

# Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

## NETHERLANDS

(Information as of 1 October 2006)

### *Date of deposit of instrument of ratification/acceptance or date of accession*

The instrument of ratification was deposited with the Secretary-General of the OECD on 12 January 2001.

### *Implementing legislation*

The law on the revision of the corruption legislation was published in the Official Gazette on 28 December 2000 (Staatsblad 2000 nr. 616) and entered into force on 1 February 2001.

### *Brief description:*

The law provides for several amendments to Dutch legislation in order to meet the obligations under the Convention and other international instruments. The amendments relevant to the obligations under the Convention can be briefly summarised as follows:

- (1) A new article (article 178a) was added to the Penal Code in order to extend the application of the active bribery offences, which previously only applied to domestic public servants, to “persons in the public service of a foreign state or an international law organisation”, “former public servants” “persons anticipated to become a public servant” and “judges of a foreign state or an international organisation”.
- (2) A new article (article 177a) was added to the Penal Code in order to establish the offence of bribing a public servant in order to obtain an act or omission of him/her that is not in breach of his/her official duties. Article 177, which pertains to the bribery of a public servant, applies only where the purpose of the bribe is to obtain an act or omission in breach of official duties.
- (3) The penalty of imprisonment and the fine that apply under article 177 of the Penal Code (i.e. where the bribe is intended to obtain an act or omission in breach of official duties) were increased, for imprisonment from 2 to 4 years and for the fine from category 4 to category 5.
- (4) The offences were expanded to cover the case where a person renders or offers a public servant a “service” (articles 177, 177a and 178 of the Penal Code).
- (5) Article 51a of the Extradition Act was amended in order that the offences under articles 177 and 177a of the Penal Code are considered extraditable offences.

### *Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations*

- (1) In April 2006 the Netherlands enacted legislation to expressly prohibit the tax deductibility of bribes to foreign public officials. The legislation amended all three laws regulating the non-tax

deductibility of expenses related to crimes: the Law of Income Tax 2001, the Law on Wage Tax 1964, and the Law on Corporate Tax 1969.

- (2) The Act on Audit Firms entered into force in February 2006. The Act strengthens provisions dealing with auditor independence, and also includes new supervision arrangements, and provisions for reporting of suspected offences by auditors (either to company management or where necessary, law enforcement authorities).
- (3) Amendments to the statute of limitations entered into force on 1 January 2006. Under the former law, the statute of limitations was suspended with every prosecutor's act of prosecution, known by the defendant. Under the new law the condition of knowledge is no longer required: the statute is suspended with every act of prosecution, whether the defendant has knowledge of the prosecution or not.
- (4) Provisions governing the confiscation of bribes and the proceeds of bribery were amended by Act of Parliament of 8 May 2003, which entered into force on 1 September 2003. The provisions allow for broader possibilities to confiscate property the value of which constitutes the proceeds of foreign bribery.
- (5) The current "Directive on the investigation and prosecution of corruption of officials", adopted on 8 October 2002 is under review and the new Directive will enter into force on 15 February 2007. The Directive indicates the factors that will have to be taken into account in determining whether it is appropriate to prosecute domestic and foreign corruption cases. The directive addresses, among others, the use of facilitation payments/gifts for which no specific monetary value is set.

### ***Other information***

#### *Relevant authorities*

Dutch National Police Internal Investigation Department (Rijksrecherche; email: info@rijksrecherche.nl, Tel: 31.70.3411100)

Public Prosecutor's Office in Rotterdam (Tel: 31.10.4966816)

Telephone number for anonymous denouncements: 0800-7000

#### Relevant Internet links to national implementing legislation

<http://www.oecd.org/dataoecd/40/59/2739921.pdf> (Staatsblad 2000, nr. 616)

<http://www.openbaarministerie.nl/beleidsregels/docs/2002a009.htm> (Aanwijzing opsporing en vervolging ambtelijke corruptie)

#### *Signature/Ratification of other relevant international instruments*

##### Ratification:

- The EU Convention on the Protection of the European Communities' Financial Interests (PIF-Convention) and its first and second Protocol

- The EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States
- The EU Council Framework Decision against Corruption in the Private Sector
- The Criminal Law Convention on Corruption of the Council of Europe
- The United Nations Convention against Transnational Organised Crime
- The Protocol to the Criminal Law Convention on Corruption of the Council of Europe
- The United Nations Convention against Corruption, acts of ratification sent to UN secretariat in October 2006.

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/39/43/2020264.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/14/49/36993012.pdf>