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II. Executive summary

Netherlands (Kingdom of the)

1. Introduction: overview of the legal and institutional framework of the Kingdom of the Netherlands in the context of implementation of the United Nations Convention against Corruption*

The United Nations Convention against Corruption was signed by the Kingdom of the Netherlands on 10 December 2003 and the document of acceptance was deposited with the Secretary-General of the United Nations on 31 October 2006. The application of the Convention was extended to Bonaire, Sint Eustatius and Saba on 10 October 2010.

Article 94 of the Constitution states that the provisions of international treaties prevail over contradicting statutory law if those provisions are binding on all persons. Accordingly, the Convention has become an integral part of domestic law, ranking above national legislation.

The implementation by the Kingdom of the Netherlands of chapters III and IV of the Convention was reviewed in the third year of the first review cycle, and the executive summary of that review was issued on 28 May 2014 (CAC/COSP/IRG/I/3/1/Add.12).

The national legal framework for preventing corruption and recovering assets comprises, notably, the Constitution, the General Administrative Law Act, the Civil Servants Act of 2017, the Whistle-blowers Authority Act, the Political Parties (Financing) Act, the Public Procurement Act, the Freedom of Information Act, the Criminal Code, the Code of Criminal Procedure, the Enforcement of Criminal Judgments (Transfer) Act and the Money-Laundering and Terrorist Financing (Prevention) Act.

Relevant corruption prevention and asset recovery authorities include the National Ombudsman, the Whistle-blowers Authority, the Court of Audit, the Ministry of the Interior and Kingdom Relations, the National Internal Investigations Department, the Fiscal Information and Investigation Service, the Central Authority for Mutual Legal Assistance in Criminal Matters within the Ministry of Justice and Security, the Public Prosecution Service, the Asset Recovery Office and the International Legal Assistance (Criminal Matters) Division of the Public Prosecution Service, as well as law enforcement agencies such as the Anti-Corruption Centre of the Fiscal Information and Investigation Service and the National Police Force.

All information provided in the present executive summary reflects the situation in the Kingdom of the Netherlands at the time of the country visit in November 2020.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

There is no overarching anti-corruption strategy, but all government entities must develop an integrity policy and publish an annual account of their integrity policy (art. 4, para. 4, of the Civil Servants Act). Each entity is responsible for the formulation, implementation and monitoring of its own policy. The Minister of the Interior and Kingdom Relations is responsible for the overall system of integrity policies. Monitoring of the framework is carried out through internal evaluations.

* In view of the status of Curaçao, Sint Maarten and Aruba as separate countries within the Kingdom of the Netherlands, the following findings relate only to the implementation of the Convention in the Kingdom of the Netherlands in Europe and the Caribbean (Bonaire, Sint Eustatius and Saba).

There is no systematic evaluation of the effectiveness of administrative and legal instruments.

Anti-corruption practices include the creation of an information platform by the Ministry of Justice and Security to increase and disseminate knowledge relating to the prevention of corruption; however, operation of the platform has been suspended since 2019.

The Kingdom of the Netherlands does not have a centralized body exclusively designated to prevent corruption, and preventive measures are taken at different levels of Government.

The office of the National Ombudsman, which is responsible for handling complaints on the functioning of Government, is enshrined in the Constitution and the General Administrative Law Act (art. 9:18). The Ombudsman and the Deputy Ombudsman are appointed by the House of Representatives (art. 78a (2) of the Constitution).

The Whistle-blowers Authority, established by the Whistle-blowers Authority Act, is mandated to advise reporting persons and investigate suspected wrongdoing in a work-related situation and treatment by employers (art. 3 of the Act). Its members and Chair are appointed by royal decree for a maximum period of four years (art. 3c, para. 1, of the Act).

The Kingdom of the Netherlands collaborates with other States parties through the Group of States against Corruption of the Council of Europe, the Organisation for Economic Co-operation and Development, the Network of European Integrity and Whistleblowing Authorities, the European Partners Against Corruption, the Group of 20 Anti-Corruption Working Group and the European contact-point network against corruption.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The recruitment of public officials is decentralized and each ministry or department oversees the process with the support of the Human Resources Shared Service Organization. Government employers may conduct an assessment of suitability and competence for a position as a civil servant (art. 3a of the Civil Servants Act). Vacancies are published on a central website. Hiring is at the discretion of the hiring manager and unsuccessful candidates are notified and informed of their right to contact the hiring manager for further information.

Each ministry or department must designate positions that involve a particular risk of a financial conflict of interest or a risk of the improper use of price-sensitive information (art. 5, para. 1, of the Civil Servants Act). However, there is no specific selection procedure for, or training or mandatory rotation of, individuals in such positions. General integrity training is provided by each government entity (art. 4 of the Civil Servants Act).

Criteria concerning candidature for public office at the national, provincial and municipal levels do not include disqualification for offences established in accordance with the Convention, and criteria for the nomination of ministers and State secretaries are not enshrined in law.

Candidates for the House of Representatives must report donations exceeding 4,500 euros per donor in a single calendar year (art. 29 of the Political Parties (Financing) Act), but there is no reporting obligation with regard to expenditure. Candidates to other elected positions are not subject to specific reporting requirements in relation to donations. There is no limit on donations from natural or legal persons, no ban on anonymous donations and only individual anonymous donations of more than 1,000 euros must be reported (art. 21 (1) of the Political Parties (Financing) Act). At the time of the country visit, a bill prohibiting foreign donations was being drafted. There is no electoral oversight institution.

Government entities promote integrity, honesty and responsibility through basic integrity standards and the establishment of guidelines (art. 4 of the Civil Servants Act). The Code of Conduct for Integrity in the Central Public Administration provides civil servants in the central public administration with a framework for managing conflicts of interest (section 4.1). The Code is not enforceable and does not establish disciplinary sanctions. Violations of integrity rules may be sanctioned under labour law (art. 6 of the Civil Servants Act and the Collective Labour Agreement).

Departments may draw up further organization-specific rules. The House of Representatives and the Senate have their own codes of conduct that establish disciplinary measures in case of violations (arts. 5, 10 and 11 of the respective codes).

Secondary professional activities must be reported, and ancillary activities and financial interests that may hamper the functioning of the public administration are prohibited (art. 8 of the Civil Servants Act). However, there is no mechanism for verifying adherence to these rules.

“High-risk” public officials designated as such by a government employer pursuant to article 5, paragraph 1, of the Civil Servants Act must declare their financial interests, but the fulfilment of this obligation is not monitored and the veracity of the declarations is not verified (see the section concerning article 52, paragraph 5, of the Convention, below). Gifts, including benefits, cannot be accepted without the permission of a superior (art. 8, para. 1 (e), of the Civil Servants Act).

Every public or private institution that employs at least 50 persons must have a reporting procedure in place (sect. 2 of the Whistle-blowers Authority Act). Violations of integrity can also be reported externally to the Whistle-blowers Authority and the National Ombudsman. Corruption offences, depending on the type of offence, must be reported to the Public Prosecution Service, the Fiscal Information and Investigation Service, the National Internal Investigations Department or the police, or through a confidential helpline (art. 162 of the Code of Criminal Procedure).

At the time of the country visit, a plan was being developed to merge all codes of conduct and guidelines for the courts within the judiciary into a single code of conduct. Each court has an integrity committee and a confidential adviser that, along with the Human Resources Department of the Council for the Judiciary, provide advice on integrity issues.

All officials working for the Public Prosecution Office are bound by the Public Prosecution Service Code of Conduct, the Government Code of Ethics, the Guidelines on Reporting Integrity Violations and instructions on how to handle integrity violations. The Public Prosecution Service Integrity Bureau was set up to comply with the obligation to implement the integrity policy and code of conduct within the Public Prosecution Service (art. 4 of the Civil Servants Act). In addition to the Bureau’s advisory and policymaking role, its investigators may carry out internal investigations into any suspected integrity violation within the Public Prosecution Service.

Public procurement and management of public finances (art. 9)

The Kingdom of the Netherlands has a decentralized government system and, therefore, a decentralized procurement system, the legal framework for which is established by the Public Procurement Act, the Public Procurement Decree, the Proportionality Guide, the Works Procurement Regulations 2016 and the European Single Procurement Document. The Public Procurement Act is based on the European Union procurement directives 2014/23/EU, 2014/24/EU and 2014/25/EU. For tenders with a value equal to or above the European Union thresholds, a European Union tendering procedure is obligatory (art. 2.1 of the Public Procurement Act). For tenders with a value below the European Union thresholds, part I of the Public Procurement Act applies.

Under the Public Procurement Act, government authorities are obliged to publish all calls for tenders on the TenderNed platform (chap. 2.3 and art. 4.13). Tenderers are

selected on the basis of award criteria (chap. 2.3.8) and, in specific cases, on the basis of selection criteria (chap. 2.3.6) provided for in the tender documents (art. 2.3.3).

After the provisional award decision, unsuccessful tenderers have 20 calendar days to appeal and institute summary proceedings, during which period no contract may be awarded (arts. 2.127 and 2.131 of the Public Procurement Act). A request for a review by a civil law judge can be made. In addition to the judicial procedure, a special form of dispute resolution is offered by the Committee of Procurement Experts, which issues non-binding advice when a party claims that procurement rules have been violated (art. 4.27 of the Public Procurement Act).

Economic operators must be excluded from participating in a procurement procedure in case of convictions for, among other offences, corruption and fraud, and may be excluded from participating in a procurement procedure where a conflict of interest cannot be effectively remedied (arts. 2.86 and 2.87 of the Public Procurement Act).

The Dutch Public Procurement Expertise Centre, PIANOo, is responsible for, inter alia, organizing training activities and improving administrative capacity among public procurement practitioners.

Procedures for the adoption of the State budget are established in the Government Accounts Act 2016. Revenue and expenditure reports must be produced in accordance with articles 2.22, 2.23, 2.28 and 2.29 of the Act. The Netherlands Court of Audit is responsible for conducting an annual audit of the annual financial reports of each ministry, and the Central Audit Service is the independent internal auditor of central Government (art. 1.1 of the Act). The Service may be instructed by a minister to conduct specific audits of "major projects" designated by the House of Representatives (art. 3 of the Central Government Audit Service Decree). Decentralized governments are subject to an annual external audit, including of public procurement.

Civil, administrative and criminal measures on protecting the integrity of accounting books are laid down in the General State Taxes Act (arts. 52, 68 and 69), the Economic Offences Act (arts. 1 and 6), the Civil Code (for example, arts. 2:10, 2:361, 2:362 and 2:394) and the Criminal Code (arts. 225 and 336).

Public reporting; participation of society (arts. 10 and 13)

The Freedom of Information Act establishes, on the basis of article 110 of the Constitution, the principle that, aside from specific statutory exceptions, information in the possession of administrative bodies is public. Public requests for information must be addressed within two weeks, with a possibility of extension for another two weeks (sect. 6 of the Freedom of Information Act). Although there is no oversight body to oversee the enforcement of the right of access to information, an appeal against any denial of access can be made to the public body concerned and in court (art. 6, para. 4, art. 7, para. 1, and art. 8, para. 1, of the General Administrative Law Act). The judge may order that access to the information be provided within a certain time frame and issue a fine to the authority concerned (art. 15b of the Freedom of Information Act).[1]

Draft legislation may be published for consultation online and the comments received from the public are considered in the drafting process.

In 2019, a bill was prepared to amend the Freedom of Information Act, establishing the requirement that government institutions proactively publish certain documents and general information on their organization and functioning).[2]

Measures aimed at simplifying administrative procedures include the establishment of a knowledge and information centre to facilitate effective communication between

[1] Following the country visit, the Freedom of Information Act was repealed and replaced by the Open Government Act.

[2] On 5 October 2021, the Senate approved the Open Government Act, which came into effect on 1 May 2022 and has replaced the Freedom of Information Act.

citizens and the Government and support administrative bodies in adopting an informal and proactive approach to the provision of public information. The centre also mediates between citizens and institutions in complaint, objection and appeal procedures.

The number of corruption investigations in the country's public administration are published by the National Internal Investigations Department through the Public Prosecution Service Annual Review. The Kingdom of the Netherlands does not conduct periodic evaluations on the risks of corruption in its public administration.

The National Internal Investigations Department, which is responsible for investigating corruption in the public sector, is accessible to the public through its website, which allows for anonymous reporting.

Private sector (art. 12)

Listed companies must report on their adherence to the Corporate Governance Code, which sets out principles and best practices on internal auditing controls (principles 1.3 et seq.) and other preventive measures. On the basis of the "comply-or-explain" principle, listed companies must either comply with the provisions of the Code or explain their reasons for deviating from them. The Corporate Governance Code Monitoring Committee reports its findings to the Minister of Economic Affairs and Climate Policy, the Minister of Finance and the Minister of Legal Protection.

A public-private partnership through the Dutch Financial Expertise Centre provides for cooperation between law enforcement and the private sector. Public bodies involved in the fight against corruption, such as the Fiscal Information and Investigation Service and the Public Prosecution Service, organize or contribute to joint workshops for the public and private sector aimed at raising awareness of specific risks of corruption.

Companies registered in the Trade Register must provide beneficial ownership information (arts. 30 and 31 of the fourth revised European Union Transparency Directive).

Provisions on the misuse of procedures governing private entities, including procedures relating to subsidies and licences granted by public authorities for commercial activities, are established in the Public Administration (Probity Screening) Act (chap. 2, arts. 5–7).

The Corporate Governance Code contains a principle on internal audit controls (principle 1.3), but the principle is not enforceable.

The Kingdom of the Netherlands has not imposed restrictions on the professional activities of former public officials in the private sector. For a period of two years following their resignation, former ministers and State secretaries are prohibited from engaging with civil servants from their former ministry or from ministries with which the former minister had active involvement while in office (adjacent policy areas). However, the Secretary-General of the ministry concerned may authorize an exception to that rule.

Obligations on the maintenance of books by private sector entities are laid down in the Civil Code (arts. 2:10, 2:24, 2:361, 2:362 and 2:392–395), the General Customs Act (art. 10:5) and the General State Taxes Act (art. 52). The preparation and use of false documents is criminalized by the Criminal Code (arts. 225 and 336). The General State Taxes Act provides that any obliged person must keep accounting records and make them available for inspection (art. 68 1 (a), (b) and (e)).

The tax deductibility of expenses that constitute bribes is prohibited (art. 3.14 of the Income Tax Act).

Measures to prevent money-laundering (art. 14)

The Money-Laundering and Terrorist Financing (Prevention) Act establishes obligations for various reporting entities, including banks, other financial institutions and designated non-financial businesses and professions (art. 1a). Relevant supervisory authorities include De Nederlandsche Bank N.V. (art. 1d (1a)), the Netherlands Authority for the Financial Markets (art. 1d (1b)), the Financial Supervision Office (art. 1d (1c)), the President of the Netherlands Bar (art. 1d (1d)), the Minister of Finance (art. 1d (1e)) and the Netherlands Gaming Authority (art. 1d (1f)). The customer due diligence requirements under chapter II of the Money-Laundering and Terrorist Financing (Prevention) Act provide for, inter alia, the identification and verification of clients and beneficial owners (art. 3 (2)). All institutions are obliged to file unusual transaction reports to the Netherlands Financial Intelligence Unit (art. 16). The obligation to keep records for at least five years is established under article 33 of the Act.

A risk-based approach is taken under the anti-money-laundering regime (art. 2b of the Money-Laundering and Terrorist Financing (Prevention) Act). The national risk assessment is conducted every two years, which requires the Minister of Finance and the Minister of Justice and Security to jointly publish a report on the risks identified (arts. 1 (1) and 1 (f) (1) of the Act). Reporting entities must use the results of the national risk assessment and the supranational risk assessments produced by the European Commission, in addition to the information they collect, to implement the risk-based approach (art. 2c of the Act). In 2019, the Government launched a national action plan to prevent and combat money-laundering.[3]

The Financial Intelligence Unit is responsible for collecting, processing and analysing information regarding money-laundering and terrorist financing, including the receipt of unusual transaction reports (arts. 13 and 16 of the Money-Laundering and Terrorist Financing (Prevention) Act). Information can be shared at the domestic level between the Unit and the Public Prosecution Service and other law enforcement and supervisory authorities (art. 13 (f) (3) and 13 (g) of the Act). The Unit can also exchange information, spontaneously or upon request, with its foreign counterparts (art. 13a of the Act).

Any natural person entering or leaving the European Union and carrying cash, including bearer negotiable instruments, with a value equal to or exceeding 10,000 euros, should declare that sum to the competent authorities (art. 3 of Regulation (EU) 2018/1672). The customs authorities are responsible for cash controls at the borders. Failure to declare or the act of falsely declaring cash movements are punishable with a fine or a term of imprisonment of not more than four years in the case of intentional failure to declare (art. 10:1 of the General Customs Act). At the time of the country visit, the General Customs Act was being revised to include an obligation to declare cash or cash equivalents of 10,000 euros when entering or leaving the Kingdom of the Netherlands; the customs authorities are required to report such transactions to the Financial Intelligence Unit (art. 9 of Regulation (EU) 2018/1672).

Regulation (EU) 2015/847 on information accompanying transfers of funds is directly applicable in the Kingdom of the Netherlands. The Regulation requires reporting entities to obtain adequate information on payers and payees and maintain proper records (arts. 4, 7, 8 and 16).

The Kingdom of the Netherlands is a member of the Financial Action Task Force and has undergone three rounds of evaluation so far.[4] It was reported that the fourth and fifth European Union money-laundering directives were duly transposed into national law. The national authorities have the ability to cooperate widely with their counterparts through various networks in order to prevent money-laundering.

[3] Following the country visit, the plan was renewed in 2022.

[4] Following the country visit, the Kingdom of the Netherlands completed its fourth evaluation in 2022.

2.2. Successes and good practices

- The establishment of the knowledge and information centre to facilitate effective communication between citizens and the Government, in order to support all administrative bodies in adopting an informal and proactive approach to the provision of public information (art. 10 and art. 13, para. 1 (b)).

2.3. Challenges in implementation

It is recommended that the Kingdom of the Netherlands:

- Ensure that an effective mechanism is in place to evaluate the effectiveness of integrity policies, ensure coordination between government institutions in the formulation, implementation and monitoring of those policies, and endeavour to consistently implement existing preventive practices (art. 5, para. 1).
- Endeavour to periodically evaluate the effectiveness of relevant legal instruments and administrative measures (art. 5, para. 3).
- Ensure the designation of a body or bodies responsible for overseeing and coordinating the implementation of integrity policies at the relevant levels of Government (art. 6, para. 1).
- Enhance transparency in the recruitment of public officials by establishing clear criteria on the recruitment, hiring, retention, promotion and retirement of civil servants, and consider establishing an oversight body to ensure that recruitment is based on the principles of efficiency, transparency and objective criteria (art. 7, para. 1 (a)).
- Establish adequate procedures for the selection and training of individuals for public positions identified as being especially vulnerable to corruption and consider establishing the rotation of such individuals to other positions (art. 7, para. 1 (b)).
- Consider adopting legislative and administrative measures to prescribe criteria for the positions of ministers and State secretaries, and extending the criteria concerning candidature for and election to public office to include no prior convictions for offences established in accordance with the Convention (art. 7, para. 2).
- Consider establishing a comprehensive framework on the funding of candidatures for elected public office beyond candidates for the House of Representatives, establishing a reporting obligation with regard to expenditure, establishing a limit on donations from natural or legal persons, banning anonymous donations, establishing an electoral oversight body and enacting the bill prohibiting foreign donations (art. 7, para. 3).
- Strengthen systems to prevent conflicts of interest and endeavour to extend the obligation to report interests to include assets, and include the interests and assets of close family members; consider establishing a monitoring, verification and sanctions mechanism to ensure compliance with reporting obligations; and consider permitting its competent authorities to share such information with foreign competent authorities (art. 7, para. 4, art. 8, para. 5, and art. 52, para. 5).
- Consider establishing an oversight body to ensure effective access to information through the monitoring of implementation of the access to information legislation (art. 10 (a) and art. 13, para. 1).
- Consider publishing periodic reports on the risks of corruption in the public administration (art. 10 (c)).
- Impose restrictions for a reasonable period of time on the employment of public officials by the private sector, where such employment relates directly to the functions held during their tenure (art. 12, para. 2 (e)).

- Consider taking further measures to ensure that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption (art. 12, para. 2 (f)).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The Kingdom of the Netherlands can apply relevant provisions of the Criminal Code, the Code of Criminal Procedure, the Financial Penalties and Confiscation Orders (Mutual Recognition and Enforcement) Act and the Enforcement of Criminal Judgments (Transfer) Act for the purpose of asset recovery. The Central Authority for Mutual Legal Assistance in Criminal Matters within the Ministry of Justice and Security is the central authority for all forms of judicial mutual legal assistance with regard to non-member States of the European Union, while the Asset Recovery Office acts as the national point of contact for the confiscation and recovery of assets. A bank data retrieval portal serving as the central bank register was created by the Bank Data Retrieval Portal Act.

Information can be shared spontaneously by the Financial Intelligence Unit with its foreign counterparts and through its membership of the Egmont Group of Financial Intelligence Units, or by other authorities through different networks, such as the International Criminal Police Organization (INTERPOL), the European Union Agency for Law Enforcement Cooperation and the European Union platform of asset recovery offices.

The Kingdom of the Netherlands has concluded several multilateral and bilateral agreements and has joined the Camden Asset Recovery Inter-Agency Network and other networks for international cooperation in asset recovery.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Chapter II of the Money-Laundering and Terrorist Financing (Prevention) Act prescribes specific customer due diligence requirements, including verification of customer identities. Reporting entities must conduct enhanced customer due diligence if the business relationship or transaction entails a greater than average risk or if there is an increased geographical risk (art. 8 (1)). Enhanced due diligence measures must also be taken in respect of politically exposed persons (art. 8 (5) to (9)), including both foreign and domestic politically exposed persons. Such measures are also applicable to family members and close associates of politically exposed persons. The Minister of Finance and the Minister of Justice and Security are required to establish a list of positions that qualify as prominent public positions, including domestic politically exposed persons and foreign politically exposed persons based in the Kingdom of the Netherlands (art. 9a). Measures on the identification of beneficial owners are provided under chapter 2 of the Money-Laundering and Terrorist Financing (Prevention) Act (arts. 3, 3a, 4, 8 and 9 and sect. 2.4a), and the beneficial ownership registers for legal entities and for trusts and similar legal arrangements have been established accordingly. All beneficial owners must be identified by obliged entities.

The Ministry of Finance and the Ministry of Justice and Security have issued general guidance on the Money-Laundering and Terrorist Financing (Prevention) Act. In addition, the supervisory authorities have issued various guidelines and advisories tailored to specific sectors, such as the De Nederlandsche Bank N.V. Guidance on the Money-Laundering and Terrorist Financing (Prevention) Act, to assist reporting entities under their supervision in carrying out their obligations under the Act, including in the area of enhanced customer due diligence.

Institutions must maintain records for at least five years after the date of termination of the business relationship or up to five years after completion of the relevant transaction (art. 33 of the Money-Laundering and Terrorist Financing (Prevention) Act).

The Financial Supervision Act prohibits all persons with a registered office in the Kingdom of the Netherlands from providing banking services without a licence granted by the European Central Bank (art. 2:11). In addition, it is prohibited for banks and other financial undertakings to enter into or continue a correspondent relationship with a shell bank or with a bank or other financial undertaking that is known to allow a shell bank to use its accounts (art. 5 (5) of the Money-Laundering and Terrorist Financing (Prevention) Act).

"High-risk" public officials, as designated by the Civil Servants Act, must declare financial interests (art. 5 (1) (d) and art. 8 of the Act), which do not include all types of assets. Each government entity must internally register the declarations. However, there is no centralized monitoring, verification or appropriate sanctioning for non-compliance, or an authority to verify that government entities enforce this obligation. The legislation contains no provisions on the reporting of accounts that public officials have an interest in or signature or other authority over in foreign jurisdictions.

The Financial Intelligence Unit is responsible for receiving, analysing and disseminating unusual transaction reports to the competent authorities (art. 16 of the Money-Laundering and Terrorist Financing (Prevention) Act). The Unit may also request further data or information from reporting entities if it deems it necessary (art. 17 of the Act). It cooperates with national authorities and foreign financial intelligence units pursuant to article 13 of the Act and is a member of the Egmont Group. A draft bill authorizing the Unit to temporarily suspend unusual financial transactions was under consultation at the time of the country visit.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Foreign States have legal standing in the country's courts. They can initiate action in civil proceedings to establish title to or ownership of property, for example through "revindication" or through a claim for unlawful enrichment or an unlawful act (arts. 5:2, 6:212 and 6:162 of the Civil Code). In addition, when the defendant is the "owner" of the disputed property, foreign States may obtain ownership of the property that has been unlawfully taken in lieu of compensation as an injured party in civil proceedings (art. 6:103 of the Civil Code).

Foreign States can also join criminal proceedings and claim compensation or damages as a victim that has suffered an economic loss or other harm directly caused by a criminal offence (arts. 51 (a)–(h) of the Code of Criminal Procedure; art. 36f Criminal Code). The Kingdom of the Netherlands reported that in criminal proceedings, property can be returned directly to original owners, including foreign States, pursuant to the Code of Criminal Procedure (arts. 116 and 353). If the judge finds that the hearing of the claim of the injured party imposes a disproportionate burden, the injured party can be referred to a civil court (art. 361 of the Code). In addition, the interested parties may file a written complaint to the criminal court about the confiscation of objects belonging to them within three months of a decision becoming enforceable (art. 552 (b) of the Code).

The Kingdom of the Netherlands distinguishes between foreign confiscation orders issued by European Union member States and non-member States. The Financial Penalties and Confiscation Orders (Mutual Recognition and Enforcement) Act is applicable to the enforcement of confiscation orders from States members of the European Union where a confiscation order would be recognized and enforced under national law (arts. 4, 22 and 35). The convicted person and interested parties may appeal against the recognition and enforcement of a confiscation order to the Northern

Netherlands District Court (arts. 27 and 39). With regard to the enforcement of a foreign confiscation order from a non-member State of the European Union, the order would be transposed into a domestic confiscation judgment and enforced in the Kingdom of the Netherlands (arts. 14–16, 18–28 and 30–33 of the Enforcement of Criminal Judgments (Transfer) Act). A public hearing should be held for that purpose, and the court should hear the opinions of the public prosecutor and the defendant (arts. 28 (2) and 31a). There is also a possibility to appeal against the decision of the court (art. 32).

Confiscation of the proceeds and instrumentalities of money-laundering and other criminal offences is envisaged under the Criminal Code (arts. 33 (1), 33a and 36e). National law does not provide for non-conviction-based confiscation, although lawmakers were reviewing the possibility of introducing such a procedure at the time of the country visit. However, it was reported that foreign non-conviction-based confiscation orders could be enforced in the Kingdom of the Netherlands, as the Financial Penalties and Confiscation Orders (Mutual Recognition and Enforcement) Act and the Enforcement of Criminal Judgments (Transfer) Act do not distinguish between confiscation orders in that regard.

Similarly to the enforcement of foreign confiscation orders, the Kingdom of the Netherlands also distinguishes between requests for seizure from European Union member States and non-member States. Seizure within the European Union is governed by articles 5.5.1. to 5.5.19 of the Code of Criminal Procedure, in which the mutual recognition and enforcement of European Union freezing orders is regulated. With regard to requests from non-member States of the European Union, insofar as it is provided by a treaty, including the Convention, property that would be confiscated under the law of the foreign State may be seized and preserved at the request of that foreign State (art. 13a of the Enforcement of Criminal Judgments (Transfer) Act). Such requests could either entail a foreign seizure order or demonstrate that such an order would have been issued if the relevant property had been in the territory of the foreign State.

The Kingdom of the Netherlands reported that it may initiate its own investigation on the basis of a foreign arrest or criminal charge that involved a substantial suspicion of criminal offences without asking for a foreign request. The administration of assets is governed by the Seized Objects (Safekeeping) Decree, under the responsibility of the Asset Management Office and other relevant agencies.

The Kingdom of the Netherlands has received and executed foreign requests for confiscation of property before. In addition, a domestic criminal and financial investigation into gains unlawfully obtained by a person under investigation in a foreign State may be initiated in the Kingdom of the Netherlands following a request from that State made on the basis of the Convention (art. 13 of the Enforcement of Criminal Judgments (Transfer) Act). Investigative powers, including asset tracing and seizure, can be applied as part of criminal and financial investigations.

The Kingdom of the Netherlands reported that it could communicate directly with foreign authorities prior to refusing a request or lifting a provisional measure (art. 5.1.4 (5) of the Code of Criminal Procedure). The interests of bona fide third parties are protected under article 552a and 552b of the Code.

Return and disposal of assets (art. 57)

There is no domestic legislation governing the return and disposal of assets. Return of property to a requesting State, including the deduction of reasonable expenses, is conducted pursuant to bilateral mutual legal assistance agreements or on a case-by-case basis. According to several mutual legal assistance agreements, confiscated assets would be kept by the requested State; however, the possibility would exist for those assets to be returned or shared, with due consideration for the interests of bona fide third parties.

In addition, the Ministry of Justice and Security is authorized to conclude agreements with the competent authority of the requesting State on the disposal of confiscated assets pursuant to the Convention. Such agreements may entail the full or partial transfer of assets to the foreign requesting State with a view to compensating injured parties or returning the assets to the entitled parties. In this regard, the Kingdom of the Netherlands reported several cases involving the full return of assets.

3.2. Successes and good practices

- The establishment of two beneficial ownership registers (art. 12, para. 2 (c), and art. 52, para. 1).
- The multidisciplinary approach taken by the Public Prosecution Service in confiscation cases, including the use of specialized teams.

3.3. Challenges in implementation

It is recommended that the Kingdom of the Netherlands:

- Clarify the application of different legal bases for mutual legal assistance and asset recovery by, for example, developing an asset recovery guide (art. 51).
- Strengthen systems to prevent conflicts of interest and endeavour to extend the obligation to report interests to include assets, and include the interests and assets of close family members; consider establishing a monitoring, verification and sanctions mechanism to ensure compliance with reporting obligations; and consider permitting its competent authorities to share such information with foreign competent authorities (art. 8, para. 5, and art. 52, para. 5).
- Consider requiring appropriate public officials to report foreign accounts in a foreign country that they have an interest in or signature or other authority over and to maintain relevant records (art. 52, para. 6).
- Take the necessary measures to ensure that the direct enforcement of foreign confiscation orders issued in States parties that are not members of the European Union is timely and streamlined (art. 54, para. 1 (a)).
- Although the Kingdom of the Netherlands is able to enforce non-conviction-based confiscation orders issued by foreign authorities, in order to provide mutual legal assistance, consider taking the necessary measures to allow confiscation of property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence (art. 54, para. 1 (c)).
- Adopt legislative or other measures to ensure that confiscated assets be disposed of pursuant to the requirements of the Convention, including by returning property to its prior legitimate owners or compensating the victims of the offences, and consider concluding agreements for the final disposal of confiscated property (art. 57, paras. 1, 3 and 5).
- Consider allowing the Financial Intelligence Unit to administratively freeze or suspend suspicious transactions (art. 58).