be sent to the Council of State for advice. Once these amendments have entered into force, further measures – such as training, the development of new guidelines and/or the amendment of existing guidelines (for example the Directive on the Investigation and Prosecution of Corruption of Officials as referred to under recommendation i) – will be taken as necessary to ensure the full implementation of the amendments to the Criminal Code.
25. GRECO takes note of the information provided. It welcomes the planned clarification of the disqualification sanction in article 28 of the Criminal Code as well as the specific references to this article to be made in the relevant offence provisions in the Criminal Code. Although GRECO has not been provided with the text of the planned amendments, it considers that, if adopted as foreseen, these changes may at least remedy one of the problems noted in the Second Round Evaluation Report (paragraph 66): namely the lack of clarity of the existing provision, which was cited by the Dutch authorities as one of the reasons why it had never been used in practice to disqualify persons holding managerial positions in legal persons. However, GRECO also notes another statement made during the Second Round Evaluation Visit that “there are no specific regulations to ensure the effective application of the [disqualification] sanctions”. In this regard, GRECO also considers that ensuring that the regime of disqualification is effective in practice - in respect of persons acting in a leading position in legal persons – may require more than changes to legislation. In this connection, GRECO notes that further measures may be taken upon entry into force of the amended article 28 of the Criminal Code.
26. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

27. *GRECO recommended to consider to increase the penal sanctions for legal persons in order to be sure that the sanctions are effective, proportionate and dissuasive.*
28. The authorities of the Netherlands report that in February 2006 amendments to article 23 of the Criminal Code entered into force, which have increased the maximum financial sanctions of the sixth category from €450,000 to €670,000. A maximum fine of €670,000 can now be imposed on legal persons who are convicted of money laundering and certain active bribery offences² (i.e.

² It should be recalled that a fine can be imposed in addition to a confiscation sanction (*verbeurdverklaring*) or special confiscation measure (*ontneming*). The application of confiscation sanction or special confiscation measure does not affect

active bribery of civil servants to make them act in breach of their duties, of judges to secure a conviction in a criminal case or private sector bribery). Furthermore, in the context of a revision of the Law on Economic Crimes a general study or reflection on the level of penal sanctions as regards crimes which generate large amounts of profits (including corruption) will be carried out.

29. GRECO takes note of the information provided on the increase of the maximum fine of the sixth category to €670,000. In light of the fact that several Dutch companies have an annual turnover of several hundred million euros, one may wonder if - even with this increase - such a fine would be effective, proportionate and dissuasive in practice. In this regard, GRECO notes that the level of sanctions for profitable crimes will be subject to further consideration. GRECO welcomes this and acknowledges that by amending the Criminal Code, the Dutch authorities have done more than merely consider an increase in the sanctions for legal persons.
30. GRECO concludes that recommendation vi has been implemented satisfactorily.

III. CONCLUSIONS

31. **In view of the above, GRECO concludes that the Netherlands has implemented satisfactorily or dealt with in a satisfactory manner half of the recommendations contained in the Second Round Evaluation Report.** Recommendations i and vi have been implemented satisfactorily and recommendation iv has been dealt with in a satisfactory manner. Recommendations ii, iii and v have been partly implemented. GRECO notes that the Netherlands has taken steps to deal with the recommendations regarding “proceeds of corruption”, in particular as regards promoting the wider use of confiscation and seizure schemes. The amendments to the Criminal Code, which should provide for an increase in the level of fines applicable to certain corruption offences, have been drafted but have not yet entered into force. Concerning “public administration” (recommendation iii and iv), the Netherlands has introduced an obligation in the Civil Servants Act that all public bodies should establish codes of conduct for their employees and is in the process of providing more guidance to civil servants on conflicts of interest. On “legal persons and corruption” (recommendations v and vi), GRECO notes with satisfaction the recently introduced increase in the maximum fine applicable to legal persons and takes note of the further amendments to the Criminal Code to be made in the near future as regards a sanction disqualifying someone from exercising a specific profession. GRECO stresses the importance of ensuring that such a sanction is effective in practice. Overall, GRECO is hopeful that further progress will be reported at the next stage regarding the three recommendations which have not yet been implemented, as much appears to be dependent on provisions which have already been drafted but have yet to enter into force.
32. In light of the above, GRECO invites the Head of the Dutch delegation to submit additional information regarding the implementation of recommendations ii, iii and v by 30 April 2009.
33. Finally, GRECO invites the authorities of the Netherlands to authorise, as soon as possible, the publication of this report, to translate the report into the national language and to make the translation public.

the amount of the fine, or *vice versa*. The maximum fine on legal persons can thus be exceeded by confiscation (whether special or ‘ordinary’ confiscation) of the economic advantage the legal person in question has obtained.