



**PISM** | POLSKI INSTYTUT SPRAW MIĘDZYNARODOWYCH  
THE POLISH INSTITUTE OF INTERNATIONAL AFFAIRS

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*“Prevention of fraud, corruption and bribery committed through legal entities for the purpose of financial and economic gain”*

QUESTIONNAIRE

February 2012



**EUROPEAN COMMISSION**

Directorate-General Home Affairs  
Directorate A : Internal Security  
Unit A4 : Financial Support – Internal Security

## QUESTIONNAIRE PART A

### ESTABLISHING RELEVANT NATIONAL LEGISLATION IN LINE

#### WITH THE EU ACQUIS AND INTERNATIONAL TREATIES

## 1. CORRUPTION<sup>1</sup>

### 1) Criminalisation of corruption in the course of business activities

1.1) Have measures been taken to ensure that any form of active corruption constitutes a criminal offence? Please specify the substance of the relevant provisions (Article 2(1) sub a))

In Dutch law there is no overall criminal offence on corruption. In Dutch criminal law corruption is divided in specific criminal offences which all have their own specific definition. Most corruption can be qualified as a criminal offence but it is sometimes difficult to qualify them as such. Qualifying in general as an offence is easy (forgery for example) but proving that the act specifically qualifies as corruption is harder. Given this general observation, a specific form of active corruption in the Dutch Criminal Code (DCC) seems relevant regarding to art. 2, par. 1, section a of the Framework Decision 2003/568/JHA of 22 July 2003 on combatting corruption in the private sector. Art. 328ter par. 2 of the DCC deals with bribery of a private person: punishable is the private person that gives or offers someone other than a civil servant, working in employment or acting as an agent, in exchange for something he has done or not done or will do or refrain from doing in the performance of his burden, a gift or promise, or a service of that nature or under such circumstances that he should reasonable assume that such a gift or promise will be withheld from his employer or principal contrary to good faith. This provision covers active corruption on the initiative of all private persons, including employees, managers and directors of private entities. However, this provision is limited to the bribery of employees and managers and seems to exclude the bribery of a director of a private entity. This means that this provision does not fully cover the obligation under art. 2, par. 1, section a of the Framework Decision 2003/568/JHA. In addition to art. 328ter DCC more general provisions can be used, especially when the active corruption involves bribery of a director of a private entity. Dependant upon the circumstances of the case the provisions on forgery, falsifying of documents and cheating could be relevant. These circumstances should then involve: the forgery of a written statement with the intention to use this statement as genuine (art. 225 DCC), the falsification of stock certificates or other official certificates or documents, (art. 226 DCC) or the elements of cheating. In art. 326 of the DCC cheating is described as: the person who intentionally favours himself or another person in a unlawfull way, by using a false name, a false capacity, cunning manouvres or fabrications, moving another person to hand over a good, a service, information or a debt.

1.2) Have measures been taken to ensure that any form of passive corruption constitutes a criminal offence? Please specify the substance of the relevant provisions (Article 2(1) sub b))

In Dutch law there is no overall criminal offence on corruption. In Dutch criminal law corruption is divided in specific criminal offences which all have their own specific definition. Most corruption can be qualified as a criminal offence but it is sometimes difficult to qualify them as such. Qualifying in general as an offence is easy (forgery for example) but proving that the act specifically qualifies as corruption is harder. Given this general observation, a specific form of passive corruption in the Dutch Criminal Code (DCC) seems relevant regarding to art. 2, par. 1, section a of the Framework Decision 2003/568/JHA of 22 July 2003 on combatting corruption in the private sector. Art. 328ter par. 1 of the DCC deals with a private person being bribed: punishable is the private person that, otherwise than as a civil servant, is working as an employee or is acting as an agent, and in relation tot the performance of his tasks has done or not done or will do or not do something in exchange for receiving or asking a gift, promise or a service and the received or asked was withheld from his employer or principal contrary to good faith. This provision covers passive corruption that is limited to employees and managers that are being bribed and seems to exclude

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<sup>1</sup> Questions based on Framework decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector. The Articles mentioned refer to this instrument.

the director of a private entity being bribed. This means that this provision does not fully cover the obligation under art. 2, par. 1, section b of the Framework Decision 2003/568/JHA. In addition to art. 328ter par. 1 DCC more general provisions can be used, especially when the passive corruption involves a director of a private entity being bribed. Dependant upon the circumstances of the case the provisions on forgery, falsifying of documents and cheating could be relevant. These circumstances should then involve: the forgery of a written statement with the intention to use this statement as genuine (art. 225 DCC), the falsification of stock certificates or other official certificates or documents, (art. 226 DCC) or the elements of cheating. In art. 326 of the DCC cheating is described as: the person who intentionally favours himself or another person in a unlawfull way, by using a false name, a false capacity, cunning manouvres or fabrications, moving another person to hand over a good, a service, information or a debt.

1.3) Have measures been taken to ensure that instigating, aiding and abetting of corruption constitutes a criminal offence? Please specify the substance of the relevant provisions (Article 3)

Yes, we have some articles that makes instigation, aiding and abetting a criminal offence in general. These articles are applicable to the beforementioned forms of active and passive corruption.

Article 47, par. 1 DCC: As perpetrators of an offense will be punished:

sub 1: Those who commit the fact, make one commit the fact, or those who commit (parts of) the fact together.

sub 2: Those who by gifts, promises, abuse of authority, violence, threat or deception or by providing opportunity, means or information, deliberately instigate the fact.

Paragraph 2 in respect of the latter, only the acts which are intentionally instigated will be considered, and the consequences of those acts as well.

Article 48 DCC: As accessories to a crime can be punished:

sub 1: they who intentionally assist in the committing of a crime.

sub 2: they who intentionally provide opportunity, means or information to commit the crime.

These provisions have in common that intentional behaviour is required. This seems to be a limited implementation of the purpose of art. 3 of the Framework decision on combatting corruption in the private sector that seems to provide also for the punishment of unintentional instigation, aiding and abetting.

## 2) Penalties and sanctions

2.1) Have measures been taken to ensure that the above mentioned offences are punishable by criminal penalties? If yes; indicate minimum and maximum (Article 4(1) and 4(2))

*Please specify, to separate measures taken in the sphere of criminal, civil and administrative law*

Yes, criminal penalties are possible.

Minimum penalties: at least 1 day imprisonment (art. 10, par. 2 DCC). Besides imprisonment it is possible to impose a fine of at least 3 euros (art. 23, par. 2 DCC).

Maximum terms of imprisonment:

Forgery of a written statement (art. 225 DCC): six years

Falsification of official documents (art. 226 DCC): seven years

Cheating (art. 326 DCC): four years

Active and passive bribery (art. 328ter par. 1 and 2 DCC): two years

Maximum of the fine:

Forgery of a written statement (art. 225 DCC): 76.000 euros

Falsification of official documents (art. 226 DCC): 76.000 euros

Cheating (art. 326 DCC): 76.000 euros

Active and passive bribery (art. 328ter par. 1 and 2 DCC): 76.000 euros

The punishment in case of accessory will be reduced with one third (art. 49 DCC).

2.2) Can measures of disqualification be imposed on natural persons in a leading position of a legal entity for having committed active or passive corruption? Specify, if possible, whether these measures can be taken in all those cases, or only in case of a clear risk of abuse of position (Article 4(3))

*Please specify, to separate measures taken in the sphere of criminal, civil and administrative law*

If the crime of article 225, art 226, art. 326 or 328ter DCC is committed while practicing a job, the judge may in his sentence decide that the person can no longer exercise that job (art. 235 par 1 and art. 339 par 1 DCC).

The judge can also decide that the offender is disqualified for certain positions (art. 235 par. 2 and art. 339 par 2 DCC). These positions are found in article 28, par. 1, sub 1, 2 and 4 DCC. These are positions as a civil servant, serving in the armed forces, and jobs as a lawyer or as a trustee.

In cases where active and passive corruption constitute an economic crime under the Economic offences Act (EOA) the judge may decide that the offender is disqualified for the before mentioned positions and more important for any particular job (art. 7 par. 1 EOA). The consequence of this last disqualification can be that the legal entity in fact ceases its activities because these activities require the job activities of the offender. This disqualification has not been imposed much except for a few cases (See Kamerstukken II, 2009-2010, 32 123 VI, nr. 85).

### **3) Liability of legal persons**

3.1) Have measures been taken to ensure that all or only some specific types of legal persons can be held liable for the above mentioned offences (active and/or passive forms of corruption) when committed by persons in a leading position? Please specify to substance of the relevant provisions In case of a differentiation. Please specify the legally established distinctions between legal persons (Article 5(1) and 5(2))

*Please specify, to separate measures taken in the sphere of criminal, civil and administrative law*

Legal persons can be part of legal proceedings, as a legal person as such or represented by the leading person. The legal persons that can be part of civil legal proceedings are stated in article 3 of book 2 of the Dutch Civil code. In criminal proceedings the same legal persons can be part of the proceedings. Some organisations are equated to legal persons in article 51, section 3 of the Dutch criminal code. According to art. 51 of the Dutch Criminal Code legal persons as well as natural persons can be held liable for all offences. Prosecution and sanctioning can be imposed on the legal person and/or the person under whose factual authority the offence has been committed and/or the person that has been factual in charge during activities that have led to the offence (section 2). The liability of legal persons for these offences includes corporations, private limited companies, partnerships and shipping companies (section 3). In general legal persons can be criminal liable for the above mentioned offences. Also, corruption may lead to sanctions under administrative law, such as revocation of permits and licences and withdrawal of subsidies.

3.2) Please specify the nature of these measures; where appropriate please specify the different types of measures taken for different types of legal persons

*Please specify, to separate measures taken in the sphere of criminal, civil and administrative law*

The measures are the same for a legal person as for a natural person. Although it is impossible to imprison a legal person, it is possible to imprison the leading person of a legal person. Also, fines may be imposed on both natural persons and legal persons. These fines are divided over six categories, starting with the category of relatively low fines and ending with the category of the highest fine (maximum of 760.000 euro). In the case of imposing a fine to a legal person and organisations that are equated to legal persons and the applicable category does not seem fit for an adequate fine, a fine may be imposed of the nearest higher category (art. 23, par. 7 and 8 DCC).

3.3) Have measures been taken to ensure the liability of legal persons where the lack of supervision or control by a natural person possessing a leading position in the legal entity has made possible the commission of the above mentioned offences? If appropriate please make a distinction between different types of legal persons. Please specify the substance of the relevant provisions

A legal person can be held liable as such, even if there is not a leading person acting during criminal activities, according to art. 51 of the Dutch Criminal Code. Legal persons also include corporations, private limited companies, partnerships and shipping companies (section 3). According to case law a legal person can be held liable if criminal behaviour in fairness can be attributed to the legal person. A leading factor in constituting this fairness is whether or not this behaviour has taken place in the sphere of the legal person. This may be the case if the behaviour stems from an employee, if the behaviour fits within the common activities of the legal person, if the behaviour has benefitted the legal person or the behaviour could have been controlled or could have been supervised by the legal person.

#### **4) Penalties for legal persons**

4.1) Have measures been taken to ensure that legal persons held liable pursuant to Article 5(1) are punishable by criminal penalties? Please specify the substance of the relevant provisions (Article 6)

Yes, according to art. 51 of the DCC in combination with the specific provisions that describe the criminal behaviour and the relevant penalties. In general the measures are the same for a legal person as for a natural person. Although it is impossible to imprison a legal person, it is possible to imprison the leading person of a legal person. Also, fines may be imposed on both natural persons and legal persons. These fines are divided over six categories, starting with the category of relatively low fines and ending with the category of the highest fine (maximum of 760.000 euro). In the case of imposing a fine to a legal person and organisations that are equated to legal persons and the applicable category does not seem fit for an adequate fine, a fine may be imposed of the nearest higher category (art. 23, par. 7 and 8 DCC).

#### **5) Jurisdiction**

5.1) What are the relevant national rules on jurisdiction with regard to legal entities committing corruption inside the national territory? (Article 7(1))

*Please specify, to separate measures taken in the sphere of criminal, civil and administrative law*

Article 2 DCC: The Dutch Criminal Code is applicable to everyone who commits a crime foreseen in the Dutch Criminal Code or other Dutch criminal statutes, on Dutch territory.

Article 3 DCC: The Dutch Criminal Code is applicable to everyone who commits a crime foreseen in the Dutch Criminal Code or other Dutch criminal statutes, on board of a Dutch plane or ship.

5.2) What are the relevant national rules on jurisdiction with regard to legal entities committing corruption outside the national territory? Please specify the substance of the relevant provisions (Article 7(2))

Article 5, par 1, section 2 DCC: The Dutch Criminal Code is applicable to the Dutch legal entity that commits a crime outside the Netherlands and this crime is an offence according to Dutch criminal law and is also punishable in the State where the crime is committed. The jurisdiction is limited to the offences of Book 2 of the DCC and does not include the misdemeanors/minor offences of Book 3 of the DCC.

5.3) Can the Public Prosecutor initiate legal proceedings *ex officio* or only after a complaint by a victim of corruption or a third party?

The public prosecutor can initiate legal proceedings *ex officio*.

5.4) Is distinction being made between public and private entities with regard to the applicable legal regime? Please specify what these differences, if any, entail

Both private and public entities can be criminal liable, but based on jurisprudence a distinction is made as to the authority to prosecute. It is not possible to prosecute the public entity's of the government, when the criminal offence was committed during an act which is considered an act of government. An act of government is an act which is exclusively practised by the government. The State is therefore on the base of jurisprudence not criminal liable. This exclusion for criminal liability has recently been confirmed in the case against the city of Amsterdam in the Probo Koala case. This case concerns illegal waste disposal after approval of the city of Amsterdam and the lack of enforcement of the local municipality. The public prosecuting office was not admissable to criminal proceedings because the city of Amsterdam was considered to act on behalf of an exclusive government authority.

5.5) Please identify the most relevant statutory limitations within national procedural law with regard to corruption

*Please specify, to separate measures taken in the sphere of criminal, civil and administrative law*

The statute of limitations works for all criminal offences:

Article 1 DCC – No punishment without law

1. No criminal offence is accountable which does not constitute a criminal offence under national law at the time when it was committed.

2. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

## 6) **Enforcement**

6.1) Provide a statistical overview of cases brought against legal entities and/or their directors in the period 2005-2010

*Please specify, to cases in the sphere of criminal, civil and administrative law*

In the period of 2005-2010 various criminal cases were brought against legal entities and/or their directors. In providing a statistical overview over this period it should be born in mind that in some cases multiple legal entities and/or directors are prosecuted. In large cases several trials can take place against different persons and legal entities, these were counted as just one case. The year in which the case is mentioned is the year of the judgement. These cases can be found in various datbases, like opmaat.nl and rechtspraak.nl

2005: 9 cases

2006: 8 cases

2007: 3 cases

2008: 4 cases

2009: 2 cases

2010: 2 cases

6.2) Provide an overview of the type of offences dealt with in cases brought against legal entities and/or their directors

Different types of offences: Especially falsification and tax fraud and evasion. But also not reporting suspicion of certain crimes in cases where one is obliged to report, misappropriation, money laundering, fraud, disadvantaging creditors. These criminal offences are usually combined with each other or with other offences such as taking part in a criminal organisation. Sometimes these crimes are committed by legal entities, sometimes by persons within the entity but the legal entity or director can be held (partially) responsible, sometimes the legal entity was established with the purpose to commit crimes.

6.3) Provide a general assessment of the impact of the jurisprudence on private sector corruption

In general the prosecution of these cases leads to a conviction. It therefore can be assumed that the outcome of these cases should have some preventive and deterring effect on private sector corruption. However, this observation should be taken with some reservation because many cases are sanctioned by the public prosecutors office before trial proceedings. In these so called transactions the accused usually pays a certain amount of money to the State in order to avoid criminal proceedings and conviction. Little can be said about the contents of these transactions as they are not open for consultation to the public. Also, there is some doubt on the amount of cases that lead to a transaction because the public prosecuting office is not able to give the necessary accurate information (Report Algemene Rekenkamer on "Prestaties in the strafrechtketen", TK 2011-2012, 33 173, nr. 2, p. 18).

6.4) Please describe whether the prosecution strategy could be considered as adequate and effective with regard to the characteristic features of corruption in your country

The prosecution strategy in these cases can be considered as adequate and effective as in general the prosecution of these cases leads to a conviction. Also, in large cases the prosecution involves as many accused as possible and multiple charges are brought out to them. However, this observation should be taken with some reservation because many cases are sanctioned by the public prosecutors office before trial proceedings. In these so called transactions the accused usually pays a certain amount of money to the State in order to avoid criminal proceedings and conviction. Little can be said about the contents of these transactions and the underlying prosecution strategy as they are not open for consultation to the public. Also, there is some doubt on the amount of cases that lead to a transaction because the public prosecuting office is not able to give the necessary accurate information (Report Algemene Rekenkamer on "Prestaties in the strafrechtketen", TK 2011-2012, 33 173, nr. 2, p. 18).

## BRIBERY<sup>2</sup>

### 7) Criminalisation of bribery

7.1) Have measures been taken to ensure that any form of bribery of a (foreign) public official by a private legal entity, including persons in a leading position, constitutes a criminal offence? Please specify the substance of the relevant provisions (Article 1(1))

These offences are: bribery during elections (art. 126, par. 1 DCC), bribery of a civil servant, in which case the civil servant acts contrary to his duty (art. 177 DCC), bribery of a civil servant, in which case the civil servant does not act contrary to his duty (art. 177a DCC), bribery of a judge (art. 178 DCC), bribery of a foreign civil servant or judge, or a civil servant or judge from an international law organisation (art. 178a DCC).

Art. 126, par. 1 DCC: punishable is the person that during an official election bribes by gift or promise someone else with the purpose of not using or using in a certain way his or someone else's right to vote.

Art. 177 DCC: punishable is the person that offers a gift, a promise or a service to a civil servant with the purpose to induce him contrary to his duties to a certain action or to refrain from a certain action.

Art. 177a DCC: punishable is the person that offers a gift, a promise or a service to a civil servant with the purpose to induce him to a certain action or to refrain from a certain action.

Art. 178 DCC: punishable is the person that offers a gift, a promise or a service to a judge with the purpose to influence the decision of the judge in a judicial case.

Art. 178a: article 177, 177a and 178 are also applicable if it is a foreign civil servant or judge, or a civil servant or judge from an international law organisation.

7.2) Have measures been taken to ensure that complicity, including incitement, aiding and abetting, or the authorisation of an act of bribery constitutes a criminal offence? (Article 1(1))

Yes, we have some articles that makes instigation, aiding and abetting a criminal offence in general. These articles are applicable to the beforementioned forms of bribery.

Article 47, par. 1 DCC: As perpetrators of an offense will be punished:

sub 1: Those who commit the fact, make one commit the fact, or those who commit (parts of) the fact together.

sub 2: Those who by gifts, promises, abuse of authority, violence, threat or deception or by providing opportunity, means or information, deliberately instigate the fact.

Paragraph 2 in respect of the latter, only the acts which are intentionally instigated will be considered, and the consequences of those acts as well.

Article 48 DCC: As accessories to a crime can be punished:

sub 1: they who intentionally assist in the committing of a crime.

sub 2: they who intentionally provide opportunity, means or information to commit the crime.

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<sup>2</sup> Questions based on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Articles mentioned refer to this instrument.



## 8) Penalties and sanctions

8.1) Have measures been taken to ensure that the above mentioned offences are punishable by criminal (or civil or administrative) penalties? If yes; Indicate minimum and maximum level of fines or/and imprisonment (Article 3(1))

*Please specify, to separate measures taken in the sphere of criminal, civil and administrative law*

Yes, criminal penalties are possible. Minimum penalties: at least 1 day imprisonment (art. 10, par. 2 DCC). Besides imprisonment it is possible to give a fine of at least 3 euros ( art. 23, par. 2 DCC).

Maximum term of imprisonment:

- bribery during elections (art. 126, par. 1 and par. 2 DCC): six months;
- bribery of a civil servant (art. 177 DCC): four years;
- bribery of a civil servant (art. 177a DCC): two years;
- bribery of a judge (art. 178, par. 1 DCC): 6 years;
- bribery of a judge to get a conviction in a criminal law case (178, par 2 DCC): 9 years;
- bribery of a foreign civil servant or judge is punished with the same punishment as bribery of a national civil servant or judge (178a DCC).

Maximum of the fine:

- bribery during elections (art. 126 par. 1 and par 2 DCC): 7.800 euros;
- bribery of a civil servant (art. 177 DCC): 78.000 euros;
- bribery of a civil servant (Art. 177a DCC): 78.000 euros
- bribery of a judge (art. 178 par. 1 DCC): 78.000 euros
- bribery of a foreign civil servant or judge is punished with the same punishment as bribery of a national civil servant or judge (178a DCC).

The punishment in case of accessory will be reduced with one third (art. 49 DCC).

## 9) Liability of legal persons

9.1) Have measures been taken to ensure that all or specific types of legal persons can be held liable for the above mentioned offences when committed by persons in a leading position? Please specify to substance of the relevant provisions. In case of a differentiation please specify the legally established distinctions between legal persons (Article 2)

*Please specify, to separate measures taken in the sphere of criminal, civil and administrative law*

In general legal persons can be criminal liable for the above mentioned offences. According to art. 51 of the Dutch Criminal Code legal persons as well as natural persons can be held liable for these offences. Prosecution and sanctioning can be imposed on the legal person and/or the person under whose factual authority the offence has been committed and/or the person that has been factual in charge during activities that have led to the offence (par. 2). The liability of legal persons for these offences includes corporations, private limited companies, partnerships and shipping companies (par. 3). Also, bribery may lead to sanctions under administrative law, such as revocation of permits and licences and withdrawal of subsidies.

9.2) Please specify the nature of these measures; where appropriate specify the different types of measures taken for different types of legal persons

*Please specify, to separate measures taken in the sphere of criminal, civil and administrative law*

The measures are the same for a legal person as for a natural person. Although it is impossible to imprison a legal person, it is possible to imprison the leading person of a legal person. Also, fines may be imposed on both natural persons and legal persons. These fines are divided over six categories, starting with the category of relatively low fines and ending with the category of the highest fine (maximum of 760.000 euro). In the case of imposing a fine to a legal person and organisations that are equated to legal persons and the applicable category does not seem fit for an adequate fine, a fine may be imposed of the nearest higher category (art. 23, par. 7 and 8 DCC).

9.3) Have measures been taken to ensure the liability of legal persons where the lack of supervision or control by a natural person possessing a leading position in the legal entity has made possible the commission of the above mentioned offences? If appropriate please make a distinction between different types of legal persons. Please specify the substance of the relevant provisions

A legal person can be held liable as such, even if there is not a leading person acting during criminal activities, according to art. 51 of the Dutch Criminal Code. Legal persons also include corporations, private limited companies, partnerships and shipping companies (section 3). According to case law a legal person can be held liable if criminal behaviour in fairness can be attributed to the legal person. A leading factor in constituting this fairness is whether or not this behaviour has taken place in the sphere of the legal person. This may be the case if the behaviour stems from an employee, if the behaviour fits within the common activities of the legal person, if the behaviour has benefitted the legal person or the behaviour could have been controlled or could have been supervised by the legal person. .

## 10) Penalties for legal persons

10.1) Have measures been taken to ensure that legal persons held liable are punishable by criminal penalties? Please specify the substance of the relevant provisions

Yes, according to art. 51 of the Dutch Criminal Code in combination with the provision which describes the criminal behaviour and penalties. In general the measures are the same for a legal person as for a natural person. Although it is impossible to imprison a legal person, it is possible to imprison the leading person of a legal person. Also, fines may be imposed on both natural persons and legal persons. These fines are divided over six categories, starting with the category of relatively low fines and ending with the category of the highest fine (maximum of 760.000 euro). In the case of imposing a fine to a legal person and organisations that are equated to legal persons and the applicable category does not seem fit for an adequate fine, a fine may be imposed of the nearest higher category (art. 23, par. 7 and 8 DCC):

Art. 126, par. 1 DCC: punishable is the person that during an official election bribes by gift or promise someone else with the purpose of not using or using in a certain way his or someone else's right to vote.

Art. 177 DCC: punishable is the person that offers a gift, a promise or a service to a civil servant with the purpose to induce him contrary to his duties to a certain action or to refrain from a certain action.

Art. 177a DCC: punishable is the person that offers a gift, a promise or a service to a civil servant with the purpose to induce him to a certain action or to refrain from a certain action.

Art. 178 DCC: punishable is the person that offers a gift, a promise or a service to a judge with the purpose to influence the decision of the judge in a judicial case.

Art. 178a: article 177, 178 and 177a are also applicable if it is a foreign civil servant or judge, or a civil servant or judge from an international law organisation.

10.2) In the event that criminal responsibility is not applicable to legal persons, have measures been taken to ensure that legal persons shall be subject to non-criminal sanctions, such as monetary sanctions (Article 3(2))

*Please specify, to separate measures taken in the sphere of civil and administrative law*

Criminal responsibility is equally applicable to legal persons and/or natural persons.

## 11) Jurisdiction

11.1) What are the relevant national rules on jurisdiction with regard to legal entities committing one of the offences mentioned in question 7 in whole or in part within the national territory? (Article 4(1))

*Please specify, to separate measures taken in the sphere of criminal, civil and administrative law*

Article 2 DCC: The Dutch Criminal Code is applicable to everyone who commits a crime foreseen in the Dutch Criminal Code or other Dutch criminal statutes, on Dutch territory.

Article 3 DCC: The Dutch Criminal Code is applicable to everyone who commits a crime foreseen in the Dutch Criminal Code or other Dutch criminal statutes, on board of a Dutch plane or ship.

11.2) What are the relevant national rules on jurisdiction with regard to nationals possessing a leading position in a legal entity committing one of the offences mentioned in question 7 outside the national territory? (Article 4(2))

Article 5, par 1, section 2 DCC: The Dutch Criminal Code is applicable to the Dutch legal entity that commits a crime outside the Netherlands and this crime is an offence according to Dutch criminal law and is also punishable in the State where the crime is committed. The jurisdiction is limited to the offences of Book 2 of the DCC and does not include the misdemeanors/minor offences of Book 3 of the DCC.

Article 4, sub 9 DCC: The Dutch Criminal Code is applicable if the crime of art. 177 or 177a DCC is committed outside the Netherlands against a Dutch person or a Dutch civil servant, and the crime is also punishable in the State where it was committed.

Article 4, sub 10 DCC: The Dutch Criminal Code is applicable if the offence of art. 177 or 177a DCC is committed outside the Netherlands by a Dutch civil servant, or a servant that works for an international legal organisation that is residing in The Netherlands, and the offence is also punishable in the State where it is committed.

11.3) Can the Public Prosecutor initiate legal proceedings *ex officio* or only after complaints are brought by the concerned public official or a third party?

The public prosecutor can initiate legal proceedings *ex officio*.

11.4) Is distinction being made between public and private entities with regard to the applicable legal regime? Please specify what these differences, if any, entail

Both private and public entities can be criminal liable, but based on jurisprudence a distinction is made as to the authority to prosecute. It is not possible to prosecute the public entity's of the government, when the criminal offence was committed during an act which is considered an act of government. An act of government is an act which is exclusively practised by the government. The State is therefore on the base of jurisprudence not criminal liable. This exclusion for criminal liability has recently been confirmed in the case against the city of Amsterdam in the Probo Koala case. This case concerns illegal waste disposal after approval of the city of Amsterdam and the lack of enforcement of the local municipality. The public prosecuting office was not admissible to criminal proceedings because the city of Amsterdam was considered to act on behalf of an exclusive government authority.

11.5) Please identify the most relevant statutory limitations within national procedural law with regard to bribery (Article 6)

*Please specify, to separate measures taken in the sphere of criminal, civil and administrative law*

The statute of limitations works for all criminal offences:

Article 1 DCC – No punishment without law

1. No criminal offence is accountable which does not constitute a criminal offence under national law at the time when it was committed.
2. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

## 12) Enforcement

12.1) Provide a statistical overview of cases brought against legal entities and/or their directors regarding bribery of (foreign) public officials in the period 2005-2010

*Please specify, to cases in the sphere of criminal, civil and administrative law*

In the period of 2005-2010 various criminal cases were brought against legal entities and/or their directors regarding bribery of (foreign) public officials. In providing a statistical overview over this period it should be born in mind that in some cases multiple legal entities and/or directors are prosecuted. In large cases several trials can take place against different persons and legal entities, these were counted as just one case. The year in which the case is mentioned is the year of the judgement. These cases can be found in various databases, like opmaat.nl and rechtspraak.nl

2005: There was one very big case, numerous trials were held concerning bribery of civil servants.

2006: 2 cases

2007: 4 cases

2008: 6 cases

2009: 3 cases

2010: 2 cases

12.2) Additionally, provide an overview of the type of offences dealt with in cases brought against legal entities and/or their directors

Different types of offences: Especially falsification and tax fraud and evasion. But also not reporting suspicion of certain crimes in cases where one is obliged to report, misappropriation, money laundering, fraud, disadvantaging creditors. These criminal offences are usually combined with each other or with other offences such as taking part in a criminal organisation. Sometimes these crimes are committed by legal entities, sometimes by persons within the entity but the legal entity or director can be held (partially) responsible, sometimes the legal entity was established with the purpose to commit crimes.

When it comes to bribery lots of cases are against the civil servant for taking a bribery. Within the private sector there aren't much cases against legal entities in the private sector for trying to bribe others.

12.3) Provide a general assessment of the impact of the jurisprudence on the prevalence of bribery of (foreign) public officials

In general the prosecution of these cases leads to a conviction. It therefore can be assumed that the outcome of these cases should have some preventive and deterring effect on the prevalence of bribery of (foreign) public officials. However, this observation should be taken with some reservation because many cases are sanctioned by the public prosecutors office before trial proceedings. In these so called transactions the accused usually pays a certain amount of money to the State in order to avoid criminal proceedings and conviction. Little can be said about the contents of these transactions as they are not open for consultation to the public. Also, there is some doubt on the amount of cases that lead to a transaction because the public prosecuting office is not able to give the necessary accurate information (Report Algemene Rekenkamer on "Prestaties in the strafrechtketen", TK 2011-2012, 33 173, nr. 2, p. 18).

12.4) Please describe whether the prosecution strategy could be considered as adequate and effective with regard to the characteristic features of bribery in your country

The prosecution strategy in these cases can be considered as adequate and effective as in general the prosecution of these cases leads to a conviction. Also, in large cases the prosecution involves as many accused as possible and multiple charges are brought out to them. However, this observation should be taken with some reservation because many cases are sanctioned by the public prosecutors office before trial proceedings. In these so called transactions the accused usually pays a certain amount of money to the State in order to avoid criminal proceedings and conviction. Little can be said about the contents of these transactions as they are not open for consultation to the public. Also, there is some doubt on the amount of cases that lead to a transaction because the public prosecuting office is not able to give the necessary accurate information (Report Algemene Rekenkamer on "Prestaties in the strafrechtketen", TK 2011-2012, 33 173, nr. 2, p. 18).

## 2. ORGANISED CRIME<sup>3</sup>

### 13) Definition

13.1) Which of the two definitions of organised crime, mentioned in article 1 of the Framework Decision, is being applied in national legislation? Is organised crime defined in another way, or is organised crime not defined at all? Please specify the main elements of the definition (Article 1)

We use both definitions in article 140 of the DCC.

Article 140, par. 1 DCC: Taking part in a organisation with the intention of committing criminal offences is punishable with imprisonment with a maximum of 6 years imprisonment and a maximum fine of 78.000 euro.

Article 140, par. 2 DCC: he who participates in the continuation of the activities of a organisation which is prohibited by a judge can be punished with imprisonment with a maximum of 1 year imprisonment and a maximum fine of 7800 euro.

Article 140, par. 3 DCC: The punishment may be rated up by one third of the maximum punishment in case of conviction of the founder, leader or the manager of the organisation.

Article 140, par. 4 DCC: Participation is also giving financial or other material support, or recruiting persons or money for the organisation.

The scope of this provision seems rather broad. It is sufficient that there is some form of participation in a criminal organisation or other legal entity with criminal purposes. Also sufficient is that these criminal purposes are aimed at. It is not required that actual criminal activities have been undertaken. Therefore, a person participating in a criminal organisation is punishable if he has a general knowledge of the criminal intentions of this organisation even if his personal participation does not involve criminal activities.

### 14) Criminalisation

14.1) Have measures been taken in order to ensure that active participation in a criminal organisation is regarded as an offence? Please specify the substance of the relevant provisions (Article 2(a))

Article 140 DCC: Taking part in a organisation with the objective to commit criminal offences is punishable with imprisonment with a maximum of 6 years imprisonment and a maximum fine of 78.000 euro.

Article 140, par. 2 DCC: he who participates in the continuation of the activities of a organisation which is prohibited by a judge can be punished with imprisonment with a maximum of 1 year imprisonment and a maximum fine of 7800 euro.

Article 140, par. 3 DCC: The punishment can be rated up by one third of the maximum punishment in case of conviction of the founder, leader or the manager of the organisation.

Article 140, par. 4 DCC: Participation is also giving financial or other material support, or recruiting persons or money for the organisation.

14.2) Have measures been taken in order to ensure that a person who is conspiring to commit an offence related to participation in a criminal organisation, or a person providing information or material to a criminal organisation, can be regarded as taking part in that criminal organisation, even if this person does not take part in the actual execution of the activity? Please specify (Article 2(b))

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<sup>3</sup> Questions based on Council Framework Decision 2008/841/JHA on the fight against organised crime. Articles mentioned refer to this instrument.

Yes, for article 140 DCC to be applicable only participation in a criminal organisation is needed next to its intent to commit crimes. Taking part in the actual execution of the crimes is not required. Also Article 140, par. 4 DCC: participation is also giving financial or other material support, or recruiting persons or money for the criminal organisation.

## 15) Penalties and sanctions

15.1) Have measures been taken to ensure that the above mentioned offences are punishable by effective, proportionate and dissuasive criminal penalties? If yes; Indicate minimum and maximum (Article 3)

Yes, criminal penalties are possible:

Minimum penalties: at least 1 day imprisonment (art. 10 par. 2 DCC). Besides imprisonment it is possible to give a fine of at least 3 euros (art. 23, par. 2 DCC).

Article 140, par. 1 DCC : maximum of 6 years imprisonment, and a maximum fine of 78.000 euro. This maximum term of imprisonment seems effective, proportionate and dissuasive as it outweighs the maximum term of imprisonment of two to five years recommended in art. 3 of the Council Framework Decision 2008/841/JHA on the fight against organised crime

Article 140, par. 2 DCC: maximum of 1 year imprisonment, and a maximum fine of 7800 euro.

Article 140, par. 3 DCC: The punishment can be rated up by one third of the maximum punishment in case of conviction of the founder, leader or the manager of the organisation.

Beside there is the possibility of withdrawal of illegal obtained income and profits as a result of the crimes committed (art. 36e DCC).

15.2) Is partaking in a criminal organisation considered an 'aggravating circumstance' in the national legal system during the prosecution of other crimes? Please specify the substance of the relevant provisions

No, it is a separate crime, but it can accumulate with other criminal offences. That means that the perpetrator may be punished for both a specific criminal activity and being a member of a criminal organisation.

## 16) Liability of legal persons

16.1) Have measures been taken to ensure that legal persons can be held liable for the above mentioned offences when committed by persons in a leading position? Please specify (Article 5)

In general legal persons can be criminal liable for the above mentioned offences. According to art. 51 of the Dutch Criminal Code legal persons as well as natural persons can be held liable for these offences. Prosecution and sanctioning can be imposed on the legal person and/or the person under whose factual authority the offence has been committed and/or the person that has been factual in charge during activities that have led to the offence (par. 2). The liability of legal persons for these offences includes corporations, private limited companies, partnerships and shipping companies (par. 3). Also, taking part in a criminal organization may lead to sanctions under administrative law, such as revocation of permits and licences and withdrawal of subsidies.

## 17) Penalties for legal persons

17.1) Have measures been taken to ensure that legal persons held liable pursuant to Article 5 are punishable by criminal penalties? Please specify (Article 6)

Art. 51 DCC foresees for the punishment of natural persons as well as legal persons and organisations that can be equated to legal persons for committing an offence of the DCC. The liability of legal persons for these offences includes corporations, private limited companies, partnerships and shipping companies (par. 3).

## 18) Jurisdiction

18.1) What are the relevant national rules on jurisdiction with regard to criminal organisations active inside the national territory, and with regard to nationals committing one the offences mentioned above outside the national territory? (Article 7(1))

Article 2 DCC: The Dutch Criminal Code is applicable to everyone who commits a crime foreseen in the Dutch Criminal Code or other Dutch criminal statutes, on Dutch territory.

Article 3 DCC: The Dutch Criminal Code is applicable to everyone who commits a crime foreseen in the Dutch Criminal Code or other Dutch criminal statutes, on board of a Dutch plane or ship.

Article 5, par 1, section 2 DCC: The Dutch Criminal Code is applicable to the Dutch legal entity that commits a crime outside the Netherlands and this crime is an offence according to Dutch criminal law and is also punishable in the State where the crime is committed. The jurisdiction is limited to the offences of Book 2 of the DCC and does not include the misdemeanors/minor offences of Book 3 of the DCC..

18.2) What are the relevant provisions on international cooperation with regard to prosecuting criminal organisations (Article 7(2))

Provisions on international cooperation with regard to prosecution can be found in the Dutch Criminal Procedure Code (DCPC). These provisions are applicable on international cooperation with regard to prosecuting criminal organisations. These provisions deal with investigation authorities that may be exercised by foreign authorities (art. 54, par. 4 and art. 126h, i, j, o, p, q, qa DCPC), investigation authorities that may be exercised by Dutch authorities outside the Netherlands in other States (art. 539a DCPC), requests for judicial aid to other States (art. 552h-552qe DCPC), recognition of decisions of a foreign judicial authority within the European Union (art. 552jj-552vv DCPC). Also the Dutch Extradition law (DEL) provides for the possibility of extraditing leading persons of a criminal organisation and other forms of cooperation with regard to prosecuting criminal organisations on request of a foreign State within the European Union (art. 49-54 DEL).

18.3) Can the Public Prosecutor initiate legal proceedings *ex officio* or only after a complaint by a victim of organised crime?

The public prosecutor can initiate legal proceedings *ex officio*.

18.4) Please identify the most relevant statutory limitations within national procedural law with regard to organised crime

The statute of limitations works for all criminal offences:

Article 1 DCC – No punishment without law

1. No criminal offence is accountable which does not constitute a criminal offence under national law at the time when it was committed.

2. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

## 20) Enforcement

20.1) Provide a statistical overview of cases brought against legal entities and/or their directors in the period 2005-2010

In the period of 2005-2010 various criminal cases were brought against legal entities and/or their directors concerning organized crime. In providing a statistical overview over this period it should be born in mind that in some cases multiple legal entities and/or directors are prosecuted. In large cases several trials can take place against different persons and legal entities, these were counted as just one case. The year in which the case is mentioned is the year of the judgement. These cases can be found in various databases like [opmaat.nl](http://opmaat.nl) and [rechtspraak.nl](http://rechtspraak.nl)



2005: 3 cases

2006: 10 cases

2007: 8 cases

2008: 4 cases

2009: 2 cases

2010: 2 cases

20.2) Provide an overview of the type of offences dealt with in cases brought against legal entities and/or their directors

Different types of offences: Especially falsification and tax fraud and evasion. But also not reporting suspicion of certain crimes in cases where one is obliged to report, misappropriation, money laundering, fraud, disadvantaging creditors. These criminal offences are usually combined with each other or with other offences such as taking part in a criminal organisation. Sometimes these crimes are committed by legal entities, sometimes by persons within the entity but the legal entity or director can be held (partially) responsible, sometimes the legal entity was established with the purpose to commit crimes.

With regard to the criminal offence of taking part in a criminal organisation, the offences are sometimes combined with drug-related offences and smuggling.

20.3) Provide a general assessment of the impact of the jurisprudence on organised crime

In general the prosecution of these cases leads to a conviction. It therefore can be assumed that the outcome of these cases should have some preventive and deterring effect on organised crime. However, this observation should be taken with some reservation because many cases are sanctioned by the public prosecutors office before trial proceedings. In these so called transactions the accused usually pays a certain amount of money to the State in order to avoid criminal proceedings and conviction. Little can be said about the contents of these transactions as they are not open for consultation to the public. Also, there is some doubt on the amount of cases that lead to a transaction because the public prosecuting office is not able to give the necessary accurate information (Report Algemene Rekenkamer on "Prestaties in the strafrechtketen", TK 2011-2012, 33 173, nr. 2, p. 18).

20.4) Please describe whether the prosecution strategy could be considered as adequate and effective with regard to the characteristic features of organised crime in your country

The prosecution strategy in these cases can be considered as adequate and effective as in general the prosecution of these cases leads to a conviction. Also, in large cases the prosecution involves as many accused as possible and multiple charges are brought out to them. However, this observation should be taken with some reservation because many cases are sanctioned by the public prosecutors office before trial proceedings. In these so called transactions the accused usually pays a certain amount of money to the State in order to avoid criminal proceedings and conviction. Little can be said about the contents of these transactions and the underlying prosecution strategy as they are not open for consultation to the public. Also, there is some doubt on the amount of cases that lead to a transaction because the public prosecuting office is not able to give the necessary accurate information (Report Algemene Rekenkamer on "Prestaties in the strafrechtketen", TK 2011-2012, 33 173, nr. 2, p. 18).

## QUESTIONNAIRE PART B

### APPLICATION OF PREVENTIVE STRATEGIES AND MEASURES

# 1 CORRUPTION and BRIBERY<sup>4</sup>

## General policies

- 1.1) Please indicate whether specific and well elaborated national preventive policies with regard to corruption in the private sector and bribery of (foreign) public officials, have been established (Article 5 UNCAC)

When it concerns the integrity of a public official as defined under the UNCAC there are several laws and codes of conduct that state how they should behave as good public officials. Each public organization should have their own integrity code for their employees and directors. This is stimulated by BIOS (bureau for stimulating integrity in the public sector) in several ways. The organization of the united Dutch municipals (VNG) also has its own integrity centre, BING (Bureau of integrity Dutch municipals). In certain jobs there is an obligation to give a declaration of behaviour. A person only gets this declaration if there aren't any criminal convictions which could cause a problem in practising the job.

Prevention of corruption in the private sector is mainly the responsibility of the private sector. The development of such preventive policies is stimulated by the government. They inform about the harm that corruption can bring to the private sector and the possibility of prosecution when the corruption involves criminal offences. MVO Nederland (Corporate social responsibility The Netherlands), established by the ministry of economics in 2004, stimulates the development of codes of conduct which should prevent corruption and bribery. The International chamber of commerce (ICC), part of the main registration and information body of entrepreneurs in the private sector, also publishes models of codes of conduct involving prevention of corruption.

The government stimulates further by viewing someones credentials and behaviour before handing out certain licenses. When public money is spend on transactions with the private sector the integrity of the relevant legal persons is investigated before the transaction.

- 1.2) What are the main elements, policy objectives, and main instruments e.g. specialised corruption and bribery prevention bodies, of the above meant policy, particularly in the private sector

Main elements are information about the risk and harm of corruption and bribery. In the private sector the main goal is to stimulate the private sector to take their responsibility in creating or adopting a preventive policy. This is stimulated in several ways. By giving lectures, sharing information, giving instruments which can help companies measure the risk of corruption and instruments to fight corruption.

- 1.3) Please describe whether these national preventive policies could be considered as adequate and effective with regard to the characteristic features of corruption in your country

It is difficult to assess the adequacy and effectiveness of these preventive policies. It seems safe to assume that it will have some positive informational and preventive effect. Overall, the corruption perception index of Transparency International puts the Netherlands in the 7th position in 2011.

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<sup>4</sup> Questions based on the United Nations Convention Against Corruption (UNCAC) and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Articles mentioned refer to these instruments.

- 1.4) Does collection, exchange and analysis of information on prevention of corruption form an integral part of such a policy (Article 61 UNCAC)?

The Bureau for stimulating integrity in the public sector (BIS) collects data on integrity, and makes exchange of information possible. The Corporate social responsibility The Netherlands and the International chamber of commerce provide for information for the private sector as well, they offer various instruments and information about preventing corruption and bribery. Also, since 2005 there is a government platform in which different departments of the government come together to discuss the policy on fighting corruption within the public and private sector.

- 1.5) Please indicate which national authorities and bodies are involved in the activities mentioned under 1.4.

The Bureau for stimulating integrity in the public sector, Corporate social responsibility The Netherlands, the International chamber of commerce and the government platform on fighting corruption.

- 1.6) Do the officers of these national authorities and staff of these bodies receive specialised training in order to prevent corruption in the private sector? Please specify (Article 20 Council of Europe Criminal Law Convention on Corruption)

Most of the people working at these authorities have an adequate academic background. Besides training on the job they receive special training in prevention of corruption in the private sector by means of national conferences and workshops.

- 1.7) Please indicate which international authorities and bodies are involved in the activities mentioned under 1.4 (e.g. EU Anti-Corruption Network (EACN), Eurojust, Europol, and Member States)

Europol is involved in the collection, exchange and analysis of information on prevention of corruption. Their main support consists in analysis to uncover the activities of corruption networks in Europe. This takes place within the framework of an analysis work file. This file offers a variety of operational and strategical products for the Dutch authorities. Given that Europol is a law enforcement organisation, the focus is more on police-type support. Also, Eurojust plays a supporting role in the collection, exchange and analysis of information on prevention of corruption. Their focus is more on the exchange of this information for police authorities and prosecuting authorities. Eurojust aims at information exchange between the competent authorities of the Member States and assists them in providing the best possible coordination and cooperation.

- 1.8) Please describe whether current practise on the exchange of information could be considered adequate and effective with regard to prevention of corruption in the private sector

It is difficult to assess the adequacy and effectiveness of the exchange of information on prevention of corruption. It seems safe to assume that it will have some positive informational and preventive effect. Overall, the corruption perception index of Transparency International puts the Netherlands in the 7th position in 2011.

- 1.9) To what extent does accounting misconduct, in particular misconduct for corruptive purposes or the bribing of foreign public officials or concealing bribery, constitute an issue in your country? If possible, please provide examples of off-the-book accounts, inadequately identified transactions, use of false documents and non-existent expenditures (Article 8(1) OECD Convention)

Although there is always some dark figure, there seem to be only a few cases in which accounting misconduct for corruptive purposes or the bribing of foreign public officials have occurred in the Netherlands. Therefore, it is not a real issue at the moment.

The examples that are asked for are part of criminal records and dossiers that are not open to the general public. An exception to this is the end report of the Parliamentary Committee on fraud in the Construction and building sector. The conclusion of this Committee in 2002 was that in this sector there were many fraudulent activities in this sector, such as off-the-book accounts, use of false documents and non-existent expenditures. However, no evidence was found that (foreign) public officials had taken part in corruption or were bribed (TK 2002-2003, 28 244, nr. 6).

- 1.10) Have these issues been addressed by measures aimed at improving the regulating of the maintenance of books and records? (Article 8(1) OECD Convention)

The second book of the Dutch private law code (art. 2:360- 2:455) gives legal entities the obligation to make an annual report, according to the requirements of the law. If false numbers are intentionally published in the annual report the perpetrator can be punished with a maximum of 6 years imprisonment and a fine up to 76 000 euros (art. 336 DCC). Making and using false documents is a criminal offence punishable with a maximum of 6 years imprisonment, and a fine up to 76000 euro (art. 225 DCC).

### Specific measures

- 1.11) Have specific measures been taken in order to promote, in accordance with domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector (Article 39 UNCAC)? Please specify

The cooperation is promoted by stimulating entities of the private sector to develop a policy on preventing corruption and protecting whistle-blowers. Also the possibility to protect a witness or maintaining the anonymity of the witness involved in a criminal trial promotes cooperation.

Some professionals are obliged to report fraudulent offences to the authorities. For example accountants are obliged to report suspicion of fraude to their superiors.

- 1.12) Have specific measures been taken in order to promote the development of standards and procedures designed to safeguard the integrity of relevant private entities, including an anti-corruption code of conduct (Article 12(2) sub b UNCAC)? Please specify

Several organisations provide for such instruments. BIOS, which focuses on the public sector. ICC, MVO and Transparency International The Netherlands provide for different sorts of model codes of conduct and other information to help the private sector safeguard their integrity. Also the Foundation for the Integrity of the Construction and Building sector can be mentioned. See: [www.sbib.nl](http://www.sbib.nl), [www.bios.nl](http://www.bios.nl) and [www.transparencyinternational.nl](http://www.transparencyinternational.nl).

- 1.13) Have specific measures been taken in order to disqualify persons convicted of corruption or bribery from acting as directors of legal persons by court order or any other appropriate means?

In sentencing some forms of corruption and bribery the judge can remove a director of a legal person from office.

That means that he is deprived of his right to exercise a certain profession and to continue a certain position.

This measure can be imposed for the following crimes: various forms of bribery (art. 177, par. 3, art. 177a, par. 3, 178, par. 3 and art. 339 lid 1 DCC), human trafficking (art. 197a DCC), employing illegal persons (art. 197b DCC), various sorts of forgery and counterfeiting (art. 235 par. 1 DCC), embezzlement (art. 325, par. 2 DCC), fraudulent bankruptcy (art. 349 par. 1 DCC), fencing (art. 417ter DCC) and money laundering (art. 420 quinquies DCC)

- 1.14) Are awareness raising programs regarding the existence, causes and gravity of and the threat posed by corruption being set up within (different parts within) the private sector (source: article 13 UNCAC)? Please specify

The Dutch National Contact point educates and informs the private sector about the OESO-guidelines and corporate social responsibility. Other organisations concerning private legal persons give information and advice as well. For example MVO Nederland (Corporate social responsibility The Netherlands), established by the Ministry of economics in 2004.

1.15) Have specific measures been taken in order to abolish tax deductibility of expenses that constitute bribes (Article 12(4) UNCAC)? Please specify

Yes, art 3.14 par 1 section h of the Dutch Code on Income tax forbids the deduction of these expenses. It is therefore not allowed to deduct costs and expenses apparently made in relation to criminal activities that are punishable under articles 126 par 1, 177, 177a, 178, 178a, 328ter par 2, or 328quater, par 2 of the DCC.

1.16) Have specific measures been taken in order to provide effective protection from potential retaliation or intimidation for witnesses involved in the criminal proceedings? Please specify to measures related to physical protection, and to measures related to ensuring the safety of the witness during trial through the use of communications technology (Article 32(2) sub a and b UNCAC)

Yes, these witnesses can be protected in several ways. During pre-trial investigations the judge of instruction can take measures to protect the identity of anonymous witnesses, witnesses that are threatened or witnesses that have a special protection status in the interests of the State (art. 190, 226a, d and f and 226m, n, p, r DCPC). The protective measures are not specified and open for interpretation as long as they are necessary to protect the witness. During trial proceedings the protection of these witnesses may require that their absence is excused (art. 264, par. 3 DCPC).

## 2. ORGANISED CRIME<sup>5</sup>

### General policies

- 2.1) Please indicate whether specific and well elaborated national preventive policies with regard to organised crime, committed within or through the private sector, have been established

Since the late 1980s Dutch law-makers made the connection between money laundering and the fight against organised crime. Consequently, the European Directive on Money Laundering 1991 of the Council of the European Union was implemented by making national criminal provisions for money laundering. Also, the implementation of this Directive led to the Dutch Act on Disclosure of Unusual Transactions (DUT) and to the Identification Financial Services Act (IFS) in 1993. Also, the law BIBOB was introduced in 2002. This means that governmental authorities can get information for screening and auditing of persons that apply for a governmental permit. The Bureau for promotion of integrity appraisal (Bureau BIBOB) can provide for this information on which a government authority may decide whether or not to grant a permit.

- 2.2) What are the main elements, policy objectives, and main instruments e.g. bodies specialised in the prevention of organised crime prevention, of the above meant policy, in the private sector

Whereas the European Directive was formally limited to organised drugs crime the Dutch government took a more general approach to money laundering. The Dutch anti-money laundering intervention targets all financial transactions involving illegal proceeds, irrespective of the nature of the crimes connected with them. Though this Dutch intervention is not aimed exclusively at organised crime, the Dutch policy explicitly states that the anti-money laundering measures are initially targeted at preventing different forms of organised crime. These interventions are not restricted to the origin of crime money only, it encompasses the criminal purposes of funds as well. This illustrates the Dutch policy objective that obtaining insight into money flows in the solution to stop organised crime. To achieve this objective two obligations are introduced. The first requires clients to show identification before financial services are required prescribed in the DUT. The second obligation entails financial service providers reporting to the authorities any transaction that might be connected to money laundering (IFS). Unusual transactions have to be reported to the Dutch Finance Intelligence Unit. This Unit is integrated with the Bureau of the Nationale Public Prosecutor on Unusual Transactions. Also, a task force is placed under the Dutch National police.

- 2.3) Please describe whether the national policy on the prevention of organised crime committed within or through the private sector could be considered as adequate and effective with regard to the characteristic features of this type of organised crime in your country

The national policy on the prevention of crime has had the effect of making visible that organised crime exists in the Netherlands and that the main feature of it is that it is transit crime: The Netherlands is a market place for international trade in illegal goods. It also has shown that certain sectors are vulnerable for organised crime, such as transport, waste disposal and the hotel and catering industry. Although organised crime still exists it seems plausible that the increased supervision introduced by the Dutch legislator has had a diminishing effect on the level of organised crime. Also, the Dutch strategy of increasing the awareness of possible abuse and the strengthening of the integrity of agencies and legal persons has had a positive effect. Finally, by reducing rewards the Dutch government has limited the incentive for organised crime. This was done by the refusal or withdrawal of permits and subsidies and the exclusion from tendering procedures of certain persons and legal entities. Alongside this, various administrative warnings were given and in some cases establishments housing illegal hotels, casinos and catering operations were closed down. Also, the criminal measure on the withdrawal of illegally obtained profits can be mentioned (art. 36e

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<sup>5</sup> Questions based on the United Nations Convention on Transnational Organised Crime (UNTOC).

DCC). This criminal measure aims at the prevention of organised crime by the withdrawal of income that derives from organised criminal activities.

- 2.4) Does collection, exchange and analysis of information on prevention of organised crime committed within or through the private sector form an integral part of such a policy? (Article 28 UNTOC)

Yes, this is the primary goal of the Monitor on Organised Crime. The purpose of the organized Crime Monitor is to optimize the use of knowledge gained during large-scale investigations to develop an insight into the nature of organized crime in the Netherlands. In the course of this Monitor 120 large police investigations concerning organised crime have been analysed since 1996 by the Research and Documentation Centre of the Dutch Ministry of Justice(WODC). The results of these analysis have been gathered in three major reports that are open for the general public and can be downloaded without charge ([www.wodc.nl](http://www.wodc.nl))

- 2.5) Please indicate which national authorities and bodies are involved in the activities mentioned under 2.4

The Monitor on Organised Crime is undertaken by the Research and Documentation Centre of the Dutch Ministry of Justice (WODC). The police investigations that are analysed involve various national authorities like the Criminal Information Unit, the Drugs Enforcement Administration, the Fiscal Information and Investigation Service, the National Police, the Public Prosecuting Office and the Royal Dutch Marechaussee.

- 2.6) Do the officers of these national authorities and staff of these bodies receive specialised training in order to prevent organised crime committed within or through the private sector? (Article 29 UNTOC) Please specify

In general, officers of the national authorities like the Criminal Information Unit, the Drugs Enforcement Administration, the Fiscal Information and Investigation Service, the National Police, the Public Prosecuting Office and the Royal Dutch Marechaussee receive specialized training in the prevention of organized crime. Beside the general training on the job, a number of specialized trainings can be mentioned. First there are trainings in the administrative prevention of organised crime provided by the Buro Integrity of the Dutch municipalities. These trainings focus on preventive measures on a local level and are meant for the street level police officers. Also the Criminal Investigation College offers specialized training s in prevention of organized crime for higher ranked police officers. For high ranked police officers with tactical and intelligence positions a specialized Operational integrated analysis training is offered at Europol. Specialized trainings for public prosecutors can be found in a combination of various trainings provided for by the Dutch Centre for Study and Training for magistrates (SSR). Eurojust offers no trainings as such but provides for a network for public prosecutors by providing for cooperation and information exchange between competent authorities of the Member States.

- 2.7) Please indicate which international authorities and bodies are involved in the activities mentioned under 2.4 (e.g. Eurojust, Europol, and Member States)

Europol is involved in the collection, exchange and analysis of information on prevention of organised crime. Their main support consists in analysis to uncover the activities of organised crime networks in Europe. This takes place within the framework of an analysis work file. This file offers a variety of operational and strategical products for the Dutch authorities. Also, a specific target group or Joint Investigation Team can be set up. Several police officers as liaison officers actively participate in these analytical projects, facilitating the exchange of strategic and operational information. Given that Europol is a law enforcement organisation, the focus is more on police-type support. Also, Eurojust plays a supporting rol in the collection, exchange and analysis of information on prevention of organised crime. Their focus is more on the exchange of this information for police auctorities and prosecuting authorities. Eurojust aims at information exchange between the competent authorities of the Member States and assists them in providing the best possible coordination and cooperation. The European Judicial Network plays a supporting role in the exchange of this information between and for the national judiciary and prosecuting authorities. The exchange of this information runs primarily through a network of judicial contact points where liaison magistrates that are part of

the the national judiciary are appointed. Beside, the European Judicial Network provides for background information by means of an appropriate telecommunications network.

- 2.8) Please describe whether current practise on the exchange of information could be considered adequate and effective with regard to prevention of organised crime committed within or through the private sector

Because Europol, Eurojust and the European judicial network are situated in The Hague (the seat of government of the Netherlands) there is a logistic advantage to support the relevant Dutch authorities with exchange of information on the prevention of organised crime. However the exchange of this information is somewhat limited because of the legal statutory European framework that defines the tasks and authorities of these three institutions in such a way that they are expected to be focussed on certain aspects of exchange of this information. This influences the exchange of information in such a way that this information at times is focussed on certain authorities and therefore limited in contents. The focus of Europol is more on police-type support, The focus of Eurojust is more on police authorities and prosecuting authorities and the European judicial network focusses more on the competent magistrates of the Member States. Given these limitations, the exchange of information on prevention of organised crime seems adequate and effective, also due to the fact that the relevant Dutch authorities have several liaison officers and magistrates working inside (the network of) these institutions.

#### **Specific measures**

- 2.9) Have specific measures been taken in order to promote, in accordance with domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector with regard to organised crime committed within or through the private sector? Please specify

In the 1990s the criminal investigations concerning organised crime in the Netherlands were usually exclusively undertaken by police authorities. That meant that these investigations were quite extensive and therefore lengthy and arrests were commonly made after the conclusion of these investigations with the purpose of dismantling the entire criminal organisation. Since then the trend in police investigations has shifted more towards short investigations because they appeared to be more effective. In these short investigations sometimes private entities are used. The focus is then on (possible) facilitators and aiders of organized crime networks, like private transporters, private owners of construction sites and private owners of housing facilities. Sometimes these private persons have been used as a civil criminal informant and even as a civil infiltrator in an organized criminal network. The Dutch Criminal Procedure Code (DCPC) has been changed to provide for a legal base for these special methods of investigations that involve private entities (art. 126v-z DCPC).

- 2.10) Have specific measures been taken in order to disqualify persons convicted of partaking in activities and offences related to organised crime from acting as directors of legal persons by court order or any other appropriate means? (Article 31(2) sub d (ii) UNTOC)

In sentencing some forms of organized crime the judge can remove a director of a legal person from office. That means that he is deprived of his right to exercise a certain profession and to continue a certain position. This measure can be imposed for the following crimes: various forms of bribery (art. 177, par. 3, art. 177a, par. 3, 178, par. 3 and art. 339 lid 1 DCC), human trafficking (art. 197a DCC), employing illegal persons (art. 197b DCC), various sorts of forgery and counterfeiting (art. 235 par. 1 DCC), murder and manslaughter (art. 295 par. 2 DCC), embezzlement (art. 325, par. 2 DCC), fraudulent bankruptcy (art. 349 par. 1 DCC), fencing (art. 417ter DCC) and money laundering (art. 420 quinquies DCC)

- 2.11) Have specific measures been taken in order to encourage persons who participate or who have participated in organised criminal groups to supply information useful to competent authorities? (Article 26 UNTOC) Please specify



Yes, It is possible to make a deal with persons who participate or have participated in organised criminal groups with the purpose of bringing them to act as a witness in criminal proceedings against (other) suspects of organised crimes. In exchange for their testimony the competent authorities have the authority to promise that a lower sentence will be demanded in criminal proceedings against these persons (art. 226g DCC).

2.12) Have specific measures been taken in order to provide effective protection from potential retaliation or intimidation for witnesses involved in the criminal proceedings? Please specify to measures related to physical protection, and to measures related to ensuring the safety of the witness during trial through the use of communications technology (Article 24 UNTOC)

Yes, these witnesses can be protected in several ways. During pre-trial investigations the judge of instruction can take measures to protect the identity of anonymous witnesses, witnesses that are threatened or witnesses that have a special protection status in the interests of the State (art. 190, 226a, d and f and 226m, n, p, r DCPC). The protective measures are not specified and open for interpretation as long as they are necessary to protect the witness. During trial proceedings the protection of these witnesses may require that their absence is excused (art. 264, par. 3 DCPC)

## QUESTIONNAIRE PART C

### INVENTORY OF BEST PRACTISES

#### 1. Contact-point network against corruption

1.1) Have measures been taken to establish a national contact-point pursuant to Council Decision 2008/852/JHA<sup>6</sup> on the Contact-point network against corruption? Please specify: the date of establishment and provide contact information (website etc.)

Yes, we have a Dutch National Anti-Corruption Service. Website: <[http://www.epac.at/download/country/EACN the Netherlands.pdf](http://www.epac.at/download/country/EACN%20the%20Netherlands.pdf). Established in 1996.

1.2) If yes, have these contact-points provided information on measures and best-practises regarding the prevention of corruption in the private sector? Please specify

The Dutch National Anti-corruption Service is a National police force and its main task is to undertake investigations in criminal cases concerning corruption and crimes in the public and governmental area. Their legal duties do not foresee in measures and best-practises regarding the prevention of corruption in the private sector.

#### 2. Whistle-blowers

2.1) Has national legislation or a code of conduct been established regulating disclosure by reporting persons? Please specify

Yes, there are several codes of conduct regulating disclosure by persons. For example the code of conduct for reporting the suspicion of misconduct in the police force or in the central government, Stb. 2008, 572.

2.2) Have measures been taken in order to establish a separate national disclosure office for whistle-blowers?

Yes, the Dutch government decided that there should be a committee for advice and directing of whistle-blowers, (Stb. 2011, 427). This will be a temporary committee, at the end of 2015 after two years there will be an evaluation. (TK 2011-2012, 28844, 57.) Also there is a committee for whistle-blowers when it concerns the municipal authorities, (committee whistle-blowers municipal authorities).

2.3) Please describe, if available, which national measures are particularly effective in order to stimulate persons to disclose corruption, bribery or organised crime practises in the private sector

The CSR starting point for international entrepreneurship (see: <http://www.oecdguidelines.nl/ncp/pending-complaints>) gives information on pending cases and closed complaints on corruption and bribery. On this record (dating from 2008) it is clear that the possibilities of the Netherlands National Contact Point on OECD guidelines for multinational enterprises in giving information and filing complaints is working well.

#### 3. Interconnection of business-registers and public records

3.1) Are public records being kept, or included in business-registries, of directors of legal persons convicted of corruption, bribery, or partaking in activities and offences related to organised crime? Please specify who is authorised to access these records, both national and international authorities and bodies

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<sup>6</sup> OJ L 301/38, 12.11.2008.

Records of all kinds of information about criminal offences are kept, but they are not open for the general public. The government decides which authorities have access to the records and under which circumstances (Code on judicial and procedural criminal law information, Stb. 2002, 552). The authorities that can have access are mentioned in the 'Decision on Judicial data'. This decision was changed in march 2012 to comply with several European guidelines, (Stb. 2012, 130). These authorities include: the liability foundation for victims (schadefonds geweldsmisdrijven), foreign authorities, the general intelligence and safety service (AIVD), the military intelligence and safety service (MIVD), the bureau for promotion of integrity appraisal (BIBOB), Member States of the European Union, immigration service, directors of prisons and institutions, ministers, mayors, tax authorities, child protection services, the head of regional police forces, public prosecutors, the head of the contact-point of unusual transactions (MOT), Special investigative servants (BOA), certain public services when a person applies for a job as a public servant, Europol and Eurojust. For the local public authorities the bureau for promotion of integrity appraisal (BIBOB) can provide the necessary information on the existents of criminal records in for instance corruption, bribery or organised crime.

3.2) Have measures been taken in order to connect the above mentioned public records or national business-registries for the purposes of preventing transnational corruption, bribery and organised crime? Please specify

Based on the modifying Decision of march 24, 2012 (Stb. 2012, 130) the 'Decision on Police data' and the 'Decision on Judicial data' are up to date to the Framework Decision 2008/977/PbEU L 350/60 on dataprotection) and the Framework Decision 2009/315/PbEU L 93/23, on data for the European Criminal Record Information System (ECRIS).

3.3) Please describe, if available, which national measures are particularly effective in order to enhance the exchange of information between national business-registries and public records for the purposes of preventing transnational corruption, bribery and organised crime.

Records of all kinds of information about criminal offences are kept, but they are not open for the general public. The government decides which authorities have access to the records and under which circumstances (Code on judicial and procedural criminal law information, Stb. 2002, 552). The authorities that can have access are mentioned in the 'Decision on Judicial data'. This decision was changed in march 2012 to comply with several European guidelines, (Stb. 2012, 130). These authorities include: the liability foundation for victims (schadefonds geweldsmisdrijven), foreign authorities, the general intelligence and safety service (AIVD), the military intelligence and safety service (MIVD), the bureau for promotion of integrity appraisal (BIBOB), Member States of the European Union, immigration service, directors of prisons and institutions, ministers, mayors, tax authorities, child protection services, the head of regional police forces, public prosecutors, the head of the contact-point of unusual transactions (MOT), Special investigative servants (BOA), certain public services when a person applies for a job as a public servant, Europol and Eurojust. For the local public authorities the bureau for promotion of integrity appraisal (BIBOB) can provide the necessary information on the existents of criminal records in for instance corruption, bribery or organised crime.

#### **4. Sector specific best practises: prevention of corruption and organised crime in the area of illegal trafficking of waste**

4.1) To what extent does corruption, bribery or organised crime in the private sector constitute an issue in waste management in your country? Please specify

There are no records of research on that topic. So, it seems not to be an issue at the moment.

4.2) Has a system of preventive screening been established aimed at detecting corruption, bribery or organised crime in the waste management sector?<sup>7</sup>

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<sup>7</sup> Systems of preventive screening of business sectors are, for example, developed by the FATF. An example of such an evaluation is the report 'Money laundering through the Football Sector', available at: <http://www.fatf-gafi.org/dataoecd/7/41/43216572.pdf>, retrieved at 21 December 2011. Another example constitutes a preventive screening of

Records of all kinds of information about criminal offences are kept, but they are not open for the general public. The government decides which authorities have access to the records and under which circumstances (Code on judicial and procedural criminal law information, Stb. 2002, 552). The authorities that can have access are mentioned in the 'Decision on Judicial data'. This decision was changed in march 2012 to comply with several European guidelines, (Stb. 2012, 130). These authorities include: the liability foundation for victims (schadefonds geweldsmisdrijven), foreign authorities, the general intelligence and safety service (AIVD), the military intelligence and safety service (MIVD), the bureau for promotion of integrity appraisal (BIBOB), Member States of the European Union, immigration service, directors of prisons and institutions, ministers, mayors, tax authorities, child protection services, the head of regional police forces, public prosecutors, the head of the contact-point of unusual transactions (MOT), Special investigative servants (BOA), certain public services when a person applies for a job as a public servant, Europol and Eurojust. For the local public authorities the bureau for promotion of integrity appraisal (BIBOB) can provide the necessary information on the existants of criminal records in for instance corruption, bribery or organised crime in the waste management sector.

4.3) Has a national contact-point been established pursuant to Council Resolution 10291/11 on the creation of an informal network for countering environmental crime (EnviCrimeNet)?

There is not yet a national contact-point pursuant to Council Resolution 10291/11 on EnviCrimeNet. The Netherlands took the initiative towards starting EnviCrimeNet and it is strongly supporting this idea ( the Commission document of March 7 2012, Nr. COM(2012)95).

4.4) Have any methods been developed aimed at identifying criminal networks, active in the private sector, suspected of being involved in illegal trafficking of waste, either inside or outside the framework of EnviCrimeNet?

No specific methods have been developed aimed at identifying criminal networks, active in the private sector, suspected of being involved in illegal trafficking of waste, other than the traditional methods for detecting criminal offences. Based on reports of the Commissie Herziening Handhavingstelsel VROM-regelgeving (Commissie Mans, De tijd is rijp, TK 2007-2008, bijlage bij 22 343, nr. 201) and the evaluation report of Pro Facto in 2009 (TK 2008-2009, bijlage bij kamerstuk 22 343, nr. 236) the investigation of serious environmental crime is not well organised and more or less divided between several national, regional and local police-authorities, resulting in deficient exchange of information within the police and between the police and the public prosecuting office.

4.5) Have any methods been developed aimed at improving the exchange of information and gathering of criminal intelligence in this field, particularly with regard to Europol and Eurojust?

No specific methods have been developed aimed at identifying criminal networks, active in the private sector, suspected of being involved in illegal trafficking of waste, other than the traditional methods for the exchange of information on criminal offences.

4.6) Are any other programs or particularly effective means being developed with regard to the prevention of illegal trafficking of waste? Please specify

No other programs or particularly effective means are being developed with regard tot the prevention of illegal trafficking of waste. After the Probo Koala incident some recommendations were developed though. See also Vakblad handhaving, notably 2009 nr 2 at <http://www.vakblad-handhaving> on the cooperation agreement between the Dutch and English environmental agencies. This cooperation has led to the exchange of information and the analysis of criminal activities concerning illegal trafficking of waste, the widening of cooperation on a bilateral and European level and therefore in the improvement of case solving and investigation techniques.

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the Dutch arts and antiques sector: *'Pure art', preventive criminal analysis of the Dutch art and antique trade*, INTRAVAL, Groningen/Rotterdam, 2007.

## **5. Sector specific best practises: prevention of corruption and organised crime in the area of public procurement**

5.1) To what extent does corruption, bribery or organised crime in the private sector constitute an issue in public procurement in your country? Please specify

Corruption, bribery and organised crime are considered as important issues from a preventive point of view in case of public procurement in The Netherlands. A specialised institution is created: 'PIANOO', the centre of expertise on public procurement (Expertisecentrum Aanbesteden) offers information, advice, instruments and practical advice to governmental institutions.

5.2) Has a system of preventive screening been established aimed at excluding bidders that are, or have been, guilty of corruption or partaking in activities related to organised crime?

Based on the Act on promotion of governmental integrity (BIBOB) (2002) governmental authorities can get information for screening and auditing of the persons who applied for a governmental permit. The bureau for promotion of integrity appraisal (bureau BIBOB) can give this information on which a governmental authority can decide whether or not to grant a permit.

Next to this preventing system for governmental authorities all kinds of institutions need to make notice of irregular transactions in the the fight against moneylaundering based on the Act on giving notice of irregular financial transactions (Wet Melding Ongebruikelijke Transacties) and the Act identification public and private service (Wet Identificatie bij Dienstverlening).

To enhance the administrative enforcement on this topic the Ministry of Interior Affairs started in 2008 'Bestuurlijke aanpak van georganiseerde misdaad', resulting in the creation of the Regional Information and Expertise Centres (Regionale Informatie en Expertise Centra)(RIEC's), which give information to local authorities and other governmental institutions.

Next to these national measures also local specific measures are taken (for instance: the Amsterdam 'Wallenproject' aimed at tackling the rise of criminal influence in local private property).

5.3) Have measures been taken in order to develop specific tools, such as notification systems, to encourage participants or other persons to provide information about corruption, bribery or organised crime in the area of public procurement?

No measures in this way are taken. These forms of criminal behaviour can be declared at the police and anonymous by phone.

5.4) Has any initiative been developed in order to enhance transparency of conduct of private sector parties participating in the procurement procedure by the private sector itself?

Within the field of construction and building the Foundation Evaluation Integrity Construction (Stichting beoordeling integriteit Bouwnijverheid/SBIB) is aiming to stimulate, manage and guard self-disciplinary rules regarding the integrity of construction and building companies in procurement and competition. The SBIB has set a free of entry Code of Conduct that these companies can use. There is the possibility of filing a complaint regarding an offence of this Code resulting in a possible sanction.

## **6. Sector specific best practises: prevention of corruption and organised crime in the area of Emission Trading**

6.1) To what extent does corruption, bribery or organised crime, in particular with regard to insider dealing and market manipulation, constitute an issue in emission trading in your country? Please specify

Corruption, bribery and organised crime are considered as important issues from a preventive point of view in case of emission trading in The Netherlands. In the Netherlands there are two emissions trading systems, one for emissions of carbon dioxide (CO<sub>2</sub>) and one for emissions of nitrogen oxides (NO<sub>x</sub>). The Dutch Emission Authority (de Nederlandse Emissieautoriteit (NEa) supervises these two systems.

6.2) Has a system of preventive screening been established aimed at detecting corruption, bribery or organised crime in the emission trading sector?

There is no specific system of preventive screening other than is being dealt with by the Dutch Emission Authority (NEa). Obligatory participants draw up a monitoring protocol that they then submit for approval to the NEa. The NEa has access to all BIBOB-information for the event of approval of granting the company with an emission permit. The BIBOB-information is based on the Act on promotion of governmental integrity (2002). As a result of this Act governmental authorities can get information for screening and auditing of persons that apply for a governmental permit. The BIBOB bureau can provide for this information on which the government authority can decide whether or not to grant the permit.

6.3) Are any best practises or other particularly effective means being developed with regard to the prevention of corruption, bribery and organised crime in the area of emission trading?

The enforcement of the law with regard to the prevention of corruption, bribery and organised crime in the area of emission trading of the NEa consists of combined actions with the Customs on identity fraud, the national tax service on VAT fraud and illegal financing and the Financial Market Authority on derivatives trading. The NEa has developed specific adequate measures with regard to the prevention of corruption, bribery and organised crime in the area of emission trading. It adopted the European Registry Regulation to tackle ID Fraud in applications made for accounts in the Emission Trading Registry next to a monitoring of account-holders. Also, a plan of action was implemented to raise access security to the level of online banking. A third measure was to prevent VAT fraud with the declaration of the reverse charge mechanism applicable to emission allowances. See <https://www.emissieautoriteit.nl/emissierechten/publications>, especially the Study Report on risks of fraud in the emissions trading system, 2011.

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Erasmus University, The Netherlands, 2012