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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

Cancels & replaces the same document of 21 December 2023

Phase 4 follow-up: Additional written report by the Netherlands

10-13 October 2023
Paris, France

This report was submitted by The Netherlands for the October 2023 plenary meeting of the Working Group on Bribery in International Business Transactions. It does not reflect the views or opinions of the Working Group.

JT03535272

Instructions

This document seeks to obtain information on the progress that the Netherlands has made implementing outstanding recommendations of its Phase 4 evaluation report.

Responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions. Further details concerning the written follow-up process is in the [Phase 4 Evaluation Procedure](#) (paragraphs 51-59).

Please submit completed answers to the Secretariat on or before **12 September 2023**.

Name of country:	THE NETHERLANDS
Date of approval of Phase 4 Report:	16 October 2020
Date of approval of Phase 4 Two-Year Follow-Up Report:	14 October 2022

PART I: RECOMMENDATIONS FOR ACTION

Text of recommendation 2(a):

2. Regarding detection of foreign bribery by whistleblowers, the Working Group recommends that the Netherlands:

a. amends the Whistleblower Authority Act to transpose the EU Whistleblower Protection Directive, as a priority [2009 Recommendation IX (iii)] and implement, as appropriate, the recommendations of the various evaluations of the Whistleblower Authority, to ensure that public and private sector employees that report suspected acts of foreign bribery are protected from discriminatory and disciplinary action;

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

The Whistleblowers Protection Act entered into force on 18 February 2023. The entry into force decree for the implementation act was published in the Official Gazette (Stb. 2023, 52) on 17 February 2023. This means that all mandatory provisions of the EU Whistleblower Protection Directive, which is also concerned with the protection of whistleblowers against possible discriminatory and disciplinary actions, have been fully implemented in Dutch legislation since 18 February 2023. Hereby whistleblowers who have made a report of a suspicion of abuse (including foreign bribery) as intended in the Dutch Whistleblower Act also are protected from discriminatory and disciplinary measures.

Previous opinions on the Whistleblowers Authority and recommendations in the report on the evaluation of the Whistleblowers Authority Act have largely been followed or are now being followed up. Example of the latter concerns joining the Employers' Employment Survey (WEA) to monitor the presence and application of the prescribed internal reporting channel (Article 2 of the Whistleblowers Protection Act).

The WEA is a biennial survey of employers on employment policies by and of companies and institutions in the Netherlands. It is planned to conduct this survey in the first quarter of 2024. Most recommendations requiring legislative amendments have already been included in the Whistleblowers Protection Act. The remaining recommendations could potentially help clarify the law. If necessary, these clarifications will be included in the next bill now being prepared.

Finally psychosocial support is arranged for whistleblowers through the Stichting Slachtofferhulp Nederland. The aim is to start legal support through the Legal Aid Board in autumn 2023. This support can be called upon after referral by the Whistleblowers Authority.

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 detection of foreign bribery by whistleblowers, the Working Group recommends that the Netherlands:

b. conduct training and awareness raising activities for the private sector and public agencies, specifically the Ministry of Foreign Affairs, on implementing the WAA's requirements for effective internal protected reporting mechanisms and its amendments, once enacted [2009 Recommendation IX iii)];

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

In the two-year follow-up report, the Working Group recognized the significant efforts from the Netherlands. However, the Whistleblowers Protection Act had not yet fully entered into force. As explained in relation to recommendation 2(a), in the meantime, the mandatory parts of the EU Whistleblower Protection Directive have been implemented and entered into force. Relevant awareness raising activities have been continued. For example, through the website specially set up by the Ministry of the Interior and Kingdom Relations (www.wetbeschermingklokkenluiders.nl) and through a periodic newsletter, employers (both in the public and private sectors) are informed about the changes in the law through the implementation of the EU Whistleblower Protection Directive and subsequent legislative changes and are given practical tips. The Minister of the Interior and Kingdom Relations has also launched a campaign to promote a safe working and reporting climate among employers. Several activities and meetings were organised as part of the campaign in 2023 with the aim of promoting knowledge of the legislation, sharing knowledge among themselves, and raising awareness of the importance of a safe working environment. In addition, the Whistleblowers Authority is tasked with promoting knowledge and awareness.

The Whistleblowers Authority also entered into discussions with the National Internal Investigations Department (NIID; Rijksrecherche). The scope for referring advice seekers for further advice or reporting official misconduct, including fraud or corruption, has been explored. The obligation to report official misconduct that may arise during investigations or advice by the Whistleblowers Authority has also been discussed. The possible cooperation between the NIID and the Whistleblowers Authority still needs to be further elaborated.

The Ministry of Foreign Affairs has also continued relevant awareness raising activities, and shared information with its employees on the new WAA. For example, by:

- Internally communicating general information about the directive, and what this means for employees, through the information portal and app for all employees,
- The government-wide addendum that has been developed for the investigation protocol for reporting and investigating wrongdoings, in line with the WAA, has been made available on the integrity portal (BZelf – *investigating integrity violations*).
- There is a new inappropriate behaviour complaints procedure that entered into force, which has been proactively communicated to all employees at the Ministry in February 2023.
- The Integrity Reporting and Advice office, communicates frequently on the information portal about integrity and social safety, which also includes a standard reference on how to report suspected violations.
- A new code of conduct is being drawn up, and is expected to be ready by the end of this year.
- Besides that, a coordinator for the network of confidential advisers has been set up, and external studies have been carried out into the willingness to report and racism. This report has been discussed within the organisation, and recommendations are being implemented under the guidance of a steering committee.

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 3:

3. Regarding detection of foreign bribery self-reporting, the Working Group recommends that the Netherlands' authorities establish a clear policy and guidelines explaining the procedure for making self-reports and the extent to which self-reporting will be considered in resolving and sanctioning foreign bribery cases [Article 3 of the Convention; 2009 Recommendation III.i.].

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

As mentioned in our previous input, the Ministry of Justice and Security decided to commission an independent research into the use of self-investigation and self-reporting by companies. On behalf of the Dutch Scientific Research and Documentation Centre for the Ministry of Justice and Security (*Wetenschappelijk Onderzoek- en Documentatiecentrum; WODC*), the *Vrije Universiteit Amsterdam* conducted this research, focused on self-reporting and self-investigation by companies regarding financial and economic crime. The study has been published in February 2023.¹ The Minister of Justice and Security has sent the research, including a letter of initial response, to the House of Representatives.² This letter states that the study is an important starting point to first engage with stakeholders – including the legal profession, the judiciary, investigation services, the PPS and civil society – on these and other issues addressed by the study, including their possible follow-up, taking into account that practice

¹ [3221-zelfonderzoek-en-zelfmelden-fraude-en-corruptie-bedrijven-summary.pdf \(wodc.nl\)](#) (English summary). If an English source is available, we have referenced this in this template. Where no such source is available, we have referenced the relevant Dutch sources. Please do let us know if you require translations of any sources and we will of course arrange for this as soon as possible.

² [Kamerbrief bij onderzoeksrapport naar zelfonderzoek en zelfmelding van fraude en corruptie door bedrijven | Kamerstuk | Rijksoverheid.nl](#) (Dutch).

around self-reporting and self-reporting is still developing in the Netherlands. A more extensive policy response will likely be sent to the House of Representatives in December 2023.

A comparative country study (Germany, UK, France and the US) was carried out and (29) experts were interviewed. The research finds that practice in the Netherlands is still developing and that there is no formal regulation for self-investigation and self-reporting yet. The researchers indicate that most (consulted) experts agree that some form of regulation of self-examination and self-reporting in the case of fraud and corruption is desirable in order to provide clarity to both the (potential) reporter and the Public Prosecution Service (PPS). However, experts differ in their opinion on the content and interpretation of any further regulation. According to the researchers, the general opinion among the consulted experts about self-reporting is that this procedure should be regulated more but should not be codified in too much detail and too strictly either. Most of the experts also indicate that it is useful to meet certain conditions for a self-investigation especially when using it for a self-report. Critics of the regulation of self-investigation and self-reporting state that strict regulation can be at the expense of willingness to report and the freedom of the PPS to decide on the prosecution (*principle of prosecutorial discretion, 167 DCPC*).

The study provides no advice on the (legal) form that further codification should have. The researchers identify several important substantive points that need to be worked out in more detail before a decision can be made as to whether some kind of regulation should be drawn up. Examples include the role and scope of legal privilege in self-investigations, sentence reduction and admission of guilt. The research also notes that the position of victims and natural persons are themes that should be taken into account more in the current discussion and the further policy making process. The Ministry of Justice and Security has invited stakeholders such as the PPS, the Dutch Bar Association, Royal Dutch Professional Association of Accountants, Transparency International – Netherlands, the International Chamber of Commerce – Netherlands and the association for professionals in the field of Ethics, Compliance and Integrity to discuss the results of the research and the possible follow-up. In addition to this, the PPS continues to work on formulating its self-reporting policy and its plans for policy on the use of self-investigation in criminal investigations.

If no action has been taken to implement recommendation 3, 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 5(a):

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

a. take urgent measures, as appropriate within its criminal justice system, to address delays caused by processes for assessing legal privilege claims in foreign bribery investigations [Convention Article 5, 2009 Recommendation Annex I B)];

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

The establishment of a working process for dealing with legal privilege claims is being discussed in various contexts by relevant parties. This is not an issue specific to foreign bribery cases and it is therefore being considered more broadly. These discussions also address how to filter out material subject to legal privilege from datasets. These discussions are ongoing and case law on this topic

continues to develop.

The two-year follow-up report mentions that this issue will be addressed in the reform of the Dutch Code of Criminal Procedure (DCCP) which is expected to enter into force in 2026 and that the Public Prosecution Service (PPS) has drawn up a new draft Directive on dealing with material that is possibly subject to legal privilege.³ This draft Directive sets out the principles that the PPS and investigative bodies will observe to guarantee upholding legal privilege. Interested parties have since been asked for their views on the draft. The PPS will consider those views and determine whether this gives cause to make any changes. This consultation process has started in January 2023. Meanwhile, the Dutch Bar Association has taken the position that the draft Directive offers insufficient protection to the right of non-disclosure.⁴

Further consultations are on hold awaiting the ruling of the Supreme Court on preliminary questions regarding legal privilege.⁵ In an interlocutory ruling of May 2023, the Court of Appeal ruled, that in this particular case the right of non-disclosure had been violated in a structural manner. The Court of Appeal announced to submit preliminary questions to the Supreme Court because legal privilege is a fundamental principle of law and the answers to these preliminary questions are important for the exercise of investigative powers by the PPS in many (ongoing) criminal investigations.⁶ According to the Court of Appeal, the basis for legal privilege lies in the fact that "*the public interest that the truth be revealed in court must give way to the public interest that everyone should be able to turn to them for assistance and advice freely and without fear of disclosure of what has been discussed.*" The Court of Appeal therefore decided to use the recently established possibility to submit preliminary questions to the Supreme Court to shed its light on the matter. Meanwhile, the Court of Appeal has imposed an interim measure that a public prosecutor will leave the selection, filtering and assessment of data to the examining magistrate in question when it is expected that digital data obtained from a service provider on the basis of Article 126ng/ug DCCP (e.g. e-mails) may contain material that is entitled to legal privilege.

This interlocutory ruling and the preliminary questions are not aimed specifically at shortening the delays caused by the processes for assessing legal privilege claims. Notwithstanding this, the opinion of the Supreme Court could be of importance for further shaping the draft directive and (thus) could lead to more clarity and certainty about the procedures that have to be followed. Eventually this could also address the delays caused by the processes for assessing legal privilege claims.

In addition, the ruling of the Court of Appeal (and thus the opinion of the Supreme Court) affects the temporary working method described in the two-year follow-up report. Discussions on this matter are ongoing. These discussions and case law developments could again lead to adjustments in the working method.

³ *Handleiding verwerking geheimhouderinformatie aangetroffen in inbeslaggenomen voorwerpen en in digitale bestanden* (2014). (Dutch)

⁴ <https://www.advocatenorde.nl/nieuws/voorgestelde-werkwijze-om-biedt-onvoldoende-bescherming-aan-het-verschoningsrecht> (Dutch).

⁵ <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBOBR:2022:1035> (Dutch).

⁶ <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:GHSHE:2023:1329> (Dutch).

If no action has been taken to implement recommendation 5(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(a):

6. Regarding non-trial resolutions, pursue the proposed reforms to its non-trial resolution framework as a priority and in this context:
a. publish, as necessary and in compliance with the relevant rules, the essential elements of resolutions in all foreign bribery cases [Convention Arts 3 and 5; 2009 Recommendation III(i)];

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

During the past two years, the Netherlands reported that the existing framework for publishing information regarding resolutions in criminal cases (including foreign bribery cases) through press releases⁷ was already considered sufficient, having in mind that recommendation 6(a) states that essential elements of foreign bribery resolutions should be published “*as necessary and in compliance with the relevant rules*”. The existing (general) framework stipulates that high transactions as well as other non-trial-resolutions are actively reported by means of a press release if it concerns sensitive cases or cases that are the subject of great societal and/or political interest.

Nevertheless, the PPS also considered other options specifically for foreign bribery to meet the recommendation of the Working Group on this topic. Based on these considerations, the PPS submitted a draft to the prosecutor’s general’s office to amend the Directive on the Investigation and Prosecution of Foreign Bribery and insert that a press release will be published if foreign official bribery is sanctioned by means of a non-trial resolution through a punishment order or transaction. This draft amendment is currently still in the internal decision-making process.

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 non-trial resolutions, pursue the proposed reforms to its non-trial resolution framework as a priority and in this context:
b. introduce, as planned, appropriate oversight of proposed non-trial resolutions in foreign bribery cases [Convention, Article 5 and Annex I D];

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

The planned legislative reforms to the non-trial resolution process to set out a legal framework for large settlements in the DCCP, including the introduction of a system of judicial oversight for non-trial resolutions, will have structural chain-wide implications, including shifts in case flows and shifts in

⁷ The Directive (and the Instruction) on Information about Investigation and Prosecution <https://wetten.overheid.nl/BWBR0044027/2020-09-01> (Dutch) and the Instruction high transactions and transactions in sensitive cases (besides the Directive on High Transactions <https://wetten.overheid.nl/BWBR0044047/2020-09-04>) (Dutch).

volumes of cases. This reform deals with large numbers of (mostly minor) cases and is associated with substantial implementation consequences, including adjustments in ICT-facilities. Against that background, these legislative reforms are taken into account in the broader context of the introduction of a new DCCP. The Bill introducing this new DCCP is currently pending before the Dutch Parliament. Through a separate Bill, the legislative reforms that include judicial oversight for non-trial-resolutions will be introduced into the new DCCP. This separate Bill is expected to be submitted for (internet) consultation in the first quarter of 2024.

In the meantime, as acknowledged by the Working Group last year, the Netherlands successfully implemented a transitory oversight regime involving the approval of an independent Review Committee abolishing the previous intervention of the Minister of Justice and Security in the approval procedure. This transitory oversight regime will apply until the entry into force of the statutory system of judicial oversight for non-trial resolutions.

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 6(c):

6. Regarding non-trial resolutions, pursue the proposed reforms to its non-trial resolution framework as a priority and in this context:

c. provide guidance on procedures for self-reporting and the level of cooperation expected from defendants [Convention Articles 3 and 4 and Annex I D];

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

Please see the input for recommendation 3.

If no action has been taken to implement recommendation 6(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 6(d):

6. Regarding non-trial resolutions, pursue the proposed reforms to its non-trial resolution framework as a priority and in this context:

d. clarify if and under which conditions non-trial resolutions are available to natural persons in foreign bribery cases, including under the Directive on Large Transactions;

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

If no action has been taken to implement recommendation 6(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:

No new action has been taken since the two-year follow-up report. According to the Public Prosecution Service (PPS), the current framework is sufficient. For further substantiation, please see the updated enforcement efforts of the Netherlands, that show that non-trial resolutions are available to natural persons, also in cases that do not qualify as ‘Large Transactions’ in the meaning of the Directive on

Large Transactions.⁸ We emphasize that when, in the eyes of the PPS, imprisonment is the appropriate punishment (which is not possible for legal persons), a natural person has to be indicted to appear before court (and such a case can therefore not be settled out-of-court).

Additionally, we note that the threshold amounts used in the Directive on Large Transactions will be reflected in the new DCCP (in short: at least €200,000 for a sole fine/penalty component (the single payment to the State of a sum of money) or transactions with a total value of at least €1,000,000 (including confiscation of the proceeds of a crime, the value of any property liable to be declared forfeit which the offender relinquishes, and compensation)). Regarding large transactions, the new DCCP will leave room to make a transaction offer in the same case to both the legal entity and the natural persons involved.

Text of recommendation 6(e):

6. Regarding non-trial resolutions, pursue the proposed reforms to its non-trial resolution framework as a priority and in this context:

e. provide further guidance and training on factors to be taken into account when determining penalties in non-trial resolutions, and imposing and enforcing additional measures such as compliance monitors and remedial compliance actions. [Convention Article 3(1), Article 5; 2009 Recommendation III(ii)]

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

No new action has been taken since the 2022 follow-up report to provide further guidance and training on factors to be taken into account when determining penalties in non-trial resolutions, but previous actions mentioned in the Two-Year Follow-Up Report of the Netherlands, have also been carried out again in 2023. Determining penalties and measures is still a part of several courses that are available in 2023 for public prosecutors, such as the course ‘*Determining penalties in fraud cases*’ (<https://ssr.nl/cursus/srrstoem/> (Dutch)) in September 2023 and for judges, such as the course ‘*Sentencing and sentencing motivation*’ (<https://ssr.nl/cursus/szzmstmm/> (Dutch)) on several occasions in 2023 and 2024.

As already mentioned in earlier reports, the recommendation regarding imposing and enforcing additional measures such as compliance monitors and remedial compliance actions will be addressed by the draft Bill to amend the DCCP and other laws.

⁸ Since Phase 4, the investigations against 3 natural persons have been settled out of court for foreign bribery in Cases C and D:

- <https://www.om.nl/actueel/nieuws/2023/02/15/gelboetes-en-transacties-vanwege-buitenlandse-omkoping> and the investigations against 6 natural persons have been settled out of court for other crimes than foreign bribery in the following former foreign bribery:

- Case JJ: one natural person (<https://www.om.nl/actueel/nieuws/2023/05/11/strafbeschikking-voor-farmaceutisch-bedrijf-en-haar-beheersmaatschappij>),

- Case X: one natural person (<https://www.om.nl/actueel/nieuws/2022/08/23/om-legt-geldboete-en-verbeurdverklaring-van-miljoenen-op-wegens-witwassen-en-valsheid-in-geschrift>) and

- Case O: four natural persons in a sub-investigation of (<https://www.om.nl/actueel/nieuws/2022/07/15/om-legt-straf-op-aan-personen-in-onderzoek-vanguard>).

Previously (in 2016), in Case A the investigations against 2 natural persons has been settled out of court for foreign bribery (as mentioned in the press release <https://www.om.nl/actueel/nieuws/2023/02/15/gelboetes-en-transacties-vanwege-buitenlandse-omkoping>).

If no action has been taken to implement recommendation 6(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:

PART II: ENFORCEMENT

Please describe any development in the detection, investigation, prosecution and/or resolution of any foreign bribery-related case since October 2022, including those cases listed in the Matrix over which the Netherlands has jurisdiction.

In addition to the enforcement efforts reported during the Phase 4 evaluation, the Netherlands can report (until August 2023):

- **3 foreign bribery cases that have been settled out of court**, involving 3 natural persons and 2 legal persons.
- **1 ‘related offence’ case in which a legal person has been convicted** for failure to report unusual transactions related to foreign bribery.
- **18 cases that are ongoing**, of which 11 foreign bribery cases in the investigative phase, 6 foreign bribery cases in the prosecution phase (one case pending on appeal) and 1 related offence case in the prosecution phase (prosecution of a natural person has been ordered).
- **13 foreign bribery investigations that have been discontinued without sanctions for foreign bribery, of which 4 cases** (involving 2 natural persons and 6 legal persons) **have been settled out of court for other offences** (forgery and money laundering).

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

Please find below an update by the Netherlands on the various follow-up issues identified by the Working Group.

Text of issue for follow-up 14(a):

- a. The interpretation of the offence in practice to ensure that:
- i. The offer of a bribe is criminalised and enforced [Convention Article 1];
 - ii. That the definition of ‘foreign public official’ is autonomous, sufficiently broad to cover employees of public enterprises and consistent with Article 1 of the Anti-Bribery Convention [Convention Article 1 and Commentary 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:

On 16 March 2023, a District Court stated in a foreign bribery judgment - in brief - that the indictment was internally contradictory by charging both Article 177 of the Dutch Criminal Code (DCC) (concerning a civil servant in Dutch service) and elements of Article 178a DCC (a person equated with a civil servant in Dutch service, i.e. a civil servant in foreign service). The District Court considered: *"This results in an internally contradictory indictment. After all, the legislator introduced Article 178a of the Criminal Code precisely to bring officials not covered by the civil servant concept of Article 177 (old) of the Criminal Code within the scope of this provision. A person in the category of section 178a of the Criminal Code is precisely not a civil servant, but can be equated with one."* The PPS has filed an appeal against the judgment.

Please see (Dutch):

<https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBROT:2023:2147> and
<https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBROT:2023:2146>

Text of issue for follow-up 14(b):

b. Whether the increase in resources increases the FIU Netherlands' ability to process UTRs and provide feedback on their overall quality to the private sector, as it relates to the detection of foreign bribery [Convention Article 7; 2009 Recommendation III.i];

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:

No relevant developments to be reported at this moment.

Text of issue for follow-up 14(c):

c. The implementation of the Source Protection in Criminal Matters Act, as it relates to ensuring protection of sources who report foreign bribery [2009 Recommendation IX (iii)];

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 Working Group welcomed the strong legal framework in place to protect freedom of the press in the Netherlands, along with regular monitoring of the media by law enforcement authorities as a source of detection. They are, however, concerned about reports of a journalist being detained for not identifying his sources, in a case unrelated to foreign bribery. The Working Group follow-up to ensure that sources who report foreign bribery are afforded protection in accordance with the Source Protection in Criminal Matters Act.

The Source Protection in Criminal Matters Act entered into force on 1 October 2018, amending the DCCP by establishing that journalists summoned as witnesses may refuse to answer questions from the judiciary if answering could compromise the confidentiality of their journalistic sources. In line with relevant case law of the European Court for Human Rights, this refusal may be overruled by the court if the magistrate considers that there is an overriding requirement of the public interest that outweighs the right of non-disclosure.

During the parliamentary debate on the law, a motion was passed requesting the government to evaluate the law to see if it is being applied for the right purposes. This study has now been conducted and published.⁹ The study concludes that the main objective of the law - codification of principles outlined in relevant case law of the European Court of Human Rights under Article 10 of the European Convention on Human Rights - has been achieved. The two secondary objectives of the law have also been achieved. To date, the law has proved future-proof (secondary objective 1), as it is still in line with said case law. In addition, the circle of persons entitled to privilege has not in practice turned out to be wider than the legislator intended (secondary objective 2). No cases have

⁹ https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2023D07139&did=2023D07139

come to light in the criminal law context where the question was whether a particular person could qualify as a journalist or publicist.

According to respondents, the introduction of the Source Protection in Criminal Matters Act and of the Criminal Procedure Instructions against Journalists has led to greater awareness of the importance of the judiciary exercising restraint when it comes to the application of powers. The respondents are of the opinion that the law provides (reasonably) good protection against infringements of the right to source protection. The study notes, based on the interviews, that for Dutch criminal justice practice, observing the principle of subsidiarity principle may be a point of attention. No recommendations flow from these conclusions of the study itself. Some other recommendations for adaptation of the statutory regulation have been made.

Text of issue for follow-up 14(d):

d. The application of the foreign bribery offence in practice to ensure it is interpreted in conformity with the Convention [Articles 1 and 4 (a)]

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:

In consultation with the Working Group's secretariat, it was decided that this follow-up issue seems to be a duplication and that therefore no response is required.

Text of issue for follow-up 14(e):

e. The adequacy of human and financial resources to investigate and prosecute foreign bribery [Convention Article 5; 2009 Anti-Bribery Recommendation Annex I.D];

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:

No relevant developments to be reported at this moment. The capacity of the relevant authorities continues to be a point of attention for all parties involved.

Text of issue for follow-up 14(f):

f. The use of 'self-investigations' in foreign bribery cases [Convention Article 5; 2009 Anti-Bribery Recommendation Annex I.D];

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:

Please see the two-year follow-up report on follow-up issue 14(f) and the new input on recommendation 3.

Text of issue for follow-up 14(g):

g. The ability of the Minister of Justice and Security to request information from the OM in specific cases, and the exercise of these powers 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:

No relevant developments to be reported.

Text of issue for follow-up 14(h):

h. The implementation of the UBO register in the Netherlands, including in the BES Islands, to ensure that it records adequate, accurate and current beneficial ownership information on companies incorporated in their jurisdictions, and provides sufficient access by law enforcement authorities in foreign bribery cases [Convention Articles 5 and 7 and Annex I D];

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:

In accordance with the (amended) fourth EU Anti-Money Laundering Directive, the Netherlands has an Ultimate Beneficial Owner (UBO)-register since 27 September 2020, with the transitional period ending in March 2022. Its aim is to prevent abuse of the financial systems for e.g. laundering money and financing terrorism. The register has a part that is only accessible to competent authorities. Following a judgment by the European Court of Justice on November 22, 2022, the register is no longer publicly accessible.. The Netherlands is currently working on updating its legislation, in accordance with this judgment.

Text of issue for follow-up 14(i):

- i. That natural persons involved in foreign bribery schemes are held liable [Convention Arts. 3 and 5, 2009 Recommendation Annex I.D];

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:

Please see the updated enforcement efforts of the Netherlands. These show that natural persons involved in bribery schemes are held liable by the Public Prosecution Service. These enforcement efforts show that natural persons are prosecuted, have to appear before court and are settled out of court.

Text of issue for follow-up 14(j):

- j. Relevant case law developments to ensure that:
 - i. Parent companies can be held liable for the acts of foreign subsidiaries;
 - ii. Jurisdiction can be exercised over mailbox companies for the purposes of prosecuting foreign bribery [Article 4(1) of the Convention];

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:

No relevant developments to be reported.

Text of issue for follow-up 14(k):

k. The application of the dual criminality requirement for exercising extraterritorial jurisdiction, to ensure that it does not provide an impediment in foreign bribery cases; [Convention Article 1, 2009 Recommendation, III (ii), V, VI and Annex I A]

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:

No relevant developments to be reported.

Text of issue for follow-up 14(l):

l. The re-assessment of tax returns to ensure non-deductibility as foreign bribery case law developments [2009 Recommendation III.iii and VIII.i, Tax Recommendation II].

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:

No relevant developments to be reported.

Text of issue for follow-up 14(m):

m. The use of the Ministry of Justice and Security's database of convictions among public agencies to enhance due diligence and the application of exclusion rules [2009 Recommendation XI.(i)].

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:

No relevant developments to be reported.