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## The Netherlands has increased foreign bribery enforcement but there are concerns about the number of concluded cases to date

05/11/2020 – Foreign bribery enforcement has ramped up in the Netherlands following the establishment of specialised investigative and prosecutorial teams. Nevertheless, only a small number of cases have been concluded in relation to the size and risk profile of the Dutch economy: just seven companies and two individuals have been sanctioned in five foreign bribery cases to date, all through non-trial resolutions. There have also been worrying examples of retaliation against whistleblowers reporting foreign bribery. Concerns were further raised about the involvement of the executive branch in foreign bribery case management, according to a new report by the OECD Working Group on Bribery.

The 44-country OECD Working Group on Bribery has just completed its Phase 4 evaluation of the Netherlands' implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments.

The Group notes, that protracted processes for assessing legal privilege claims, the lack of a comprehensive legal framework for self-reporting and a whistleblower protection regime that has faced criticism, pose obstacles for detecting and sanctioning foreign bribery.

The Group made a range of recommendations to the Netherlands to improve its capacity to combat foreign bribery, including to:


- introduce, as planned, appropriate oversight of proposed non-trial resolutions in foreign bribery cases;
- provide guidance on procedures for self-reporting and the level of co-operation expected from defendants;
- take urgent measures to address undue delays caused by the process for assessing legal privilege claims in foreign bribery investigations;
- amend, as a priority, the Whistleblower Authority Act.

The Report also highlights positive developments, such as innovative sanctions imposed on company auditors in foreign bribery cases pursuant to an enforcement policy targeting gatekeepers and recent case law that confirms a broader approach to exercising jurisdiction over mailbox companies. It also notes the Netherlands' strong framework for international co-operation and success in confiscating the proceeds of bribery in concluded cases against companies. The report praises the Netherlands' increased efforts to detect possible foreign bribery, including through innovative approaches by the FIU, Fiscal Intelligence and Information Service (FIOD), National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation (Functioneel Parket) and financial sector, as well as the Netherlands' efforts in raising awareness. The Working Group welcomed a recent interim measure to remove the requirement for the Minister of Justice to approve non-trial resolutions but will follow closely proposed legal reforms to introduce judicial oversight of large settlements.

Furthermore, the Working Group will follow-up on the application of the foreign bribery offence in practice to ensure interpretation in conformity with the Convention, the use of 'self-investigations' in foreign bribery cases and the implementation of the UBO register in the Netherlands.

The [Netherlands Phase 4 Report](#) was adopted by the OECD Working Group on Bribery on 16 October 2020. The report lists the recommendations the Working Group made to the Netherlands on pages 97-100, and includes an overview of recent enforcement activity and specific legal, policy, and institutional features of the Netherlands framework for fighting foreign bribery. The Netherlands will submit a written follow-up report to the Working Group within one year on progress with legislative reforms to its non-trial resolution framework and the amendment of the Whistleblowers Authority Act. Within two years (October 2022), the Netherlands will submit a written report to the Working Group on the implementation of all recommendations and its enforcement efforts. These follow-up reports will also be made publicly available.

The report is part of the OECD Working Group on Bribery's fourth phase of monitoring, launched in 2016. Phase 4 looks at the evaluated country's particular challenges and positive achievements. It also explores issues such as detection, enforcement, corporate liability, and international co-operation, as well as covering unresolved issues from prior reports.

For further information, journalists are invited to contact [Daisy Pelham](#), OECD Anti-Corruption Division (+33 (0)1 45 24 90 81 ). For more information on OECD's work to fight corruption, please visit [www.oecd.org/corruption-integrity/](http://www.oecd.org/corruption-integrity/).

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