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EXECUTIVE SUMMARY

The Phase 3 report on the Netherlands by the OECD Working Group on Bribery evaluates and makes recommendations on the Netherlands' implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in the Netherlands' legislative and institutional framework, as well as progress made since the Netherlands' Phase 2 evaluation. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement.

The Working Group on Bribery has serious concerns that the overall results of foreign bribery investigations and prosecutions to date are too low. Eleven years after the entry into force of the Convention in the Netherlands, no individual or company has been sanctioned for foreign bribery. Out of 22 foreign bribery allegations received by the Dutch law enforcement authorities, 14 have not triggered the opening of any investigation, in part due to a lack of resources. Only two foreign bribery cases have led to prosecutions, which are scheduled to go to trial in 2013, and four cases are the subject of ongoing investigations. The Working Group thus recommends that the Dutch law enforcement authorities be more proactive in opening investigations into foreign bribery allegations, and take all the necessary steps to ensure their effective investigation. The Working Group questions in particular the Netherlands' ability and proactivity in initiating proceedings against companies which are incorporated in the Netherlands but pursue their activities entirely from abroad („mailbox companies“). Out of the 22 foreign bribery allegations mentioned, 12 concern mailbox companies. In this respect, the Working Group welcomes the firm intention recently expressed by the Dutch prosecution authorities to actively pursue ongoing investigations and prosecutions in foreign bribery cases involving such mailbox companies. The Working Group recommends that the Netherlands vigorously pursue these efforts, and looks forward to seeing increased enforcement of the Netherlands' foreign bribery laws very soon.

The report identifies further areas for improvement. Law enforcement authorities must be adequately resourced to be able to effectively deal with the significant number of foreign bribery allegations requiring investigation, a situation which has yet to be remedied in the Netherlands. While other prosecutors may take on foreign bribery cases, the office of the National Public Prosecutor for Corruption, which is responsible for the coordination and prosecution of foreign bribery, is only staffed with two prosecutors. Efficient enforcement also goes hand in hand with effective, proportionate and dissuasive sanctions: the current level of sanctions for legal persons in the Netherlands is not sufficient in that respect. The Working Group therefore welcomes the draft legislation prepared by the Netherlands aiming to increase the maximum pecuniary sanctions for legal persons to ten per cent of the turnover of the company, and recommends that the Netherlands proceed promptly with the passing of this law. The Netherlands should also step up efforts to enhance detection and reporting of foreign bribery, in particular by adopting appropriate whistleblower protection legislation.

The report also notes positive developments. The Netherlands has developed strong expertise with respect to confiscation of the proceeds of crime, as demonstrated by the efficient legislation in place, the significant financial commitments to support its implementation in practice, and the high level of expertise in the specialised Criminal Asset Deprivation Bureau. A database has also been set up to track mutual legal assistance requests, thus ensuring more prompt and efficient responses, and facilitating the collection of statistics. The Netherlands has also put in place a number of initiatives to raise awareness of foreign bribery among the Dutch public and private sectors. The Ministry of Foreign Affairs has been particularly active in the awareness-raising area through its embassies abroad, and has put in place specific channels to facilitate the reporting of foreign bribery.

The Report and its recommendations reflect findings of experts from Estonia and Ireland, and were adopted by the Working Group on 14 December 2012. It is based on legislation and other materials provided by the Netherlands and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its three-day on-site visit to The Hague on 19-21 June 2012, during which the team met representatives of the Netherlands' public and private sectors, legislature, judiciary, civil society, and media. Within one year of the Working Group's

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approval of this report, the Netherlands will make a follow-up report on its implementation of certain recommendations. It will further submit a written report on the implementation of all recommendations within two years. The Working Group will closely re-examine foreign bribery enforcement efforts when the Netherlands makes its Phase 3 Follow-up Report in 2013 and its Written Follow-up Report in 2014.