THE NETHERLANDS: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

MAY 2015

This report, submitted by the Netherlands provides information on the progress made by the Netherlands in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 12 May 2015.

The Phase 3 report evaluated the Netherlands' implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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TABLE OF CONTENTS

SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY 4

PHASE 3 EVALUATION OF THE NETHERLANDS: WRITTEN FOLLOW-UP REPORT 7

PART I: RECOMMENDATIONS FOR ACTION 7

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP 28

ANNEX 1 – NUMBER OF PROSECUTIONS OF LEGAL PERSONS – JANUARY 1995 UNTIL DECEMBER 2014 33

ANNEX 2: INSTRUCTION ON THE INVESTIGATION AND PROSECUTION OF CORRUPTION OF PUBLIC OFFICIALS ABROAD 35

ANNEX 3: OUT-OF-COURT SETTLEMENTS - PRESS RELEASES (IN RELATION TO RECOMMENDATION 11(B)) 45

ANNEX 4 – PRESS RELEASES PUBLIC PROSECUTION SERVICE 52

SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

Summary of findings

1. In March 2015, the Netherlands presented its written follow-up report to the OECD Working Group on Bribery (Working Group), outlining its responses to the recommendations and follow-up issues identified during the Phase 3 evaluation in December 2012. The Netherlands has taken substantial steps to implement a number of recommendations, with 11 out of 22 recommendations fully implemented, 6 partially implemented and 5 not implemented.

2. The Netherlands has demonstrated significant progress with regard to enforcement. Since December 2012, the Netherlands has opened 7 new foreign bribery investigations, bringing the total number to 16 since the entry into force of the Convention. Ten of these are ongoing investigations and 4 have been closed. The remaining 2 investigations, which involve Dutch companies SBM Offshore and Ballast Nedem, have been finalised with sanctions imposed on the defendants through out-of-court settlements. SBM Offshore agreed to a USD 40 million fine and a USD 200 million disgorgement. Ballast Nedem agreed to pay EUR 17.5 million and, in the context of the same case, KPMG Accountants NV agreed to pay a EUR 3.5 million fine and EUR 3.5 million in confiscation in relation to bribery related accounting misconduct (see the press releases in Annex 4).

3. The Netherlands has made important efforts to improve its investigative and prosecutorial capacities through a range of measures, some of which could be expanded upon in order to further improve enforcement. The Working Group is encouraged, in particular, by the Public Prosecution Service's initiative to set up a forum in which all relevant government parties can share information and consult. Nevertheless, since the forum has only had the opportunity to meet once, in November 2014, and given that none of the 7 new foreign bribery investigations actually resulted from proactive detection efforts, recommendation 3a on proactive detection is only considered partially implemented at this stage. Similarly, while the Working Group commends the Netherlands for its enforcement efforts since Phase 3, the Group is aware of 24 other foreign bribery allegations that do not appear to have been investigated (*recommendation 3b*). With respect to multijurisdictional cases, the Working Group welcomed the proactive cooperation efforts by the Dutch authorities in practice as well as the new Instruction on the Investigation and Prosecution of Corruption of Public Officials Abroad (see Annex 2) which recommends contacting foreign law enforcement authorities in such cases (*recommendation 3c*). Furthermore, the Instruction explicitly requires compliance with Article 5 of the Convention (*recommendation 3d*). The Working Group also notes resources for the Office of the National Public Prosecutor for Corruption and multidisciplinary teams in charge of foreign bribery investigations have been increased (re*commendation 3e*).

4. Relevant amendments to the Dutch Criminal Code entered into force on 1 January 2015 and address several Phase 3 recommendations.[1] The amendments simplify and harmonise the offences for foreign bribery including by removing the distinction between bribery to induce a violation of official duty and bribery to receive a benefit within the official's duty (*recommendation 1a*). The amendments also increase the maximum sanctions for foreign bribery to 6 years of imprisonment for natural persons and up to 10 percent of turnover for legal persons (*recommendation 4a*). The maximum sanctions for false accounting have also been increased to 10 percent of turnover (*recommendation 6b*). In line with the

[1] The text of these amendments had been considered in draft form at the time of Phase 3, but had yet to be passed into law.

Working Group's standard procedure, a full evaluation of the amended law should be conducted in the next evaluation phase.

5. All constituent countries of the Kingdom of the Netherlands have now adopted foreign bribery offences (*recommendation 1c*). Aruba criminalised foreign bribery with effect from February 2014. Sint Maarten adopted laws on 24 February 2015, which are expected to come into effect soon.

6. The Netherlands has improved overall the regime of criminal liability of legal persons, but some issues remain outstanding. The Netherlands has provided training to law enforcement on corporate liability (*recommendation 2b*) and continued to maintain detailed yearly statistics on the number of prosecutions of legal persons (*recommendation 2c*). The Working Group is further encouraged by the commitment of Dutch law enforcement authorities to pursue mailbox companies involved in foreign bribery. However, such a case has not been tested by the Dutch courts, thus it remains to be seen whether the potentially problematic decision of the *Chemical Waste* case, identified in Phase 3, will pose problems in asserting jurisdiction over mailbox companies. Accordingly, recommendation 2a regarding mailbox companies is only partially implemented. With respect to the use of probationary periods in foreign bribery cases, while the Working Group notes that this issue concerns only a minority of cases, it nevertheless remarks that the Netherlands has not developed guidance on this issue (*recommendation 2d*). Further, the Netherlands has not taken steps to consider introducing additional sanctions against legal persons, such as court ordered debarment or suspension from public benefits (*recommendation 4b*).

7. The Netherlands has implemented some, but not all, of the recommendations related to awareness-raising and training. The Working Group welcomes substantial awareness raising activities conducted for the public sector, but considers more could be done to engage the private sector, including encouraging companies to adopt internal controls, and ethics and compliance measures to prevent and detect bribery (*recommendation 8*). Further, while the Netherlands has reviewed its policy and approach to facilitation payments, targeted measures to encourage companies to prohibit, discourage and record such payments have not been sufficient (*recommendation 1b*). However, the Working Group is encouraged by the Netherlands' expressed intent to further address these issues as part of the public/private communications strategy currently being developed. With respect to foreign bribery-related offences, the Netherlands has raised awareness and provided training to its financial intelligence agency, law enforcement officials and reporting entities on foreign bribery as a predicate offence to money laundering through seminars and publications (*recommendation 5*). Similarly, tax officials received relevant training and were referred information in the context of a specific foreign bribery case (*recommendation 7*). While the Dutch Professional Association of Accountants (NBA) has developed a draft guideline on training auditors to detect foreign bribery, the training itself will not be provided until the guideline has been finalised (*recommendation 6a*).

8. The Working Group regrets that the Netherlands has not amended its legislation since Phase 3 to increase protections for foreign bribery-related whistleblowing in the public and private sectors (*recommendation 9b*). Parliamentary consideration of a private member's Bill to strengthen such protection has progressed somewhat since the introduction of the Bill at the time of Phase 3. An amended version of the Bill is expected to be discussed in the House of Representatives in 2015. The Working Group will have the opportunity to assess the amendment in the context of a future evaluation if the Bill is passed.

9. The Netherlands has promoted the obligation on public officials to report foreign bribery detected in the performance of duty and published a letter to Parliament on preventing and combating corruption, which includes public sector reporting obligations (*recommendation 9a*). The letter, published in March 2015 shortly after the Working Group's meeting, also covers the establishment of a national contact point for public sector reports. However, recommendation 9a is not fully implemented on the basis that the

relevant law governing such reports (article 162 of the Code of Criminal Procedure) has not been clarified. In this regard, the Working Group welcomes the project underway in the Ministry of Justice and Ministry of Internal Affairs to assess the application of this provision.

10. Finally, the Netherlands has not taken sufficient steps to achieve a more systematic approach by its agencies, in particular those in charge of public procurement and export credit, to ensure that companies seeking or receiving public benefits have not been convicted of bribery. In particular, efforts could be made to raise awareness of the Ministry of Security and Justice's database of convictions (*recommendation 10*).

Conclusions of the Working Group on Bribery

11. Based on these findings, the Working Group concludes that *recommendations 1a, 1c, 2b, 2c, 3c, 3d, 3e, 4a, 5, 6b* and *7* are fully implemented; *recommendations 1b, 2a, 3a, 3b, 8* and *9a* are partially implemented; and *recommendations 2d, 4b, 6a, 9b* and *10* are not implemented. The Netherlands has addressed *follow-up item 11(a)* by analysing and explaining the reasons for the decline in prosecutions of legal persons in the Netherlands. However, the issue of the number of corporate prosecutions in the Netherlands should continue to be followed up in the context of future evaluations. The Working Group will also follow up in the context of Phase 4 monitoring on the recommendations that are partially or not implemented, and *follow-up items 11(b)-(d)* as case law further develops.

PHASE 3 EVALUATION OF THE NETHERLANDS: WRITTEN FOLLOW-UP REPORT

Name of country:	**NETHERLANDS**
Date of approval of Phase 3 evaluation report:	**14 December 2012**
Information to be submitted:	**23 January 2015**

PART I: RECOMMENDATIONS FOR ACTION

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

Text of recommendation 1(a):

1. Regarding the offence of bribing a foreign public official, the Working Group recommends that the Netherlands:

a) Keep the Working Group on Bribery informed of developments concerning the adoption of amendments to the foreign bribery offence in the Dutch Criminal Code [Convention, Article 1];

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

The amendments to the Dutch Criminal Code simplify the (foreign) bribery offence. As a result of these amendments the distinction between bribes being paid to act (or not to act) in breach of duty and to act (or not act) without breach of duty, has been abolished. As a result Article 177a has been repealed and the active bribery offence in Article 177 (which also covers foreign bribery) has been amended. The maximum sentence has also been increased from two (old Article 177a) and four (old Article 177) years to six years imprisonment (new Article 177). In addition the maximum sentence for the active bribery of a judge in Article 178 has been increased from six to nine years (Article 178 paragraph 1) and from nine to twelve years (Article 178 paragraph 2).
The bill has been adopted by Parliament on November 18, 2014. The bill has been published in the Official Gazette and entered into force on January 1, 2015.

New Article 177 Criminal Code (Active bribery of a public official)
1. Punishment in the form of a prison sentence of no more than six years or a fine in the fifth category will be imposed on:
1°. Whoever makes a gift or a promise to a public official or provides or offers him a service with a view to getting him to carry out or fail to carry out a service;
2°. Whoever makes a gift or a promise to a public official or provides or offers him a service in response to or in connection with a service, past or present, that the official carried out or failed to carry out.
2. The same punishment will apply to anyone who commits an offence as described in the first paragraph, under 1°, against a person who has prospects of an appointment as a public official, if the appointment as a public official is followed.
(...)

Article 177a Criminal Code has been repealed.

New Article 178 Criminal Code (Active bribery of a judge)
1. Whoever makes a gift or a promise to a judge or provides or offers him a service with a view to exerting influence on his decision in a case that is subject to his judgment will be punished with a prison sentence of at most nine years or a fine in the fifth category.
2. If the gift or promise is made or the service is provided or offered with a view to obtaining a conviction in a case, the guilty person will be punished with a prison sentence of at the most twelve years or a fine in the fifth category.

New Article 178a Criminal Code (Extended definition of public official)
1. With regard to Article 177, persons working in the public service of a foreign state or an organization governed by international law are equivalent with public officials.
2. With regard to Article 177, first paragraph, under 2°, former public officials are equivalent to public officials.
3. With regard to Article 178, judges in a foreign state or an organization governed by international law are equivalent to judges.

If no action has been taken to implement recommendation 1(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(b):

1. Regarding the offence of bribing a foreign public official, the Working Group recommends that the Netherlands:

b) Periodically review its policy and approach on small facilitation payments, and continue to encourage Dutch companies to prohibit or discourage their use and in all cases, accurately record them in companies' accounts [Convention, Article 1; 2009 Recommendation III. (ii) and VI.(i) and (ii)];

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

While, strictly speaking, small facilitation payments constitute a criminal offence under the Dutch Penal Code, the Dutch Public Prosecution Service generally does not prosecute facilitation payments provided:

- they concern acts or omissions falling within the legal competence of the official concerned;
- the payments do not distort competition;
- the payments are small in absolute or relative terms;
- the payments are made to a low-ranking official;
- the payments are entered transparently in the business' accounts;
- the initiative for the payments is taken by the foreign official.

An entrepreneur must be able to satisfy the Public Prosecution Service that the payments in question comply with the aforementioned conditions and are thus small facilitation payments, and therefore do not constitute an offence according to the OECD Anti-Bribery Convention. The Public Prosecution Service will consider the circumstances of the payment and the customs of the country concerned. This policy of the Public Prosecution Service on facilitation payments has been laid down in the Instruction on Investigation and Prosecution of Corruption of Public Officials Abroad.

The Netherlands continues to raise awareness about its policy and approach to small facilitation payments among Dutch companies and continues to encourage companies to prohibit or discourage the use of small facilitation payments and to accurately record them in companies' accounts in all cases. Examples of this awareness raising can be found in the brochure "Honest Business, without corruption" which was published end 2012 by the Ministries of Economic Affairs, Foreign Affairs, Security and Justice and by the Confederation of Dutch Industry and Employers VNO-NCW, ICC Netherlands and the Royal Association MKB Netherlands.

The Ministry of Foreign Affairs and the Ministry of Security and Justice have consulted the private sector (and civil society) on the current approach to small facilitation payments on a number of occasions:

- At the stakeholders meeting on 10 November 2014 about the letter to Parliament on prevention and combating corruption (present: ICC NL; Good Company; MVO Nederland and Transparency International NL).
- At the first brainstorming session on the public-private communication strategy.
- In bilateral meetings with ICC NL and TI NL.
- In consultation with some twenty Dutch internationally operating companies who are represented in the Corporate Responsibility& Anticorruption Committee of ICC Netherlands.

Business representatives have indicated that the current Dutch policy and approach to small facilitation payments is clear enough for business, but that awareness among Dutch companies about this issue should increase further even though the impression is that Dutch companies in general apply a "zero tolerance" approach. The Netherlands intends to include awareness raising activities about the policy and approach on small facilitation payments in the public-private communication strategy that is under development (please also refer to the answer to recommendation 8).

In addition, the current policy was discussed during different meetings between the Public Prosecution Service, the Ministry of Security and Justice and the Ministry of Foreign Affairs. The issue of small facilitation payments was also discussed during different awareness raising activities – for instance the presentation at the ICC NL conference on 9 April 2014 and workshops/presentations at the Netherlands Enterprise Agency and the Tax authorities (as mentioned in the written follow-up report of the Netherlands, under rec. 8).

If no action has been taken to implement recommendation 1(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(c):

1. Regarding the offence of bribing a foreign public official, the Working Group recommends that the Netherlands:

c) Continue to encourage Aruba and Sint Maarten to adopt a foreign bribery offence and assist them in their efforts to do so, in line with the rules governing its relationship [Convention, Article 1].

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

With regard to Aruba, Curaçao and Sint Maarten, the act of adopting the necessary legislation to make the

OECD Anti-Bribery Convention applicable remains an autonomous affair. That said, it can be noted that with respect to the criminalization of foreign bribery, Curaçao adopted a new Criminal Code in November 2011. Aruba also adopted a new Criminal Code which entered into force in February 2014. Both Criminal Codes include a foreign bribery offence. The offence closely resembles the foreign bribery provisions under the Dutch Criminal Code.

Sint Maarten adopted a new Criminal Code as well, in May 2012. It was published in the National Gazette in January 2013 and also contains a foreign bribery offence. After adoption, several parts of the Penal Code were submitted for testing to the Constitutional Court based on the Ombudsman's prerogative to review the law as to its compliance with the Constitution of Sint Maarten. As a result of the decision of the Constitutional Court in November 2013, parts of the new Penal Code had to be revised. This concerned the provisions on life sentences and early release of foreign detainees.
The amendments to the Penal Code were adopted by Parliament on 24 February 2015. This means that the new Penal Code of Sint Maarten can be published soon and go into effect.

Consequently, although none of these countries have formally ratified the OECD Convention, legislation already is, or shortly will be, in place to allow for the enforcement of foreign bribery offences.

If no action has been taken to implement recommendation 1(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(a):

2. Regarding the criminal liability of legal persons, the Working Group recommends that the Netherlands:

a) Take all possible measures to ensure that mailbox companies are considered legal entities under the Dutch Criminal Code and that cases of foreign bribery involving mailbox companies can be effectively investigated, prosecuted and sanctioned [Convention, Article 2; 2009 Recommendation V];

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

Legal persons are broadly defined under Dutch law (see Articles 1, 2 and 3 of the Civil Code), as pointed out during the Phase 3-evaluation. As "mailbox companies" are incorporated in the Netherlands, they are considered Dutch legal persons under the Civil Code.
The Netherlands is committed to effectively investigate, prosecute and sanction these mailbox companies, when they violate the law. As expressed by public prosecutors during the on-site visit in 2012, there is a firm intention to pursue ongoing investigations and prosecutions against mailbox companies allegedly involved in foreign bribery, and to test the issue of jurisdiction before the courts, including up to the Supreme Court, if necessary.
One of the examples that show that the Netherlands is committed to investigate and prosecute possible cases of foreign bribery committed by mailbox companies is the investigation into foreign bribery by an international company (incorporated in the Netherlands) in a Caribbean country. The Public Prosecution Service has taken some important steps forwards in this case and is determined to complete the investigation and take the case to court. Besides this Caribbean-case, the Public Prosecution Service is now also investigating a mailbox company with regard to foreign bribery in Asia.

The Netherlands is also actively involved in the development of a FATF-typology on transparency of

beneficial ownership and associated risks. Although the scope of this project is not limited to (foreign) corruption, it does show that the Netherlands is committed to address the issue of complex legal structures (like mailbox companies) being misused to commit crimes, like foreign corruption.

If no action has been taken to implement recommendation 2(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(b):

2. Regarding the criminal liability of legal persons, the Working Group recommends that the Netherlands:

b) Draw the attention of prosecutors to the importance of applying effectively the criminal liability of legal persons in foreign bribery cases, including for acts by intermediaries and related legal persons [Convention, Article 2; 2009 Recommendation V];

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

The Netherlands has broad experience with the prosecution of legal persons. Effectively applying the criminal liability of legal persons in foreign bribery cases, including for acts by intermediaries and related legal persons, is one of the themes that is specifically addressed in the course on the fight against corruption of the Public Prosecution Service. This yearly course is attended by approximately an average of 15 persons (employees of the Public Prosecution Service, investigative authorities and the judiciary). This year, however, due to an increased number of applications, the Training and Study Centre for the Judiciary is considering to plan a second session of this course.

The Public Prosecution Service also developed a course on criminal liability of legal persons. In this course specific attention is paid to the criminal liability of legal persons in general. Different issues regarding the criminal liability of legal persons are covered in-depth, among others: the attribution of criminal liability to legal persons, the different types of legal persons, investigative powers, statutory defenses, possibilities of punishment and relevant jurisprudence. The attribution of criminal liability to legal persons in case of acts by intermediaries and related legal persons is one of the issues explicitly discussed during this course. The course on criminal liability of legal persons took place for the first time in 2014 and will be held twice a year. The course is attended by 18 to 24 participants each time. Most participants are from the Public Prosecution Service and the judiciary, but there are also participants from administrative courts and from the private sector (lawyers).

In addition, one of the webpages of the Intranet of the Public Prosecution Service is dedicated to the issue of criminal liability of legal persons. The information provided on this webpage is quite comprehensive and updated regularly. It is one of the tools that can help employees of the Public Prosecution Service to update their knowledge on this topic.

Furthermore, the Instruction on Investigation and Prosecution of Corruption of Public Officials Abroad clearly underlines that "there may be no misunderstanding that the mere involvement of a local agent/ representative/ consultant may also constitute an offence. It is widely known that such persons are often used to pay bribes abroad. Dutch companies may therefore be expected to take a critical attitude toward the nature and scope of the work of such a person."

To conclude, it also has to be noted that public prosecutors from different sections of the Public

Prosecution Service are involved in the prosecution of foreign bribery cases, especially public prosecutors from the National Public Prosecutor's Office for Serious Fraud and Environmental Crime. The public prosecutors from this specialized office of the Public Prosecution Service are very much experienced in prosecuting legal persons. Also, in the new investigations that the Public Prosecution Service started since December 2012, natural persons as well as legal persons are designated as suspects of foreign bribery.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(c):

2. Regarding the criminal liability of legal persons, the Working Group recommends that the Netherlands:

c) Continue to maintain detailed yearly statistics on the number of prosecutions of legal persons [Convention, Article 2; 2009 Recommendation V];

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

Please refer to Annex 1.

If no action has been taken to implement recommendation 2(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(d):

2. Regarding the criminal liability of legal persons, the Working Group recommends that the Netherlands:

d) Develop guidance on the application of probationary periods in foreign bribery cases [Convention, Article 2; 2009 Recommendation V].

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

If no action has been taken to implement recommendation 2(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

It has to be stressed that the amount of cases in which a public prosecutor decided to conditionally dismiss a case against a legal person is both relatively and in absolute terms small, as is also shown in Annex 1. For example, in 2013 27 cases against legal persons were conditionally dismissed (on a total of 4239 cases). Moreover, there has not been a conditional dismissal against a legal person in a foreign bribery case.
The principle of prosecutorial discretion in the Netherlands gives the public prosecutor a certain amount of freedom to prosecute or handle a case in the most appropriate way. All relevant facts and circumstances are taken into account by the public prosecutor, which in rare cases may lead to a conditional dismissal.

This practice is so casuistic, that the Public Prosecution Service feels it is not desirable or feasible to develop guidance on this issue. Nevertheless, there is guidance on the investigation and prosecution of foreign bribery in general. In sensitive, high profile, cases the management of the Public Prosecutor's Office is always consulted before a final decision is made on the way forward in that case (going to trial, dismissal, out of court settlement, etc.).

Text of recommendation 3(a):

3. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that the Netherlands:

a) Proactively gather information from diverse sources at the pre-investigative stage to increase the sources of allegations and to enhance investigations [Convention, Article 5; 2009 Recommendation V];

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

The Netherlands acknowledges that a more pro-active approach in investigating leads and contacting fellow law enforcement authorities in other countries is important, also and especially in the case of mailbox companies.
Since December 2012, the Public Prosecution Service has stepped up its efforts in pro-actively gathering information regarding signs of possible foreign bribery. This pro-active approach resulted in five new criminal investigations. In these investigations not only the natural persons, but also the legal persons involved are considered suspects. In one of these five new criminal investigations, the suspect is a mailbox company.
In order to further strengthen the gathering of information from diverse sources and the overall investigation of cases, the Public Prosecution Service has developed a new, integrated, approach to fight foreign bribery. The core idea of this approach is to set up a forum in which all relevant government parties that can detect signs of foreign bribery, can share information and subsequently consult each other on the best intervention. Through this approach the detection of foreign bribery will be enhanced, information will be brought together in order to build stronger cases and interventions will be more effective and efficient.
At November 6, 2014, the kick-off meeting for this new approach took place. This meeting was well attended by relevant partners, like the Public Prosecution Service, the National Police Internal Investigations Department ('Rijksrecherche'), the Fiscal Intelligence and Investigation Service, the Ministry of Security and Justice, the Financial Intelligence Unit, Tax authorities, the Ministry of Foreign Affairs, The Netherlands Central Bank, the Netherlands Enterprise Agency, the Authority for Consumers and Markets and the Authority for Financial Markets.

If no action has been taken to implement recommendation 3(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(b):

3. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that the Netherlands:

b) Proactively investigate cases of foreign bribery involving legal persons, including mailbox companies [Convention, Article 5; 2009 Recommendation V];

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

Please refer to previous answer (recommendation 3a).

If no action has been taken to implement recommendation 3(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(c):

3. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that the Netherlands:

c) Exercise its jurisdiction in foreign bribery cases concerning Dutch natural or legal persons, and, where relevant, consult with other jurisdictions to determine the most appropriate jurisdiction for prosecution or consider undertaking concurrent or joint investigations [Convention, Articles 4 and 5; 2009 Recommendation V, XIII.(i) and (iii)];

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

The Instruction on the Investigation and Prosecution of Corruption of Public Officials Abroad of the Public Prosecution Service states: "if criminal inquiries have been started abroad the Netherlands Prosecution Service should get in touch with their foreign colleagues and discuss the method of prosecution. It is recommended to seek cooperation with other countries involved as early as possible. This is possible via international requests for legal assistance, but parallel investigations or a Joint Investigation Team (JIT) could also be considered for instance."
Since the Phase 3-evaluation, but also before that, the Dutch law enforcement authorities have been in contact with their counterparts in other countries in order to consult on the best way forward and to cooperate in parallel and in JIT's.
There are several examples that can illustrate this commitment. One of these examples concerns the prosecution of a Dutch company. Thanks to a referral from the World Bank the Netherlands started a criminal investigation in 2011 on possible corruption related to projects financed by the World Bank. A JIT was formed with the British authorities, which proved very useful with regard to e.g. the exchange of information.
As a result of this referral from the World Bank, the Minister of Security and Justice and the World Bank signed a Memorandum of Understanding, with the aim to facilitate the exchange of information (both ways) on possible cases of fraud and corruption. Not only has the Netherlands received information from the World Bank on illegitimate practices of Dutch-based companies, the Dutch law enforcement authorities have also provided the World Bank with information on possible fraudulent behavior of its employees.

Based on the experience in the World Bank case, the Netherlands have also cooperated closely with OLAF, the EU anti-fraud organization. The Netherlands have shared information and in November 2013 the Dutch Public Prosecution Service attended a coordination meeting in Brussels, with OLAF, France, UK, Germany, the World Bank and the European Investment Bank. In this meeting the countries discussed how to cooperate. A next meeting will follow soon**.**
Another example can be found in the cooperation with other OECD WGB-members in the investigation of a possible case of foreign bribery in an Asian country. There have been several EUROJUST-meetings to get all of the countries involved together and coordinate the different MLA-requests and investigations. This has proven to be very useful and successful.
In 2014 the National Public Prosecutor's Office also shared information with OLAF on another possible case of foreign bribery. This information is now further being analyzed to determine if there is enough ground for a suspicion of foreign bribery in this case.
Another example is a criminal case which ended in an out-of-court settlement. During the investigation and before reaching a settlement, the National Public Prosecutor's Office had several meetings with the U.S. Department of Justice which led to the fact that the Netherlands Public Prosecution Service settled the case and the U.S. Department of Justice ended its investigation.
Since the benefits of consulting and cooperating with other countries has, time and again, proven to be substantial, the Dutch law enforcement authorities are committed to proceed with this approach in the future.

If no action has been taken to implement recommendation 3(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(d):

3. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that the Netherlands:

d) Proceed with the adoption and implementation of the revised *Instruction on the Investigation and Prosecution of Foreign Corruption* to ensure in no uncertain terms that it cannot be interpreted contrary to Article 5 of the Convention [Convention, Article 5; 2009 Recommendation, Annex I(D)];

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

The revised Instruction on the Investigation and Prosecution of Corruption of Public Officials Abroad of the Public Prosecution Service has entered into force in January 2013. This Instruction will be valid for an indefinite period – until the Public Prosecution Service deems it necessary to change or update the content of the Instruction.
The Instruction explicitly states that the public prosecutor must comply with article 5 of the OECD Convention when using its discretionary powers. It continues by saying that it is not allowed to be influenced by consideration of national economic interest, the possible effect on relationships with other states or the identity of the natural or legal persons involved.
The revised Instruction is part of the whole system of rules and regulations of the Public Prosecution Service that is regularly brought to the attention of the law enforcement authorities, for example in training courses for the Public Prosecution Service, investigative authorities and the judiciary. The revised Instruction and its relation to the OECD-Convention (among others, Article 5 of the Convention) is, for instance, one of the topics discussed during the yearly course on the fight against corruption of the Public Prosecution Service.

Please also refer to Annex 2 (Revised Instruction on the Investigation and Prosecution of Corruption of Public Officials Abroad).

If no action has been taken to implement recommendation 3(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(e):

3. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that the Netherlands:

e) Provide adequate resources to Dutch law enforcement authorities to effectively examine, investigate and prosecute all suspicions of foreign bribery [Convention, Article 5; 2009 Recommendation V and Annex I(D)].

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

The 'foreign corruption desk' at the National Public Prosecutor's Office has a (mainly) coordinating task; public prosecutors from other parts of the Public Prosecution Service are qualified to lead the prosecution of actual cases of foreign bribery. At this moment, for instance, several public prosecutors from the National Public Prosecutor's Office for Serious Fraud and Environmental Crime are involved in the prosecution of foreign bribery cases.
Besides this, the Public Prosecution Service has been exploring other ways to increase the effectiveness and efficiency of the resources available for the investigation of foreign corruption. The Public Prosecution Service has therefore developed a new approach for the fight against foreign corruption. Part of this approach is working with combined investigation teams, with investigators from the National Police Internal Investigation Department ('Rijksrecherche') and the Fiscal Intelligence and Investigation Service ('FIOD'). These combined teams are a good example of increasing the effectiveness and efficiency of the available resources.
Another part of this new approach is the setting up of an integrated forum in which relevant government parties that can detect signs of foreign bribery, can share information and subsequently consult each other on the best intervention (as mentioned before, in the answer to recommendation 3a). Through this approach the detection of foreign bribery will be enhanced, information will be brought together in order to build stronger cases and interventions will be more effective and efficient.

If no action has been taken to implement recommendation 3(e), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(a):

4. Regarding sanctions in cases of transnational bribery, the Working Group recommends that the Netherlands:

a) Promptly proceed with the adoption of the proposed amendments to the Criminal Code which would significantly increase the level of sanctions [Convention, Article 3];

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

The amendments to the Criminal Code have significantly increased the level of sanctions. In cases where an appropriate punishment for legal persons is necessary, a judge will have the possibility to impose a fine up to 10% of the annual turnover of the company, instead of the former maximum fine of the sixth category in Article 23 of the Criminal Code (max. € 810.000). This new option is implemented by adding a new sentence to the seventh paragraph of Article 23 of the Criminal Code.
The bill has been adopted by Parliament on November 18, 2014. Subsequently it has been published in the Official Gazette and entered into force on January 1, 2015.

Article 23 Criminal Code
1. He who has been charged with a monetary fine is obliged to pay the fixed amount to the state within the time period specified by the Public Prosecution Service who is responsible for the enforcement of the penalty order or the verdict.
2. The amount of the monetary fine is at least €3.
3. The highest monetary fine that can be imposed is equal to the amount of the category which has been determined for that criminal offence.
4. There are six categories:
the first category, € 405;
the second category, € 4.050;
the third category, € 8.100;
the fourth category, € 20.250;
the fifth category, € 81.000;
the sixth category, € 810.000.
5. For a violation, notably so a criminal offense, for which no monetary fine has been fixed, a monetary fine can be imposed which at the maximum could be equal to the amount of the first notably the third category.
6.For a violation, notably so a criminal offense, for which a monetary fine is fixed, but where no penalty category has been determined, a monetary fine can be imposed which at the maximum could be equal to the amount of the first notably the third category if this amount is higher than the amount imposed on the relevant punishable act.
7. When convicting a legal person, where there is no appropriate penalty, a monetary fine can be imposed which at maximum is equal to the amount of the next highest category. If the maximum of the sixth category can be imposed, but this is not an appropriate penalty, a monetary fine can be imposed which at maximum is equal to ten percent of the annual turnover of the legal person in the financial year preceding the verdict or penalty order.
8. The previous paragraph also applies when sentencing a company where there is no legal body, partnership or target assets.
9 The figures mentioned in the fourth paragraph are adapted according to developments of the consumer price index every two years as of January the 1st of a year by the council's general measures since the last adaptations of these amounts. With these adaptations the monetary figure in the first category is rounded down in multiples of €5 and will be determined as a result of the amount in the first category and the

maintenance of the mutual relationship of the amounts of the monetary penalty categories and the amounts of the second up to and including the sixth monetary penalty category.

If no action has been taken to implement recommendation 4(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(b):

4. Regarding sanctions in cases of transnational bribery, the Working Group recommends that the Netherlands:

b) Consider introducing the possibility of additional sanctions against legal persons, such as suspension from public procurement or other publicly-funded contracts [Convention, Article 3; Commentary 24].

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

Public procurement legislation in the Netherlands is consistent with European law. Institutions that are publicly financed, managed or fall under public supervision must follow the European public procurement rules as implemented by the Dutch Public Procurement Act 2012.
The Public Procurement Act 2012 comprises so-called mandatory exclusions. One of these exclusion grounds is a conviction for foreign bribery by court decision in the four years preceding the request for participation for the tender (Article 2.86) .
Mandatory exclusion means that if the contracting authority finds that one of the grounds for exclusion is raised, the company has to be excluded from the public tender.
Under Article 2.88 of the Act, a contracting authority may choose not to apply mandatory exclusion for "compelling public-interest reasons; or if, in the contracting authority's judgment, the contractor or tenderer has taken adequate measures to restore the betrayed confidence; or if, in the contracting authority's judgment, exclusion is not a proportional sanction, in light of the time which has passed since the conviction and given the subject matter of the contract." Both articles are directly implemented from the EC Directives."

In addition to additional sanctions through suspension from public procurement, it should be noted that bribery has been an assessment criterion since 2002 for the financial foreign policy instruments that aim to support Dutch business abroad. This means that involvement in bribery could imply that the applicant will be turned down from the use of these financial instruments. This is examined on a case-by-case basis. All the financial instruments to support export and foreign investments refer to the OECD Guidelines for Multinational Enterprises, which contains a chapter on combating corruption. When companies apply for the use of a financial foreign policy instrument, companies need to sign a declaration of commitment that they will apply the OECD Guidelines. In addition, they are advised to use the CSR Risk Check tool.

If no action has been taken to implement recommendation 4(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendations for ensuring effective prevention and detection of foreign bribery

Text of recommendation 5:

5. Regarding money laundering, the Working Group recommends that the Netherlands raise awareness and provide training to the FIU, law enforcement officials and reporting entities on foreign bribery as a predicate offence to money laundering. Such awareness-raising could also include the sharing of typologies on money laundering related to foreign bribery [Convention, Article 7; 2009 Recommendation III.(i)].

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

During the on-site visit in 2012, the Dutch Financial Intelligence Unit (FIU) expressed its intention to increase their efforts in the fight against corruption, particularly in their meetings with reporting entities. Several initiatives have taken place since the on-site visit in 2012.

The FIU attended a meeting of the Platform on Fighting Corruption in June 2013. This Platform was organized by the Ministry of Security and Justice. During this meeting the FIU gave a presentation on its role in general and its (potential) role in the fight against (foreign) corruption. This presentation was followed by a fruitful discussion with the Platform members. The core issue discussed was how increased attention to suspicious foreign financial flows can help identify foreign bribery. Among others, the Head of the Dutch FIU attended the meeting. There were also several law enforcement officials: the national coordinating prosecutor for corruption cases, the senior legal officer for corruption cases, the national coordinating prosecutor for money laundering, a prosecutor on money laundering from the National Public Prosecutor's office, a representative from the Office of the Board of Procurators-General, a representative from the National Public Prosecutor's Office for Serious Fraud and Environmental Crimes and a representative from the National Police Internal Investigations Department. Also other Platform members (the Ministry of Foreign Affairs, the Ministry of Finance and the Ministry of Internal Affairs and Kingdom Relations) attended the meeting.

In October 2013 the FIU published a newsletter about its role in the fight against corruption. This newsletter was send to the then known reporting institutions (such as banks, accountants, trust offices) and to The Netherlands Central Bank, the Dutch Banking Association and the Ministry of Security and Justice. In this newsletter it is stated that corruption in general can be a predicate offence to money laundering. The newsletter states that the FIU NL examined its database in the preceding year for transaction reports with a link to corruption. This analysis revealed that there are few reports on this topic, or that the reports cannot be recognized by the FIU NL as being linked to corruption. The newsletter further states that this does not mean that there are no relevant signs at the reporting institutions. Therefore the FIU NL asks the recipients of the newsletter to report corruption-related transactions as an unusual transaction. It also asks to use the words 'suspected corruption' in the description of the transaction report and it further emphasizes that the FIU NL will always examine these reports.

In October 2014 the Ministry of Security and Justice also gave a presentation about (foreign) corruption in a meeting with the FIU and representatives of reporting entities (the so-called 'Commissie Meldplicht'). The following organisations were present: FIU NL, Ministry of Finance, Public Prosecution Service, The Netherlands Central Bank, Authority for Financial Markets, Fiscal Intelligence and Investigation Service, Financial Supervision Office, Tax administration, Paysquare (payment processor), Holland Quaestor (association of Corporate Services Providers), Dutch Association of Tax Advisers, Dutch Association of Lawyers, Holland Casino, Dutch Banking Association, Dutch Association of Money Remitters, Dutch Real Estate Association, Royal Dutch Association of Civil-law Notaries, Dutch

Association of Insurers, Netherlands Institute of Chartered Accountants (NBA), International Card Services, Advisors in Financial Security. In the presentation, among other things, the OECD report on foreign bribery was discussed. Partly as a result of this meeting, the FIU and the Ministry of Security and Justice decided to collaborate in the development of red flags for reporting entities, in order to better detect possible (foreign) corruption. This is an ongoing project.

The FIU is also one of the partners of the new integrated approach to foreign bribery. For more information on this new approach, please refer to the answer to recommendation 3a.

Besides this, all the suspicious transactions that are reported by the FIU are being scrutinized by officers from the FIOD or the National Police Agency to see what kind of crimes could be underlying these transactions. If there are signals of (foreign)corruption they are being forwarded to the designated investigators.

The Netherlands will also continue to explore other ways of awareness raising, training and dialogue.

If no action has been taken to implement recommendation 5, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(a):

6. Regarding accounting and auditing requirements, the Working Group recommends that the Netherlands:

a) Ensure that the foreign bribery offence and the accounting and auditing requirements of the Convention are covered in training programmes and related guidelines for the accounting and auditing professions, in order to facilitate their more active role in detecting foreign bribery [Convention, Article 8; 2009 Recommendation III.(i)];

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

As a result of the Dutch Act on the supervision of audit firms and rules established further to this Act, an auditor is held to identify fraud and bribery. In performing a statutory audit, the auditor must maintain professional skepticism and always consider the possibility of a material misstatement resulting from fraud, including bribery. Furthermore, the auditor is required to notify to the competent investigating officer a reasonable suspicion of fraud and bribery when this is material in relation to the financial statements of the audit client. In addition, an audit firm is required to inform the competent authority (the Authority for Financial Markets) about incidents which have serious consequences for the ethical conduct of its business. Incidents include forgery, money laundering, corruption, tax offenses, but also violations of reporting requirements further to the Act on Prevention of Money Laundering and Financing of Terrorism and the Financial Supervision Act. The offenses may relate to the audit firm, its auditors or other employees, but also to third parties conduct such as an audit client.

In addition to the above, the Dutch professional association of accountants (*Nederlandse Beroepsorganisatie van Accountants, NBA*) has issued rules regarding mandatory training programs on professional skepticism for auditors who perform statutory audits, to help identify fraud and bribery. The NBA is currently working on a guideline on bribery. The draft guideline focuses on the audit process and the work of the auditor. It provides an overview of the relevant laws and regulation (including UK and US). It provides insights in factors that influence the risk of bribery and it gives guidance on the work to

be performed by the auditor based on Dutch-gaap (Generally Accepted Accounting Principles, i.e. the Dutch accountancy rules). This guideline, to be issued in the spring of 2015, will provide guidance in relation to existing rules and raise awareness with regard to bribery.

In addition, it may be interesting to note that the Authority for Financial Markets (AFM) is starting a preliminary research this year to get insight into the nature and size of signals referring to integrity issues with accountancy firms. This may lead to the follow-up of signals with more research into integrity violations by accountancy firms.

If no action has been taken to implement recommendation 6(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(b):

6. Regarding accounting and auditing requirements, the Working Group recommends that the Netherlands:

b) Promptly proceed with the adoption of the proposed amendments to the Criminal Code which would significantly increase the level of financial sanctions on legal persons for the false accounting offence [Convention, Article 8; 2009 Recommendation X.A.(iii)].

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

Please refer to the answer to recommendation 4a.

If no action has been taken to implement recommendation 6(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7:

7. With respect to tax-related measures, the Working Group recommends the Netherlands encourage law enforcement authorities to promptly share information on foreign bribery enforcement actions with the tax administration to verify whether bribes were impermissibly deducted [2009 Recommendation VIII.(i); 2009 Tax Recommendation I.(i)].

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

If legally possible, the law enforcement authorities and tax authorities exchange relevant information in (foreign) bribery cases. In one of the foreign bribery cases the law enforcement authorities transmitted information on involved individuals to the tax authorities. The tax authorities are still busy handling the tax implications of this information.

There are some developments that will further facilitate the exchange of information between law enforcement authorities and tax authorities:

As mentioned in the answer to recommendation 3e, the National Police Internal Investigation Department ('Rijksrecherche') and the Fiscal Intelligence and Investigation Service ('FIOD') enhanced their

cooperation in foreign bribery investigations. The FIOD is part of the tax authorities; this cooperation therefore also contributes to more attention being paid to possible impermissibly deduction of bribes. The FIOD, but also the Tax administration itself, is taking part in the new integrated approach to foreign bribery (please refer to the answer to recommendation 3a). This new approach will, among other things, better facilitate the exchange of information between the law enforcement authorities and tax authorities in foreign bribery cases.

It also has to be noted that the Tax administration is already paying attention to indications of possible (foreign) bribery in the administration of companies. The Tax administration undertook several initiatives to raise awareness on this issue in its own organization. For example, in November 2014 the National Police Internal Investigation Department, the Ministry of Security and Justice and the Ministry of Foreign Affairs gave a presentation about (foreign) corruption to employees of the Tax authorities. One of the issues discussed during that session is the cooperation between law enforcement authorities and tax authorities in the fight against corruption. A report about this meeting was put on the Intranet of the Tax administration.

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8:

8. Regarding awareness-raising, the Working Group recommends that the Netherlands: (i) continue its foreign bribery awareness-raising efforts within the public and private sectors including, where relevant, in cooperation with business associations; (ii) continue to encourage companies, especially SMEs, to develop internal controls, ethics and compliance systems to prevent and detect foreign bribery, including by promoting the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance [2009 Recommendation III.(i), X.C.(i) and (ii); Annex II, Good Practice Guidance on Internal Controls, Ethics and Compliance].

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

In the past two years, the Dutch authorities continued to raise awareness on foreign bribery within the public and private sector and in cooperation with business associations where relevant. The awareness raising efforts mentioned in the Phase 3 report on the Netherlands (para. 139-143) are ongoing. In addition, the Netherlands would like to specifically point out several recent awareness raising activities:

Within the public sector: a new integrated approach
At November 6, 2014, the kick-off conference for the new integrated approach to fight foreign bribery took place. This conference focused on improving detection of bribery by exchanging information amongst all relevant parts of the government. Through interactive sessions, representatives of all relevant parts of the government learned how and to what extent each could contribute to solving pieces of a foreign bribery case puzzle: combining the information held by the officials in the overseas mission, the employee of the Netherlands Enterprise Agency, the tax agent, the competition authority, the Netherlands Central Bank etc. This conference showed the importance for a new integrated approach to tackle foreign bribery cases and also contributed to raising awareness on the foreign bribery offence in the participating organisations.
In addition, several presentations and workshops were given in the past two years, amongst others to: 1) Heads of economic sections of embassies ; 2) employees with the Netherlands Enterprise Agency (RVO, previously known as Agentschap NL) ; 3) the Tax authorities; 4) the FIU and 5) the liaison officers of

the Dutch police and military police that are stationed abroad. Also, the Netherlands Central Bank has published a brochure on corruption in June 2014.

Within the private sector: combined public-private communication strategy to Dutch business
The Netherlands continues to raise awareness of foreign bribery within the wider context of its encouragement of international corporate social responsibility (CSR). Preventing foreign bribery is part of CSR due diligence the Netherlands expects from Dutch companies operating abroad. Preventing foreign bribery is referred to in all CSR websites and practical business tools such as the CSR Risk Check (please refer to www.csrriskcheck.com).
In addition, the Ministry of Security and Justice, the National Police Internal Investigation Department and the Public Prosecution Service have explained the Dutch anti-bribery laws and policy to Dutch business at a conference organized by ICC- the Netherlands on April 9, 2014.
The Netherlands will soon publish a letter to parliament on its integrity- and corruption prevention policy, including foreign bribery by Dutch business. One of the activities foreseen is the development of a combined public-private communication strategy to further strengthen awareness raising activities towards Dutch business. Currently, the Ministry of Foreign Affairs and the Ministry of Security and Justice are working together with organizations like the Netherlands branch of the International Chamber of Commerce (ICC) and the Netherlands chapter of Transparency International to develop this communication strategy, which will focus amongst others on awareness raising among Dutch SMEs.
The Netherlands continues to promote business tools that help prevent bribery, including the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance, which is referred to on the website of the Netherlands Enterprise Agency.

Next to these awareness- raising efforts focused on the public and private sector, there are of course also awareness-raising efforts undertaken towards the broader Dutch society. An example is the conference organized by the University of Amsterdam on integrity and corruption on January 29, 2014, with a contribution by one of the procurators-general from the Public Prosecution Service.

The awareness raising efforts mentioned in the Phase 3 report on the Netherlands (para 139-143) are ongoing:

- Awareness raising efforts for government officials working in overseas missions or advising Dutch companies operating abroad (para. 139). Workshops and presentations to government officials working in overseas missions or advising Dutch companies operating abroad are still given on a regular basis, e.g. most recently to employees of the Dutch Enterprise Agency and to the Heads of Economic sections of missions. Anti-corruption training to officials working in overseas missions and for new ambassadors are also still provided regularly. With respect to providing clarity between their advisory role to companies and the duty of embassy officials to report suspicions of foreign bribery, this is regularly touched upon in meetings with embassy officials and will also be included in the public-private communication strategy to the private sector (see below).
- The Annex on foreign bribery to the MFA Code of Conduct and the website aimed at providing embassy officials with specific tools to combat corruption, including foreign bribery (para. 140). The Annex is being updated following the transition of the Directorate-General for Foreign Economic Relations from the Ministry of Economic Affairs to the Ministry of Foreign Affairs and following a November 2014 conference on foreign bribery. This update will be published before the summer of 2015.
- The Netherlands continue to raise awareness of foreign bribery within the wider context of international corporate social responsibility (CSR) (para. 141). Preventing foreign bribery is part of CSR due diligence the Netherlands expects from Dutch companies operating abroad. Preventing foreign bribery is referred to in all CSR websites. The "CSR Passport" mentioned in the report has been distributed to Dutch embassies and trade promotion agencies again in December 2014. The employees with the Netherlands Enterprise Agency continue to receive information on responsible business conduct, including foreign bribery and in

its preparatory meetings with companies, the Netherlands Enterprise Agency provides a CSR country-specific information package for a limited number of countries, a factsheet on the OECD Guidelines and a factsheet on due diligence. The advisors of the Netherlands Enterprise Agency bring up the subject CSR in every contact with customers who are interested in international business opportunities. In addition, MVO Nederland, the Dutch business association focusing on CSR, has developed a CSR Risk Check tool for companies, including on corruption (see www.csrriskcheck.com or www.mvorisicochecker.nl/en).
- The "Platform for Fighting Corruption" comprising of representatives from various ministries and the law enforcement authorities (para. 142). The Platform still meets two-four times a year to discuss topical issues on domestic and international corruption, including foreign bribery. The meetings are open once or twice a year to other parties, including civil society and private sector, based on the topic of the agenda.
- Awareness-raising activities to the private sector in collaboration with business and industry associations (para. 143). Workshops and seminars to raise awareness on foreign bribery continue to be organised by several parties in the Netherlands. Workshops and seminars in collaboration with business and industry associations will also be subject of a public-private communication strategy that is currently being developed (see below).

In addition, the Netherlands would like to specifically point out several recent awareness raising activities:

Within the public sector: a new integrated approach
At November 6, 2014, the kick-off conference for the new integrated approach to fight foreign bribery took place. This conference focused on improving detection of bribery by exchanging information amongst all relevant parts of the government. Through interactive sessions, representatives of all relevant parts of the government learned how and to what extent each could contribute to solving pieces of a foreign bribery case puzzle: combining the information held by the officials in the overseas mission, the employee of the Netherlands Enterprise Agency, the tax agent, the competition authority, the Netherlands Central Bank etc. This conference showed the importance for a new integrated approach to tackle foreign bribery cases and also contributed to raising awareness on the foreign bribery offence in the participating organisations.
Approximately 50 participants attended the November 2014 conference. They were all from the public sector, since the objective of the conference was raising awareness on recognizing and sharing information between different parts of the public sector on signals of possible bribery of foreign officials. Participants included representatives from the Ministry of Security and Justice, the Ministry of Foreign Affairs, The Ministry of Finance, The Public Prosecution Service, the Fiscal Intelligence and Investigation Service, the Financial Intelligence Unit of the Netherlands, the National Police, the National Police Internal Investigations Department, the Tax Administration, the Authority for Consumers & Markets, the Authority for Financial Markets, The Netherlands Central Bank and the Netherlands Enterprise Agency.

In addition, several presentations and workshops were given in the past two years, amongst others to: 1) Heads of economic sections of embassies ; 2) employees with the Netherlands Enterprise Agency; 3) the Tax authorities; 4) the FIU and 5) the liaison officers of the Dutch police and military police that are stationed abroad. Also, the Netherlands Central Bank has published a brochure on corruption in June 2014.

Within the private sector: combined public-private communication strategy to Dutch business
The Ministry of Security and Justice, the National Police Internal Investigations Department and the Public Prosecution Service have explained the Dutch anti-bribery laws and policy to Dutch business at a conference organized by ICC- the Netherlands on April 9, 2014.

One of the activities foreseen in the letter to Parliament on the prevention and combating of corruption

(including foreign bribery) is the development of a combined public-private communication strategy to further strengthen awareness raising activities towards Dutch business. Currently, the Ministry of Foreign Affairs and the Ministry of Security and Justice are working together with organizations like the Dutch chapters of the International Chamber of Commerce (ICC) and Transparency International to develop this communication strategy, which will focus amongst others on awareness raising among Dutch SMEs.

The Netherlands continues to promote business tools that help prevent bribery, including the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance, which is referred to on the website of the Netherlands Enterprise Agency.

Next to these awareness- raising efforts focused on the public and private sector, there are of course also awareness-raising efforts undertaken towards the broader Dutch society. An example is the conference organized by the University of Amsterdam on integrity and corruption on January 29, 2014, with a contribution by one of the procurators-general from the Public Prosecution Service.

If no action has been taken to implement recommendation 8, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(a):

9. With respect to the reporting of foreign bribery, the Working Group recommends that the Netherlands:

a) Ensure that public servants report all suspicions of foreign bribery, including by private persons and companies, irrespective of whether it constitutes a violation of the rules in the public servants' field of activity, and that they are made aware of this duty [2009 Recommendation IX.(ii)];

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

Public bodies, public officials and independent administrative authorities can, in the performance of their duties, obtain knowledge of criminal offences. Those public bodies and public servants have an obligation to report a number of those offences. It is not relevant that the criminal offence does or does not constitute a violation of the rules in the public officials' field of activity in a strict sense. This (special) obligation to report offences is laid down in article 162 Code of Criminal Procedure and applies, among others, to the offences described in Articles 177-178 of the Criminal Code (thus including foreign bribery).

The obligation of public officials to report suspicions of crimes, particularly foreign bribery, has been clearly outlined in the legally binding instruction of the Dutch Public Prosecution Service: the Instruction on the Investigation and Prosecution of Corruption of Public Officials Abroad. It is also mentioned in the recent letter to Parliament on prevention and combating of corruption that the duty to report not only concerns serious offences committed by Dutch public officials, but also relates to signs of bribery of foreign public officials by Dutch (legal) persons.

The Ministry of Internal Affairs and Kingdom Relations and the Ministry of Security and Justice are currently looking into the application of Article 162 of the Code of Criminal Procedure in practice in general (including, but not limited to foreign bribery). Consultation with relevant stakeholders, such as regulatory bodies, have taken place to assess if this obligation is clear enough and known to public officials. Based on the outcomes of these consultations measures will be taken to further strengthen the

compliance with this obligation. This is an ongoing project.

The obligation to report has been discussed on several awareness raising activities (as mentioned under recommendation 8), for example the presentations/workshops given at the Tax administration and the Netherlands Enterprise Agency. It was also discussed during the November 2014 conference on the new integrated approach to foreign bribery. Partly resulting from these presentations/workshops and the November 2014 conference, the Ministry of Foreign Affairs is updating the Annex on foreign bribery to its Code of Conduct with concrete examples to Dutch officials of what needs to be reported.

As also mentioned in the letter to Parliament about prevention and combating corruption, a national contact point will be set up within the National Police Internal Investigations Department to further strengthen the compliance with the obligation to report (Article 162 Code of Criminal Procedure) for public officials. Public officials and public bodies can consult this contact point in case of a possible abuse of power in order to see if they have to file a criminal complaint, and if so where and when. This contact point can be consulted in case of suspicions of national corruption as well as foreign bribery.

In the discussions leading up to the decision to establish this national contact point, there has been regular contact between the Public Prosecution Service, the National Police Internal Investigations Department, the Ministry of Security and Justice and the Ministry of Foreign Affairs. This has led to clearer guidelines on the transmission of sings for foreign bribery from the Ministry of Foreign Affairs to the Public Prosecution Service. This resulted in the transmission of new signs of possible foreign bribery to the Public Prosecution Service.

If no action has been taken to implement recommendation 9(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(b):

9. With respect to the reporting of foreign bribery, the Working Group recommends that the Netherlands:

b) Put in place appropriate measures to protect from discriminatory or disciplinary action public and private sector employees who report suspected acts of foreign bribery in good faith and on reasonable grounds to competent authorities [2009 Recommendation IX.(iii)].

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

From October 1, 2012 a newly established 'National Independent Advice Point/Centre for Whistleblowing' ('Adviespunt Klokkenluiders') acts as a point of support for (potential) whistle blowers in both the public and the private sector who have questions concerning whistleblowing. Potential whistle blowers who observed a possible misconduct in the organization and are not sure how to handle this information can contact the centre. The identity of the potential whistle blower is protected (confidentiality). The Advice Point only advises and refers whistle blowers to the competent authorities. It has no task or competence to examine, inspect or investigate cases. It creates a 'safe haven' for potential whistle blowers to get independent advise. It is based on the UK independent non-governmental organization 'Public Concern at Work', with the difference that the Dutch version is funded by the government. The Advice Point is recently evaluated after two years' operation. It is considered an 'effective operating organization' and as 'a valuable contribution to the existing whistleblowing provisions'.

The Whistle blowers Regulation for the public sector is also recently evaluated. This Regulation offers whistle blower provisions for Central Government, the Police sector, the Defence sector, the Provinces and the Municipalities. This Regulation contains measures to protect whistle blowers such as a discrimination ban for employers and also an explicit obligation for employers to protect the whistle blower when he/she is a victim of actual harassment, mobbing, intimidation or aggression by his/her colleagues. 'Good employership' involves that the competent authority offers the intimidated whistle blower de facto protection in those circumstances.

In addition, the specific whistle blower complaints body for the public sector, the so-called Council on Integrity in the Public Sector ('Onderzoeksraad Integriteit Overheid') has also been evaluated in the first half of 2014.

There are no specific laws or regulations for whistle blowers in the private sector, apart from the Advice Point. Whistle blowers in the private sector can invoke general regulations concerning 'good employership'. This situation can change in a relatively short period of time as a discussion in Parliament is now ongoing on a draft law on whistleblowing covering the public sector and the private sector. This concerns a private member's bill to strengthen whistle blowers protection, including establishing a Whistle blowers Centre with investigative powers. Since December 2012 the discussion in Parliament on the draft bill has moved further on: the draft bill has passed the House of Representatives (Tweede Kamer) in December 2013. In May 2014 the draft bill was discussed in the Senate (Eerste Kamer). The members of the Senate made many critical comments and the initiators of the draft bill decided to make amendments to the bill to address these issues. In December 2014 the amended draft bill was presented to the House of Representatives. It is expected that the discussions in Parliament will soon take place (i.e. in the first half of 2015)

If no action has been taken to implement recommendation 9(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10:

10. Regarding public advantages, the Working Group recommends that the Netherlands promote the use of the Ministry of Security and Justice's database of convictions more widely among public agencies to enhance due diligence and the application of exclusion rules, where appropriate [2009 Recommendation XI.(i)].

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

Public agencies have the possibility to require a person or company that is applying for a government subsidy (or other forms of government assistance or public advantages) to provide a Certificate of Conduct for a Natural Person or a Certificate of Conduct for a Legal Person (a so-called 'Verklaring Omtrent Gedrag', or VOG). This is a document by which the Minister of Security and Justice declares that the applicant did/did not commit any criminal offences that are relevant in that given situation. As is the case in public procurement, it is the natural and/or legal person itself that applies for a VOG (and not the public agency that provides the public advantages).
There is a special department within the Ministry of Security and Justice (the screening authority JUSTIS) that is responsible for the issuance of VOG's. After applying for a VOG JUSTIS will, among other things, consult the Criminal Records System. This system contains data on the settlement of criminal offences (convictions, dismissals, out-of-court settlements, etc.) Additionally, JUSTIS can also use data from the

police records and obtain information from the Public Prosecution Service and the Probation Service. The Criminal Records System is, however, also used for other purposes (for instance by the Public Prosecution Service).

It should be noted that the Certificate of Conduct is just one way of screening natural and legal persons in case of public advantages. With regard to public advantages for Dutch companies that (want to) operate abroad the financial foreign policy instruments are especially relevant. To enhance due diligence among Dutch companies as well as the application of exclusion rules for bribery, bribery is an assessment criterion, as a part of the CSR check by the implementing agencies of the financial foreign policy instruments. This means that involvement in bribery could imply that the applicant will be turned down from the use of these financial instruments. This is examined on a case-by-case basis. All the financial instruments to support export and foreign investments refer to the OECD Guidelines for Multinational Enterprises, which contains a chapter on combating corruption. When companies apply for the use of a financial foreign policy instrument, companies need to sign a declaration of commitment that they will apply the OECD Guidelines. In addition, they are advised to use the CSR Risk Check tool.

There have been not been other concrete steps undertaken to promote the use of the Certificate of Conduct. Nevertheless, as has been agreed by The Ministry of Security and Justice, the Ministry of Foreign Affairs, the Public Prosecution Service and other relevant stakeholders will explore this issue further this year to see what concrete actions can be taken.

If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develops:

    a) The results of the analysis carried out by the Netherlands on the reasons for the decline in prosecutions of legal persons [Convention, Article 2];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The Public Prosecution Service has gathered information on the registration of cases against legal persons per legal arrangement in the period from 1995 – August 2014, as is shown in Annex 3. As can be seen in the table in Annex 3, the statistics on the prosecution of legal persons refer to prosecution initiatives for all types of criminal offences, and not specifically (foreign) bribery. Because this is a long-term trend, the registration numbers are grouped into four categories (1995-1999, 2000-2004, 2005-2009 and 2010-August 2014). The number of relevant legal arrangements is large and divers, hence the category 'Other'. There is a difference in the figures mentioned in Annex 1 (referred to under recommendation 2c) and Annex 3. The table in Annex 3 includes all cases against legal persons registered at the Public Prosecution Service, misdemeanours ('overtredingen') and felonies ('misdrijven'), whereas Annex 1 only

refers to felonies committed by legal persons.
The figures in Annex 3 show that the registration of cases against legal persons at the Public Prosecution Service has decreased 78% from 130.600 (1995-1999), 97.740 (2000-2004), 59.700 (2005-2009) to 27.100 (2010-August 2014). Although the statistics in Annex 1 and 3 provide an insight into the use of criminal proceedings against legal persons, these numbers do not include efforts undertaken in other types of proceedings, such as the increased use of administrative fines ('bestuurlijke boetes') or the use of preventive measures.

These administrative fines are an important explanation of the decrease in criminal proceedings against legal persons. In the timeframe used in the tables of Annex 1 and 3, the use of administrative fines has grown significantly. Since the mid-nineties the power for government agencies to impose administrative fines on natural and legal persons was introduced in many legal arrangements. At the end of 2005 there were already 56 legal arrangements with administrative fines. There is a large number of (scientific) publications written on this subject in the Netherlands. Efficiency has been an important incentive in this process. There are different reasons for the introduction of administrative fines, amongst others:
- The implementation, monitoring and enforcement of legal arrangements are brought together in one organization, and as a result the workload of the criminal courts has decreased.
- For the enforcement of certain legal arrangements specific expertise is needed; this expertise is already present in the involved government agencies.
- The enforcement through administrative fines is often much quicker and more efficient than criminal proceedings; this mechanism of administrative fines is better able to process a large number of the more simple (and less severe) offences.
In some legal arrangements the administrative fines were introduced as a substitute for criminal enforcement, in other legal arrangements these two enforcement mechanisms co-exist. In the latter case, there are often clear rules on when an administrative or a criminal procedure is indicated. This may, for instance, depend on the severity of the offence.
Because of the large number of legal arrangements that have introduced administrative fines, it is not possible to give a complete overview. Below some examples of legal arrangements that have introduced administrative fines:
- An important part of the enforcement of traffic rules has been transferred from criminal enforcement to administrative enforcement since the 1990's.
- Violations of the Working Conditions Act ('Arbeidsomstandighedenwet') are nowadays mostly sanctioned through administrative fines. Only in case of severe violations of the Working Conditions Act a criminal proceeding will be initiated.
- In 2001 administrative fines were introduced for violations of the Food and Drugs Act ('Warenwet'), and related legal arrangements.
- Almost all violations of the Working Hours Act ('Arbeidstijdenwet') are being enforced with administrative fines.
- In 2005 administrative fines were introduced for violations of the Foreign Nationals Employment Act ('Wet Arbeid Vreemdelingen').
- In 2002 administrative fines were introduced for violations of the Pesticides Act ('Bestrijdingsmiddelenwet').

Another important development is the introduction of the punitive order (the so-called 'strafbeschikking'). This punitive order was introduced in 2008 and is a form of out-of-court settlement. The Public Prosecution Service is allowed to impose this punishment for a number of frequently occurring offences without court intervention. An important part of the misdemeanours are therefore nowadays settled with a punitive order. In many cases these settlements are not registered at the Public Prosecution Service, but are directly send to the Central Fine Collection Agency ('Centraal Justitieel Incassobureau', or CJIB). Only when the CJIB is not able to execute the punitive order, or when the person in question objects to the punitive order, the case is registered at the Public Prosecution Service.

As mentioned under recommendation 4a, the maximum sanctions for legal persons have been increased since 1 January 2015. And, although the tables in Annex 1 and 3 show a decrease over time in cases against legal persons that are registered at the Public Prosecution Service, the efforts to investigate and prosecute foreign bribery have increased the last years.

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develops:

    b) The use of out-of-court settlements in foreign bribery cases [Convention, Article 5];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Since the conclusion of the Phase 3-evaluation of the Netherlands, the Public Prosecution Service entered into three out-of-court settlements in foreign bribery cases: Ballast Nedam, KPMG and SBM Offshore.

Ballast Nedam
By the end of December 2012, shortly after the conclusion of the Phase 3-evaluation of the Netherlands, the Public Prosecution Service reached an out-of-court settlement with the large Dutch constructing and engineering company Ballast Nedam. The case concerned payments to local agents working in the Middle East, from 1996 until 2003. Ballast Nedam accepted an out-of court settlement of in total 17,5 million Euro. Ballast Nedam also strenghtened its compliancy policy by introducing new guidelines in order to safeguard the integrity of the company. As part of the policy on out-of-court settlements, the Public Prosecution Service issued a press release on the settlement with Ballast Nedam.

KPMG
At the end of 2013 the Public Prosecution Service reached a second out-of-court settlement in a foreign bribery case, with auditing firm KPMG.
This KPMG-case was a spin-off of the Ballast Nedam case. The criminal investigation focused on the role of the auditor in making it possible to disguise payments to foreign agents by Ballast Nedam. The audit carried out by KPMG was deliberately conducted in a manner that payments made by Ballast Nedam to foreign agents and the associated parallel administration were disguised. The Public Prosecution Service considered this to be a serious offence, given the key role of the auditor in safeguarding financial accountability. KPMG has cooperated, with full disclosure, with the Public Prosecution Service and has indicated that it regrets the state of affairs surrounding the controls of Ballast Nedam. The persons responsible for this are no longer working at KPMG.
Partly due to this case, KPMG further strengthened its compliance policy and procedures. These measures are being monitored by the Netherlands Authority for Financial Markets, the AFM.
As part of the out-of-court settlement KPMG has paid a total of 7 million Euro. This amount is made up of a 3.5 million Euro fine and 3.5 million Euro as a confiscation measure.

SBM Offshore
In November 2014 the Public Prosecution Service also reached an out-of-court settlement with SBM Offshore. This is a Dutch-based global group of companies selling systems and services to the offshore oil and gas industry. SBM made an early self-report in 2012 to both the US and Dutch public prosecutors, stating that they started their own internal investigation. In May 2014 the company filed a formal criminal complaint against itself. SBM Offshore fully cooperated with the Public Prosecution Service in

the following investigation by the law enforcement authorities. The settlement, which is the largest one in the history of the Netherlands, relates to, among others, foreign bribery in Equatorial Guinea, Angola and Brazil in the period from 2007 through 2011.
The out-of-court settlement consists of a payment by SBM Offshore of US$240 million (a US$40 million fine and a US$200 million confiscation measure). The company also enhanced its anti-corruption compliance program and related internal controls. The Public Prosecution Service issued a extensive press release about this settlement.

For the translation of the press releases of the Public Prosecution Service, please refer to Annex 4.

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develops:

    c) The application in practice of sanctions and confiscation measures in on-going and future foreign bribery investigations [Convention, Article 3];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The Public Prosecution Service always tries to impose the most appropriate sanction(s) in criminal cases. This means that sanctions have to be proportionate and dissuasive and the fact and circumstances of the case and suspect(s) have to be taken into account. Confiscation is a central element of the Public Prosecution Service's sanction strategy. The fundamental idea is that crime should not pay.
To make the sanctions for legal persons more proportionate and dissuasive the Netherlands has introduced a new category of fines in Article 23 of the Criminal Code. Since January 1, 2015, the judge has the possibility to impose a fine up to 10% of the annual turnover of the company. Please also refer to the answer to recommendation 4a.

Since the conclusion of the Phase 3-evaluation of the Netherlands, the Public Prosecution Service entered into three out-of-court settlements. These settlements consist of both fines and a confiscation measures. Another important part of the out-of-court settlements was the strengthening of the company's compliance procedures and internal control systems. The Public Prosecution Service believes that this a crucial element in preventing the company to be involved in foreign bribery again in the future.
Please also refer to the answer to follow-up issue 11b.

Text of issue for follow-up:

11. The Working Group will follow-up the issues below as case law and practice develops:

    d) That the Netherlands takes any measures necessary to assure either that it can extradite its nationals for foreign bribery or that it can prosecute its nationals for foreign bribery. If the Netherlands declines a request to extradite a person for foreign bribery solely on the grounds that the person is its national, it shall submit the case to its competent authorities for the purpose of prosecution [Convention, Article 10.3].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The Netherlands can extradite its nationals, although only for the purpose of prosecution (and not for the execution of a sentence), under the guarantee that if the extradited Dutch national was to be sentenced to imprisonment in the requesting state, the person would be allowed to serve the sentence in the Netherlands on the basis of a transfer of the execution of the sentence (Article 4, paragraph 2, Extradition Act) (Article 6 Surrender Act).

If extradition is refused on the grounds of nationality, the Netherlands can, on the basis of Article 552x (and further) of the Code of Criminal Procedure, take over the prosecution from another state.
In the context of the UNCAC-review, the Netherlands informed the evaluation team about an extradition case. Another state requested the extradition of a wanted person living in the Netherlands. The wanted person was suspected of money laundering, fraud and corruption. The wanted person had the Dutch nationality and there was no applicable treaty making it possible for the wanted person to be extradited with the guarantee that the sentence could be served in the Netherlands. The Netherlands requires this guarantee in order for an extradition of a Dutch national to take place. As such guarantee could not be granted the Netherlands informed the other state about the possibility to transfer their criminal proceedings to the Netherlands.

ANNEX 1 – NUMBER OF PROSECUTIONS OF LEGAL PERSONS – JANUARY 1995 UNTIL DECEMBER 2014

Number of cases	Year of registration																
Prosecutor's decision	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Prosecute before court	2703	2716	3275	2501	2171	1939	1884	1817	1942	2360	1909	1726	1613	1376	1452	1271	1019
Combine with other case	589	482	504	578	360	368	321	291	369	380	235	145	115	129	104	25	8
Penalty imposed by public prosecutor (strafbeschikking)															2	9	810
Out of court settlement	13337	11998	10472	12115	11311	11178	10652	11358	11859	9973	7929	6313	5055	4746	4347	2888	2068
Conditional dismissal	76	69	101	79	74	82	67	62	96	84	70	34	40	41	48	60	43
Dismissal	3017	2764	2374	2234	2021	1923	1746	2052	1702	1833	1556	1339	1098	919	767	563	599
Open														1	7	16	27
Total	19722	18029	16726	17507	15937	15490	14670	15580	15968	14630	11699	9557	7921	7212	6727	4832	4574

Number of cases	Year of registration		
Prosecutor's decision	2012	2013	2014[2]
Prosecute before court	730	1080	871
Combine with other case	13	12	18
Penalty imposed by public prosecutor (strafbeschikking)	2088	2127	2196
Out of court settlement	526	374	291
Conditional dismissal	50	27	43
Dismissal	556	421	381
Open	57	198	241
Total	4020	4239	4035

[2] These are the preliminary numbers

Court decisions on legal persons – January 1995 until February 2014

Number of cases	Year of court decision																
Court decision	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Conviction with penalty	2493	2311	2536	2647	2113	1722	1541	1551	1693	1619	1771	1633	1372	1223	1156	1077	1012
Conviction without penalty	29	43	17	22	26	23	24	44	38	18	26	33	36	28	17	14	28
Combined with other case	64	86	63	78	80	89	66	90	145	95	104	67	70	46	49	46	47
Acquittal	221	209	227	178	168	136	108	165	123	153	157	188	168	131	145	154	163
Prosecutor inadmissable	43	36	47	41	31	34	35	36	31	24	31	35	25	17	31	21	21
OVAR[3]	30	32	14	25	32	22	15	26	22	37	17	13	22	15	22	12	16
Total	2880	2717	2904	2991	2450	2026	1789	1912	2052	1946	2106	1969	1693	1460	1420	1324	1287

Number of cases	Year of court decision		
Court decision	2012	2013	2014[4]
Conviction with penalty	822	594	757
Conviction without penalty	29	12	37
Combined with other case	32	16	11
Acquittal	101	54	74
Prosecutor inadmissable	37	22	69
OVAR	13	6	13
Total	1034	704	892

[3] OVAR = dismissal of al legal proceedings, because either the suspect can't be held liable for the criminal act or the act does not constitute a crime. It's different from an acquittal where there is simply not enough evidence.
[4] These are the preliminary numbers

ANNEX 2: INSTRUCTION ON THE INVESTIGATION AND PROSECUTION OF CORRUPTION OF PUBLIC OFFICIALS ABROAD (2012A020)

Legal nature

Instruction as defined in article 130, para. 4 of the Judiciary (Organization) Act

Sender

Board of Procurators General

Addressee

Heads of the Public Prosecutors' Offices, Director of the National Police Internal Investigation Department

Registration number

2012A020

Date of adoption

13 December 2012

Date of coming into force

1 January 2013

Publication in Government Gazette

2012, no. 26939

Relevant policy rules

Instruction for the Investigation and Prosecution of Corruption of Public Officials in the Netherlands (2011A014)

Instruction on Tasks and Deployment of the National Police Internal Investigation Department (2010A033)

Instruction on Confiscation (2013A021)

Instruction on Money Laundering (2008A006)

Statutory provisions

Articles 177, 177a, 178, 178a, 362, 363, 364 and 364a of the *Criminal Code* and article 162 of the *Code of Criminal Procedure*

Summary

Foreign corruption is the bribery of a foreign public official by a company or an individual.

This Instruction further specifies the scope of the penalization in relation to the jurisdiction of the Dutch courts, and the factors that must be taken into account in assessing the expediency of prosecuting individual cases of foreign corruption that are actually liable to punishment. It goes without saying that the factors are also relevant for the assessment of the expediency of any investigative activities that precede prosecution. In addition, this Instruction describes the decision-making procedure for the selection of cases. This Instruction covers both the bribing party (civilians and companies) and the party who was bribed (public officials) in cases of foreign corruption.

The investigation and prosecution of corruption committed in the Netherlands is addressed in the Instruction on the Investigation and Prosecution of Corruption of Public Officials in the Netherlands.

Background

Corruption is a phenomenon which manifests itself in many ways. Corruption is a serious infringement of the integrity of the government, and has enormous moral and political consequences. Furthermore, it leads to serious economic damage and false competition in business. It is important for a government that wants to be integer and transparent to act as vigorously as possible against corruption.

The Public Prosecution Service contributes to combating corruption by instigating criminal investigations and instituting criminal proceedings. This Instruction describes the factors that are relevant to the investigation and prosecution of corruption offences in public office committed abroad.

Articles 177, 177a and 178 of the Criminal Code state that the bribery of public officials and judges (active bribery) is an offence. Articles 362, 363 and 364 of the Criminal Code state that the acceptance of a bribe by a public official or *judge* (passive bribery) is an offence.

The tools provided by criminal law have a wide scope of application. Anyone who offers a public official a gift, a promise or a service with a view to getting him to carry out or fail to carry out any official action, and any public official who accepts a gift, a promise or a service, while he knew or could have suspected that something would be expected in return, can fall within the scope of criminal law[1]. After all, the law makes no distinction regarding punishable and non-punishable gifts. The legislative branch has decided to leave it to the discretion of the Public Prosecutions Department to set limits, as it is able to have a controlling function by availing itself of its right to exercise prosecutorial discretion and/or "by promulgating guidelines, which can be more easily adjusted to society's reality which is constantly changing" [2]. In this context, the Minister of Security and Justice also felt that a statutory distinction between punishable and non-punishable gifts could have the unwanted effect that situations in which relatively minor advantages for official acts that definitely must be regarded as undesirable, would by definition fall outside the scope of the criminal provisions[3].

Various international conventions have been concluded with a view to improving the fight against fraud and corruption, i.e., the Convention on the Protection of the European Communities' Financial Interests, concluded in Brussels on 26 July 1995 (Treaty Series 1995, 289), the (first) Protocol to this Agreement dated 27 September 1996 (Treaty Series 1996, 330) and the OECD[4] Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, concluded in Paris on 17 December 1997 (Treaty Series 1998, 54). These conventions aim to harmonize the criminal provisions regarding fraud and corruption of the various countries, with the aim of effective international cooperation. The perspective of the OECD Convention is that of international business transactions. The preamble to this Convention explicitly considers that bribery is a widespread phenomenon that undermines good governance and economic development and has disastrous consequences for international competition.

As a consequence of these conventions, in 2001 legislation in the field of bribing public officials and official corruption was drastically amended, including the introduction of article 178a into the Criminal Code, which means that from that moment on it was possible to prosecute (legal) persons for foreign corruption.

As a result of these Conventions the legislation concerning bribery of public servants and corruption in public office was amended significantly in 2001, and led to, inter alia, the introduction of article 178a of the Netherlands Criminal Code, which made it possible to prosecute natural persons and legal entities for foreign corruption. Corruption committed abroad, in brief also referred to as 'foreign corruption', has been defined as follows since 2001: anyone who bribes a Dutch public servant abroad can be prosecuted in the Netherlands; the same applies to Dutch citizens bribing a public servant from another country outside Dutch territory (article 178a Criminal Code).

Criminalization and jurisdiction

The introduction of article 178a already meant a considerable extension in Dutch jurisdiction for official corruption committed abroad. As of 1 April 2010[5] jurisdiction was broadened even further, to the effect that the concept of Dutch public official was added to point 9 (previously point 10) of article 4 of the Criminal Code. Since this amendment this means that Dutch criminal law applies to a person abroad who bribes a Dutch person *or a Dutch public official*. In other words, the concept of Dutch public official in corruption legislation means: a public official in the service of the Dutch state. This enlargement of the jurisdiction amounts to the fact that a foreigner living abroad who bribes a foreigner in the service of the Dutch state can be prosecuted in the Netherlands.

The explanation to this amendment to the law reads: "The infringement of Dutch interests is not in the first place based on the fact that a person who is a Dutch national was bribed (abroad), but in the fact that a person with the status of a Dutch official was bribed there." [6]

At present, the following suspects can be prosecuted in the Netherlands:

- Any Dutch public official bribed outside Dutch territory (article 6 paragraph 1 of the Criminal Code);
- Any employee of a Dutch-based international institution bribed outside Dutch territory (article 6 paragraph 2 of the Criminal Code);
- Anyone bribing a Dutch national or anyone in the service of the Dutch authorities, committing the offence outside Dutch territory (article 4 paragraph 10 of the Criminal Code);
- Any Dutch citizen bribing a Dutch or foreign public official outside Dutch territory (article 5 paragraph 1 of the Criminal Code);
- Any Dutch public official or another person in public office of a Dutch-based international institution violating article 177 or article 177a of the Criminal Code (article 4 paragraph 1 of the Criminal Code) outside Dutch territory.

A foreign public official bribed outside Dutch territory by a Dutch citizen cannot be prosecuted in the Netherlands, unless that public official is employed by a Dutch-based international institution.

Jurisdiction

The standard rules on jurisdiction laid down in articles 4 et seq. of the Criminal Code apply to liability to prosecution, the general rule being the requirement of double criminality. However, a number of variations to corruption committed outside Dutch territory have been elaborated on in the following way:

- Article 4 paragraph 9 of the Criminal Code explicitly provides that anyone, apart from their nationality, committing the offences set out in articles 177 and 177a of the Criminal Code, outside Dutch territory but vis-à-vis a Dutch public official, can be prosecuted in the Netherlands, provided that the offence in question is also liable to punishment in the country where it was committed.
- Article 4 paragraph 10 of the Criminal Code explicitly provides that a Dutch public official or person holding a public office of a Dutch-based international institution, regardless of their nationality, committing the offences set out in articles 177 and 177a of the Criminal Code outside Dutch territory, can be prosecuted in the Netherlands, provided that the offence committed is also liable to punishment in the country where the offence was committed. For example, a non-Dutch employee of the International Criminal Court, which is based in The Hague, conducting an investigation into evidence for specific offences and bribing public officials outside Dutch territory with a view to obtaining information or collaboration, can be prosecuted in the Netherlands.
- Article 5 provides for an exception to the requirement of double criminality for Dutch citizens who have violated articles 177, 177a and 178 of the Criminal Code, but only where it concerns an offence against the administration of justice of the International Criminal Court as referred to in article 70, paragraph 1 of the Rome Statute concluded in Rome on 17 July 1998 concerning the International Criminal Court (Bulletin of Treaties, Series 2000, 120). In these cases, it is irrelevant whether or not the country where the offence was committed has a similar criminal provision.
- Finally, article 6 of the Criminal Code provides that Dutch public officials and persons in public office of a Dutch-based international institution, (with regard to both categories), regardless of their actual nationality, can be prosecuted for the offences set out in articles 362 to 364a of the Criminal Code, wherever committed. The requirement of double criminality does not apply to this form of passive corruption.

In respect of whether legal entities can be prosecuted, the rule concerning nationality (in particular important for the provision of article 5 of the Criminal Code stated above) is that a legal entity can be regarded as a Dutch legal entity if it was incorporated under Dutch law and/or has its registered office in the Netherlands. According to the law, the latter applies in any case to all Dutch legal forms , but it will be particularly relevant for all informal legal entities and partnerships put on a par with legal entities as well as to acknowledged European partnerships. The actual registered office, e.g. the principal place of business, is not relevant for the issue of jurisdiction set out in article 5 of the Criminal Code.

Investigation

With regard to corruption - in general, but specifically corruption committed abroad – it is the National

Police Internal Investigations Department ('Rijksrecherche') that is primarily entrusted with investigating such offences. Given the expertise available at this department, the Instruction on Tasks and Deployment of the National Police Internal Investigations Department also assigns an important role to this department in respect of cases of bribery of public officials, including cases where Dutch nationals or legal entities are involved in serious offences committed by foreign public officials while in office. The Instruction on the Tasks and Deployment of the National Police Internal Investigations Department provides that it is the Coordination Committee Rijksrecherche (CCR) that decides about the National Police Internal Investigations Department's deployment.

Leads

There are a number of sources available from which information can be obtained on possibly *suspicious* situations of bribery of public officials abroad.

- Open sources such as the international press and internet.
- Requests for mutual legal assistance requests from countries that are investigating a public official who is guilty of accepting bribes from (representatives of) a Dutch business.
- Cases that are reported on a regular basis by the OECD secretariat to the relevant parties to the Convention. This concerns information that is gathered by the "OECD Working group on Bribery" from open sources and that contains leads of possible cases of corruption in public service committed in the context of international business transactions.
- Reports of whistle-blowers.
- Reports made by public officials of the diplomatic corps.
- Official reports of crimes, whether or not based on art. 162 of the Code of Criminal Procedure.

Investigation of foreign corruption

As to 'corruption committed on Dutch territory', it similarly applies to corruption committed abroad that – apart from the foreign investigation department - investigation services other than the National Police Internal Investigations Department can be put in charge of the investigation. It makes sense, for example where bribery is discovered in the context of an on-going criminal investigation with international aspects (consider for example an investigation into a Dutch person involved in exporting XTC, who bribed a Czech customs officer), that the team in charge of the XTC case also investigates the bribery. It is also conceivable that the Fiscal Information and Investigation Service (FIOD) can conduct such an investigation further to leads given to the tax authorities, or thanks to the involvement of Dutch companies. However, corruption committed outside Dutch territory need not be revealed in the course of an on-going criminal investigation (consider for example the situation in which a Dutch businessman bribes a foreign public official in order to bring in an order). In such a case, it is plausible that the National Police Internal Investigations Coordination Committee (CCR) puts the National Police Internal Investigations Department in charge of the investigation, despite the fact that the person under investigation is not a Dutch public official, but a Dutch citizen or Dutch company. People can inform the National Public Prosecutor on Corruption of possible corruption offences committed abroad. This National Public Prosecutor on

Corruption maintains a record of the progress made in foreign corruption investigations and other investigative efforts in the field.

Mutual legal assistance

When investigating foreign corruption, it is important to realise that prosecution in the Netherlands of a foreign public official who was bribed abroad will generally not be possible. Therefore, in these cases, the prosecution efforts of the Dutch investigative authorities will (largely) focus on the role of a person who carried out the bribery who can be prosecuted here, while a foreign sister organization will be responsible for the foreign public official. The usual rules for mutual legal assistance apply to collaboration between the two sets of investigative authorities.

What should be borne in mind is that a foreign investigation will generally be required for evidence of the criminal activities of a Dutch person who commits bribery. The obvious course would be to send a MLA-request to the country concerned. If necessary, assistance can be requested from of the National Police Internal Investigations Department through the National Public Prosecutor for Corruption.

Prosecution

The prosecuting authority: the Public Prosecution Service
In view of the complexity of cases that can occur within this framework, the Public Prosecution Service must guarantee sufficient expertise. This is why the responsibility for foreign corruption is now vested in the *National Public Prosecutors' Office*. All possible cases of foreign corruption should be reported to the National Public Prosecutor for Corruption. The latter will ensure that reports are put before the Coordination Committee of the National Police Internal Investigations Department (CCR).

Possible suspicious situations will be analysed and where possible processed by the National Police Internal Investigations Department. If a case has sufficient points of departure to warrant further investigation by the National Police Internal Investigations Department, the CCR then decides whether a case will be taken on and with which public prosecutor's office it will be placed. If the CCR decides that a case is not eligible for follow-up investigation, they will make a decision, with grounds, and in certain cases, report these back to the reporting party.

As in all possible Dutch criminal cases, in the event of corruption, too, the expediency of prosecuting the bribing and the bribed party should be assessed in each individual case. To begin with, bribery is a serious offence which undermines the integrity of government and may cause considerable damage to society. The Dutch government has committed itself, nationally and internationally, to clamp down on foreign corruption. These considerations should play an important part in assessing the expediency of prosecuting foreign corruption, and the fundamental attitude towards prosecution should therefore be positive.

In this respect, when assessing the expediency of prosecuting a foreign bribery case, the public prosecutor must comply with article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and not allow himself to be influenced by considerations of national

economic interest, the possible effect on the relationship with another state or the identity of the natural or legal persons involved.

Against this background the following factors can be taken into account when determining priorities:

- The substantial scale of the bribe, whether in an absolute sense or a relative sense (e.g. a considerable percentage of the sum of the contract)
- The involvement of influential (foreign) public officials or politicians (in the sense that the involvement of such persons, in view of their role in setting a good example and/or their position of power, the bribery seems more serious than the involvement of less influential persons).
- The bribe is directly or indirectly (e.g. as government support, credit insurance, subsidies, etc.) at the expense of Dutch general public funds or at the expense of funds intended for international development aid.
- The damage to the country where the public official was bribed;
- The degree to which it resulted in unfair competition (the higher this is, the more serious it is);
- Recidivism
- The possibilities for further investigation and the likelihood of successful prosecution

If the defendant has been convicted on exactly the same charges abroad, he cannot be prosecuted again. If criminal inquiries have been started abroad the Netherlands Prosecution Service should get in touch with their foreign colleagues and discuss the method of prosecution. It is recommended to seek cooperation with other countries involved as early as possible. This is possible via international requests for legal assistance, but parallel investigations or a Joint Investigation Team (JIT) could also be considered for instance.

The criminal prosecution of foreign corruption requires a tailor-made rather than a standard approach, and each incident should be considered individually. It is therefore possible that prosecution is expedient , even if no large payment was made or even if there was no unfair competition, on different grounds.

Facilitation payments

The OECD Convention does not regard small payments for "facilitation purposes" as payments "for obtaining or retaining any business-oriented or other unauthorised advantage". Furthermore, this type of "facilitation payments" are beyond the reach of the convention-based obligation to prosecute the bribery of foreign officials. According to the common explanation with the convention, such payments which in some countries are paid as an incentive to get government officials to carry out their tasks, such as issuing permits, are generally criminal in the other country concerned. Those who drew up the convention did not feel it would be useful to support tackling this type of corruption by criminalizing the "facilitation payments" of other countries, as this clearly also assumes a degree of effort in the field of investigation and prosecution.

For punishable liability on the ground of articles 177a and 177 of the Criminal Code, what interest was served by bribing a public official is irrelevant. Strictly speaking, thus, "facilitation payments" are in fact punishable. Nevertheless, the Public Prosecution Service does not feel it would be appropriate to apply a

stricter investigative and prosecution policy regarding the fight against the bribery of foreign public officials than that suggested by the OECD convention. This means that prosecution will not take place into behaviours that the OECD convention designates as "facilitation payments". Following the new Recommendation concerning the OECD Convention, which was adopted on 26 November 2009, the present prosecution policy concerning these facilitation payments was looked at. So far, this has not resulted in changes.

Listed below are some factors that give further substance to this prosecution policy. They can be used to establish whether acts are being/have been committed which can be considered as "facilitation payments" within the meaning of the OECD convention. In addition, it may be necessary to instigate an investigation to answer the question whether these factors are a reason to drop the charges:

- Where acts or omissions are concerned which the public official in question was already obliged to perform by law. The payment may not distort competition in any way whatsoever;
- Where small amounts are concerned, in an absolute sense or in a relative sense;
- Where payments to lower-ranked public officials are concerned;
- the gift must be entered into the company's records in a transparent way and must not be concealed;
- the making of the gift must be the initiative of the foreign public official.

In international commercial transactions, it must be absolutely clear that the mere involvement of a local agent/ representative/ consultant may also constitute an offence. It is widely known that such persons are often used to pay bribes abroad. Dutch institutions may therefore be expected to take a critical attitude toward the nature and scope of the work of such a person. For example: one may only rely on recommendations from a person or institution which can be attributed such authority that the soundness of the recommendations may reasonably be trusted. In a potential criminal investigation, this aspect must be explicitly focused on in order to assess whether the payment in question constitutes an offence.

Finally

Confiscating any illegally obtained assets

As of 1 April 2010 the fine category for article 177a of the Criminal Code has been increased from the fourth to the fifth category[10]. This means that, nowadays, articles 177 and 177a of the Criminal Code are both sanctioned with a fifth-category fine and the Instruction on Confiscation applies in full to these crimes. The point of departure is that an order to confiscate will be submitted if the advantage gained is estimated to be at least €500.

For example, the profit obtained from winning a tender by a company that paid bribes abroad can be regarded as the unlawful proceeds of crime. After all, article 36e of the Criminal Code serves to confiscate the unlawful proceeds of crime that the prosecuted person obtained by violating a statutory regulation. Imposing the measure is not prejudiced by the fact that the prosecuted person could have benefited from the same advantage without such a violation (Dutch Law Reports 1993, 12).

In view of the complexity of these matters, we recommend that use is made of the expertise of the *BOOM*, the Public Prosecution Service Criminal Assets Deprivation Bureau.

The obligation to report offences under article 162 of the Code of Criminal Procedure

Public bodies, public servants and independent administrative authorities can, in the performance of their duties, obtain knowledge of offences the investigation of which they are not responsible for. Those public bodies and public servants have an obligation to report a number of those offences. This (special) obligation to report offences is laid down in article 162 Code of Criminal Procedure. The obligation to report offences applies, inter alia, to the offences described in articles 362, 363, 364 and 364a of the Criminal Code (c.f. article 162 paragraph 1 sub a of the Code of Criminal Procedure). Strictly speaking, this obligation does not apply to the bribery provisions of articles 177, 177a, 178 and 178a of the Criminal Code, as article 162 of the Code of Criminal Procedure does not explicitly refer to them. However, this concerns the active variant of passive corruption in article 362 et seq. of the Criminal Code. As it is not required to know which public servant is actually concerned where there is an obligation to report bribery, it is hard to imagine a situation where knowledge is obtained about an offence as referred to in article 177 et seq. of the Criminal Code, but not as referred to in article 362 et seq. of the Criminal Code.

Article 162 of the Code of Criminal Procedure does not mention the condition of specific jurisdiction for the offences in question, which would limit its scope of application. This would not be appropriate, because an assessment of the same cannot be required from the person obliged to report the offence. What matters to that person is the reasonable assumption that one of the offences listed has been committed.

The BZ Code of Conduct [Ministry of Foreign Affairs Code of Conduct on Bribery Abroad] elaborates on this obligation for embassy staff.
Embassy personnel who obtain information on a bribery case, past or present, involving Dutch nationals or businesses established in the Netherlands are obliged to report this information immediately. Officials who, in the exercise of their duties, obtain knowledge of certain offences – including the bribery of foreign or other public servants –must inform the relevant authorities. As article 162 points out, this is only necessary in cases where the official has a reasonable suspicion that bribery is in fact taking place. There must also be a link between the suspected offence and the Netherlands. If a company is suspected of bribing an official, the company must have ties to the Netherlands. These ties might consist of nothing more than the practice of using the services of a Dutch bank or a Dutch agent. Against a public servant failing in such duties measures can be taken.

The purpose of the provision is to protect the government's integrity and to increase confidence in the government (and not that of and in the business community). It is fair to assume that it is immaterial whether the government in question is the Dutch government or a foreign government, especially since article 178a of the Criminal Code now also covers the liability to punishment of bribery of non-Dutch public officials.

Boards and government bodies may, in addition, implement additional policies, providing that suspicions of offences such as bribery must be reported to the authorities; c.f. for example internal instructions of the

Ministry of Foreign Affairs or the Tax Authorities' Regulations on the Provision of Information (Voorschrift informatieverstrekking Belastingdienst)[11].

The National Public Prosecutor for Corruption

The National Prosecutor's Office in Rotterdam appointed a National Public Prosecutor for Corruption. This Public Prosecutor has expertise in the fields of the investigation and prosecution of cases concerning corruption. He/she makes sure that this expertise is also accessible to other members of the Public Prosecution Service. Both at his/her own initiative and upon demand, the National Public Prosecutor for Corruption assists the local Public Prosecutor's Office in the investigation and prosecution of corruption and has a coordinating role in tackling corruption committed by Dutch natural persons/legal entities committed outside Dutch territory. This National Prosecutor is also responsible for preparing projects, screening leads, and studying the crime picture, as carried out by the National Police Internal Investigations Department. Besides, as the occasion arises, the National Public Prosecutor for Corruption supervises investigations into corruption offences. Furthermore, he/she takes the initiative in developing or amending new legislation and relevant policy.

Transition law

The policy regulations in these instructions will become valid as of the date on which it comes into effect.

[1] Where these instructions refer to 'gift', this will henceforth be interpreted to mean: gift, promise or service.
[2] Treaty series, 1998-1999, 26469, no. 3, page 4-5
[3] Treaty series, 1999-2000, 26469, no. 5, page 6
[4] OECD = Organization for Economic Cooperation and Development.[5] Act dated 29 November 2009, Bulletin of Acts and Decrees 525; came into force on 1 April 2010, Bulletin of Acts and Decrees 2010, 139
[6] Explanatory Memorandum, Parliamentary documents II 2007/08, 31 391, no. 3, p. 4
[7] As mentioned earlier, the concept of Dutch public official here does not refer to the Dutch nationality but to the fact that someone is in the service of the Dutch government.
[8] See extended Asser's Manual for exercising Dutch Citizens' Rights, Representation and Legal Person: H. II, para. 4, 56 - 68 and specifically for NV and BV, H. III para. 4 number 26 - 30
[9] see, e.g. for NV and BV art. 2:66 and 2:177 of the Civil Code.
[10] Act dated 26 November 2009, Bulletin of Acts and Decrees 525, came into force on 1 April 2010, Bulletin of Acts and Decrees 2010, 139
[11] See art. 6.3.2 and 6.3.3 of the said regulation.

ANNEX 3: OUT-OF-COURT SETTLEMENTS - PRESS RELEASES (IN RELATION TO RECOMMENDATION 11(B))

Out-of-court settlement with KPMG regarding its role in the concealment of payments to international agents.

30 December 2013 - National Public Prosecutor's Office for Serious Fraud and Environmental Crime

KPMG Accountants N.V. (KPMG) and three former auditors (partners) of that company have been subjected to a criminal investigation focusing on financial years 2000 to 2003 into the role of the auditor in the concealment of payments made to international agents by Ballast Nedam. The investigation was conducted by the Fiscal Intelligence and Investigation Service (FIOD), headed by the National Public Prosecutor's Office for Serious Fraud and Environmental Crime.

In the judgement of the Public Prosecution Service this investigation has shown that the audit carried out by KPMG was deliberately done in such a way that it was possible for payments made by Ballast Nedam to international agents and the parallel administration kept in that regard to be concealed. KPMG failed to respond adequately to the signals it picked up in this regard. KPMG did not sufficiently address compliance with the due care and integrity requirements.

The Public Prosecution Service regards the audit carried in respect of these payments to international agents as being culpably inadequate. In view of the key position of the auditor in the financial accountancy system, the Public Prosecution Service considers this a serious punishable offence.

KPMG regrets what happened regarding the audits on Ballast Nedam and has condemned it in the strongest terms. KPMG has cooperated with the investigation and has been completely open. These are old offences and the persons responsible for this are no longer working at KPMG. The company has learnt a lesson from this case and put measures in place.

In response to this case KPMG has strengthened its compliance policy and laid it down in additional measures to guarantee the organisation's integrity. The additional integrity, compliance and quality measures to which KPMG has committed itself are of a preventative and repressive nature. The preventative measures serve, for example, to identify problems at an early stage and avoid misunderstandings. The repressive measures range from reallocating tasks to severance of the employment contract. The Public Prosecution Service has taken note of these measures and taken them into consideration in the out-of-court settlement offer. The measures have also been communicated to the Netherlands Authority for the Financial Markets (AFM). The AFM will include compliance with these measures in its supervision of KPMG.

KPMG will be paying a total sum of 7 million euros for its role in the audits over the financial years 2000 to 2003. That amount comprises a 3.5 million euro fine and 3.5 million euros as a confiscation measure.

The investigation against three suspects, former auditors, is being continued. An out-of-court settlement was agreed in the case against Ballast Nedam in December 2012. The investigation into a number of

Ballast Nedam managers who were suspected of personally gaining from the payments made to international agents has not yet reached its conclusion.

Out-of-court settlement with Ballast Nedam

21 December 2012 - National Public Prosecutor's Office for Serious Fraud and Environmental Crime

Ballast Nedam and the Public Prosecution Service have agreed on an out-of-court settlement. This concerns payments made to international agents in the period from 1996 to 2003. The settlement consists of a payment to the Public Prosecution Service of € 5 million by the subsidiaries at which the former international activities took place and the irrevocable relinquishment of a claim of the group on the tax department in the amount of € 12.5 million.

At the end of 2009 the tax department requested information about the administration from 1998 to 2001 of a foreign entity that was discontinued in 2001. In January 2011 Ballast Nedam transferred the findings of an internal investigation to the Public Prosecution Service, reported the matter to the authorities and cooperated with the criminal investigation conducted by the Fiscal Intelligence and Investigation Service (FIOD). That cooperation is being continued in this ongoing investigation into third parties.

Ballast Nedam condemns what took place in the former international activities concerning payments to international agents, including incorrect administrative records and non-transparent payments.

This also brings to an end the case concerning a payment made to a Dutch official.

The compliance policy has been strenghtened and laid down in new compliance directives to guarantee the organisation's integrity. Strict conformity with the compliance directives will be monitored and Ballast Nedam will be operating a zero tolerance policy in this regard.

SBM Offshore N.V. settles bribery case for US$ 240,000,000

12 november 2014 - Functioneel Parket

SBM Offshore has accepted an offer from the Dutch Public Prosecutor's Service to enter into an out-of-court settlement. The settlement consists of a payment by SBM Offshore to the *Openbaar Ministerie* of US$ 240,000,000 in total.

SBM Offshore has accepted an offer from the Dutch Public Prosecutor's Service (*Openbaar Ministerie*) to enter into an out-of-court settlement. The settlement consists of a payment by SBM Offshore to the Openbaar Ministerie of US$ 240,000,000 in total. This amount consists of a US$ 40,000,000 fine and US$ 200,000,000 disgorgement (*ontneming van wederrechtelijk verkregen voordeel*). This settlement relates to improper payments to sales agents and foreign government officials in Equatorial Guinea, Angola and Brazil in the period from 2007 through 2011 as identified by the Openbaar Ministerie and the Dutch Fiscal Intelligence and Investigation Service (*Fiscale Inlichtingen- en Opsporingsdienst*; *FIOD*). According to

the Openbaar Ministerie's those payments constitute the indictable offences of bribery in the public and the private sector as well as forgery (*valsheid in geschrifte*).

Appropriate disposal of the case

The Openbaar Ministerie considers the settlement pursuant to section 74 of the Dutch Criminal Code an appropriate outcome of the case. The settlement consists of a fine and a disgorgement component. Furthermore, the Management Board of SBM Offshore, newly put together in the first half of 2012, *at* its own initiative took an extensive set of measures in order to enhance the company's compliance. The Openbaar Ministerie values this, in the expectation that criminal offences as mentioned above do not occur again in the future. In addition, if it so wishes the Openbaar Ministerie will receive access to the continued implementation of SBM Offshore's compliance policies.

The reasons for the Openbaar Ministerie to offer an out-of-court settlement include:

- SBM Offshore itself brought the facts to the attention of the authorities, including the Openbaar Ministerie, SBM Offshore itself investigated the matter and agreed to fully cooperate with subsequent criminal investigations by the Openbaar Ministerie and the FIOD;
- there has been a new Management Board since 2012;
- after it became aware of the facts, the newly established Management Board of SBM Offshore, at its own initiative, has taken significant measures to improve the company's compliance; and
- as noted in SBM Offshore's press release, the current Management Board and Supervisory Board regret the failure of control mechanisms in place in the past.

Reasons for the investigation by the FIOD and the Openbaar Ministerie

In the spring of 2012, SBM Offshore, at its own initiative, informed the Openbaar Ministerie of its self-initiated internal investigation into potentially improper payments made to its sales agents for services.

The internal investigation was conducted in the period from 2012 through 2014 and focused on the period from 2007 through 2011. The extent of the internal investigation was determined in consultation with the Openbaar Ministerie and the FIOD.

In addition, the FIOD conducted its own investigation under the direction of the Openbaar Ministerie.

Countries involved in the investigation

From 2007 through 2011, SBM Offshore paid approximately US$ 200 million in commissions to foreign sales agents for services. The largest part of these commissions, totalling US$ 180.6 million, relate to Equatorial Guinea, Angola and Brazil.

The investigation conducted by the Openbaar Ministerie and the FIOD focused on these three countries. The Openbaar Ministerie considers the investigation into these three countries sufficiently representative for the entirety, taking into account the portion these three countries represented in SBM Offshore's business.

Equatorial Guinea

In early 2012, it came to SBM Offshore's attention that one of its former sales agents might have given certain items of value to government officials in Equatorial Guinea. This reportedly involved one or more cars and a building. In the opinion of the Openbaar Ministerie and the FIOD, SBM Offshore's former sales agent paid a significant portion of the commissions paid to him by SBM Offshore on to third parties, who in turn would have forwarded parts of these payments to one or more government officials in Equatorial Guinea. There also are other payments, such as education and health insurance costs. In the opinion of the Openbaar Ministerie and the FIOD, such (forwarded) payments took place with the knowledge of people who at the time were SBM Offshore employees, including someone who at the time was a member of the Management Board. From 2007 through 2011, SBM Offshore paid that particular sales agent USD 18.8 million in total in relation to Equatorial Guinea.

Angola

In the period from 2007 through 2011, SBM Offshore also used several sales agents in Angola. These sales agents received commissions for services regarding certain projects in Angola. In the opinion of the Openbaar Ministerie and the FIOD, Angolan government officials, or persons associated with Angolan government officials, who are associated with at least one of these sales agents, received funds. In addition, there are payments for travel and study costs to one or more Angolan government officials or their relatives. Also with respect to Angola, the Openbaar Ministerie and the FIOD are of the opinion that such payments took place with the knowledge of people who at the time were SBM Offshore employees. In the period from 2007 through 2011, SBM Offshore paid USD 22.7 million in commissions to its sales agents in connection with Angola.

Brazil

With regard to Brazil, certain "red flags" relating to the main sales agent used in Brazil were found during the internal investigation commissioned by SBM Offshore. These red flags included:

- the high amounts (in absolute terms) of commission that were paid to the sales agent and its companies;
- a split between commissions paid to the sales agent between its Brazilian and its offshore entities; and
- documents indicating the sales agent had knowledge of confidential information about a Brazilian client.

The internal investigation conducted by SBM Offshore did not yield any concrete evidence that payments may have been made to one or more government officials in Brazil. In the period from 2007 through 2011, SBM Offshore paid USD 139.1 million in commissions to its sales agents in connection with Brazil.

A mutual legal assistance request in the context of the investigation conducted by the FIOD, under instruction of the Openbaar Ministerie, established that payments were made from the Brazilian sales agent's offshore entities to Brazilian government officials. These findings resulted from means of investigation inaccessible to SBM Offshore.

The investigation

In the context of the internal investigation by SBM Offshore, hard drives and other electronic data and documents were analysed. Also, interviews were conducted with current and former SBM Offshore employees, including members of the Management Board, Supervisory Board, employees of the Legal, Sales and Marketing, Accounting and Finance departments and the relevant project teams.

This internal investigation was conducted by specialised law firms and forensic accountants, who were assisted by an internal team of SBM Offshore which, as of his appointment, was led by Sietze Hepkema, SBM Offshore's Chief Governance and Compliance Officer, and consisted of members of SBM Offshore's Legal, Compliance Finance/Internal Controls and Internal Audit departments.

SBM Offshore has always given full disclosure to the Openbaar Ministerie and the FIOD. The Openbaar Ministerie and the FIOD were kept informed of the progress of the internal investigation by SBM Offshore via meetings. The preliminary findings of the internal investigation were reported to the Openbaar Ministerie and the FIOD. The internal investigation was completed in early 2014, after which SBM Offshore filed a complaint with the Openbaar Ministerie.

In addition, the FIOD, under the direction of the Openbaar Ministerie, conducted its own investigation. Administration was seized, witnesses and other persons involved were interviewed and mutual legal assistance was requested from countries involved. SBM Offshore cooperated with this investigation conducted by the FIOD under the direction of the Openbaar Ministerie that was also instigated as a result of the findings of the internal investigation conducted by SBM Offshore.

Measures to prevent recurrence

SBM Offshore's Supervisory Board constituted a new Management Board, which took office in the first half of 2012. This new Management Board constantly stresses the importance of compliance inside and outside the organisation. One of the members, Sietze Hepkema, was appointed Chief Governance and Compliance Officer, a newly created position in the Management Board. Another experienced employee has been appointed to the position of Group Compliance Director. In the next few years, these positions will continue to be held by people with the necessary expertise, authority and stature to continue the compliance programme.

As of its appointment in the course of 2012, the current Management Board has taken many (remedial) measures to prevent recurrence. For example, the use of sales agents within SBM Offshore has been restricted directly from the beginning of 2012. SBM Offshore first suspended all payments to sales agents pending the completion of the compliance assessment of these sales agents. A newly created "Compliance Task Force", composed of representatives of the Internal Audit, Compliance and Group Internal Control departments, investigated payments of commissions to sales agents during the period from 2007 through 2011. In addition, SBM Offshore established a Validation Committee consisting of the CEO, the Chief Governance and Compliance Officer, the Group Controller and the Group Sales Director, in order to assess all its sales agents and to decide whether to approve the sales agent and its commission, or to discontinue use of the sales agent. All sales agents that were and are used by the company are subject to this stringent procedure. Sales agents that were unable to meet the compliance requirements of SBM Offshore are no

longer used by the company. In addition, SBM Offshore decided to no longer use sales agents in those countries where the company itself has a substantial presence.

In addition, the compliance policy was enhanced to ensure the integrity of the company. For this purpose, guidelines and procedures with regard to entering into, continuing and dealing with relationships with sales agents, other intermediaries and joint venture partners were drawn up and/or enhanced. The sales agents themselves have to contractually commit to the policies that apply within SBM Offshore.

In addition to the measures imposed on sales agents, disciplinary actions were taken against employees who were involved in or had knowledge of the payments concerned. Furthermore, all employees in compliance-sensitive positions, approximately 2,540 each year over the past four years, have attended updated anti-corruption trainings. They will be kept updated annually by additional training modules. In order to ensure the integrity of its employees in the future, SBM Offshore also enhanced its HR procedures. As a result, future employees will be subject to a stricter screening. In addition, current and future employees are required to adhere to SBM Offshore's compliance commitments.

With its voluntary disclosure of the internal investigation to the Openbaar Ministerie and the market in April 2012, SBM Offshore made it clear that it wants to conduct its business transparently. It closely monitors at strict adherence to its compliance policy now and in the future. The Openbaar Ministerie and the FIOD, also based on conversations with the Supervisory Board and Management Board, came to the conclusion that after discovery of the events, SBM Offshore has put itself on the right compliance track and that it will continue to follow this track in the future.

Further investigation

It appears from the criminal investigation that certain natural persons have been involved in the criminal offences committed in the opinion of the Openbaar Ministerie. In a case like the one at hand, the Openbaar Ministerie has jurisdiction if criminal acts are committed in the Netherlands, or when criminal acts are committed abroad by persons with the Dutch nationality. From the current state of affairs of the investigation, this does not appear to be the case. The Openbaar Ministerie will cooperate fully with the countries that have jurisdiction to prosecute the natural persons involved.

The Openbaar Ministerie and SBM Offshore are confident that with the measures taken by the new Management Board and the importance which the management of the company attaches to transparency, potential past abuses, as described above, will not occur in the future.

The Openbaar Ministerie has, partly because of the reasons mentioned above, seen reason to offer an out-of-court settlement to SBM Offshore, and sees this as an appropriate outcome of this matter.

SBM Offshore will continue to provide its full cooperation in any potential ongoing investigations of third parties by the Openbaar Ministerie.

Finally

With this matter, the Netherlands shows that it takes action against foreign corruption. The Openbaar Ministerie considers corruption and related criminal offences severe because of the undermining and corrupting character they impose on society.

In the eyes of the Openbaar Ministerie, out-of-court settlements involve punishment, restoration, and prevention. In that context, the Openbaar Ministerie also takes into account the positioning of the suspected company and the measures the company has taken at its own initiative.

ANNEX 4 – PRESS RELEASES PUBLIC PROSECUTION SERVICE

Out-of-court settlement with Ballast Nedam

21 December 2012 - National Public Prosecutor's Office for Serious Fraud and Environmental Crime

Ballast Nedam and the Public Prosecution Service have agreed on an out-of-court settlement. This concerns payments made to international agents in the period from 1996 to 2003. The settlement consists of a payment to the Public Prosecution Service of € 5 million by the subsidiaries at which the former international activities took place and the irrevocable relinquishment of a claim of the group on the tax department in the amount of € 12.5 million.

At the end of 2009 the tax department requested information about the administration from 1998 to 2001 of a foreign entity that was discontinued in 2001. In January 2011 Ballast Nedam transferred the findings of an internal investigation to the Public Prosecution Service, reported the matter to the authorities and cooperated with the criminal investigation conducted by the Fiscal Intelligence and Investigation Service (FIOD). That cooperation is being continued in this ongoing investigation into third parties.

Ballast Nedam condemns what took place in the former international activities concerning payments to international agents, including incorrect administrative records and non-transparent payments.

This also brings to an end the case concerning a payment made to a Dutch official.

The compliance policy has been strenghtened and laid down in new compliance directives to guarantee the organisation's integrity. Strict conformity with the compliance directives will be monitored and Ballast Nedam will be operating a zero tolerance policy in this regard.

Out-of-court settlement with KPMG regarding its role in the concealment of payments to international agents.

30 December 2013 - National Public Prosecutor's Office for Serious Fraud and Environmental Crime

KPMG Accountants N.V. (KPMG) and three former auditors (partners) of that company have been subjected to a criminal investigation focusing on financial years 2000 to 2003 into the role of the auditor in the concealment of payments made to international agents by Ballast Nedam. The investigation was conducted by the Fiscal Intelligence and Investigation Service (FIOD), headed by the National Public Prosecutor's Office for Serious Fraud and Environmental Crime.

In the judgement of the Public Prosecution Service this investigation has shown that the audit carried out by KPMG was deliberately done in such a way that it was possible for payments made by Ballast Nedam to international agents and the parallel administration kept in that regard to be concealed. KPMG failed to respond adequately to the signals it picked up in this regard. KPMG did not sufficiently address compliance with the due care and integrity requirements.

The Public Prosecution Service regards the audit carried in respect of these payments to international agents as being culpably inadequate. In view of the key position of the auditor in the financial accountancy system, the Public Prosecution Service considers this a serious punishable offence.

KPMG regrets what happened regarding the audits on Ballast Nedam and has condemned it in the strongest terms. KPMG has cooperated with the investigation and has been completely open. These are old offences and the persons responsible for this are no longer working at KPMG. The company has learnt a lesson from this case and put measures in place.

In response to this case KPMG has strengthened its compliance policy and laid it down in additional measures to guarantee the organisation's integrity. The additional integrity, compliance and quality measures to which KPMG has committed itself are of a preventative and repressive nature. The preventative measures serve, for example, to identify problems at an early stage and avoid misunderstandings. The repressive measures range from reallocating tasks to severance of the employment contract. The Public Prosecution Service has taken note of these measures and taken them into consideration in the out-of-court settlement offer. The measures have also been communicated to the Netherlands Authority for the Financial Markets (AFM). The AFM will include compliance with these measures in its supervision of KPMG.

KPMG will be paying a total sum of 7 million euros for its role in the audits over the financial years 2000 to 2003. That amount comprises a 3.5 million euro fine and 3.5 million euros as a confiscation measure.

The investigation against three suspects, former auditors, is being continued. An out-of-court settlement was agreed in the case against Ballast Nedam in December 2012. The investigation into a number of Ballast Nedam managers who were suspected of personally gaining from the payments made to international agents has not yet reached its conclusion.

SBM Offshore N.V. settles bribery case for US$ 240,000,000

12 november 2014 - Functioneel Parket

SBM Offshore has accepted an offer from the Dutch Public Prosecutor's Service to enter into an out-of-court settlement. The settlement consists of a payment by SBM Offshore to the *Openbaar Ministerie* of US$ 240,000,000 in total.

SBM Offshore has accepted an offer from the Dutch Public Prosecutor's Service (*Openbaar Ministerie*) to enter into an out-of-court settlement. The settlement consists of a payment by SBM Offshore to the Openbaar Ministerie of US$ 240,000,000 in total. This amount consists of a US$ 40,000,000 fine and US$ 200,000,000 disgorgement (*ontneming van wederrechtelijk verkregen voordeel*). This settlement relates to improper payments to sales agents and foreign government officials in Equatorial Guinea, Angola and Brazil in the period from 2007 through 2011 as identified by the Openbaar Ministerie and the Dutch Fiscal Intelligence and Investigation Service (*Fiscale Inlichtingen- en Opsporingsdienst*; *FIOD*). According to

the Openbaar Ministerie's those payments constitute the indictable offences of bribery in the public and the private sector as well as forgery (*valsheid in geschrifte*).

Appropriate disposal of the case

The Openbaar Ministerie considers the settlement pursuant to section 74 of the Dutch Criminal Code an appropriate outcome of the case. The settlement consists of a fine and a disgorgement component. Furthermore, the Management Board of SBM Offshore, newly put together in the first half of 2012, *at* its own initiative took an extensive set of measures in order to enhance the company's compliance. The Openbaar Ministerie values this, in the expectation that criminal offences as mentioned above do not occur again in the future. In addition, if it so wishes the Openbaar Ministerie will receive access to the continued implementation of SBM Offshore's compliance policies.

The reasons for the Openbaar Ministerie to offer an out-of-court settlement include:

- SBM Offshore itself brought the facts to the attention of the authorities, including the Openbaar Ministerie, SBM Offshore itself investigated the matter and agreed to fully cooperate with subsequent criminal investigations by the Openbaar Ministerie and the FIOD;
- there has been a new Management Board since 2012;
- after it became aware of the facts, the newly established Management Board of SBM Offshore, at its own initiative, has taken significant measures to improve the company's compliance; and
- as noted in SBM Offshore's press release, the current Management Board and Supervisory Board regret the failure of control mechanisms in place in the past.

Reasons for the investigation by the FIOD and the Openbaar Ministerie

In the spring of 2012, SBM Offshore, at its own initiative, informed the Openbaar Ministerie of its self-initiated internal investigation into potentially improper payments made to its sales agents for services.

The internal investigation was conducted in the period from 2012 through 2014 and focused on the period from 2007 through 2011. The extent of the internal investigation was determined in consultation with the Openbaar Ministerie and the FIOD.

In addition, the FIOD conducted its own investigation under the direction of the Openbaar Ministerie.

Countries involved in the investigation

From 2007 through 2011, SBM Offshore paid approximately US$ 200 million in commissions to foreign sales agents for services. The largest part of these commissions, totalling US$ 180.6 million, relate to Equatorial Guinea, Angola and Brazil.

The investigation conducted by the Openbaar Ministerie and the FIOD focused on these three countries. The Openbaar Ministerie considers the investigation into these three countries sufficiently representative for the entirety, taking into account the portion these three countries represented in SBM Offshore's business.

Equatorial Guinea

In early 2012, it came to SBM Offshore's attention that one of its former sales agents might have given certain items of value to government officials in Equatorial Guinea. This reportedly involved one or more cars and a building. In the opinion of the Openbaar Ministerie and the FIOD, SBM Offshore's former sales agent paid a significant portion of the commissions paid to him by SBM Offshore on to third parties, who in turn would have forwarded parts of these payments to one or more government officials in Equatorial Guinea. There also are other payments, such as education and health insurance costs. In the opinion of the Openbaar Ministerie and the FIOD, such (forwarded) payments took place with the knowledge of people who at the time were SBM Offshore employees, including someone who at the time was a member of the Management Board. From 2007 through 2011, SBM Offshore paid that particular sales agent USD 18.8 million in total in relation to Equatorial Guinea.

Angola

In the period from 2007 through 2011, SBM Offshore also used several sales agents in Angola. These sales agents received commissions for services regarding certain projects in Angola. In the opinion of the Openbaar Ministerie and the FIOD, Angolan government officials, or persons associated with Angolan government officials, who are associated with at least one of these sales agents, received funds. In addition, there are payments for travel and study costs to one or more Angolan government officials or their relatives. Also with respect to Angola, the Openbaar Ministerie and the FIOD are of the opinion that such payments took place with the knowledge of people who at the time were SBM Offshore employees. In the period from 2007 through 2011, SBM Offshore paid USD 22.7 million in commissions to its sales agents in connection with Angola.

Brazil

With regard to Brazil, certain "red flags" relating to the main sales agent used in Brazil were found during the internal investigation commissioned by SBM Offshore. These red flags included:

- the high amounts (in absolute terms) of commission that were paid to the sales agent and its companies;
- a split between commissions paid to the sales agent between its Brazilian and its offshore entities; and
- documents indicating the sales agent had knowledge of confidential information about a Brazilian client.

The internal investigation conducted by SBM Offshore did not yield any concrete evidence that payments may have been made to one or more government officials in Brazil. In the period from 2007 through 2011, SBM Offshore paid USD 139.1 million in commissions to its sales agents in connection with Brazil.

A mutual legal assistance request in the context of the investigation conducted by the FIOD, under instruction of the Openbaar Ministerie, established that payments were made from the Brazilian sales agent's offshore entities to Brazilian government officials. These findings resulted from means of investigation inaccessible to SBM Offshore.

The investigation

In the context of the internal investigation by SBM Offshore, hard drives and other electronic data and documents were analysed. Also, interviews were conducted with current and former SBM Offshore employees, including members of the Management Board, Supervisory Board, employees of the Legal, Sales and Marketing, Accounting and Finance departments and the relevant project teams.

This internal investigation was conducted by specialised law firms and forensic accountants, who were assisted by an internal team of SBM Offshore which, as of his appointment, was led by Sietze Hepkema, SBM Offshore's Chief Governance and Compliance Officer, and consisted of members of SBM Offshore's Legal, Compliance Finance/Internal Controls and Internal Audit departments.

SBM Offshore has always given full disclosure to the Openbaar Ministerie and the FIOD. The Openbaar Ministerie and the FIOD were kept informed of the progress of the internal investigation by SBM Offshore via meetings. The preliminary findings of the internal investigation were reported to the Openbaar Ministerie and the FIOD. The internal investigation was completed in early 2014, after which SBM Offshore filed a complaint with the Openbaar Ministerie.

In addition, the FIOD, under the direction of the Openbaar Ministerie, conducted its own investigation. Administration was seized, witnesses and other persons involved were interviewed and mutual legal assistance was requested from countries involved. SBM Offshore cooperated with this investigation conducted by the FIOD under the direction of the Openbaar Ministerie that was also instigated as a result of the findings of the internal investigation conducted by SBM Offshore.

Measures to prevent recurrence

SBM Offshore's Supervisory Board constituted a new Management Board, which took office in the first half of 2012. This new Management Board constantly stresses the importance of compliance inside and outside the organisation. One of the members, Sietze Hepkema, was appointed Chief Governance and Compliance Officer, a newly created position in the Management Board. Another experienced employee has been appointed to the position of Group Compliance Director. In the next few years, these positions will continue to be held by people with the necessary expertise, authority and stature to continue the compliance programme.

As of its appointment in the course of 2012, the current Management Board has taken many (remedial) measures to prevent recurrence. For example, the use of sales agents within SBM Offshore has been restricted directly from the beginning of 2012. SBM Offshore first suspended all payments to sales agents pending the completion of the compliance assessment of these sales agents. A newly created "Compliance Task Force", composed of representatives of the Internal Audit, Compliance and Group Internal Control departments, investigated payments of commissions to sales agents during the period from 2007 through 2011. In addition, SBM Offshore established a Validation Committee consisting of the CEO, the Chief Governance and Compliance Officer, the Group Controller and the Group Sales Director, in order to assess

all its sales agents and to decide whether to approve the sales agent and its commission, or to discontinue use of the sales agent. All sales agents that were and are used by the company are subject to this stringent procedure. Sales agents that were unable to meet the compliance requirements of SBM Offshore are no longer used by the company. In addition, SBM Offshore decided to no longer use sales agents in those countries where the company itself has a substantial presence.

In addition, the compliance policy was enhanced to ensure the integrity of the company. For this purpose, guidelines and procedures with regard to entering into, continuing and dealing with relationships with sales agents, other intermediaries and joint venture partners were drawn up and/or enhanced. The sales agents themselves have to contractually commit to the policies that apply within SBM Offshore.

In addition to the measures imposed on sales agents, disciplinary actions were taken against employees who were involved in or had knowledge of the payments concerned. Furthermore, all employees in compliance-sensitive positions, approximately 2,540 each year over the past four years, have attended updated anti-corruption trainings. They will be kept updated annually by additional training modules. In order to ensure the integrity of its employees in the future, SBM Offshore also enhanced its HR procedures. As a result, future employees will be subject to a stricter screening. In addition, current and future employees are required to adhere to SBM Offshore's compliance commitments.

With its voluntary disclosure of the internal investigation to the Openbaar Ministerie and the market in April 2012, SBM Offshore made it clear that it wants to conduct its business transparently. It closely monitors at strict adherence to its compliance policy now and in the future. The Openbaar Ministerie and the FIOD, also based on conversations with the Supervisory Board and Management Board, came to the conclusion that after discovery of the events, SBM Offshore has put itself on the right compliance track and that it will continue to follow this track in the future.

Further investigation

It appears from the criminal investigation that certain natural persons have been involved in the criminal offences committed in the opinion of the Openbaar Ministerie. In a case like the one at hand, the Openbaar Ministerie has jurisdiction if criminal acts are committed in the Netherlands, or when criminal acts are committed abroad by persons with the Dutch nationality. From the current state of affairs of the investigation, this does not appear to be the case. The Openbaar Ministerie will cooperate fully with the countries that have jurisdiction to prosecute the natural persons involved.

The Openbaar Ministerie and SBM Offshore are confident that with the measures taken by the new Management Board and the importance which the management of the company attaches to transparency, potential past abuses, as described above, will not occur in the future.

The Openbaar Ministerie has, partly because of the reasons mentioned above, seen reason to offer an out-of-court settlement to SBM Offshore, and sees this as an appropriate outcome of this matter.

SBM Offshore will continue to provide its full cooperation in any potential ongoing investigations of third parties by the Openbaar Ministerie.

Finally

With this matter, the Netherlands shows that it takes action against foreign corruption. The Openbaar Ministerie considers corruption and related criminal offences severe because of the undermining and corrupting character they impose on society.

In the eyes of the Openbaar Ministerie, out-of-court settlements involve punishment, restoration, and prevention. In that context, the Openbaar Ministerie also takes into account the positioning of the suspected company and the measures the company has taken at its own initiative.