Country Review Report

of the Netherlands

Review by Uruguay and Australia of the implementation by the Netherlands of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015
I. Introduction

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

II. Process

The following review of the implementation by the Netherlands of the Convention is based on the completed response to the comprehensive self-assessment checklist received from the Dutch authorities, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Australia and Uruguay, by means of telephone conferences and e-mail exchanges and involving, inter alia, the following experts:

**Australia**
- Mr. Kieran Butler, Principal Legal Officer, Anti-Corruption Section, International Crime Cooperation Division, Commonwealth Attorney-General’s Department;
- Ms. Muriel Joseph, Senior Principal Legal Officer, Anti-Corruption Section, International Crime Cooperation Division, Commonwealth Attorney-General’s Department.

**Uruguay**
- Mr. Ivan Toledo, Secretary of State of the Transparency and Public Ethics Committee (Comptroller Office).

A country visit, agreed to by the Netherlands, was conducted in The Hague and Amsterdam from 15 to 17 October 2013. During the country visit, the representatives from the reviewing States parties and the Secretariat had meetings with officials from national institutions and agencies in the Netherlands involved in the implementation at the domestic level of anti-corruption measures and policies, including: the Ministry of Security and Justice; the Public Prosecution Service; the National Police Internal Investigations Department; the Financial Intelligence and Investigation Service (FIOD); the Financial Intelligence Unit of the Netherlands; and the Bureau of the Financial and Economic Police. The members of the review team also had meetings with representatives who presented the perspectives of the judiciary (Centre for Fraud and Financial Crime at the Amsterdam Court of Appeal). A separate meeting was held with representatives from the National Ombudsman; non-governmental organizations (Dutch chapter of Transparency International; and Corporate Social
Responsibility – CSR Foundation); the private sector (national office of the International Chamber of Commerce; Shell International; Van Oord Dredging and Marine Contractors); and members of the academia.

III. Executive summary

1. Introduction: Overview of the legal and institutional framework 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 Netherlands on 10 December 2003 and was proposed to the Parliament for tacit approval by the Minister of Foreign Affairs in September 2006.

After the Convention was tacitly approved, 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 the Caribbean part of the Netherlands as from 10 October 2010.

Article 94 of the Constitution states that provisions of international treaties override contradicting statutory law if those provisions are binding on all persons. Accordingly, the Convention against Corruption has become, with its publication, an integral part of Dutch domestic law, ranking above national legislation.

The Kingdom of the Netherlands previously consisted of three countries: the Netherlands in Europe, the Netherlands Antilles and Aruba. On 10 October 2010, the Netherlands Antilles was dissolved, and the Kingdom of the Netherlands now consists of four separate countries: the Netherlands (in Europe and the Caribbean), Aruba, Curaçao and Sint Maarten. The islands of Bonaire, Sint Eustatius and Saba have now become a part of the Netherlands as special municipalities. These special municipalities resemble other Dutch municipalities in most ways.

The Caribbean part — Bonaire, Sint Eustatius and Saba — of the Netherlands has its own Penal Code (PC), which is closely related to the Dutch PC to enable, as highlighted by the Dutch authorities, among other things, the fulfilment of the requirements of international conventions on corruption. The scope of these conventions was automatically extended to Bonaire, Saba and Sint Eustatius when they became a part of the Netherlands.

Curaçao introduced a brand new PC, which entered into force on 15 November 2011. As duly reported by the Dutch authorities, Aruba and Sint Maarten are also in the process of introducing a new PC using the same model. However, while treaties and conventions may be concluded only by the Kingdom and not by its constituent parts, their applicability may be confined to one or more countries. The decision that a treaty or convention is applicable to one of the respective countries within the Kingdom is an autonomous affair of that specific country.

Bearing in mind the separate country status within the Kingdom of Netherlands of Curaçao, Sint Maarten and Aruba, the following findings of the review relate only to the implementation of the Convention against Corruption in the Netherlands in Europe and the Caribbean (Bonaire, Sint Eustatius and Saba).
2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

**Bribery and trading in influence (arts. 15, 16, 18 and 21)**

Articles 177 to 178a PC establish as a criminal offence the active bribery of public officials. These provisions also cover persons whose appointment as a public official is pending, as well as former public officials. Passive bribery of domestic public officials is covered by articles 362 to 364a PC.

The criminal provisions on active and passive bribery include the terms “gift”, “promise” and “provide or offer a service”. All gifts, including customary gifts of little value (for example representational gifts) potentially fall within the scope of the criminal provisions on bribery.

Article 84 PC does not give a definition of the term “public official”. In case law, the term “public official” is understood to include “anyone who has been appointed by the public authorities to a public position, in order to perform a part of the duties of the state and its bodies”. Moreover, “whether the person can also be classified as a public official in terms of employment law is irrelevant”. Instead, it matters that “the person has been appointed under the supervision and responsibility of the government to a position of which the public nature cannot be denied”.

It is not necessary for the briber to hand the gift or service to the public official directly. Intermediaries fall within the scope of the bribery provisions. The gift or service may also be intended for a third-party beneficiary.

The provisions on passive bribery include the element of “request” or “acceptance” of a gift, promise or service. It is irrelevant whether the public official accepted the gift or promise in his capacity of “public official”. Gifts accepted outside the public official’s activities also classify as “objects of bribery”.

It is not required that the public official is authorized to carry out an official act. It is only required that his/her functions enabled him/her to carry out the act. It is irrelevant whether the act or omission actually took place.

Articles 178a and 364a PC ensure that public officials under the Dutch legislation are equated with “persons in the public service of a foreign State or of an international organization”.

New legislation is being prepared, proposing to criminalize active and passive bribery of a public official in articles 177 and 363 PC, irrespective of whether the public official was bribed to act (or not to act) in breach of his duties. The new law will increase the maximum penalty to imprisonment of six years.

Changes have been made to the text of the Instruction on Investigation and Prosecution of Foreign Corruption, emphasizing a more proactive approach when another country has already started a criminal investigation in a case where the Netherlands also has jurisdiction.

Active and passive bribery in the private sector have been criminalized in article 328ter PC. This provision concerns every form of bribery that does not involve a public official, without making a distinction by
sectors of society (profit/non-profit).

Article 328ter PC does not explicitly restrict the criminalization of private sector bribery to acts committed “in the course of business activity”. The nature of the activities or the mandate is irrelevant; this may also involve non-commercial activities. This was considered by the reviewing experts as a good practice.

At the time of the country visit, new legislation was being prepared placing the central focus of article 328ter PC on conduct contrary to one’s duty on the part of an employee. With the draft bill, a higher maximum sentence for bribery in the private sector is being proposed (four years of imprisonment).

There are no specific provisions on trading in influence in Dutch legislation. The review team took note of the argument that the criminalization of bribery in the PC provides enough scope to prosecute the exercise of improper influence for obtaining an undue advantage. However, further to discussions during the country visit, the review team encouraged the national authorities to reconsider the establishment of the offence of trading in influence in Dutch legislation.

**Money-laundering, concealment (arts. 23 and 24)**

The Netherlands has criminalized money-laundering through articles 420bis, 420ter and 420quater PC. The money-laundering offences address all material elements of the offences, as defined in article 23 of the Convention against Corruption.

The Netherlands follows a “threshold approach” in defining predicate offences for money-laundering purposes. Money-laundering is an autonomous offence under Dutch legislation and may be prosecuted independently from the predicate offence.

At the time of the country visit, a new bill was being prepared aiming at expanding the possibilities for combating financial economic crime. This proposed law would increase the maximum sanctions for different forms of money-laundering.

The acts described in article 24 of the Convention against Corruption (concealment) fall within the scope of articles 416 to 417bis (receipt of stolen property) and 420bis to 420quater (money-laundering) PC.

**Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)**

The Dutch PC contains general provisions on embezzlement, theft and fraud, which may be committed by all persons (articles 310, 321, 326), as well as provisions on offences committed by a civil servant while in office (articles 359, 361, 365 and, indirectly, 227b).

The definition of the acts related to abuse of functions is already largely covered under the forms of bribery, as described above. Furthermore, under certain circumstances, the more general offences against property, embezzlement and theft also fall within the scope of article 19 of the Convention against Corruption.

Illicit enrichment is not criminalized in the Netherlands. Although the criminal behaviour underlying this offence can be prosecuted on the basis of the provisions on money-laundering, the reviewing experts recommended that the national authorities reconsider the establishment of the offence of illicit enrichment.
Obstruction of justice (art. 25)

The use of physical force, threats or intimidation to induce false testimony or to interfere in the giving of testimony or the production of evidence falls within the scope of articles 284 and 285a PC. The use of bribery means (promise, offering or giving of an undue advantage) for the same purposes is covered by article 178 PC (in relation to judges) and 207 in combination with article 47, paragraph 2, PC (solicitation of perjury).

Article 25(b) of the Convention against Corruption is implemented through articles 179 and 180 PC, which establish criminal responsibility for the acts of coercion and resistance.

Liability of legal persons (art. 26)

According to article 51 PC, a legal person can be deemed punishable for bribery (and any other punishable crime). According to the Supreme Court, the determining criterion for the attribution of a criminal offence to the legal person is whether the conduct took place or was carried out “in the spirit of the legal entity”.

Article 51, paragraph 2, PC specifies that criminal proceedings may be instituted simultaneously or separately against legal and natural persons, and that penalties may be imposed on either the legal or the natural person, or both.

At the time of the country visit, a new bill was being prepared, which was aimed at making the fines for legal persons more flexible and therefore more proportionate, dissuasive and effective in practice.

Participation and attempt (art. 27)

Article 45 PC criminalizes the attempt to commit a criminal offence. Articles 47 and 48 PC further criminalize the procuring, assisting, solicitation or aiding and abetting of an offence and stipulate that such conduct may be subject to the same sanction as the main offence.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The applicable sanctions for the commission of offences covered by the Convention against Corruption were found to be proportionate, dissuasive and effective. The review team also welcomed ongoing legislative initiatives aimed at further increasing the sanctions for concrete corruption-related offences.

According to article 42, paragraph 2, of the Constitution, the King enjoys immunity and therefore criminal proceedings cannot be brought against him. Article 71 of the Constitution states that members of the Parliament (Staten-Generaal), ministers, State secretaries and other persons taking part in deliberations may not be prosecuted or otherwise held liable in law for anything they say during the meetings of the Parliament or its committees or for anything that they submit to them in writing.

Apart from this non-liability immunity, politicians may be investigated, prosecuted and sentenced for any offence. Nonetheless, article 119 of the Constitution institutes a special procedure for the prosecution of certain offences by (former) members of Parliament, ministers and State secretaries.
The Supreme Court has confirmed in a number of decisions that the public prosecutor is not authorized to prosecute (former) ministers and members of parliament on accounts of offences involving the abuse of their office. Only the Government (by a Royal Decree) and the Lower House of Parliament are authorized to order such a prosecution.

Prosecutions are conducted according to the principle of prosecutorial discretion. The process of out-of-court settlement is governed by article 74 PC and involves, among other things, the payment of a sum of money by the defendant to the State in order to avoid criminal proceedings (“transaction”). Moreover, it can involve the payment of the estimated proceeds acquired from the criminal offence, as well as compensation for any damage caused. It is available in relation to “serious offences,” excluding those for which the penalty of imprisonment is more than six years.

The Instruction on Large and Special Transactions contains rules for out-of-court settlements involving large amounts of money. Full immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence is not possible.

**Protection of witnesses and reporting persons (arts. 32 and 33)**

In the Dutch legal system the whole system of witness protection is legally constructed under one provision in the Criminal Procedure Code (CPC) and elaborated in various administrative orders, merely describing the procedure.

For public servants, there is a whistle-blower procedure by which a public servant can report suspected unethical conduct, as defined by the Central and Local Government Personnel Act. Discussions in Parliament on further action in this field, especially covering the private sector, are ongoing. The review team welcomed these developments and encouraged the national authorities to complete the process of enacting new legislation in this field.

**Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)**

In the Netherlands, there are two different schemes for confiscation, i.e. “ordinary” and special confiscation. Special confiscation consists of the imposition of an obligation on the person convicted of an offence to pay the State a sum in restitution for illicit earnings (article 36(e), para. 1, PC).

The specialized office of the Public Prosecution Service (Criminal Assets Deprivation Bureau Public Prosecution Service) assists prosecutors with the (special) confiscation aspects of criminal prosecutions and is also responsible for the administration of seized or confiscated property.

A special criminal financial investigation may be initiated when a preliminary investigation has shown the likelihood of illegally obtained profits or advantages amounting to at least 12,000 euros, and where it is also expected that the profits or advantages obtained from the commission of the offence will exceed this amount.

Newly enacted revisions of the provisions on confiscation revolve around the following:

- Expansion of “ordinary” confiscation to ensure that “subsequent benefits” (benefits derived from offences which were invested or
transferred into other objects) are subject to confiscation;

- Introduction of statutory presumptions of evidence in the “special confiscation” regime. If a person is convicted of a serious and potentially lucrative crime, all income this person enjoyed within a period of six years prior to the conviction and all expenditure during that period are deemed to have been originated from, or to be in connection with, the related offence. The presumptions can be refuted by the defendant on the balance of probabilities;

- Extension of “precautionary seizure/third-party precautionary seizure”. Assets that belong to a third party can be seized if there are indications that all, or part of, the objects came into the possession of the third party with the apparent intention of impeding or preventing confiscation. Hence, assets that were transferred to a third party prior to the commission of the offence are also subject to seizure;

- Extension of the scope and use of financial investigation to enable its continuation until the confiscation order has become final. In case of non-payment of the confiscation order, an investigation may now be conducted into the assets of the convicted person; and

- Enabling the imposition of precautionary seizure of the assets of the defendant on behalf of the victim.

The national authorities confirmed that bank secrecy does not pose difficulties in corruption-related investigations. In view of the threshold of four years of imprisonment foreseen in the legislation for certain offences under investigation as a prerequisite for collecting and submitting bank information, the reviewing experts encouraged the national authorities to complete the process of enacting a bill that increases the maximum sanctions for bribery in the public and private sectors.

**Statute of limitations; criminal record (arts. 29 and 41)**

Pursuant to article 70 PC, the statute of limitations period is calculated on the basis of the maximum sentence for the offence and varies from 3 to 20 years. Crimes carrying a sentence of life imprisonment do not have a statute of limitations.

At the time of the country visit, new legislation was being prepared aiming at increasing the maximum sentences for certain criminal offences, such as bribery and money-laundering and, thus, extending the period of limitations.

Recidivism is regarded as a general ground for an increase in penalty, also taking into account previous convictions in a foreign jurisdiction. The Netherlands is also party to the European Criminal Records Information System.

**Jurisdiction (art. 42)**

Article 2 PC provides for jurisdiction on the basis of the principle of territoriality. The principle of territoriality is given a wide scope in the Dutch legislation. If a part of the criminal offence is committed in the Netherlands, the Netherlands will have joint jurisdiction, pursuant to the principle of territoriality.

Article 4 PC establishes jurisdiction on the basis of the passive personality principle, subject to the requirement of double criminality. Under article 5 PC, the Dutch criminal law extends to any Dutch person
who commits a crime abroad (active personality principle), subject to the requirement of double criminality.

Article 6 PC provides for jurisdiction with regard to public office offences committed by Dutch public officials outside the Netherlands (article 6, subparagraph 1, PC). The term “public office offences” applies to the criminal provisions on passive bribery of public officials. Double criminality is not required in this case.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The Dutch legislation incorporates various means of contesting agreements that have involved corruption. This type of legal act may be void on the grounds of incompatibility with public morality or public order or on the grounds of vitiated consent.

The Public Procurement Act has established the mandatory exclusion of tenderers convicted of corruption and financial crime offences. The winning tenderers must also submit a “certificate of good conduct”, which is issued by the Ministry of Justice and Security.

Dutch legislation also provides for the possibility of injured parties having their claim for compensation for damage included in criminal proceedings.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Various investigative authorities in the Netherlands are responsible for detecting corruption offences and can carry out investigations: the police, the National Police Internal Investigations Department and the Fiscal Intelligence and Investigation Service. The National Police Internal Investigations Department is a Special Investigation Service and has the same investigative powers as the regular police.

In 2000, the Ministry of Justice created a national public prosecutor for executing and coordinating criminal prosecutions for corruption offences.

Cooperation and consultation between investigative authorities and other government organizations is given shape by means of different obligations and structures.

Under the responsibility of the Ministry of Security and Justice, a multidisciplinary anti-corruption task force has been set up, the “Platform on Fighting Corruption”, bringing together representatives from the Government, scientific and private sectors and civil society.

The Dutch authorities have also collaborated with the private sector to promote company internal controls, ethics and compliance programmes.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- The involvement of a large number of law enforcement agencies in investigations of money-laundering and the relatively high number of prosecutions and convictions for money-laundering and other offences;
- The coherent legal framework on freezing, seizure and
confiscation of proceeds of crime;

- The fact that the nature of the activities is not a constituent element of the provision criminalizing bribery in the private sector and, thus, non-commercial activities may also be covered;

- The existence of courts and judicial authorities which are specialized in fraud and financial crime, especially in view of the challenges involved in successfully prosecuting complex fraud and financial crime in many jurisdictions where judges are unfamiliar with the intricacies and technical details of these crimes;

- The possibility of pre-trial voluntary asset forfeiture: while not a formal procedure, the reviewers praised the Dutch authorities for the national experiences in some high-profile corruption cases of offering defendants the option of voluntary pre-trial asset forfeiture, which can then be taken into account at sentencing. It should be noted that this approach is in many ways desirable from victims’ perspectives, as it means they can receive compensation immediately instead of waiting for the conclusion of the trial (which may take years).

2.3. Challenges in implementation

While noting the advanced anti-corruption legal system of the Netherlands, the reviewers identified some challenges in implementation and/or grounds for further improvement and made the following remarks to be taken into account for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant Convention against Corruption requirements):

- Reconsider the establishment of the offence of trading in influence;

- Reconsider the establishment of the offence of illicit enrichment;

- While praising the national authorities for the initiative to start preparing a new bill that increases the maximum sanctions for bribery in the public sector (article 177a PC) and in the private sector (article 328ter PC), encourage them to complete the process of enacting the bill in order to increase the possibilities for the collection and submission of bank information for domestic investigations (which require a threshold of four years of imprisonment of the criminal offence under investigation);

- Complete the process of enacting new legislation in the field of protection of reporting persons; and

- While praising the national authorities for the initiative to start preparing a new bill on the sanctions against legal persons, encourage them to continue efforts to make the fines against legal persons more flexible, and therefore more proportionate, dissuasive and effective in practice.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings
A two-tier system on extradition has been put in place in the Netherlands. With regard to other member States of the European Union, the surrender of fugitives is carried out in line with the requirements of the European Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States of the European Union. The Framework Decision was domesticated through the Surrender Act. With regard to other countries, the Extradition Act is applicable.

The Netherlands makes extradition conditional on the existence of a treaty and considers the Convention against Corruption as a legal basis for extradition. So far no extradition cases based solely on the Convention have been assessed by a court in the Netherlands.

Although trading in influence and illicit enrichment have not as such been established as offences in the Dutch legal system, the underlying behaviour of these offences can in practice be covered by offences such as attempted bribery and negligent money-laundering. The fact that the Netherlands has a flexible approach on the issue of double criminality and has criminalized as “equivalent conduct offences” offences covered by the Convention would seem to reduce any concerns on requirements for double criminality.

The grounds for refusal of extradition requests are set out in the Extradition Act and the Surrender Act. Extradition cannot be refused on the ground that the offence involves fiscal matters.

The ability of the Netherlands to extradite its own nationals was favourably noted. Such extradition is allowed only for the purpose of prosecution, under the guarantee that if the extradited Dutch national was to be sentenced to imprisonment in the requesting State, he or she would be allowed to serve the sentence in the Netherlands. In practice, where a request for extradition is refused on the ground of nationality, the Dutch authorities normally forward the case to the prosecution authorities without delay, in application of the principle “aut dedere aut judicäre”.

The length of extradition proceedings invariably depends on whether the person appeals against the decision of the court and/or the Minister of Security and Justice. Simplified extradition procedures are in place. The European arrest warrant process has contributed to substantially shortening the period needed for the surrender of a fugitive to another European Union member State.

In the case of refusal of extradition requested for the purpose of enforcement of a sentence, the sentence can be taken over by the Netherlands.

The Netherlands is bound by regional instruments on extradition and multilateral instruments providing a basis for extradition. Bilateral extradition treaties with 18 countries and territories were also reported.

The Dutch legislation of the Enforcement of Criminal Judgments (Transfer) Act and the Judgments in Criminal Matters (Mutual Recognition and Enforcement) Act govern the transfer of prisoners into and out of the Netherlands. The Netherlands has concluded four bilateral treaties on transfer of prisoners and is a party to relevant regional instruments.

If extradition is refused on the ground of nationality, the Netherlands
can generally take over the proceedings from the requesting State.

**Mutual legal assistance (art. 46)**

The Netherlands does not have in place overarching legislation for the provision of mutual legal assistance, but may grant such assistance directly based on the CPC. The CPC permits judicial authorities to respond to mutual legal assistance requests in the broadest possible sense. Without a treaty, cooperation is still possible albeit more limited, as it cannot involve coercive measures. The same rule applies in case of reciprocity.

The Netherlands requires dual criminality for certain types of legal assistance involving coercive measures, and for the execution of foreign verdicts. Mutual legal assistance for non-coercive measures can be afforded in the absence of dual criminality.

Article 552l CPC sets out the grounds for refusal of mutual legal assistance requests. The fiscal nature of the offence is not a ground for refusal of MLA requests.

Bank secrecy is not a ground for refusal of mutual legal assistance requests (see, however, above the pertinent recommendation of the review team).

The Netherlands has designated as a central authority for mutual legal assistance requests the Department on International Legal Cooperation on Criminal Matters of the Ministry of Security and Justice.

The execution of mutual legal assistance requests can be carried out in accordance with the procedure specified in the request, as long as this does not conflict with the Dutch legislation.

The Netherlands is bound by regional instruments on mutual legal assistance (or with provisions on mutual legal assistance). Bilateral treaties on mutual legal assistance with 21 countries and territories were also reported.

**Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)**

Law enforcement authorities engage in broad, consistent and effective cooperation with international counterparts to combat transnational crime, including offences covered by the Convention against Corruption.

The Proceeds of Crime Bureau operating within the Public Prosecution Service serves as the Dutch centre of expertise and national office dealing with assistance in respect of the confiscation of the proceeds of crime. Liaison officers are stationed in countries that maintain considerable criminal contact with the Netherlands and countries with a different legal system.

The Netherlands is a full member of the International Criminal Police Organization (INTERPOL) and exchanges relevant information with National Central Bureaus of other connected countries via the secured I-24/7 network. Through the National Unit, the Netherlands makes use of the secured mail system SIENA (Secure Information Exchange Network Application) in order to exchange relevant information with both European Union partners and the European Police Office (Europol).

Investigating authorities in the Netherlands make use of the mechanism of joint investigation teams, in particular with civil law jurisdictions in
Europe.

A large number of special investigative means have been regulated in the CPC, including infiltration, telephone and e-mail tapping, systematic observation, covert surveillance and controlled deliveries. All special investigative techniques are admitted in corruption cases. The evidence derived from the use of such techniques is admissible in court proceedings.

Although a treaty basis is required for the deployment of special investigative techniques, this criterion is applied with enough flexibility to provide the assistance requested.

3.2. Successes and good practices

Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of the Convention against Corruption:

• The establishment of a comprehensive legal framework on international cooperation in criminal matters which encompasses all forms of international cooperation;

• The fact that the Netherlands handles a high volume of mutual legal assistance and international cooperation requests with an impressive level of execution. The efficient operations of the Netherlands in this sphere are carried out by regular law enforcement authorities, but also through the effective use of specialized agencies to deal with requests involving particularly complex and serious offences, including offences covered by the Convention. The effective use of this unique organizational structure merits recognition as a success and good practice under the Convention;

• The flexible interpretation of the double criminality requirement based on the underlying conduct of the offence.

3.3. Challenges in implementation

The following points are brought to the attention of the Dutch authorities for their action or consideration (depending on the mandatory or optional nature of the relevant Convention requirements) with a view to enhancing international cooperation to combat offences covered by the Convention:

• While praising the national authorities for the initiative to start preparing a new bill that increases the maximum sanctions for bribery in the public sector (article 177a PC) and in the private sector (article 328ter PC), encourage them to complete the process of enacting the bill in order to increase the possibilities for obtaining and providing bank information and evidence under mutual legal assistance (which requires a threshold of four years of imprisonment of the criminal offence under investigation);

• Continue efforts to put in place and render fully operational an information system, compiling in a systematic manner information on extradition and mutual legal assistance cases, with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements; in doing so, devote more human resources and make a greater effort to maintain statistics regarding compliance with chapter IV of the Convention.
IV. Implementation of the Convention

A. Ratification of the Convention

The Convention was signed by the Netherlands on 10 December 2003. The Convention was proposed to the Parliament for tacit approval by the Minister of Foreign Affairs, after having heard the Council of State, on 4th/19th September 2006. The Governors of the Netherlands Antilles and Aruba were requested to submit the Convention to the Parliament of the Netherlands Antilles and the Parliament of Aruba on 19 September 2006.

Since no expression of the wish for explicit approval (by the Senate, the House of Representatives or the Ministers Plenipotentiary) was received, the Convention was tacitly approved. The document of acceptance was deposited with the Secretary-General of the United Nations on 31 October 2006.

The approval was given for the Kingdom of the Netherlands in Europe.

B. Legal system of the Netherlands

The Dutch Constitution takes a monist approach to international conventions. Article 93 of the Constitution states that provisions of treaties and of resolutions by international institutions, which may be binding on all persons by virtue of their contents, shall become binding after they have been published.

Article 94 of the Constitution states that provisions of international treaties override contradicting statutory law (“Statutory regulations...shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions”). Accordingly the UN Convention against corruption has become, with its publication, an integral part of Dutch domestic law, ranking above national legislation.

According to the memorandum of the Minister of Foreign Affairs to the Parliament asking for approval of the Convention, the approval did not require any legislative action with the exception of some amendments to the technical aspects of the Dutch Extradition Act, which were planned to be incorporated into the Penal Code. Other than that, the amendments for the international instruments to which the Netherlands became a State Party before UNCAC were considered sufficient enough to meet the obligations also under UNCAC.

The Netherlands is a parliamentary democratic constitutional monarchy. It borders the North Sea to the north and west, Belgium to the south and Germany to the east. The capital is Amsterdam and the seat of government is The Hague. The Netherlands is densely populated. At this moment (November 2012), approximately 16,792,000 people live in the Netherlands, on 41,562 km2. It is a geographically low-lying country, with about 27% of its area and 60% of its population located below sea level. Significant areas have been gained through land reclamation and preserved through an elaborate system of polders and dikes. The Netherlands was a founding member of the UN, NATO, the European Communities (now the European Union), the International Monetary Fund, the World Bank and the West European Union. As a relatively small country with a globally-oriented economy, the Netherlands attaches great importance to multilateral and international relations.

Dutch economy

The Dutch economy is a private free-market system. The main impact of the government on the economy is through regulation and taxation. The Dutch have long been renowned as merchants and a significant part of the economy is now based on foreign trade. Its exports and imports of goods and
services comprise 82.6 and 74.5 per cent of its GDP, respectively. These large shares are pushed upwards by a large volume of re-export activities, reflecting Rotterdam’s role as a gateway to Europe (OECD Economic Survey of the Netherlands, 2012). In 2011, the Netherlands ranked 8th in the world in terms of level of exports (CIA World Factbook, Netherlands Country Profile). A large share of the export of goods are machinery-related and chemical products, while the major sectors with regard to the export of services include business, professional and technical services, franchises (and similar rights), and air and sea transport. With regard to the export of goods, the major trading partners of the Netherlands are member states of the European Union (EU) (in particular Germany, Belgium, France, and the UK), the United States and China. The major trading partners with regard to the export of services are also EU member states (in particular Ireland and Germany), and the United States. The Netherlands is home to some of the world’s largest corporations, including Royal Dutch Shell and Unilever.

Along with the United States, the Netherlands has consistently been one of the main proponents of international free trade and the reduction of duties and tariffs on goods and services. As a member of the European Union (EU), the Netherlands uses as a currency the Euro.

**System of government**

The Netherlands has been a constitutional monarchy since 1848. The Constitution (Grondwet) determines that the government i.e. the Ministers are responsible for government policy, rather than the Monarch. The Queen enjoys a position of immunity. The Netherlands is a parliamentary democracy. The State is ruled by the government under the supervision of the parliament. The government consists of the Ministers under the leadership of the Prime Minister (minister-president). Parliament consists of an Upper House, or Senate (Eerste Kamer) and a Lower House, or House of Representatives (Tweede Kamer).

The 150 members of the Lower House are elected directly by the citizens of the Netherlands. In principle, there are elections every four years. The main task of the Lower House is to supervise the government’s actions. The Lower House has several powers to do this. One of the most important is the right of amendment, i.e. the right to change bills proposed by the Cabinet. The Minister responsible for the proposed bill can adopt such an amendment, s/he can submit it to a vote in the Lower House or s/he can reject it. In this case the Lower House may table a motion of `no confidence’ against the Minister or the Cabinet. This can ultimately lead to the resignation of the Minister or the Cabinet. The Lower House may also exercise the right of initiative, i.e. the right to propose bills, the right of interpellation, i.e. the right to demand clarification from a Minister, the right of inquiry and the right of budget. These rights form the basis of parliamentary democracy in the Netherlands.

The Netherlands has three administrative layers: the State, the provinces (provincies) and the municipalities (gemeenten). Elections are held every four years for the Provincial Councils and the municipalities. Delegates from the Provincial Councils elect the members of the Upper House; the members of the Upper House are elected indirectly. The Upper House is co-legislator and monitors government policy. All bills which have been passed in the Lower House must also be approved by the Upper House. The Upper House can reject a bill but it cannot propose or amend bills. Furthermore the members of the Upper House have the same rights as members of the Lower House.

Currently the Netherlands has 11 Ministries. Each Ministry is headed by a Minister who bears political responsibility for the policy pursued by that Ministry. S/he is supported in this task by one or occasionally two State Secretaries (staatssecretarissen). The civil servants in each Ministry assist the Minister and State Secretary in their work. They maintain an apolitical stance, according to the loyalty principle. After elections, the civil servants continue to work at the same Ministry for the newly appointed Ministers and State Secretaries.

The Netherlands does not have a constitutional court. The Raad van State (Council of State) must be consulted on all bills and draft proposals. Its rulings are not formally binding, but are nonetheless
The courts

The Netherlands is a civil law country. Its laws are written and the application of customary law is exceptional. The role of case law is small in theory, although in practice it is impossible to understand the law in many fields without also taking into account the relevant case law.

A large proportion of Dutch law is laid down in international agreements, the Constitution, legal codes, acts and municipal and provincial ordinances. As defined by the Constitution, the Judiciary (Organization) Act and other acts, the role of the courts in applying the law is to create order and shape its development.

The Netherlands is divided into 19 districts, each with its own court (rechtbank). Each district court is made up of a maximum of five sectors, which always include the administrative law (bestuursrecht), civil law (civiel recht), criminal law (strafrecht) and sub-district law sector (sector kanton). Appeals against judgments passed by the district court in civil and criminal law cases can be lodged at the competent Court of Appeal (Gerechtshof). There are five Courts of Appeal in total. Appeals against administrative law judgments can be lodged at the competent specialised administrative law tribunal - the Administrative Jurisdiction Division of the Council of State, the Central Appeals Tribunal or the Trade and Industry Appeals Tribunal, also known as Administrative High Court for Trade and Industry, depending on the type of case. Appeals in cassation in civil, criminal and tax law cases are lodged at the Supreme Court of the Netherlands (Hoge Raad der Nederlanden).

The Council for the Judiciary (Raad voor de Rechtspraak) is part of the judiciary system, but does not administer justice itself. It has taken over responsibility over a number of tasks from the Minister of Security and Justice. These tasks are operational in nature and include the allocation of budgets, supervision of financial management, personnel policy, ICT and housing. The Council supports the courts in executing their tasks in these areas. Another central task of the Council is to promote quality within the judiciary system and to advise on new legislation which has implications for the administration of justice. The Council also acts as a spokesperson for the judiciary on both national and international levels.

The Public Prosecution Service

The Public Prosecution Service (Openbaar Ministerie) and the courts together make up the judiciary. The Public Prosecution Service consists of:
- The Board of Procurators-General and its Office
- The district Public Prosecutors Offices
- The National Office of the Public Prosecution Service
- The Public Prosecutors Offices at the Courts of Appeal

The Public Prosecution Service is headed by a Board of Procurators-General which determines policies with regard to investigations and prosecutions. It also supervises the National Police Internal Investigations Department (Rijksrecherche).

The Board of Procurators-General is responsible for 19 regional departments. There is a Public Prosecutor’s Office in every town which is the seat of a court. A Chief Public Prosecutor, who is responsible for ensuring that the policy of the Public Prosecution Service is implemented in his/her
district, heads it. The five courts of appeal are each assigned their own Public Prosecutor’s Office. There is also a ‘prosecution office’ at the Supreme Court. The Procurator General and his/her staff at the Supreme Court are - like judges - independent and appointed for life.

Article 124 of the Judicial Organisation Act provides that the Public Prosecution Service is responsible for the criminal enforcement of the legal system and for other tasks as established by law. The Public Prosecution Service’s main tasks are:
- investigating criminal offences;
- prosecuting offenders;
- making sure that sentences are carried out properly.

The Public Prosecution Service is the only body that can decide to prosecute somebody. Its field of work is criminal law, it does not get involved in, for example, disputes about dismissal or quarrels between neighbours. Such matters are dealt with by the civil courts. The Public Prosecution Service only concerns itself with criminal offences, both minor and serious.

The police are responsible for the practical side of criminal investigations. They collect evidence, interview witnesses and victims, and arrest suspects. And they are required to keep a complete record of the case in the form of an official report. However, the Public Prosecution Service has the ultimate responsibility for the investigation. The police have to render account for their actions to one of the public prosecutors of the Public Prosecution Service. Every investigation is carried out under the instructions of a public prosecutor, who ensures that the police observe all the rules and procedures laid down by law. This is of particular importance in the case of a serious offence, where the public prosecutor will be in direct charge.

The Public Prosecution Service is also responsible for supervising investigations carried out by other authorities, such as the Fiscal Intelligence and Investigation Service (FIOD). If necessary, the public prosecutor may authorise the police to apply certain coercive measures. The Public Prosecution Service does not have unlimited powers, and certain measures may only be taken with permission from the courts. Examples are house searches and telephone-tapping.

Prosecution begins as soon as the courts become involved in a case, even if no-one has actually appeared in court. For instance, the court may be asked to issue a warrant for remand in custody if someone is suspected of having committed a serious offence. The person in question can then be detained for a limited period of time.

The public prosecutor may have reason to decide not to prosecute a case and may therefore drop the charges against the suspect. This could be the case, for instance, if the police have not managed to collect sufficient evidence. But the charges may also be dropped for other reasons, as a matter of policy. The public prosecutor can also decide to settle a case out of court. Prosecutions in the Netherlands are conducted according to the principle of prosecutorial discretion (opportuniteitsbeginsel). Article 167 of the Code of Criminal Procedure delegates the decision to prosecute to the Public Prosecution Service. The Public Prosecution Service has a discretionary power to dismiss a case, to settle a case out of court or to choose for what offence/which offences a suspect shall be prosecuted. The decision to prosecute is however not a matter of arbitrariness, because the public prosecutor is subject to general guidelines (Instructions, or Aanwijzingen) for the prosecution of a number of offences. These Instructions counterbalance the discretionary powers of the Public Prosecution Service.

Anyone who is directly involved in a case may object to the charges being dropped by lodging a complaint with the Court of Appeal. If the Court says the complaint is well founded, the Public Prosecution Service has to start a prosecution.

If the Public Prosecution Service does not drop the charges or settle out of court, the suspect has to appear in court. He is sent a summons; a letter stating when the case is to be heard and giving a
description of the offence or offences with which he is charged. The defendant may only be tried on those counts. Relatively minor offences are heard in a court presided over by a single judge. More serious cases are heard by three judges.

The case against a defendant is presented in court by the public prosecutor. After he has explained in full the charges that have been filed, the court questions the defendant. The public prosecutor is also given an opportunity to question the defendant. He then gives his opinion of the case and requests the court to impose what he considers an appropriate sanction.

One of the Public Prosecution Service’s tasks is also to protect the interests of people who have suffered as the result of a crime. It advises them on how to claim compensation and keeps them informed of progress in the case. It can also negotiate between the offender and the victim to arrange compensation.

The Public Prosecution Service is accountable to two separate authorities. First, the courts, which review the conduct of the Public Prosecution Service and the police services. Second, the Minister of Security and Justice, who has political responsibility for the Service’s conduct and performance, and may be called upon to render account to the Parliament.

The Minister is concerned with general policy on investigations and prosecutions. Only rarely does he intervene in individual cases, although he might issue instructions to the Service’s public prosecutors after consulting the Board of Procurators-General. If the Minister decides to issue instructions to the Public Prosecution Service, he keeps the court hearing the case in question fully informed. It is of course the court that makes the ultimate decision in criminal prosecutions. If the Minister decides that a person will no be prosecuted, he has to inform Parliament of his decision.

For more information on the organisation of the Public Prosecution Service, please refer to the Brochure Public Prosecution Service (Annex 1) and the Brochure National Prosecutor's Office (Annex 2).

Revision of the judicial map of the Netherlands

Recently the bill “Revision judicial map” was approved by the Senate. This bill proposes to diminish the number of district courts from 19 to 10. Also the number of courts of appeal will be reduced from five to four. The bill will also change the composition of the boards of the court. At this moment the board of the courts consist of a president, director of operations and sector heads. In the future the boards will consist of three members: two judges, from which one will be the president, and one non-judge, who will function as the director of operations.

Furthermore the present division within the court by sectors will be lifted. This will create the possibility for courts to work more on themes which can bring the necessary expertise on a subject together. It is expected that this new bill will contribute to the needs and the demands of society. This bill will come into force on the 1st of January 2013.

Changing the geographical distribution of district courts and courts of appeal will improve the efficiency of the judicial system. This up-scaling will increase the possibilities of handling cases within a district court or court of appeal in a more structured manner. It will also widen the scope for courts to gain expertise in specialist fields, to administer customized justice, and to make the administration of justice more transparent for the citizens.

The Public Prosecution Service will also follow this division, resulting in ten district public prosecutor’s offices. In addition, the existing five public prosecutor’s offices at the courts of appeal will be replaced by one national public prosecutor’s office at the court of appeal. However, not much will change for the Public Prosecution Service, because the new division of districts coincide with the
The new division into ten districts will also apply to the distribution of the future regional units of the national police corps which is to be set up (see text below).

**Investigative authorities**

Various investigative authorities are responsible for detecting corruption-offences and can carry out investigations: the police, the National Police Internal Investigation Department (Rijksrecherche) and the Fiscal and Economic Intelligence and Investigation Service (FIOD).

For information on the police organisation, please refer to the brochure ‘Policing in the Netherlands’ (Annex 3). This brochure was produced in 2009. After that, there has been an important change with regard to the responsible Minister for the police organisation. In October 2010, part of the tasks of the Ministry of Interior and Kingdom Relations (amongst others, responsibility for the police organisation) were transferred to the Ministry of Justice. From then on, the Ministry of Justice became the Ministry of Security and Justice. The brochure ‘Working on a Safe and Just Society’ (Annex 4) contains a brief description of the organization structure, as well as of the goals and responsibilities of the Ministry of Security and Justice.

The function of the Dutch National Police Internal Investigation Department (NPIID) is to be an investigative authority, with a focus on the detection of punishable crimes committed by (semi-)governmental officials. The NPIID is an independent part of the Dutch police force, falls under the authority of the Board of Procurators-General and has the same investigative powers as the regular police. For more information on the NPIID, please refer to the answers under Article 36 (Specialized authorities) and <http://www.om.nl/vast_menu_blok/english/the_national_police/>.

The Fiscal Intelligence and Investigation Service (FIOD) is a special investigation service of the Tax and Customs Administration. The FIOD is in charge of the preliminary investigation of economic and tax crimes reported by tax authorities.

If the Tax and Customs Administration suspects fraud, the matter is referred to the FIOD. The FIOD then assesses whether fraud is indeed being committed. If this is the case, the FIOD, in consultation with the Public Prosecution Service, may decide to start a criminal investigation. In this context, particular attention is paid to the social interest of a prosecution and to feasibility. The final outcome of the investigation is set out in an official report. In nearly 90% of cases, the public prosecutor decides to prosecute the suspect. This can be done by summoning the suspect to appear in court, but in the case of fiscal fraud the public prosecutor may also opt for an administrative settlement. This means that the Tax and Customs Administration will impose a fine on the fraudster.

The FIOD also performs supervisory activities in the area of economic planning, financial integrity and goods movements. This involves matters such as bankruptcy fraud, anti-laundering legislation and the Health Care Charges Act (Wet tarieven gezondheidszorg). In addition, the FIOD contributes to the fight against organised crime and terrorism by mapping out money flows of criminal and terrorist organisations. Because such organisations are not restricted by borders, the FIOD cooperates with foreign (sister) organisations. The FIOD also has a special task in investigating cases of private corruption.

Together with the FIOD there are 4 special investigative services. The FIOD is part of the Ministry of Finance, the Social Affairs and Employment Inspectorate (Inspectie Sociale Zaken en Werkgelegenheid) of the Ministry of Social Affairs and Employment, the Human Environment and Transport Inspectorate (Inspectie Leefomgeving en Transport) of the Ministry of Infrastructure and the Environment and the Intelligence and investigation service of the Food and Consumer Product Safety
Authority (Voedsel en Waren Autoriteit) of the Ministry of Economic Affairs. The Social Affairs and Employment Inspectorate, the Human Environment and Transport Inspectorate and the Intelligence and investigation service of the Food and Consumer Product Safety Authority do not have a special task in investigating corruption. Nevertheless, if they come across any corruption offences during their regular ongoing investigations, these special investigative authorities can include these offences in their investigations.

**Police reorganization: a national police force**

The Dutch police is going to be reorganised. There will be changes to the police management structure and the division of responsibilities. The police is now organised in 25 regional forces plus the KLPD, each with its own chief. These regional forces will be replaced by a national police force, consisting of ten regional units and a national unit.

The reorganization of the Dutch police has a number of advantages, amongst other things:
- The police can work more as a unit if all police officers are subordinated to a single national police commissioner.
- As a result, they will be able to spend more time patrolling the streets and investigating crime.
- Officers will spend more time on policing, because they will spend less time on paperwork.
- There will be less bureaucracy, for instance because it will be easier to lodge a criminal complaint.
- The various entities within the police will work together more promptly and effectively (especially in the area of computerisation).

The Minister of Security and Justice will have full ministerial accountability for the national police force. The Minister will determine the budget and set the framework within which the national police force will work.

Authority over the police will not change. The mayor and the chief public prosecutor will still make local agreements about police deployment. Each municipality will draw up a public safety and security plan, which will serve as a basis for the mayor’s management of the police.

For more information on the police reorganisation, please refer to the brochure ‘National Police’ (Annex 5). Note: unlike the brochure says, the national police force has not been launched on 1 January 2012, but will instead be launched on 1 January 2013.

**Memorandum on the prevention of corruption**

In November 2005, in the ‘Memorandum on the prevention of corruption’, the Minister of Justice and the Minister of the Interior and Kingdom Relations outlined - along five lines of policy (integrity, registration, signs of corruption, criminal law enforcement and the Platform on Fighting Corruption) - the measures that the government at the time intended to take in order to fight the corruption of public servants. This Memorandum is still topical in current policy. Please refer to Annex 6.

**Policy on tackling financial economic crime**

In 2007 the Dutch government started a comprehensive government programme aimed at tackling financial crime - the Programme for Reinforcement of Measures against Financial and Economic Crime (FINEC) - in which all ministries and involved agencies co-operated closely. Simultaneously, the government Reinforcement Programme against Organized Crime was launched. The two
programmes included differing but similar elements and were designed in a mutually reinforcing manner.

The principle guiding the Dutch financial crime policy is to make the Netherlands a hostile environment for committing financial crime. The Netherlands believes that this can only be achieved through a system of prevention, disruption and enforcement, operating across organisational and geographical boundaries.

The FINEC programme is an innovative, programmatic approach, which means including all relevant actors (public and private) in combination with the reinforcement of existing measures. The implementation of the reinforcement programme involves the Ministry of Security and Justice, the Ministry of Finance, the Ministry of the Interior and Kingdom Relations, special investigation agencies, the police, the Public Prosecution Service, along with all its specialized agencies and private sector actors (such as insurance companies and banks).

The overall programme on financial crime, FINEC, brought significant expansion of law enforcement agencies involved in the tackling of financial crime.

The FINEC programme lasted until 2011. The current government has more or less continued the reinforcements made in the FINEC programme through its confiscation of illicit gains programme (*Programma Afpakken*). This national programme, which started in February 2011, ensures that law enforcement authorities ((The Public Prosecutor, the Police, Special Investigation Services) can confiscate more money (and in a smarter and more effective way) from criminals. In the upcoming years, structurally more money has to be confiscated, ultimately resulting in an amount of 100 million euro in 2018. Through an effective and efficient use of all instruments of criminal, administrative, tax and civil law, the emphasis placed on confiscation ensures that crime does not pay.

**The Caribbean parts of the Kingdom of the Netherlands**

*New constitutional structure*

The Kingdom of the Netherlands has recently undergone a process of constitutional reform. The changes concern the Netherlands Antilles, a country that until recently was made up of the islands of Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba. The reforms are based on the results of referenda and on decisions taken by representative assemblies about the islands’ future constitutional status. The results, with one exception, were unequivocal: the islands no longer wanted to be parts of the Netherlands Antilles, yet they also did not want to sever their ties with the Kingdom of the Netherlands. The exception, Sint Eustatius, voted to remain a part of the Netherlands Antilles.

On the basis of an outline agreement concluded in 2005, which set out agreements on constitutional reforms, financial and economic issues, law enforcement and good governance, a series of conferences was launched with the aim of taking a coordinated and parallel approach to dealing with the complexities of this process. This led, in October and November 2006, to final declarations on the constitutional position of Bonaire, Sint Eustatius and Saba, and of Curaçao and Sint Maarten. At the Round Table Conference in Curaçao on 15 December 2008, the Netherlands and the other Kingdom partners reached agreement on the new constitutional structure of the Kingdom.

The conclusions of the final Round Table Conference were signed on 9 September 2010. These stated that the amended Charter for the Kingdom of the Netherlands would enter into force as planned on 10 October 2010. As of 10-10-'10 the Netherlands Antilles has ceased to exist.
Autonomous Caribbean countries of the Kingdom of the Netherlands (Aruba, Curaçao and Sint Maarten)

In the new constitutional structure, Curaçao and Sint Maarten have acquired the status of countries within the Kingdom (like the Netherlands Antilles and Aruba before the changes). Aruba retains the separate country status it has had since 1986. Thus, as from 10 October 2010, the Kingdom consists of four, rather than three, equal countries: Aruba, Curaçao and Sint Maarten are not Dutch overseas dependencies, but full, autonomous partners within the Kingdom, alongside the Netherlands.

The new status means that Curaçao and Sint Maarten – like Aruba – now enjoy a high degree of autonomy on internal matters. Nevertheless, some issues are considered Kingdom affairs. Examples of these Kingdom affairs are the maintenance of the independence and the defense of the Kingdom, foreign relations and Dutch nationality, according to Article 3 of the Charter for the Kingdom of the Netherlands.

As separate countries, Curaçao, Sint Maarten and Aruba have their own governments and are responsible for their own legislation. As laid down in the Charter for the Kingdom of the Netherlands, Aruba, Curaçao and Sint Maarten are, for example, responsible for their own governance, education, legal and law enforcement system.

Quite recently Curaçao introduced a brand new Criminal Code, prepared by Erasmus University Rotterdam in the Netherlands, which entered into force on 15 November 2011. This new Criminal Code contains dedicated chapters on crimes and offences committed by civil servants, ministers, members of Parliament and judges in their official capacity. Punishable offences include criminal offences such as bribery, abuse of authorities, extortion, and fraud. Using the same model, Aruba and Sint Maarten are also in the process of introducing a new Criminal Code.

The new Criminal Codes (will) contain the necessary provisions to comply with the international conventions on corruption (like UNCAC). However, while treaties and conventions may be concluded only by the Kingdom and not by its constituent parts, their applicability may be confined to one or more countries. The decision that a treaty or convention is applicable to one of the respective countries within the Kingdom is an autonomous affair of that specific country.

Caribbean part of the Kingdom of the Netherlands (Bonairem Sint Eustatius and Saba)

The three other islands, Bonaire, Sint Eustatius and Saba have voted for direct ties with the Netherlands and are now part of the Netherlands, thus constituting ‘the Caribbean part of the Netherlands’ (CN). The relationship’s legal form will be that each island has the status of public body within the meaning of article 134 of the Dutch Constitution. In broad terms, their position is now like that of Dutch municipalities, with adjustments for their small size, their distance from the Netherlands and their geographic situation in the Caribbean region.

The legal system of the CN is based on civil law. Although part of the Netherlands now, the CN share a separate legal system that is largely derived from the law of the former Netherlands Antilles. Although the CN have their own set of legislation, certain laws of the Netherlands also apply in the CN.

An amended version of the Netherlands Antilles Criminal Code was introduced for Bonaire, Saba and Sint Eustatius, to be able to fulfill the requirements posed by the international conventions on corruption. The scope of these conventions has automatically been extended to Bonaire, Saba and Sint Eustatius, since they became a part of the Netherlands.

Every resident of the three islands who has Dutch nationality now has the right to vote in elections to the Dutch House of Representatives alongside the existing right to vote in European Parliament
elections. They are not, however, allowed to vote in Provincial Council elections because the public bodies are not part of any Dutch province.

**Responsibility for foreign relations**

The constitutional changes did not affect the way in which the Kingdom conducts its foreign relations.
- The Kingdom’s external borders have not changed.
- Foreign relations and defence remain ‘Kingdom affairs’. These are dealt with in the Council of Ministers for the Kingdom, which meets in The Hague. The governments of the Caribbean countries are represented in the Council by a minister plenipotentiary. The Aruban government has its seat in Oranjestad, the government of Curaçao is based in Willemstad and the government of Sint Maarten in Philipsburg.
- There is one Minister of Foreign Affairs, who has ultimate responsibility for foreign relations for the Kingdom as a whole.
- The Ministry of Foreign Affairs and the embassies, consulates and permanent missions/representations abroad continue to work for the Kingdom as a whole and all its constituent parts.
- As of 10 October 2010, the Caribbean countries of the Kingdom of the Netherlands (Aruba, Curaçao and Sint Maarten) each have their own Foreign Relations Department.
- While treaties and conventions may be concluded only by the Kingdom and not by its constituent parts, their applicability may be confined to one or more countries. In other words, such agreements may be concluded by the Kingdom for one or more individual parts of the Kingdom.

**Law enforcement authorities and the judiciary**

The Caribbean parts of the Netherlands (Bonaire, Sint Eustatius and Saba) have one single police force. The police force of the CN is now called ‘Korps Politie Caribisch Nederland (KPCN)’ or the Dutch Caribbean Police Force and consists of a combination of a part of the capacity of the former Sint Maarten, Sint Eustatius, Saba Police Force and the Bonaire Police Force (that, until 10 October 2010, together were part of the Netherlands Antilles Police Force).

The tasks and responsibilities of the KPCN have been laid down in the Kingdom Act Police Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba. The KPCN has the task to ensure, in accordance with the applicable rules and regulations, the effective enforcement of the law and providing assistance to those who are in need.

As for the management of the KPCN, the Minister of Security and Justice of the Netherlands is the competent authority, and can provide the necessary instructions to the chief of police. The Director-General of Police of the Dutch Ministry of Security and Justice is the mandated Regional Police Force Manager. S/he is responsible for the overall (integral) management of the KPCN.

Under the authority of the joint Procurator General of Curaçao, Sint Maarten and the Caribbean parts of the Netherlands, the National Police Internal Investigations Department (‘Rijksrecherche’) is responsible for investigations that concern integrity issues in Bonaire, Sint Eustatius and Saba. Aruba, Curaçao and Sint Maarten each have their own police force. Since 10 October 2010, as part of the agreements between the Kingdom partners to reorganize constitutional relations, the Police Force Curaçao (KPC – Korps Politie Curaçao) and the Police Force Sint Maarten (KPSM - Korps Politie Sint Maarten) were introduced, in addition to the already existing Police Force Aruba (KPA - Korps Politie Aruba). The three Caribbean countries of the Kingdom of the Netherlands also each have their own Landsrecherche; a special police force dedicated to investigating possible criminal conduct of government officials and civil servants.

In addition to these local law enforcement agencies, the Police Investigation Cooperation Team (RST
The Recherche Samenwerkingssteam was established in 2001. The main task of this cooperation between the Kingdom countries is the investigation of international and organized crimes, and crimes for which special expertise is required. The RST supports, where necessary, the investigation units of the local police forces of Aruba, Curaçao, Sint Maarten and the Caribbean parts of the Netherlands.

![Figure a. Global overview of the police organization in the Kingdom of the Netherlands](image)

Since 10 October 2010 there are three new independent public prosecution services in the Kingdom of the Netherlands: Curaçao, Sint Maarten and the Caribbean parts of the Netherlands. These three new public prosecution services each have their own chief prosecutor. There is a single (or joint) Procurator General at the head of these three public prosecution services, which is accountable to the Ministers of (Security and) Justice of Curaçao, Sint Maarten and the Netherlands.

The organizational structure, the tasks and responsibilities of the three public prosecution services and the joint Procurator General are laid down in the Kingdom Law on the Public Prosecution Services of Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba. Aruba already had, and still has, its own public prosecution service, with its Procurator General.

A case that is dealt with in court for the first time generally falls under the jurisdiction of the Court of First Instance, which is an organizational part of the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and the Caribbean parts of the Netherlands. The Courts of First Instance of Aruba, Curaçao and Sint Maarten are located in the respective countries; the Court of First Instance of the Caribbean parts of the Netherlands is located in Bonaire.

The Joint Court of Justice of Aruba, Curaçao, Sint Maarten and the Caribbean parts of the Netherlands is, thus, responsible for the administration of justice in first instance, but also in appeal cases. The Joint Court of Justice consists of a presiding judge, the other members, and their substitutes. The members of the Joint Court of Justice deal, in first instance and in appeal procedures, with civil cases, criminal cases, and cases of administrative law.

The Supreme Court of the Kingdom of the Netherlands (which has its seat in The Hague) is the highest court in Aruba, Curaçao, Sint Maarten, the Caribbean parts of the Netherlands and the Netherlands itself. It is, thus, the court of cassation for the Joint Court of Justice of Aruba, Curaçao,
Sint Maarten and the Caribbean parts of the Netherlands and therefore has the authority to quash, or to annul, verdicts of the Joint Court of Justice.

Figure b. Global overview of the Public Prosecution Service and the judiciary in the Caribbean region of the Kingdom of the Netherlands

Questions & Answers

What does the constitutional reform mean for the Kingdom?

On 10 October 2010 the Netherlands Antilles ceased to exist as a country within the Kingdom of the Netherlands. The Caribbean part of the Kingdom of the Netherlands is now made up of the countries of Aruba, Curaçao and Sint Maarten (each with its own government) and, as public bodies of the Netherlands, the islands of Bonaire, Sint Eustatius and Saba. As in Aruba, the government of the Kingdom is represented in the new countries of Curaçao and Sint Maarten by a Governor. The island councils have been abolished, and thus there is only one tier of government.

Will there be changes to the way in which the Kingdom promotes its interests abroad?

The Kingdom will continue to promote its interests abroad in the same way.
- The Kingdom’s external borders have not changed.
- Foreign relations and defence remain ‘Kingdom affairs’.
- The Minister of Foreign Affairs continues to represent the Kingdom of the Netherlands as a whole.
The Ministry of Foreign Affairs and the missions abroad continue to work for the Kingdom as a whole and all its constituent parts.

While treaties and conventions may be concluded only by the Kingdom and not by its constituent parts, such agreements may be applied to the Kingdom as a whole, or to its constituent parts individually, or in any combination.

As of 10 October 2010, the Caribbean countries of the Kingdom of the Netherlands (Aruba, Curaçao and Sint Maarten) each have their own Foreign Relations Department.

How are governance and legislation organised following the constitutional reform?

Like Aruba, the new countries, Curaçao and Sint Maarten, each have their own government and parliament. Together, these institutions are empowered to enact legislation in regard to the countries’ own affairs. The Dutch public bodies of Bonaire, Sint Eustatius and Saba have the power to regulate their own internal affairs. Each public body has a local executive and a local council. The residents of the public bodies are eligible to vote in elections to the Dutch House of Representatives (and in European Parliament elections). In each public body there is also a branch of the Dutch government’s new Department for the Netherlands in the Caribbean (Rijksdienst Caribisch Nederland), in which each government ministry is represented.

What is the Netherlands’ role in relation to the other countries of the Kingdom following the constitutional reform?

The Netherlands works together with the Caribbean countries in the Kingdom in the interests of protecting the independence of the judiciary, tackling corruption and cross-border crime, and maintaining public order. A joint Court of Justice is responsible for the administration of justice in the Caribbean part of the Kingdom, and a single Procurator General is in charge of the Public Prosecution Service for Curaçao, Sint Maarten, and Bonaire, Sint Eustatius and Saba. Aruba has its own Procurator General. The three police forces serving Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba respectively also work together closely. Cooperation in the context of the joint criminal investigation team (Recherche Samenwerkings Team, RST) will be continued for the time being. The Netherlands is also involved in financial oversight of the two new countries and the three public bodies.

How does the Netherlands manage its governance tasks on Bonaire, Sint Eustatius and Saba now that they have public body status?

Bonaire, Sint Eustatius and Saba now maintain two tiers of government, i.e. a local authority and the Dutch central government. Broadly speaking, central government has taken over the duties performed previously by the Antillean authorities. The local government is under the control of the local representative assembly (‘the island council’). As well as taking over the tasks of the Netherlands Antillean authorities, the Dutch government has also taken on certain tasks previously the responsibility of the islands, such as management of the fire service.

The implementation of the Netherlands' tasks on Bonaire, Sint Eustatius and Saba (and the related support services) is the responsibility of the Department for the Netherlands in the Caribbean (Rijksdienst Caribisch Nederland), which has a branch on each of the islands. In addition, the Department implements the Minister of the Interior and Kingdom Relations’ official tasks as the employer of all public servants on Bonaire, Sint Eustatius and Saba, including the police, the fire service and employees of the care administration office. That said, the police force and fire service maintain their own management structures.

In the short term, the aim is to improve education, public safety, public health, infrastructure and other facilities and services on the islands.
How is financial supervision organised following the constitutional reforms?

A Financial Supervision Authority has been established for Curaçao and Sint Maarten to supervise public finances under the ultimate responsibility of the Council of Ministers for the Kingdom. A similar body has been set up for Bonaire, Sint Eustatius and Saba under the minister responsible for Kingdom Relations. This type of oversight structure will continue to exist in the new constitutional situation. The underlying supervisory principles are a balanced budget, prudent financial management and a cap on contracting debt.

Has there been any change to the Joint Court of Justice of the Netherlands Antilles and Aruba as a result of the constitutional reforms?

The existing Joint Court of Justice of the Netherlands Antilles and Aruba has become the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and the Caribbean part of the Netherlands (i.e. Bonaire, Sint Eustatius and Saba). The Supreme Court remains the court of cassation for the Caribbean parts of the Kingdom.

How does the Kingdom ensure that public order, safety and security are maintained in the new constitutional situation?

Responsibility for maintaining public order, safety and security and running the emergency services on Curaçao and Sint Maarten now fall to the respective Ministers of Justice of the new countries. On Bonaire, Sint Eustatius and Saba the local authorities will be responsible for public order, crisis management and disaster response. The Public Safety and Security Act for Bonaire, Sint Eustatius and Saba also provides for special powers in the event of incidents whose scale exceeds a single island’s capacity.

What is the role of the Public Prosecution Service in the different countries of the Kingdom in the new constitutional situation?

Investigative and prosecutorial powers rest with the Procurator General. There is a single Procurator General for all the Caribbean parts of the Kingdom that once made up the Netherlands Antilles: the new countries of Curaçao and Sint Maarten and the three new public bodies of the Netherlands: Bonaire, Sint Eustatius and Saba. The Procurator General is the head of the public prosecution services in the new countries and the new public bodies. There is a joint Procurator General’s Office, with a staff including two advocates general. In Aruba, the situation has not changed in any respect as a result of these reforms. That country continues to have its own Procurator General.

What is the relationship between the Caribbean parts of the Kingdom and the EU?

The Netherlands is a European Union member state, but Aruba, Curaçao, Sint Maarten, and the Caribbean part of the Netherlands (Bonaire, Sint Eustatius and Saba) are not. Instead they have the status of Overseas Countries and Territories (OCT). As a result, the islands enjoy a number of advantages, for example where the export of goods to the EU is concerned. In addition, the islands receive funding from the European Development Fund (EDF). And since citizens of the Caribbean parts of the Kingdom are Dutch nationals and thus EU citizens, they may also vote in European Parliament elections. The constitutional reform does not affect the islands' relationship with the EU.
How is the Representation of the Netherlands in Aruba, Curaçao and Sint Maarten organized?

Since 1 January 2011, the Representation of the Netherlands in the Netherlands Antilles and the Representation of the Netherlands in Aruba has been integrated to form the Representation of the Netherlands in Aruba, Curaçao and Sint Maarten. It is a single Representation led by a single Representative, with an office in each of the three countries. The head of each office is the deputy Representative in that country. The Representation will continue to represent all Dutch ministries (apart from the Ministries of Defence and Foreign Affairs, whose responsibilities span the Kingdom as a whole). It may thus be considered an ‘outpost’ of the Netherlands. As well as reporting to the Netherlands, the Representation is tasked with preparing and assisting with visits by members of the Dutch government, officials and other dignitaries. It also provides information on Dutch policy with respect to Aruba, Curaçao and Sint Maarten, and general consular assistance to Dutch nationals in difficulty and detainees. The activities of the Representation in the Caribbean are thus comparable to that of an embassy.

C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The Netherlands cited the following texts:

Article 177 Penal Code (Bribery, in violation with official duty)
1. Punishment in the form of a prison sentence of no more than four years or a fine in the fifth category will be imposed on:
1°. Whoever makes a gift or a promise to a civil servant or provides or offers him a service with a view to getting him to carry out or fail to carry out a service in violation of his duty;
2°. Whoever makes a gift or a promise to a civil servant or provides or offers him a service in response to or in connection with a service, past or present, that the official carried out or failed to carry out in violation of his duty.
2. The same punishment will apply to anyone who commits an offence as described in the first paragraph, under 1°, against a person who has prospects of an appointment as a civil servant, if the appointment as a civil servant is followed.
3. Removal of the rights states in Article 28, first paragraph, under 1°, 2° and 4° can be pronounced.

Article 177a Penal Code (Bribery, not in violation with official duty)
1. Punishment in the form of a prison sentence of no more than two years or a fine in the fifth category will be imposed on:
1°. Whoever makes a gift or a promise to a civil servant or provides or offers him a service with a view to getting him to carry out or fail to carry out a service that is not in violation of his duty;
2°. Whoever makes a gift or a promise to a civil servant or provides or offers him a service in response to or in connection with a service, past or present, that the official carried out or failed to carry out, without this being in violation of his duty.
2. The same punishment will apply to anyone who commits an offence as described in the first paragraph, under 1°, against a person who has prospects of an appointment as a civil servant, if the appointment as a civil servant is followed.
3. Removal of the rights states in Article 28, first paragraph, under 1°, 2° and 4° can be pronounced.

Article 178 Penal Code (Bribery of a judge)
1. Whoever makes a gift or a promise to a judge or provides or offers him a service with a view to exerting influence on his decision in a case that is subject to his judgment will be punished with a prison sentence of at most six years or a fine in the fifth category.
2. If the gift or promise is made or the service is provided or offered with a view to obtaining a conviction in a case, the guilty person will be punished with a prison sentence of at the most nine years or a fine in the fifth category.
3. Removal of the rights stated in Article 28, first paragraph, under 1°, 2° and 4° can be pronounced.

Article 178a Penal Code (Extended definition of a civil servant)
1. With regard to Articles 177 and 177a, persons working in the public service of a foreign state or an organisation governed by international law are equivalent with civil servants.
2. With regard to Articles 177, first paragraph, under 2°, and 177a, first paragraph, under 2°, former civil servants are equivalent to civil servants.
3. With regard to Article 178, judges in a foreign state or an organisation governed by international law are equivalent to judges.

Article 23 Penal Code (Categories fines)
(…)
2. The minimum amount of the fine is € 3.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
a. the first category, € 390;
b. the second category, € 3.900;
c. the third category, € 7.800;
d. the fourth category, € 19.500;
e. the fifth category, € 78.000;
f. the sixth category, € 780.000.
(…)

Article 28 Penal Code (Deprivation of rights)
1. In the cases defined by law, a person found guilty may be deprived from the following rights under a court order:
   1. Holding office or any specific public office;
2. Serving in the army;
3. The right to elect members of any general representative body and to be elected as a member of such body;
4. Being a counsel or court-appointed administrator;
5. Exercising specific professions.

(…)

Article 84 Penal Code (‘Public officials’)
1. ‘Public officials’ include members of general representative bodies.
2. ‘Public officials’ and ‘judges’ include arbiters; ‘judges include those who exercise administrative jurisdiction.
3. All personnel of the armed forces are also to be regarded as ‘public officials’.

The Netherlands provided the following commentary to the laws:

Articles 177 to 178a of the Penal Code establish as a criminal offence the active bribery of public officials. Article 177 criminalizes the providing of a gift, a promise, a service or the offer of a service to a civil servant with a view to or in connection with a service that the official carried out of failed to carry out in violation with his duty. Article 177a establishes the same conduct as article 177, with the difference that the conduct of the official in connection to which the bribe is given is not in violation with the civil servant’s duty. These provisions also cover persons whose appointment as public official is pending, as well as former public officials. They apply to judges too, but in addition to this, Article 178 Penal Code covers the specific (aggravated) offence of active bribery of a judge to influence a decision in a case that is subject to his judgment or to obtain a conviction in a criminal case.

‘Promising, offering or giving’

The criminal provisions on active and passive bribery include the terms ‘gift’, ‘promise’ and ‘provide or offer a service’. The elements ‘promising, offering or giving’ are included by reference to the words “makes a gift or a promise, or provides or offers a service” in the provisions of active bribery of public officials.

Making a ‘gift’ consists of giving something; making a promise consists of undertaking to provide something (holding out the prospect of a gift). The gift may consist of something tangible, something capable of being passed from one person to another, although this is not essential. For example, the Supreme Court ruled that a ‘gift’ not only concerns the acceptance of material gain, but also the acceptance of - for instance - sexual favours (Supreme Court, 31 May 1994, NJ 1994, 673).

When the Penal Code was amended in implementation of the Criminal Law Convention on Corruption of the Council of Europe (Act of 13 December 2000; Bulletin of Acts and Decrees 2000, 616; effective since 1 February 2001), the corruption provisions - for clarification purposes - were extended to include those cases in which the accused provided or offered a ‘service’. In this way, the legislator wanted to establish beyond doubt that the provision of a service, such as the opportunity to take part in ‘facility trips’, the provision of a holiday home for a ‘peppercorn rent’ or the offer of a supervisory directorship for services rendered, can also be classified as bribery-related favours.

The criminal case underlying a 2006 Supreme Court judgment (Supreme Court, 20 June 2006, NJ 2006, 380) involved a large number of gifts to a public official - ranging from sums of money to the provision of a car free of charge - as well as the promise of employment with the briber’s company in due course for a high monthly salary.

‘Any undue advantage’

The relevant provisions on active and passive bribery of public officials and judges do not explicitly use the term ‘advantage’, but instead refer to ‘gift’, ‘promise’ and ‘service’.

30
A gift, promise or service involves both material and immaterial advantages, as illustrated by a judgment of 1994 in which the Supreme Court ruled that a gift would also include - for instance - sexual favours (Supreme Court 31 May 1994, NJ 1994, 673). In another judgment, the Supreme Court ruled that handing over something that has some sort of value to the receiver is considered to constitute a gift (Supreme Court, 25 April 1916, NJ 1916, p.551). The gift, promise or service will need to have some value for the recipient, but this may also be a non-commercial value, or the gift, promise or service may only be of value to the person to whom it is provided. Therefore the gift, promise or service does not need to have a monetary value.

Furthermore, the legislator chose not to make a distinction between gifts according to their monetary value. This means that all gifts, including customary gifts of little value (for example representational gifts) potentially fall within the scope of the criminal provisions on bribery. The Minister of Justice considered that to make such a distinction would be undesirable as certain situations involving the receipt of a relatively small advantage for the performance of an official act, which would be deemed reprehensible by the public, would potentially fall outside the scope of the criminal provisions. However, in this respect the legislator made express reference to the possibility of further elaboration in prosecution policy by the Public Prosecution Service. This was done in the Instruction on Investigation and Prosecution of Corruption of Officials in the Netherlands (Annex 7).

‘Directly or indirectly’

It is not necessary for the briber to hand the gift or service to the public official directly. Likewise, the promise does not need to concern a service to be rendered by the perpetrator in person. This may also concern a promise that, if the public official performs a certain act, he will receive something from a third party (Supreme Court, 21 October 1918, NJ 1918, p. 1128). The text of the provisions were deliberately formulated in a broad manner to ensure that intermediaries also fall within the scope of the provisions. To illustrate some more: the Instruction on Investigation and Prosecution of Corruption of Foreign Officials says, for example, that in the international business sector, there should be no misunderstanding: the mere making use of a local agent/representative/consultant can also constitute criminal liability for these businesses and their executives. Please refer to Annex 10 (Instruction on Investigation and Prosecution of Corruption of Foreign Officials).

‘For himself or herself or for anyone else’

The gift or service does not need to accrue to the public official. In a criminal case, the Court also regarded as a gift to the public official the fact that a large construction firm had made an apartment in Amsterdam available ‘free of charge’ to the public official’s daughters over a period of five years (Rotterdam District Court, 14 December 2004, LJN: AR7472; confirmed by the Hague Court of Appeal, 19 April 2006, LJN: AW2327).

‘To act or refrain from acting in the exercise of his or her functions’

Both the provisions on active and passive bribery of public officials use the phrase ‘to do something or to omit to do something, in his/her service’. In this regard, the Supreme Court ruled (Supreme Court, 26 June 1916, NL 1916, p.916) that it was not required that the public official is authorised to carry out the official act, it is only required that his/her function enabled him/her to carry out the desired act. The provisions on active and passive bribery relate to both the acts and omissions of public officials. In this regard, it is irrelevant whether the desired act or omission actually took place. Furthermore, further specification of the act or omission on the part of the public official is not considered to be of particular relevance.

The Supreme Court ruled that the terms ‘in violation of his duty to do or omit something’ are sufficiently specific in themselves (Supreme Court, 19 June 2001, LJN: ZD2851). In his opinion in the latter case, the Advocate-General observed that the intention with which gifts had repeatedly been made to the police official ‘required no further specification, partly because often it will not be clear
beforehand what the (subsequent) act in violation of a person’s official duty will comprise’. This is also illustrated by a criminal case in which the Supreme Court ruled that criminalisation of active bribery (in that particular case Article 177 of the Penal Code) not only relates to situations ‘in which there is a direct connection between the gift/promise on the one hand and a specific consideration on the other, but also to making gifts/promises to a public official in order to establish and/or maintain a relationship with that person with the aim to obtain preferential treatment’ (Supreme Court, 20 June 2006, NJ 2006, 380).

‘Committed intentionally’

In this context, a distinction should be made between the criminalisation of active bribery and the criminalisation of passive bribery.

The criminalization of active bribery (Articles 177, 177a and 178 of the Penal Code) implies the requirement of intent in actually making a gift or promise, or providing a service; if something is given, promised or provided the intent requirement has been fulfilled (for this part of the act). In addition, it is required that the gift, promise or service is provided with the aim - intention - to make a public official do or not to do something. Whether the public official indeed does (or omits to do) whatever it is the bribe-giver desires him to do is not relevant.

‘Public official’

As the Penal Code does not contain an autonomous definition of ‘public official’, case law plays an important role in determining the exact scope of the term ‘public official’.

Article 84 of the Penal Code does not give a definition of the term ‘public official’. This Article only extends its scope by adding two other categories of persons: members of general representative bodies, and arbiters, whereas all individuals belonging to the armed forces are also considered public officials (by which it was intended to include the lower-ranking officers without official status under the term ‘public official’). In case law, the term ‘public official’ is understood to include ‘anyone who has been appointed by the public authorities to a public position, in order to perform a part of the duties of the state and its bodies’ (Supreme Court, 30 January 1911, W9149). A later case further clarifies: ‘Whether the person can also be classified as a public official in terms of employment law is irrelevant’ (Supreme Court, 18 October 1949, NJ 1950, 126). Instead, it matters that the person has been appointed under the supervision and responsibility of the government to a position of which the public nature cannot be denied’.

The application of the abovementioned criteria has resulted in those carrying out the following functions - amongst others - being classified as public officials:

- a tram driver, employed by a privatized public transport company (Supreme Court, 1 December 1992, NJ 1993, 354)
- a security officer of an university, as s/he had been appointed ‘under the supervision and responsibility of the government to a position that cannot be denied a public character’ (Supreme Court, 18 May 2004, NJ 2004, 527).

The Instruction on Investigation and Prosecution of Corruption of Officials in the Netherlands provides a description of the factors that are relevant in the investigation and prosecution of corruption of public officials. The Instruction provides for some elements to be taken into consideration in determining whether criminal prosecution is expedient or not. Please also refer to Annex 7.

At the moment of drafting the present report, new legislation is being prepared, which aims at simplifying the offence for bribing a (foreign) public official in Articles 177 and 177a of the Penal Code. In the current criminalization of bribing a (foreign) public official, a distinction is made between a breach of duty (Article 177) and no breach of duty (Article 177a). In the prosecution of
bribing a (foreign) public official, the component “breach of duty/no breach of duty” has seemed to have lost its significance. In the draft bill it is being proposed to criminalise active and passive bribery of a public official in Articles 177 and 363 of the Penal Code, irrespective of whether the public official was bribed to act (or not to act) in breach of his duties. The maximum penalty for the new Article 177 of the Penal Code will be increased: six years imprisonment and a fine of the fifth category. This law proposal will be sent to Parliament in the first half of 2013. For more information, please refer to the Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8).

**Annexes:**
- Instruction on Investigation and Prosecution of Corruption of Officials in the Netherlands (Annex 7)
- Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8)

The Netherlands provided the following statistical data:
It has to be emphasized that it is difficult to get an accurate picture of the total number of corruption cases in the Netherlands, first of all due to the way cases are registered in the computer system, but even more because of the discretionary powers of the public prosecutor. In the Netherlands, prosecutions are conducted according to the principle of prosecutorial discretion (opportunitieitsbeginsel) Article 167 of the Code of Criminal Procedure delegates the decision to prosecute to the Public Prosecution Service. A public prosecutor has a discretionary power to dismiss a case or settle cases outside court. Because of these discretionary powers, a public prosecutor can also choose for what offence/which offences he will prosecute a suspect. To illustrate: the offence of bribery is often accompanied by other, more easily provable crimes. Examples of this are forgery, fraud or the provision of confidential information to unauthorized people. A conviction for bribery does not always lead to a significant higher sentence. The public prosecutor may therefore, in case of corruption, decide not to prosecute for bribery but for another (equivalent, but easier to prove) offence. This means that not all corruption-cases can be made visible in statistics.

The tables in Annex 9 show the number of cases brought to the public prosecutor and the number of convictions per year. It has to be noted that these figures are not directly related. A particular case can be brought to the public prosecutor in 2006 and result in a conviction in 2008, but a prosecution in 2006 can also result in a conviction in 2006.

**Observations on the implementation of the article**

The reviewing experts noted that articles 177 to 178a PC establish as a criminal offence the active bribery of public officials. Article 177 criminalizes the providing of a gift, a promise, a service or the offer of a service to a civil servant with a view to, or in connection with, a service that the official carried out or failed to carry out in violation with his/her duty. Article 177a establishes the same conduct as article 177, but not in violation with the civil servant’s duty. These provisions also cover persons whose appointment as public official is pending, as well as former public officials. They apply to judges too, but in addition to this, article 178 PC covers the specific (aggravated) offence of active bribery of a judge to influence a decision in a case that is subject to his judgment or to obtain a conviction in a criminal case.

The criminal provisions on active bribery include the terms “gift”, “promise” and “provide or offer a service”. These provisions were extended to include those cases in which the accused provided or offered a “service”.

Furthermore, the legislator chose not to make a distinction between gifts according to their monetary value. This means that all gifts, including customary gifts of little value (for example representation gifts) potentially fall within the scope of the criminal provisions on bribery.
Article 84 PC does not give a definition of the term “public official”. In case law, the term “public official” is understood to include “anyone who has been appointed by the public authorities to a public position, in order to perform a part of the duties of the state and its bodies”. A later case further clarifies: “Whether the person can also be classified as a public official in terms of employment law is irrelevant. Instead, it matters that “the person has been appointed under the supervision and responsibility of the government to a position of which the public nature cannot be denied”.

It is not necessary for the briber to hand the gift or service to the public official directly. The text of the provisions was deliberately formulated in a broad manner to ensure that intermediaries also fall within the scope of the provisions. The gift or service does not need to be intended for the public official himself or herself; it may also be intended for a third-party beneficiary.

The provisions on active bribery of public officials use the phrase “to do something or to omit to do something, in his/her service”. It is not required that the public official is authorized to carry out the official act. It is only required that his/her functions enabled him/her to carry out the act. It is irrelevant whether the act or omission actually took place.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 15 Bribery of national public officials**

**Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

**Annexes:**

- Instruction on Investigation and Prosecution of Corruption of Officials in the Netherlands (Annex 7)
- Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8)

**Relevant legislation:**

Article 362 Penal Code (Bribery, not in violation with official duty)

1. Punishment in the form of a prison sentence of not more than two years or a fine in the fifth category will be imposed on the civil servant:

1°. who accepts a gift, promise or service, knowing or reasonably suspecting that it is made to him in order to induce him to act or to refrain from acting in the execution of his duties, in a manner not contrary to the requirements of his office;

2°. who accepts a gift, promise or service, knowing or reasonably suspecting that it is made to him as a result or as a consequence of something he has done or has refrained
from doing, in the execution of his duties, past or present, in a manner not contrary to the requirements of his office;

3°. who asks for a gift, promise or service, in order to act or to refrain from acting in the execution of his duties, in a manner not contrary to the requirements of his office;

4°. who asks for a gift, promise or service, as a result or as a consequence of something he has done or has refrained from doing, in the execution of his duties, past or present, in a manner not contrary to the requirements of his office;

2. The same punishment will apply to anyone who has the prospects of an appointment as a civil servant, if the appointment as a civil servant is followed, commits an offence as described in the first paragraph, under 1° and 3°.

3. A person who commits an offence as described in the first paragraph in one’s capacity as minister, state secretary, royal commissioner, member of the provincial executive, mayor, aldermen or member of a public representative body, is liable to a term of imprisonment of not more than four years or a fine of the fifth category.

Article 363 Penal Code (Bribery, in violation with official duty)

1. Punishment in the form of a prison sentence of not more than four years or a fine in the fifth category will be imposed on the civil servant:

1°. who accepts a gift, promise or service, knowing or reasonably suspecting that it is made to him in order to induce him to act or to refrain from acting in the execution of his duties, in a manner contrary to the requirements of his office;

2°. who accepts a gift, promise or service, knowing or reasonably suspecting that it is made to him as a result or as a consequence of something he has done or has refrained from doing, in the execution of his duties, past or present, in a manner contrary to the requirements of his office;

3°. who asks for a gift, promise or service, in order to act or to refrain from acting in the execution of his duties, in a manner contrary to the requirements of his office;

4°. who asks for a gift, promise or service, as a result or as a consequence of something he has done or has refrained from doing, in the execution of his duties, past or present, in a manner contrary to the requirements of his office;

2. The same punishment will apply to anyone who has the prospects of an appointment as a civil servant, if the appointment as a civil servant is followed, commits an offence as described in the first paragraph, under 1° and 3°.

3. A person who commits an offence as described in the first paragraph in one’s capacity as minister, state secretary, royal commissioner, member of the provincial executive, mayor, aldermen or member of a public representative body, is liable to a term of imprisonment of not more than six years or a fine of the fifth category.

Article 364 Penal Code (Bribery of a judge)

1. A judge who accepts a gift, promise or service, knowing or reasonably suspecting that it is made or rendered to him in order to exercise influence on the decision in a case that is before him for judgment, is liable to a term of imprisonment of not more than nine years or a fine of the fifth category.

2. A judge who solicits a gift, promise or service in order to induce him to exercise influence on the decision in a case that is before him for judgment, is liable to a term of imprisonment of not more than nine years or a fine of the fifth category.

3. Where a judge, knowing or reasonably suspecting that it is made or rendered to obtain a conviction in a criminal case, accepts such gift, promise or service, he is liable to a term of imprisonment of not more than twelve years or a fine of the fifth category.

4. Where a judge solicits such a gift, promise or service in order to induce him to obtain a conviction in a criminal case, he is liable to a term of imprisonment of not more than twelve years or a fine of the fifth category.
Article 364a Penal Code (Extended definition of a civil servant)
1. With regard to articles 361, 362 and 363, persons working in the public service of a foreign state or an organisation governed by international law are equivalent with civil servants.
2. With regard to articles 362, first paragraph, under 2°, and 363, first paragraph, under 2°, former civil servants are equivalent to civil servants.
3. With regard to article 364, judges in a foreign state or an organisation governed by international law are equivalent to judges

Article 380 Penal Code
(…)
2. Upon conviction for any of the offenses defined in Articles 359, 362 to 364 incl., 366 and 379, paragraph 1, deprivation of the right listed in Article 28, paragraph 1 (4), may be imposed.

Article 23 Penal Code (Categories fines)
(…)
2. The minimum amount of the fine is € 3.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
   a. the first category, € 390;
   b. the second category, € 3.900;
   c. the third category, € 7.800;
   d. the fourth category, € 19.500;
   e. the fifth category, € 78.000;
   f. the sixth category, € 780.000.
(…)

Article 28 Penal Code (Deprivation of rights)
1. In the cases defined by law, a person found guilty may be deprived from the following rights under a court order:
   1. Holding office or any specific public office;
   2. Serving in the army;
   3. The right to elect members of any general representative body and to be elected as a member of such body;
   4. Being a counsel or court-appointed administrator;
   5. Exercising specific professions.
(…)

Article 29 Penal Code
Expulsion of the right to hold office or hold certain offices and to serve with the armed forces may, except in the cases defined in the Second Book*, be pronounced with conviction for any malfeasance or for any offence by which the offender violated a particular official duty or for which he made use of power, opportunity or means given to him by his office.

(* Second Book: Serious offences (amongst others Titel XXVIII Malfeasances (Ambtsmisdrijven) - Articles 355-380 Penal Code)

Article 84 Penal Code (‘Public official’)
1. ‘Public officials’ include members of general representative bodies.
2. ‘Public officials’ and ‘judges’ include arbiters; ‘judges’ include those who exercise administrative jurisdiction.
3. All personel of the armed forces are also to be regarded as ‘public officials’.

36
The Netherlands provided the following commentary:

Passive bribery of domestic public officials is covered by Articles 362 to 364a of the Penal Code. In the passive bribery offence, also a distinction is made between unlawful acts or omissions (breach of duty) and lawful acts or omissions (no breach of duty). Article 362 Penal Code criminalizes passive bribery of public officials, whereby the act or omission by the public official does not have to be contrary to his duty; Article 363 Penal Code criminalizes passive bribery of public officials for acts/omissions contrary to his duty; and as with active bribery, Article 364 covers a specific (aggravated) offence of bribery of a judge to exert influence in a case over which he presides or to obtain a conviction in a criminal case.

‘Request or receipt, acceptance of an offer or promise’

The criminal provisions on passive bribery include the element of ‘request’ or ‘acceptance’ of a gift, promise or service. The term ‘acceptance’ implies that the public official had or should have had knowledge of the fact that a gift was made or that an attempt was made to make a gift.

In this context, the Court of Appeal (Arnhem Court of Appeal, 25 March 2005, LJN: AT2539) ruled that the accused public official had to be acquitted with regard to a part of the passive bribery charges, since he was not aware or need not have been aware of the fact that the briber had paid a catering company a contribution towards the cost of the wedding of the accused.

For the purpose of the criminal provisions, it is irrelevant whether the public official accepted the gift or promise in his capacity of ‘public official’. Gifts which he accepts outside the strict framework of his activities also classify as ‘bribery’ (Supreme Court, 10 April 1893, W 6333).

‘Any undue advantage’

The relevant provisions on active and passive bribery of public officials and judges do not explicitly use the term ‘advantage’, but instead refer to ‘gift’, ‘promise’ and ‘service’.

A gift, promise or service involves both material and immaterial advantages, as illustrated by a judgment of 1994 in which the Supreme Court ruled that a gift would also include - for instance - sexual favours (Supreme Court 31, May 1994, NJ 1994, 673). In another judgment, the Supreme Court ruled that handing over something that has some sort of value to the receiver is considered to constitute a gift (Supreme Court, 25 April 1916, NJ 1916, p.551). The gift, promise or service will need to have some value for the recipient, but this may also be a non-commercial value, or the gift, promise or service may only be of value to the person to whom it is provided. Therefore the gift, promise or service does not need to have a monetary value.

Furthermore, the legislator chose not to make a distinction between gifts according to their monetary value. This means that all gifts, including customary gifts of little value (for example representational gifts) potentially fall within the scope of the criminal provisions on bribery. The Minister of Justice considered that to make such a distinction would be undesirable as certain situations involving the receipt of a relatively small advantage for the performance of an official act, which would be deemed reprehensible by the public, would potentially fall outside the scope of the criminal provisions.

However, in this respect the legislator made express reference to the possibility of further elaboration in prosecution policy by the Public Prosecution Service. This was done in the Instruction on Investigation and Prosecution of Corruption of Officials in the Netherlands (Annex 7).

‘Directly or indirectly’

It is not necessary for the briber to hand the gift or service to the public official directly. Likewise, the promise does not need to concern a service to be rendered by the perpetrator in person. This may also
concern a promise that, if the public official performs a certain act, he will receive something from a third party (Supreme Court, 21 October 1918, NJ 1918, p. 1128). The text of the provisions were deliberately formulated in a broad manner to ensure that intermediaries also fall within the scope of the provisions.

‘For himself or herself or for anyone else’

The gift or service does not need to accrue to the public official. In a criminal case, the Court also regarded as a gift to the public official the fact that a large construction firm had made an apartment in Amsterdam available ‘free of charge’ to the public official’s daughters over a period of five years (Rotterdam District Court, 14 December 2004, LJV: AR742; confirmed by the Hague Court of Appeal, 19 April 2006, LJV: AW2327).

‘To act or refrain from acting in the exercise of his or her functions’

Both the provisions on active and passive bribery of public officials use the phrase ‘to do something or to omit to do something, in his/her service’. In this regard, the Supreme Court ruled (Supreme Court, 26 June 1916, NL 1916, p.916) that it was not required that the public official is authorised to carry out the official act, it is only required that his/her function enabled him/her to carry out the desired act. The provisions on active and passive bribery relate to both the acts and omissions of public officials. In this regard, it is irrelevant whether the desired act or omission actually took place. Furthermore, further specification of the act or omission on the part of the public official is not considered to be of particular relevance.

The Supreme Court ruled that the terms ‘in violation of his duty to do or omit something’ are sufficiently specific in themselves (Supreme Court, 19 June 2001, LJV: ZD2851). In his opinion in the latter case, the Advocate-General observed that the intention with which gifts had repeatedly been made to the police official ‘required no further specification, partly because often it will not be clear beforehand what the (subsequent) act in violation of a person’s official duty will comprise’. This is also illustrated by a criminal case in which the Supreme Court ruled that criminalisation of active bribery (in that particular case Article 177 of the Penal Code) not only relates to situations ‘in which there is a direct connection between the gift/promise on the one hand and a specific consideration on the other, but also to making gifts/promises to a public official in order to establish and/or maintain a relationship with that person with the aim to obtain preferential treatment’ (Supreme Court, 20 June 2006, NJ 2006, 380).

‘Committed intentionally’

In this context, a distinction should be made between the criminalisation of active bribery and the criminalisation of passive bribery.

In addition to intentional acts on the part of the public official, the legislative amendment of 2000 also criminalised acts of negligence. The latter is expressed in the phrase ‘or reasonably suspecting’ in Articles 362, 363 and 364 of the Penal Code. This means that the public official will also be liable to punishment, if it is established that he should have understood that he received an advantage for a particular purpose. In this way, criminal action can be taken in the event of culpable naivety or perhaps fictitious innocence on the part of the public official.

The earlier-cited judgment of the Court of Appeal (Arnhem Court of Appeal, 25 March 2005, LJV: AT2539) is in agreement with this. The accused public official had to be acquitted with regard to a part of the passive bribery charge, because he was not aware or need not have been aware of the fact that the briber had paid a catering establishment a contribution towards the cost of the wedding of the accused.
‘Public official’

As the Penal Code does not contain an autonomous definition of ‘public official’, case law plays an important role in determining the exact scope of the term ‘public official’.

Article 84 of the Penal Code does not give a definition of the term ‘public official’. This Article only extends its scope by adding two other categories of persons: members of general representative bodies, and arbiters, whereas all individuals belonging to the armed forces are also considered public officials (by which it was intended to include the lower-ranking officers without official status under the term ‘public official’). In case law, the term ‘public official’ is understood to include ‘anyone who has been appointed by the public authorities to a public position, in order to perform a part of the duties of the state and its bodies’ (Supreme Court, 30 January 1911, W9149). A later case further clarifies: ‘Whether the person can also be classified as a public official in terms of employment law is irrelevant’ (Supreme Court, 18 October 1949, NJ 1950, 126). Instead, it matters that the person has been appointed under the supervision and responsibility of the government to a position of which the public nature cannot be denied’.

The application of the abovementioned criteria has resulted in those carrying out the following functions - amongst others - being classified as public officials:

- a tram driver, employed by a privatized public transport company (Supreme Court, 1 December 1992, NJ 1993, 354)
- a security officer of an university, as s/he had been appointed ‘under the supervision and responsibility of the government to a position that cannot be denied a public character’ (Supreme Court, 18 May 2004, NJ 2004, 527).

The Instruction on Investigation and Prosecution of Corruption of Officials in the Netherlands provides a description of the factors that are relevant in the investigation and prosecution of corruption of public officials. The Instruction provides for some elements to be taken into consideration in determining whether criminal prosecution is expedient or not. Please also refer to Annex 7.

As already mentioned under Article 15 (Bribery of national public officials), subparagraph (a), at this moment new legislation is being prepared, which aims at simplifying the offence for bribing a (foreign) public official in Articles 362 and 363 of the Penal Code. In the current criminalization of bribing a (foreign) public official, a distinction is made between a breach of duty (Article 363) and no breach of duty (Article 362). In the prosecution of bribing a (foreign) public official, the component “breach of duty/no breach of duty” has seemed to have lost its significance. In the draft bill it is being proposed to criminalise active and passive bribery of a public official in Articles 177 and 363 of the Penal Code, irrespective of whether the public official was bribed to act (or not to act) in breach of his duties. The maximum penalty for the new Article 363 of the Penal Code will be increased: six years imprisonment and a fine of the fifth category. For more information, please refer to the Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8).

The Netherlands stated that statistics on specific criminal offences need to be assessed with some restraint. For a short explanation, please refer to Article 15 (Bribery of national public officials), subparagraph (a).

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the passive bribery of domestic public officials is covered by articles 362 to 364a PC. In the passive bribery offence, also a distinction is made between unlawful acts or omissions (breach of duty) and lawful acts or omissions (no breach of duty).
The criminal provisions on passive bribery include the terms “gift”, “promise” or “service”. The corruption provisions were extended to include those cases in which the accused provided or offered a “service”.

Furthermore, the legislator chose not to make a distinction between gifts according to their monetary value. This means that all gifts, including customary gifts of little value (for example representational gifts) potentially fall within the scope of the criminal provisions on bribery.

Article 84 PC does not give a definition of the term “public official”. In case law, the term “public official” is understood to include “anyone who has been appointed by the public authorities to a public position, in order to perform a part of the duties of the state and its bodies”. A later case further clarifies: “Whether the person can also be classified as a public official in terms of employment law is irrelevant. Instead, it matters that “the person has been appointed under the supervision and responsibility of the government to a position of which the public nature cannot be denied”.

The provisions on passive bribery include the element of “request” or “acceptance” of a gift, promise or service. It is irrelevant whether the public official accepted the gift or promise in his capacity of “public official”. Gifts accepted outside the strict framework of the public official’s activities also classify as “objects of bribery”.

The provisions on passive bribery of public officials use the phrase “to do something or to omit to do something, in his/her service”. It is not required that the public official is authorized to carry out the official act. It is only required that his/her functions enabled him/her to carry out the act. It is irrelevant whether the act or omission actually took place.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 16 Bribery of foreign public officials and officials of public international organizations**

**Paragraph 1**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

**Annexes:**

- Instruction on Investigation and Prosecution of Corruption of Foreign Officials (old) (Annex 10)
- Revised Instruction on Investigation and Prosecution of Foreign Corruption (Annex 11)
- Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8)
- Article ‘Foreign corruption: a domestic matter’ (Annex 12)
- Press release “World Bank and the Ministry of Security and Justice of the Netherlands to Expand Cooperation in Fighting Global Corruption” (Annex 13)
- Brochure ‘Honest Business without corruption’ (Annex 14)

The Netherlands cited the following laws:

Article 177 Penal Code (Bribery, in violation with official duty)
1. Punishment in the form of a prison sentence of no more than four years or a fine in the fifth category will be imposed on:
1°. Whoever makes a gift or a promise to a civil servant or provides or offers him a service with a view to getting him to carry out or fail to carry out a service in violation of his duty;
2°. Whoever makes a gift or a promise to a civil servant or provides or offers him a service in response to or in connection with a service, past or present, that the official carried out or failed to carry out in violation of his duty.
2. The same punishment will apply to anyone who commits an offence as described in the first paragraph, under 1°, against a person who has prospects of an appointment as a civil servant, if the appointment as a civil servant is followed.
3. Removal of the rights states in Article 28, first paragraph, under 1°, 2° and 4° can be pronounced.

Article 177a Penal Code (Bribery, not in violation with official duty)
1. Punishment in the form of a prison sentence of no more than two years or a fine in the fifth category will be imposed on:
1°. Whoever makes a gift or a promise to a civil servant or provides or offers him a service with a view to getting him to carry out or fail to carry out a service that is not in violation of his duty;
2°. Whoever makes a gift or a promise to a civil servant or provides or offers him a service in response to or in connection with a service, past or present, that the official carried out or failed to carry out, without this being in violation of his duty.
2. The same punishment will apply to anyone who commits an offence as described in the first paragraph, under 1°, against a person who has prospects of an appointment as a civil servant, if the appointment as a civil servant is followed.
3. Removal of the rights states in Article 28, first paragraph, under 1°, 2° and 4° can be pronounced.

Article 178 Penal Code (Bribery of a judge)
1. Whoever makes a gift or a promise to a judge or provides or offers him a service with a view to exerting influence on his decision in a case that is subject to his judgment will be punished with a prison sentence of at most six years or a fine in the fifth category.
2. If the gift or promise is made or the service is provided or offered with a view to obtaining a conviction in a case, the guilty person will be punished with a prison sentence of at most nine years or a fine in the fifth category.
3. Removal of the rights stated in Article 28, first paragraph, under 1°, 2° and 4° can be pronounced.

Article 178a Penal Code (Extended definition of a civil servant)
1. With regard to Articles 177 and 177a, persons working in the public service of a foreign state or an organisation governed by international law are equivalent with civil servants.
2. With regard to Articles 177, first paragraph, under 2°, and 177a, first paragraph, under 2°, former civil servants are equivalent to civil servants.
3. With regard to Article 178, judges in a foreign state or an organisation governed by international law are equivalent to judges.
Article 23 Penal Code (Categories fines)

(…)
2. The minimum amount of the fine is € 3.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
a. the first category, € 390;
b. the second category, € 3,900;
c. the third category, € 7,800;
d. the fourth category, € 19,500;
e. the fifth category, € 78,000;
f. the sixth category, € 780,000.
(…)

Article 28 Penal Code (Deprivation of rights)
1. In the cases defined by law, a person found guilty may be deprived from the following rights under a court order:
   1. Holding office or any specific public office;
   2. Serving in the army;
   3. The right to elect members of any general representative body and to be elected as a member of such body;
   4. Being a counsel or court-appointed administrator;
   5. Exercising specific professions.
(…)

Article 84 Penal Code (‘Public official’) 
1. ‘Public officials’ include members of general representative bodies.
2. ‘Public officials’ and ‘judges’ include arbiters; ‘judges include those who exercise administrative jurisdiction.
3. All personnel of the armed forces are also to be regarded as ‘public officials’.

The Netherlands provided the following commentary:

Article 178a of the Penal Code was introduced in the implementation process of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Now bribery is also a criminal offence under Dutch law if it involves international and foreign government officials (including members of foreign general representative bodies) or judges. For this purpose, two linking provisions were added to the Penal Code: Article 178a regarding active bribery and Article 364a in respect of passive bribery.

Articles 178a and 364a of the Penal Code ensure that persons who are classified as public officials under Dutch law are equated with ‘persons in the public service of a foreign state or of an international organisation’. Furthermore, Articles 178a and 364a of the Penal Code equate ‘judges of a foreign state or of an international organisation’ with Dutch judges.

A detailed description of ‘persons in the public service of a foreign state or an international organisation’ is not required, owing to the link established with the category ‘public official’, of which the wide extent is already described under Article 15 (Bribery of national public officials).

The term ‘international organization’ refers to a form of collaboration between states that finds its origin in international law, with common objectives and with at least one body to fulfil the duties of the organization.

For more information on the elements of the offence (“promising, offering or giving”, “any undue advantage”, “directly or indirectly”, “for himself or herself or anyone else”, “to act or refrain from
acting in the exercise of his or her functions” and “committed intentionally”), please refer to Article 15 (Bribery of national public officials), subparagraph (a).

The Instruction on Investigation and Prosecution of Corruption of Foreign Officials provides a description of the factors that are relevant in the investigation and prosecution of corruption of public officials. The Instruction provides for some elements to be taken into consideration in determining whether criminal prosecution is expedient or not. Please also refer to Annex 11.

In reaction to some of the comments of the OECD-evaluation team in the current Phase III-evaluation, changes have been made to the text of the Instruction on Investigation and Prosecution of Foreign Officials (please refer to the old Instruction on Investigation and Prosecution of Corruption of Foreign Officials in Annex 10 and the revised Instruction on Investigation and Prosecution of Foreign Corruption in Annex 11), emphasizing a more active approach when another country has already started a criminal investigation in a case where the Netherlands also has jurisdiction. If a criminal investigation started abroad, the Dutch law enforcement authorities should contact their foreign counterpart in order to discuss and coordinate their respective actions. It is also being recommended to search for possibilities for cooperation with other countries in a very early stage. Another change concerns the factors that play a role in the decision whether or not to prosecute. It is being emphasized that bribery is a serious offence, the basic attitude towards the question of prosecuting this offence should therefore be positive. In order to avoid any misunderstandings two factors have been removed (being: a) investigation and prosecution efforts on the part of the country involved and b) the extent of the potential damage to the reputation of Dutch trading and political interests, if a suspicious case is not investigated and, where possible, the perpetrator(s) prosecuted). Another factor has been added: recidivism. This revised Instruction has entered into force on 1 January 2013.

As already mentioned under Article 15 (Bribery of national public officials), at this moment new legislation is being prepared, which aims at simplifying the offence for bribing a (foreign) public official in Articles 177 and 177a of the Penal Code. In the current criminalization of bribing a (foreign) public official, a distinction is made between a breach of duty (Article 177) and no breach of duty (Article 177a). In the prosecution of bribing a (foreign) public official, the component “breach of duty/no breach of duty” has seemed to have lost its significance. In the draft bill it is being proposed to criminalise active and passive bribery of a public official in Articles 177 and 363 of the Penal Code, irrespective of whether the public official was bribed to act (or not to act) in breach of his duties. The maximum penalty for the new Article 177 of the Penal Code will be increased: six years imprisonment and a fine of the fifth category. For more information, please refer to the Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8).

In the 2011 Framework letter to the Public Prosecution Service (OM Kaderbrief 2011) the Minister of Security and Justice instructed the Board of Procurators-General to develop a crime analysis on the bribery of foreign public officials. This study should give an analysis on the obstacles in investigations on foreign bribery, as well as best practices, and therefore will contribute to a more effective way of investigating possible cases of foreign bribery and a better and more successful approach of these cases. The National Police Internal Investigations Department (Rijksrecherche) has taken on the task of completing this analysis before the end of 2012.

In 2013, the Rijksrecherche concluded this analysis. One of the main conclusions of this analysis is that the various organizations involved need to increase their cooperation in order to achieve better results in the fight against foreign corruption. This analysis has helped the Public Prosecution Service in developing a new approach for fighting foreign bribery. With this new approach the Public Prosecution Service not only improves cooperation within its own organization, but also with other (government) organizations. As part of this approach, there will be - for example - combined investigation teams on a structural basis, comprising of investigators from both the Rijksrecherche and the FIOD, each providing their specific expertise (the Rijksrecherche being specialized in politically sensitive investigations and the FIOD in investigating financial crime). The decision to structurally
form multi-disciplinary teams enhances the expediency of investigations in foreign corruption. Positive results have been achieved with these combined teams already.

This year, the Ministries of Economic Affairs, Security and Justice and Foreign Affairs have jointly produced a brochure with the major Dutch business associations (VNO-NCW and SME Netherlands) and the Dutch Chapter of the International Chamber of Commerce (ICC Netherlands) that informs entrepreneurs on the OECD Convention and the Dutch law on foreign bribery, and provides for practical advice on how to operate in corruption-prone circumstances and how to harness oneself or one’s company against such circumstances. Please refer to Annex 14.

The Netherlands provided the following information on case law:

There has not been any conviction yet of bribery of a foreign public official or of an official of a public international organization.

One case has been brought before trial: the Dutch law enforcement authorities were investigating a case of international organized (drug-related) crime. In this investigation the telephones of one of the suspects were tapped and the Dutch authorities received information that this suspect was trying to bribe a foreign public prosecutor in another country. The Dutch authorities made a MLA request to this other country to obtain the essential information needed for evidence to prove the bribery of a foreign public official. Because there was not treaty between the Netherlands and the other country, the MLA request was not carried out. The case went to court, and the foreign bribery offence was the 7th crime that the suspect was charged with (the main facts were the drug-related crimes). Unfortunately, the public prosecutor could not prove that a foreign official was involved. It ended in an acquittal for the bribery offence. Nevertheless, the suspect was convicted for the drug-offences.

In 2008, the Public Prosecution Service has concluded out-of-court settlements with seven companies paying kickbacks in the context of the Oil-for-Food Programme in Iraq (although the offence charged was the violation of sanctions legislation and not the foreign bribery offence). Also criminal assets were confiscated. In July 2008 a press statement on these transactions, which mentions the names of the companies involved and the amount of the transaction that has been paid, has been released. The following out-of-court settlements have been reached:

1. Alfasan International BV, fine: € 31.800,- and confiscation: € 180.260,-
2. NV Organon, fine: € 381.602,-
3. Flowerservice BV, fine: € 76.274,- and confiscation: € 180.260,-
4. OPW Fluid Transfer Group Europe BV, fine: € 57.204,- and confiscation: € 24.600,-
5. Prodestra BV, fine: € 64.751,- and confiscation: € 34.485.95
6. Solvochem Holland BV, fine: € 136.000,- and confiscation: € 144.592,-
7. Stet Holland BV, fine: € 119.712,- and confiscation: € 54.458,-

In 2012 the Public Prosecution Service has concluded an out-of-court settlement with a Dutch construction and infrastructure company. The company agreed to pay a fine of 5 million euros and to waive a claim on the Tax Service of 12.5 million euros. This means that the settlement will cost the Dutch company a total of 17.5 million euros. As part of the settlement the company also promised to tighten and strengthen its integrity policy. The Public Prosecution Service will check on this. The Public Prosecution Service published a press release about the settlement.

The construction and infrastructure company was suspected of paying bribes to foreign intermediaries in the period 1996-2004 (and also of bribing a Dutch public official). The investigation into the bribery of foreign intermediaries is not completed with this settlement. The Public Prosecution Service is still investigation whether involved individuals can also be prosecuted. The financial advantage these individuals have enjoyed as a result of the bribery could then be confiscated.

The number of ongoing investigations at this moment is three. An example of one of these ongoing investigations is a World Bank-related case. The Dutch law enforcement authorities are investigating
possible corruption by a Dutch firm, which is suspected of bribing officials of foreign Ministries of Health, and a foreign official that is employed by the World Bank, in order to win World Bank bids in third world countries. The Netherlands received a referral from the World Bank Integrity Vice Presidency (INT). The auditors from the INT came across this case through their internal audits. Thanks to this referral from the World Bank, the Dutch law enforcement authorities were able to take on this case. Building on their cooperation in this case, the Dutch Minister of Security and Justice signed a Memorandum of Understanding (MoU) with the World Bank. For more information on this MoU, please refer to the press release “World Bank and the Ministry of Security and Justice of the Netherlands to Expand Cooperation in Fighting Global Corruption” (Annex 13). The court hearings in this case are expected to begin in 2013. The World Bank official is being prosecuted in another (his home-)country.

The Netherlands provided the following statistical data:
This information has been provided to the OECD-evaluation team in the context of the current Phase-III evaluation.

Total number of investigations started:
2006: 1
2007: 1
2008: 2
2009: 1
2010: 0
2011: 2

The number of ongoing investigations at the time of drafting the present report: 3.

There has not been any conviction yet of bribery of a foreign public official or of an official of a public international organization. Please also refer to Article 16 (Bribery of foreign public officials and officials of public international organizations), paragraph 1, previous answer.

(b) Observations on the implementation of the article

The reviewing experts noted that article 178a PC ensures that public officials under the Dutch legislation are equated with “persons in the public service of a foreign state or of an international organization”. A detailed description of “persons in the public service of a foreign state or an international organization” is not required, owing to the link established with the broadly defined concept of “public official”.

The reviewing experts welcomed the confirmation that new legislation was being prepared, proposing to criminalize active bribery of a public official in article 177 PC, irrespective of whether the public official was bribed to act (or not to act) in breach of his duties. The new law will increase the maximum penalty: imprisonment of six years and a fine of the fifth category.

Changes have been made to the text of the Instruction on Investigation and Prosecution of Foreign Corruption, emphasizing a more proactive approach when another country has already started a criminal investigation in a case where the Netherlands also has jurisdiction. If a criminal investigation started abroad, the Dutch law enforcement authorities should contact their foreign counterpart in order to discuss and coordinate their respective actions. It is also recommended to search for possibilities for cooperation with other countries at a very early stage. This revised Instruction has entered into force on 1 January 2013. An analysis conducted in 2013 has helped, as reported, the Public Prosecution Service in developing a new approach for fighting foreign bribery. As part of this approach, there will be, for example, multi-disciplinary investigation teams on a structural basis to expedite, investigations in foreign corruption cases.

The reviewing experts concluded that the provision has been adequately implemented.
Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Annexes:

- Instruction on Investigation and Prosecution of Corruption of Foreign Officials (old) (Annex 10)
- Revised Instruction on Investigation and Prosecution of Foreign Corruption (Annex 11)
- Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8)
- Article ‘Foreign corruption: a domestic matter’ (Annex 12)

The Netherlands cited the following laws:

Article 362 Penal Code (Bribery, not in violation with official duty)
1. Punishment in the form of a prison sentence of not more than two years or a fine in the fifth category will be imposed on the civil servant:
   1°. who accepts a gift, promise or service, knowing that it is made to him in order to induce him to act or to refrain from acting in the execution of his duties, in a manner not contrary to the requirements of his office;
   2°. who accepts a gift, promise or service, knowing that it is made to him as a result or as a consequence of something he has done or has refrained from doing, in the execution of his duties, past or present, in a manner not contrary to the requirements of his office;
   3°. who asks for a gift, promise or service, in order to act or to refrain from acting in the execution of his duties, in a manner not contrary to the requirements of his office;
   4°. who asks for a gift, promise or service, as a result or as a consequence of something he has done or has refrained from doing, in the execution of his duties, past or present, in a manner not contrary to the requirements of his office;
2. The same punishment will apply to anyone who has the prospects of an appointment as a civil servant, if the appointment as a civil servant is followed, commits an offence as described in the first paragraph, under 1° and 3°.
3. A person who commits an offence as described in the first paragraph in one’s capacity as minister, state secretary, royal commissioner, member of the provincial executive, mayor, aldermen or member of a public representative body, is liable to a term of imprisonment of not more than four years or a fine of the fifth category.

Article 363 Penal Code (Bribery, in violation with official duty)
1. Punishment in the form of a prison sentence of not more than four years or a fine in the fifth category will be imposed on the civil servant:
   1°. who accepts a gift, promise or service, knowing that it is made to him in order to induce him to act or to refrain from acting in the execution of his duties, in a manner contrary to the requirements of his office;
2°. who accepts a gift, promise or service, knowing that it is made to him as a result or as a consequence of something he has done or has refrained from doing, in the execution of his duties, past or present, in a manner contrary to the requirements of his office;
3°. who asks for a gift, promise or service, in order to act or to refrain from acting in the execution of his duties, in a manner contrary to the requirements of his office;
4°. who asks for a gift, promise or service, as a result or as a consequence of something he has done or has refrained from doing, in the execution of his duties, past or present, in a manner contrary to the requirements of his office;

2. The same punishment will apply to anyone who has the prospects of an appointment as a civil servant, if the appointment as a civil servant is followed, commits an offence as described in the first paragraph, under 1° and 3°.

3. A person who commits an offence as described in the first paragraph in one’s capacity as minister, state secretary, royal commissioner, member of the provincial executive, mayor, aldermen or member of a public representative body, is liable to a term of imprisonment of not more than six years or a fine of the fifth category.

Article 364 Penal Code (Bribery of a judge)
1. A judge who accepts a gift, promise or service, knowing or reasonably suspecting that it is made or rendered to him in order to exercise influence on the decision in a case that is before him for judgment, is liable to a term of imprisonment of not more than nine years or a fine of the fifth category.
2. A judge who solicits a gift, promise or service in order to induce him to exercise influence on the decision in a case that is before him for judgment, is liable to a term of imprisonment of not more than nine years or a fine of the fifth category.
3. Where a judge, knowing or reasonably suspecting that it is made or rendered to obtain a conviction in a criminal case, accepts such gift, promise or service, he is liable to a term of imprisonment of not more than twelve years or a fine of the fifth category.
4. Where a judge solicits such a gift, promise or service in order to induce him to obtain a conviction in a criminal case, he is liable to a term of imprisonment of not more than twelve years or a fine of the fifth category.

Article 364a Penal Code (Extended definition of a civil servant)
1. With regard to articles 361, 362 and 363, persons working in the public service of a foreign state or an organisation governed by international law are equivalent with civil servants.
2. With regard to articles 362, first paragraph, under 2°, and 363, first paragraph, under 2°, former civil servants are equivalent to civil servants.
3. With regard to article 364, judges in a foreign state or an organisation governed by international law are equivalent to judges.

Article 23 Penal Code (Categories fines)
(...)
2. The minimum amount of the fine is € 3.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
   a. the first category, € 390;
   b. the second category, € 3,900;
   c. the third category, € 7,800;
   d. the fourth category, € 19,500;
   e. the fifth category, € 78,000;
   f. the sixth category, € 780,000.
  (...
Article 28 Penal Code (Deprivation of rights)
1. In the cases defined by law, a person found guilty may be deprived from the following rights under a court order:
   1. Holding office or any specific public office;
   2. Serving in the army;
   3. The right to elect members of any general representative body and to be elected as a member of such body;
   4. Being a counsel or court-appointed administrator;
   5. Exercising specific professions.

The Netherlands provided the following commentary:

Article 364a of the Penal Code was introduced in the implementation process of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Now bribery is also a criminal offence under Dutch law if it involves international and foreign government officials (including members of foreign general representative bodies) or judges. For this purpose, two linking provisions were added to the Penal Code: Article 178a regarding active bribery and Article 364a in respect of passive bribery.

Articles 178a and 364a of the Penal Code ensure that persons who are classified as public officials under Dutch law are equated with ‘persons in the public service of a foreign state or of an international organization’. Furthermore, Articles 178a and 364a of the Penal Code equate ‘judges of a foreign state or of an international organization’ with Dutch judges.

A detailed description of ‘persons in the public service of a foreign state or an international organisation’ is not required, owing to the link established with the category ‘public official’, of which the wide extent is already described under Article 15 (Bribery of national public officials).

The term ‘international organisation’ refers to a form of collaboration between states that finds its origin in international law, with common objectives and with at least one body to fulfil the duties of the organisation.

For more information on the elements of the offence (“request or receipt, acceptance of an offer or promise”, “any undue advantage”, “directly or indirectly”, “for himself or herself or anyone else”, “to act or refrain from acting in the exercise of his or her functions” and “committed intentionally”), please refer to Article 15 (Bribery of national public officials), subparagraph (b).

The Instruction on Investigation and Prosecution of Foreign Corruption provides a description of the factors that are relevant in the investigation and prosecution of corruption of public officials. The Instruction provides for some elements to be taken into consideration in determining whether criminal prosecution is expedient or not. Please also refer to Annex 11.

In reaction to some of the comments of the OECD-evaluation team in the current Phase III-evaluation, changes have been made to the text of the Instruction on Investigation and Prosecution of Foreign Officials (please refer to the old Instruction on Investigation and Prosecution of Corruption of Foreign Officials in Annex 10 and the revised Instruction on Investigation and Prosecution of Foreign Corruption in Annex 11), emphasizing a more active approach when another country has already started a criminal investigation in a case where the Netherlands also has jurisdiction. If a criminal investigation started abroad, the Dutch law enforcement authorities should contact their foreign counterpart in order to discuss and coordinate their respective actions. It is also being recommended to search for possibilities for cooperation with other countries in a very early stage. Another change concerns the factors that play a role in the decision whether or not to prosecute. It is being emphasized that bribery is a serious offence, the basic attitude towards the question of prosecuting this offence should therefore be positive. In order to avoid any misunderstandings two factors have been removed (being: a) investigation and prosecution efforts on the part of the country involved and b) the extent of
the potential damage to the reputation of Dutch trading and political interests, if a suspicious case is not investigated and, where possible, the perpetrator(s) prosecuted. Another factor has been added: recidivism. This revised Instruction has entered into force on 1 January 2013.

As already mentioned under Article 15 (Bribery of national public officials), at this moment new legislation is being prepared, which aims at simplifying the offence for bribing a (foreign) public official in Articles 362 and 363 of the Penal Code. In the current criminalization of bribing a (foreign) public official, a distinction is made between a breach of duty (Article 363) and no breach of duty (Article 362). In the prosecution of bribing a (foreign) public official, the component “breach of duty/no breach of duty” has seemed to have lost its significance. In the draft bill it is being proposed to criminalize active and passive bribery of a public official in Articles 177 and 363 of the Penal Code, irrespective of whether the public official was bribed to act (or not to act) in breach of his duties. The maximum penalty for the new Article 363 of the Penal Code will be increased: six years imprisonment and a fine of the fifth category. For more information, please refer to the Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8)

In the 2011 Framework letter to the Public Prosecution Service (OM Kaderbrief 2011) the Minister of Security and Justice instructed the Board of Procurators-General to develop a crime analysis on the bribery of foreign public officials. This study should give an analysis on the obstacles in investigations on foreign bribery, as well as best practices, and therefore will contribute to a more effective way of investigating possible cases of foreign bribery and a better and more successful approach of these cases. The National Police Internal Investigations Department (Rijksrecherche) has taken on the task of writing this analysis before the end of 2012.

In 2013, the Rijksrecherche concluded this analysis. One of the main conclusions of this analysis is that the various organizations involved need to increase their cooperation in order to achieve better results in the fight against foreign corruption. This analysis has helped the Public Prosecution Service in developing a new approach for fighting foreign bribery. With this new approach the Public Prosecution Service not only improves cooperation within its own organization, but also with other (government) organizations. As part of this approach, there will be - for example - combined investigation teams on a structural basis, comprising of investigators from both the Rijksrecherche and the FIOD, each providing their specific expertise (the Rijksrecherche being specialized in politically sensitive investigations and the FIOD in investigating financial crime). The decision to structurally form multi-disciplinary teams enhances the expediency of investigations in foreign corruption. Positive results have been achieved with these combined teams already.

For case law, please refer to Article 16 (Bribery of foreign public officials and officials of public international organizations), paragraph 1, previous answers.

For statistical data, please refer to Article 16 (Bribery of foreign public officials and officials of public international organizations), paragraph 1, previous answers.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that article 364a PC ensures that public officials under the Dutch legislation are equated with “persons in the public service of a foreign state or of an international organization”. A detailed description of “persons in the public service of a foreign state or an international organization” is not required, owing to the link established with the broadly defined concept of “public official”.

The reviewing experts welcomed the fact that new legislation was being prepared, proposing to criminalize active and passive bribery of a public official in articles 177 and 363 PC,
irrespective of whether the public official was bribed to act (or not to act) in breach of his duties. The new law will increase the maximum penalty: imprisonment of six years and a fine of the fifth category.

Changes have been made to the text of the Instruction on Investigation and Prosecution of Foreign Corruption, emphasizing a more proactive approach when another country has already started a criminal investigation in a case where the Netherlands also has jurisdiction. If a criminal investigation started abroad, the Dutch law enforcement authorities should contact their foreign counterpart in order to discuss and coordinate their respective actions. It is also recommended to search for possibilities for cooperation with other countries at a very early stage. This revised Instruction has entered into force on 1 January 2013. An analysis conducted in 2013 has helped, as reported, the Public Prosecution Service in developing a new approach for fighting foreign bribery. As part of this approach, there will be, for example, multi-disciplinary investigation teams on a structural basis to expedite, investigations in foreign corruption cases.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

_Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position._

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The Netherlands cited the following laws:

**Article 310 Penal Code**

Any person who removes any property belonging wholly or partially to any other person with the intention of unlawfully appropriating it is guilty of theft and liable to a term of imprisonment not exceeding four years or a fourth-category fine.

**Article 321 Penal Code**

Any person who intentionally and unlawfully appropriates any property wholly or partially belonging to another person which the latter has in his possession other than through the commission of an indictable offence, is guilty of embezzlement and liable to a term of imprisonment not exceeding three years or a fifth-category fine.

**Article 326 Penal Code**

1. Any person who, with the object of obtaining an unlawful advantage for himself or another person, induces any person, by adopting a false name or by acting in a false capacity, or by deception or a tissue of lies, to surrender any property, to provide a service, to make data available, or to incur a debt or cancel an outstanding debt, is guilty of fraud and liable to a term of imprisonment not exceeding four years or a fifth-category fine.
2. If the offence is committed with the aim of preparing or facilitating a terrorist offence, the term of imprisonment is increased by one third.

Article 227b Penal Code (forgery)
Any person who, in violation of an obligation imposed on him by or pursuant to a statutory regulation, intentionally omits to provide the necessary information on time, shall, if this can serve to benefit himself or another, while he knows or has reasonable cause to suspect that the information provided is relevant for determining his or another’s right to that benefit payment or allowance or for the amount or the duration of such benefit payment or allowance, be liable to a term of imprisonment not exceeding four years or a fine of the fifth category.

Article 44 Penal Code
If a civil servant violates a special official duty when committing an offence, or when the civil servant uses the power, opportunity or means provided to him by his official duties when committing an offence, the penalty imposed on the criminal offence will be increased by a third, with the exception of a fine.

359 Penal Code
Any public official or any other person charged, either on a permanent or temporary basis, with any public office, who intentionally embezzles money or paper of monetary value which is in his control in the execution of his duties, or allow another person to remove or to embezzle such, or as an accessory assists that other person in such act, is liable to a term of imprisonment not exceeding six years or a fifth-category fine.

360 Penal Code
Any public official or any other person charged, either on a permanent or temporary basis, with any public office, who intentionally makes false entries in books or registers intended solely for the purpose of administrative control, or who falsifies such books or registers, is liable to a term of imprisonment not exceeding three years or a fifth-category fine.

361 Penal Code.
1. Any public official or any other person charged, either on a permanent or temporary basis, with any public office, who intentionally embezzles, destroys, damages or renders unusable any matter that is intended to convince the competent authorities or to serve the competent authorities as evidence, or instruments, documents or registers, which have been entrusted to him in the execution of his duties, or allows another person to cause to disappear, destroy, damage such or to render such unusable or as an accessory assists that other person in such act, is liable to a term of imprisonment not exceeding four years and six months or a fifth-category fine.
2. Competent authorities include an international court of law which derives its jurisdiction from a convention to which the Kingdom of the Netherlands is a party.

Article 380 Penal Code
(…)
2. Upon conviction for any of the offenses defined in Articles 359, 362 to 364 incl., 366 and 379, paragraph 1, deprivation of the right listed in Article 28, paragraph 1 (4), may be imposed.

Article 23 Penal Code (Categories fines)
(…)
2. The minimum amount of the fine is € 3.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
   a. the first category, € 390;
   b. the second category, € 3,900;
   c. the third category, € 7,800;
   d. the fourth category, € 19,500;
   e. the fifth category, € 78,000;
   f. the sixth category, € 780,000.
   
   (...) 

Article 28 Penal Code (Deprivation of rights)
1. In the cases defined by law, a person found guilty may be deprived from the following rights under a court order:
   1. Holding office or any specific public office;
   2. Serving in the army;
   3. The right to elect members of any general representative body and to be elected as a member of such body;
   4. Being a counsel or court-appointed administrator;
   5. Exercising specific professions.
   
   (...) 

Article 29 Penal Code
Expulsion of the right to hold office or hold certain offices and to serve with the armed forces may, except in the cases defined in the Second Book*, be pronounced with conviction for any malfeasance or for any offence by which the offender violated a particular official duty or for which he made use of power, opportunity or means given to him by his office.

(* Second Book: Serious offences (amongst others Titel XXVIII Malfeasances (Ambtsmisdrijven) - Articles 355-380 Penal Code)

The Netherlands provided the following commentary:

Different legal cultures use different names for criminal acts that entail the ‘fraudulent use of property’. In the Netherlands, this includes offences such as embezzlement, theft and fraud. The fact that these types of acts have been committed by an official is irrelevant in terms of the question of whether they are punishable in the Netherlands. However, if the official committed the act of theft or embezzlement by taking advantage of the authority, opportunity or means available to him or her by virtue of his or her office, this may constitute grounds to impose a heavier penalty (conform Article 44 of the Penal Code).

The Netherlands has implemented Article 17, according to the facts and circumstances of the case, in the form of provisions such as Articles 310, 321 and 326 of the Penal Code and the specific serious offences committed by a civil servant while in office referred to in Articles 359, 360 and 361 of the Penal Code.

The Dutch Penal Code contains general provisions on embezzlement, theft and fraud, which can be committed by all persons.

Article 310 criminalizes theft as “the removing of any property belonging in whole or in part to another, with the object of unlawfully appropriating it”. Article 321 defines embezzlement as “intentionally appropriating, unlawfully, any property belonging in whole or in part to another, and of which he has control other than as the result of a serious offence.” Article 326 foresees a criminal penalty for a person “who, with the object of obtaining unlawful gain for himself or another, induces a person, by assuming a false name or a false capacity, or by artful tricks, or by a tangle of lies, to surrender any property, make available data having monetary value in commerce, incur a debt or renounce a claim”.
Those three offences, committed by a civil servant taking advantage of the authority, opportunity or means available by virtue of his/her office, may carry a heavier penalty (Article 44 Penal Code).

On the other hand, Dutch law establishes relevant offences committed by a civil servant while in office. Article 359 of the Penal Code states that “any public servant or any other person charged, either on a permanent or temporary basis, with any public office, who intentionally embezzles money or paper of monetary value which is in his control in the execution of his duties, or allow another person to remove or to embezzle such, or as an accessory assists that other person in such act” will be punished. Punishment is foreseen in Article 360 of the Penal Code for “a public servant or any other person charged, either on a permanent or temporary basis, with any public office, who intentionally makes false entries in books or registers intended solely for the purpose of administrative control, or who falsifies such books or registers”. Article 361 of the Penal Code establishes as a criminal offence the conduct of “a public servant or any other person charged, either on a permanent or temporary basis, with any public office, who intentionally embezzles, destroys, damages or renders unusable any matter that is intended to convince the competent authorities or to serve the competent authorities as evidence, or instruments, documents or registers, which have been entrusted to him in the execution of his duties, or allows another person to cause to disappear, destroy, damage such or to render such unusable or as an accessory assists that other person in such act”. Paragraph 2 of this Article states that “competent authorities” include an international court of law “which derives its jurisdiction from a convention to which the Kingdom of the Netherlands is a party.”

The Netherlands cited the following case law:
In a 2009 case the Court in Utrecht convicted a public official for embezzlement in the course of his duties pursuant to Article 359 Penal Code. The public official, a policeman, was suspected of embezzling - for his own benefit - sums of money (fines for traffic offences) entrusted to him by virtue of his position. The Court pointed out that Article 359 Penal Code applies in case of misappropriation of money by a public official, to whom the money has been entrusted by virtue of his position. In a Supreme Court ruling it was pointed out that the intention of Article 359 Penal Code is to protect the State from public officials that evade money from the official destination (Supreme Court, 29 November 1949, NJ 1950, 214). The policeman was fired and the Court decided that he had to pay a compensation fee to the police organisation. The defendant was also sentenced to a conditional prison sentence of two months (Court Utrecht, 10 June 2009, LJN: BM5074).

In regards to statistical data, the Netherlands stated that it appeared to be not possible - in a technical sense - to get an overview from the Public Prosecution Service on the number of cases in which a person was prosecuted/convicted for Article 310, 321 or 326 Penal Code in combination with Article 44 Penal Code. It was possible to get an overview of the prosecutions/convictions for Article 310, 321 or 326 Penal Code alone. These numbers include however all cases of theft and embezzlement and are not relevant in the context of embezzlement, misappropriation or other diversion of property by a public official.

There are numbers available for Articles 359, 360 and 361 Penal Code. Please refer to Annex 9. Nevertheless, statistics on specific criminal offences need to be assessed with some restraint. For a short explanation, please refer to Article 15 (Bribery of national public officials), subparagraph (a).

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the Dutch PC contains general provisions on embezzlement, theft, forgery and fraud, which can be committed by all persons (articles 310, 321, 227b, 326),
as well as provisions on offences committed by a civil servant while in office (articles 359, 361, 365).

The reviewing experts concluded that the provision has been adequately implemented.

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands considered that it partly implemented this provision of the Convention.

There are no specific provisions on trading in influence in Dutch legislation. The acts deemed punishable offences which are described in this Article are familiar from the Council of Europe Convention on Corruption. When granting its approval in respect of that convention, the Netherlands did so on the provision that it would not implement the obligation to make illegal influence a punishable offence. To this end, the Netherlands made a reservation to the Criminal Law Convention on Corruption, which states: “In accordance with Article 37, paragraph 1, the Netherlands will not fulfil the obligation under Article 12”.

This condition was imposed because it is possible to impose a sentence in respect of almost all cases of “illegal influence” pursuant to the provisions with regard to active and passive bribery (whether or not in the form of an attempt or in combination with the forms of participation set out in Articles 47 and 48 of the Penal Code). These provisions already sufficiently provide for adequate protection against unauthorised and actual exertion of influence and no separate offence needs to be established in order for this to be a criminal offence.

With respect to those cases in which it is not possible to hand down a sentence, the act committed does not constitute a punishable offence. An example of this is a situation whereby influence has been exerted (in a financed or unfinanced manner) on the official or political decision-making process in the form of lobbying on the part of representatives or interest groups. These objections against penalisation of “illegal influence” also apply mutatis mutandis to the present Article, and the Netherlands therefore does not intend to provide for any further implementation in this respect.

For active and passive bribery provisions, please refer to the answers under Articles 15 (Bribery of national public officials) and 16 (Bribery of foreign public officials and officials of public international organisations).

(b) Observations on the implementation of the article

The reviewing experts noted that there are no specific provisions on trading in influence in the Dutch legislation. When ratifying the Council of Europe Criminal Law Convention on Corruption, the
Netherlands made a reservation stating that “in accordance with Article 37, paragraph 1, the Netherlands will not fulfil the obligation under Article 12”. The national authorities further explained that the caution to introduce criminal law measures in this field was also attributed to the fact that many international non-governmental organizations were active in the Netherlands and involved in lobbying activities. The review team took note of the optional nature of article 18 of UNCAC, as well as the argument of the national authorities that the criminalization of bribery in the PC is understood to be broad and consequently it provides enough possibility to prosecute the exercise of improper influence for obtaining an undue advantage. However, further to discussions during the country visit with representatives from civil society and the private sector who identified as a “blind spot” of the legislation the lack of provisions to tackle the act of exercising improper influence for obtaining an undue advantage, the review team encouraged the national authorities to reconsider the establishment of the offence of trading in influence in the Dutch legislation.

**Article 18 Trading in influence**

**Subparagraph (b)**

> Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

> (b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

**Summary of information relevant to reviewing the implementation of the article**

The Netherlands considered that it partly implemented this provision of the Convention.

Please refer to Article 18 (Trading in influence), subparagraph a for citation of texts, case law, statistical data.

The Netherlands has indicated that it does not require any form of technical assistance.

**Observations on the implementation of the article**

See above under article 18 subparagraph (a) of the UNCAC.

**Article 19 Abuse of Functions**

> Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

**Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.
The definition of the acts, as incorporated in this Article, is already largely covered under the forms of bribery to be made a punishable offence pursuant to Article 15. The Article means that illegal acts or omissions committed by an official in a professional capacity, for the purpose of obtaining benefit for him of herself or for another person, must be deemed a punishable offence. This will often concern non-completed forms of bribery, for example attempted passive bribery and incitement to active bribery. Furthermore, under certain circumstances the more general offences against property, embezzlement and theft shall fall within the scope of this Article of the convention. These penalty provisions provide sufficient scope for the implementation of this Article, although this provision under the convention is not mandatory.

Please also refer to the answers with regard to Article 15 (Bribery of national public officials), 16 (Bribery of foreign public officials and officials of public international organisations) and 17 (Embezzlement, misappropriation or other diversion of property by a public official).

The country under review provided the following information regarding case law:
With regard to attempted passive bribery: In a 2011 court case (LJN: BP1512), the lawyer of the defendant - a civil servant of a municipality, being charged with passive bribery - stated that the solicitation for a gift can only be punishable if the company involved acted on this solicitation. If this is not the case, the lawyer said, the acts only constitute a failed attempt, and therefore are not punishable. The court in ’s-Hertogenbosch disagreed with this argument and pointed out that the mere solicitation for a gift constitutes a completed punishable offence under Article 363, subparagraph 1 (3) of the Penal Code:

1. Punishment in the form of a prison sentence of not more than four years or a fine in the fifth category will be imposed on the civil servant:
   (…)  
   3°. who asks for a gift, promise or service, in order to act or to refrain from acting in the execution of his duties, in a manner contrary to the requirements of his office;
   (…)  

The following provision is also of relevance:
Article 365 Penal Code (abuse of function to force someone)

A public official who, by abusing the authority vested in him, compels another person to act or to refrain from certain acts or to tolerate certain acts, shall be liable to a term of imprisonment not exceeding two years or a fine of the fourth category.

In regards to statistical data, the Netherlands stated the following:
Please refer to the information provided under Articles 15 (Bribery of national public officials), 16 (Bribery of foreign public officials and officials of public international organisations) and 17 (Embezzlement, misappropriation or other diversion of property by a public official) of the self-assessment. The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the definition of the acts related to abuse of functions is already largely covered under the forms of bribery, as described above. Furthermore, under certain circumstances, the more general offences against property, embezzlement and theft also fall within the scope of article 19 of UNCAC.

The reviewing experts concluded that the provision has been adequately implemented.
Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands considered that it partly implemented this provision of the Convention.

This Article is not implemented as such in criminal legislation in the Netherlands. “Unauthorised enrichment” does not fit in well with the Dutch legal tradition. The essence of the behaviour that is to be made subject to penalization is formed by the element “substantial increase in assets”. In itself, a substantial increase in assets is not a punishable offence, unless the official in question is unable to provide a reasonable explanation for such increase. The official must therefore demonstrate that the increase in his or her assets has taken place in a lawful manner. A penalty provision set out in this way is not very compatible with the basic principle, applicable in the Netherlands, that it is the duty of the Public Prosecution Service to prove that an individual is guilty of committing an offence, and that the accused shall not be required to prove his or her innocence. It is on these grounds that the Netherlands does not intend to provide for any further implementation of Article 20.

Although Article 20 has not been implemented as such in Dutch legislation, Dutch law provides for possibilities to investigate and prosecute in cases of illicit enrichment. The criminal behaviour underlying this offence can be prosecuted on the basis of the Dutch provisions on money laundering (please also refer to the answers under Article 23 of the Convention).

There has also been a change in Dutch legislation in 2011 which is worth pointing out in relation to this Article. On 1 July 2011 a new revision of the provisions on confiscation entered into force (Act of 31 March 2011, Stb. 2011, 171). This new legislation further enlarges the possibilities for confiscating criminal proceeds. Among other things, the legislation provides for the introduction of legal presumptive evidence regarding the origin of assets belonging to the defendant (also referred to as a shift of the burden of proof). The legislation provides in statutory presumptions of evidence regarding the origin of assets, belonging to the defendant. These presumptions may concern assets acquired over a period of up to six years prior to the criminal offence. The presumptions can be rebutted by the defendant, on the balance of probabilities. Please also refer to Article 31 (Freezing, seizure and confiscation).

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the act of illicit enrichment is not criminalized in the Netherlands given that such criminalization would not be compatible with the basic principle that it is the duty of the Public Prosecution Service to prove that an individual is guilty of committing an offence, and that the accused shall not be required to prove his or her innocence.

Although article 20 of UNCAC has not been implemented as such in the Dutch legislation, the Dutch law provides for possibilities to investigate and prosecute in cases of illicit enrichment. The criminal behaviour underlying this offence can be prosecuted on the basis of the provisions on money-laundering. The reviewing experts recommended that the national authorities reconsider the establishment of the offence of illicit enrichment.
With regard to asset declaration systems for public officials, the national authorities reported that since the end of 2013 all high ranking officials working for the ministries are obliged to report their financial interests. This includes all interests that may conflict with or influence the fulfilment of their position within the ministry (such as assets, mortgages, debts, etc.). The reporting requirement also includes the interests of spouses and dependent family members such as minors, as well as shares held in companies. The remuneration of MP’s is also restricted to a maximum amount and they are also subject to an obligation of declaration of their ancillary positions and interests and of the income they receive from them.

**Article 21 Bribery in the private sector**

**Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting:

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

**Annex:**
- Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8)

**Relevant legislation:**

Article 328ter Penal Code (Bribery in the private sector)
1. A person who, in a capacity other than that of public servant, either in the service of his employer or acting as an agent, accepts a gift or promise in relation to something he has done or has refrained from doing or will do or will refrain from doing in the service of his employer or in the exercise of his mandate, and who, in violation of the requirements of good faith, conceals the acceptance of the gift or promise from his employer or principal, is liable to a term of imprisonment of not more than one year or a fine of the fifth category.
2. The punishment in sub-section 1 is also applicable to a person who makes a gift or a promise to another person who, in a capacity other than that of public servant, is employed or acts as an agent, in relation to something that person has done or has refrained from doing or will do or will refrain from doing in his employment or in the exercise of his mandate, the gift or promise being of such nature or made under such circumstances that he might reasonably assume that the latter, in violation of the requirements of good faith, will not disclose the gift or promise to his employer or principal.

Article 23 Penal Code (Categories fines)
(…)
2. The minimum amount of the fine is € 3.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
a. the first category, € 390;
b. the second category, € 3,900;
c. the third category, € 7,800;
d. the fourth category, € 19,500;
e. the fifth category, € 78,000;
f. the sixth category, € 780,000.

Article 28 Penal Code (Deprivation of rights)
1. In the cases defined by law, a person found guilty may be deprived from the following rights under a court order:
   1. Holding office or any specific public office;
   2. Serving in the army;
   3. The right to elect members of any general representative body and to be elected as a member of such body;
   4. Being a counsel or court-appointed administrator;
   5. Exercising specific professions.

Comments:

Active and passive bribery of persons active in the private sphere has been criminalised in Article 328ter of the Penal Code. Article 328ter, paragraph 1 concerns passive bribery, Article 328ter, paragraph 2 relates to active bribery.

‘Persons who direct or work for, in any capacity, private sector entities’

This criminal provision concerns every form of bribery that does not involve a public official, without making a distinction by sectors of society (profit/non-profit). Article 328ter uses the description ‘otherwise than as a public official, working as an employee or acting as an agent’. This provision is meant to comprise anyone working other than as a public official, whether or not in regular employment. At this point, attention should be drawn to the wide interpretation of the term ‘public official’ in Dutch criminal law (please also refer to Article 15 (Bribery national public officials)). This entails that in certain circumstances persons working for a private organisation should nevertheless be regarded as public officials. Bribery in respect of these persons therefore classifies as bribery of public officials.

‘Promising, offering or giving’

This is similar to the description of bribery of public officials (please also refer to Article 15 (Bribery of national public officials), subparagraph (a)), albeit that the ‘provision of a service’ is not stated explicitly. Although this addition was made to the provisions on bribery of public officials (when being reviewed through a legislative amendment in 2001), it is not required under case law. In a number of criminal cases, the Supreme Court classified the provision of a service as a ‘gift’. For example, reference can be made to a case in which the provision of sexual favours to a public official was classified as a ‘gift’ (Supreme Court, 31 May 1994, NJ 1994, 673).
In this respect, therefore, the addition to the criminal provisions on bribery of public officials was nothing more than a codification of case law. There is no reason either to assume that the description in the criminal provisions on private corruption would be less wide.
‘Any undue advantage’

Article 328ter refers to ‘gift or promise’. As already pointed out above/before, the addition of ‘service’ is not necessary on the basis of case law. The Supreme Court has ruled that the provision of a service should be considered to be a gift. There is no reason to assume that the provision on private sector bribery is less wide than the established case law and provisions on public sector bribery. Providing of offering a service should thus be regarded as being included in the scope of Article 328ter.

The decisive element in establishing whether the gift was undue is the concealment of the acceptance of the gift from the bribe-taker’s employer ‘in violation with the requirements of good faith’. For establishing active private sector bribery it is necessary that the gift or promise is of such a nature or made under such circumstances that s/he (the bribe-giver) might reasonably assume that the latter (the bribe-taker), in violation of the requirements of good faith, will not disclose the gift or promise to his/her employer or principal.

‘Directly or indirectly’

This is also similar to the description of bribery of public officials. Please refer to Article 15 (Bribery of national public officials), subparagraph (a) and subparagraph (b). It is not necessary that a gift or promise is made directly by the bribe-giver to the bribe-taker and/or that the act in return is rendered by the bribe-taker him/herself. Private sector bribery through an intermediary is covered in a similar manner as for bribery of public officials.

‘For himself or herself or for anyone else’

This is also similar to the description of bribery of public officials. Please refer to Article 15 (Bribery of national public officials), subparagraph (a) and subparagraph (b). Case law on this issue regarding bribery of public officials is also applicable to private sector bribery in as far as third party beneficiaries are concerned.

‘To act or refrain from acting’

This is also similar to the description of bribery of public officials, albeit in slightly different terms. Please refer to Article 15 (Bribery of national public officials), subparagraph (a) and subparagraph (b). This involves a gift or promise pursuant to something the employee or agent did or did not do, or will or will not do. However, the criminalisation of active and passive bribery in the private sector does not focus on ‘doing or not doing’, but on the concealment - contrary to good faith - of the acceptance of the gift or promise from the employer or principal.

As in the case of bribery of public officials, no connection is required between the gift and a specific act that can be labelled as ‘doing or not doing something’. The Rotterdam District Court ruled that the provision of a BMW car together with cards for obtaining free fuel should indeed be regarded as a gift based on a particular performance on the part of the employee within the meaning of Article 328ter of the Penal Code. The counsel for the defence had argued that there was no causal relationship between the gift and a performance on the part of the employee. According to the Court, no such relationship was required: ‘the assumption that this would only involve a criminal offence in case of a particular performance on the part of the accused (employee) is not correct’. The accused should have understood that the use of the car and the fuel cards served to establish, maintain or improve a relationship between the employer/employers of the accused as the principal and the company (of the giver) as the supplier, whether or not in the context of a preferred suppliership (Rotterdam District Court, 24 May 2006, LJN: AX4719). In another case, the deputy manager of a private housing corporation had a construction firm do work to his residential property at a great discount (Supreme Court, 27 November 1990, NJ 1991, 318).
‘In the course of business activity’

Article 328ter Penal Code does not explicitly restrict the criminalisation of private sector bribery to acts committed ‘in the course of business activity’, but provides that the bribe-taker is doing something or omitting to do something in the service of his employer or in the exercise of his mandate. The nature of the activities or the mandate is irrelevant; this may also involve non-commercial activities.

‘In breach of duties’

The central element in the criminalization of private sector bribery is not the breach of duties as such, but the concealment of the gift or promise from the employer, contrary to the requirements of good faith: by concealing the acceptance of a gift or promise the employee has breached his/her duties. The obligation to inform the employer, and thereby acting contrary to good faith, has been objectified: the decisive factor is whether the employee was obliged to disclose the gift or promise in accordance with objective criteria (to be determined and assessed at external level). This also means that the employee, when in doubt as to whether he should disclose a particular gift, is obliged as well to inform or at least consult the employer.

Only benefits that can no longer be considered - on the basis of objective social standards, including recognised business practices - to be customary business gifts, have to be notified. This entails the provision that the gifts to be reported are generally already questionable in nature, or, at any rate, intended to achieve above-average influencing. The Dutch legislator leaves the decision-making about how to further handle such situations to the business community, confident that conduct will be in accordance with the applicable standards concerning responsible business practices and honest competitive conditions. Important sections of the business community have already shown, by drawing up codes of conduct and ethical codes, that they are taking this task seriously.

‘Committed intentionally’

Cases of active private bribery (Article 328ter, paragraph 2 of the Penal Code) should, in addition to the provision of the gift (in respect of which conditional intent is sufficient), also involve intent or guilt with regard to other elements of the offence. Where the connection with the act or omission on the part of the corrupted employee is concerned, the law stipulates that the giver’s intent should be aimed at this act or omission. Pursuant the earlier-cited judgment of the Rotterdam District Court, however, no reference needs to be made to specific acts on the part of the corrupted employee.

A decisive element, finally, is the giver’s guilt with regard to the non-disclosure of the gift or promise - contrary to good faith - by the employee to his employer. This guilt ensues from ‘the nature’ of the gift or promise or ‘the circumstances’ under which he makes them, and which are such that he ‘should reasonably assume that this gift or promise will be concealed, contrary to good faith’.

This also means that the perpetrator of active private corruption remains liable to punishment even if the receiving employee, against his expectations, does disclose the gift to his employer.

At the moment of drafting the present report, new legislation is being prepared, which, amongst other things, amends Article 328ter of the Penal Code. As stated in the Explanatory Memorandum of this draft bill (see Annex 8) international obligations to criminalise active and passive bribery often link the punishability of corruptive conduct in the relevant sector to the criterion of acting contrary to a duty. Because of this, the Dutch government is of the opinion that there is reason to adjust the criminalisation of private bribery in order to ensure that the relevant international obligations are adequately implemented. The expansion of the criminalisation of private bribery is translated into concrete terms by placing the central focus of Article 328ter of the Criminal Code on conduct contrary to one’s duty on the part of an employee or mandatory. It is clarified in the proposed third paragraph that acting contrary to a duty in any event also includes a failure to disclose a gift, promise or service,
contrary to good faith, to which the scope of Article 328ter is currently limited. With the draft bill, also a higher maximum sentence for bribery in the private sector is being proposed: four years of imprisonment and a fine of the fifth category. This law proposal will be sent to Parliament in the first half of 2013.

For examples of case law, please refer to Article 21 (Bribery in the private sector), subparagraph (a), previous answer.

Statistics on specific criminal offences need to be assessed with some restraint. For a short explanation, please refer to Article 15 (Bribery of national public officials), subparagraph (a). Please refer to Annex 9 for statistical information.

(b) Observations on the implementation of the article

The reviewing experts noted that the active bribery in the private sector has been criminalized in article 328ter PC. This provision concerns every form of bribery that does not involve a public official, without making a distinction by sectors of society (profit/non-profit). It is also meant to comprise anyone working other than as a public official, whether or not in regular employment.

Article 328ter PC does not explicitly restrict the criminalization of private sector bribery to acts committed “in the course of business activity”, but provides that the bribe-taker acts – or omits to act - in the service of his/her employer or in the exercise of his/her mandate. The nature of the activities or the mandate is irrelevant; this may also involve non-commercial activities. This was considered by the reviewing experts as a good practice.

At the time of the country visit, new legislation was being prepared placing the central focus of article 328ter PC on conduct contrary to one's duty on the part of an employee. It was clarified that acting contrary to a duty in any event also includes a failure to disclose a gift, promise or service, contrary to good faith, to which the scope of Article 328ter is currently limited. With the draft bill, also a higher maximum sentence for bribery in the private sector is being proposed: four years of imprisonment and a fine of the fifth category.

The reviewing experts welcomed this development and concluded that the provision has been adequately implemented.

(c) Successes and good practices

• The fact that the nature of the activities is not a constituent element of the provision criminalizing bribery in the private sector and, thus, non-commercial activities may also be covered.

Article 21 Bribery in the private sector

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the
the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

Annex:

- Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8)

Relevant legislation:

Article 328ter Penal Code (Bribery in the private sector)
1. A person who, in a capacity other than that of public servant, either in the service of his employer or acting as an agent, accepts a gift or promise in relation to something he has done or has refrained from doing or will do or will refrain from doing in the service of his employer or in the exercise of his mandate, and who, in violation of the requirements of good faith, conceals the acceptance of the gift or promise from his employer or principal, is liable to a term of imprisonment of not more than one year or a fine of the fifth category.
2. The punishment in sub-section 1 is also applicable to a person who makes a gift or a promise to another person who, in a capacity other than that of public servant, is employed or acts as an agent, in relation to something that person has done or has refrained from doing or will do or will refrain from doing in his employment or in the exercise of his mandate, the gift or promise being of such nature or made under such circumstances that he might reasonably assume that the latter, in violation of the requirements of good faith, will not disclose the gift or promise to his employer or principal.

Article 23 Penal Code (Categories fines)
(…)
2. The minimum amount of the fine is € 3.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
a. the first category, € 390;
b. the second category, € 3,900;
c. the third category, € 7,800;
d. the fourth category, € 19,500;
e. the fifth category, € 78,000;
f. the sixth category, € 780,000.
(…)

Article 28 Penal Code (Deprivation of rights)
1. In the cases defined by law, a person found guilty may be deprived from the following rights under a court order:
   1. Holding office or any specific public office;
   2. Serving in the army;
   3. The right to elect members of any general representative body and to be elected as a member of such body;
   4. Being a counsel or court-appointed administrator;
   5. Exercising specific professions.
(…)

63
Comments:

Active and passive bribery of persons active in the private sphere has been criminalised in Article 328ter of the Penal Code. Article 328ter, paragraph 1 concerns passive bribery, Article 328ter, paragraph 2 relates to active bribery.

‘Persons who direct or work for, in any capacity, private sector entities’

This criminal provision concerns every form of bribery that does not involve a public official, without making a distinction by sectors of society (profit/non-profit). Article 328ter uses the description ‘otherwise than as a public official, working as an employee or acting as an agent’. This provision is meant to comprise anyone working other than as a public official, whether or not in regular employment. At this point, attention should be drawn to the wide interpretation of the term ‘public official’ in Dutch criminal law (please also refer to Article 15 (Bribery national public officials)). This entails that in certain circumstances persons working for a private organisation should nevertheless be regarded as public officials. Bribery in respect of these persons therefore classifies as bribery of public officials.

‘Request or receipt, acceptance of an offer or promise’

This is similar to the description of bribery of public officials. Please refer to Article 15 (Bribery of national public officials), subparagraph (b). However, a central element of the provision on passive private bribery does not so much concern the acceptance of a gift or a promise, but the concealment - contrary to good faith - of the acceptance of the gift or promise from the employer or principal.

‘Any undue advantage’

Article 328ter refers to ‘gift or promise’. As already pointed out above/before, the addition of ‘service’ is not necessary on the basis of case law. The Supreme Court has ruled that the provision of a service should be considered to be a gift. There is no reason to assume that the provision on private sector bribery is less wide than the established case law and provisions on public sector bribery. Providing of offering a service should thus be regarded as being included in the scope of Article 328ter.

The decisive element in establishing whether the gift was undue is the concealment of the acceptance of the gift from the bribe-taker’s employer ‘in violation with the requirements of good faith’. For establishing active private sector bribery it is necessary that the gift or promise is of such a nature or made under such circumstances that s/he (the bribe-giver) might reasonably assume that the latter (the bribe-taker), in violation of the requirements of good faith, will not disclose the gift or promise to his/her employer or principal.

‘Directly or indirectly’

This is also similar to the description of bribery of public officials. Please refer to Article 15 (Bribery of national public officials), subparagraph (a) and subparagraph (b). It is not necessary that a gift or promise is made directly by the bribe-giver to the bribe-taker and/or that the act in return is rendered by the bribe-taker him/herself. Private sector bribery through an intermediary is covered in a similar manner as for bribery of public officials.

‘For himself or herself or for anyone else’

This is also similar to the description of bribery of public officials. Please refer to Article 15 (Bribery of national public officials), subparagraph (a) and subparagraph (b). Case law on this issue regarding bribery of public officials is also applicable to private sector bribery in as far as third party beneficiaries are concerned.
'To act or refrain from acting'

This is also similar to the description of bribery of public officials, albeit in slightly different terms. Please refer to Article 15 (Bribery of national public officials), subparagraph (a) and subparagraph (b). This involves a gift or promise pursuant to something the employee or agent did or did not do, or will or will not do. However, the criminalisation of active and passive bribery in the private sector does not focus on ‘doing or not doing’, but on the concealment - contrary to good faith - of the acceptance of the gift or promise from the employer or principal.

As in the case of bribery of public officials, no connection is required between the gift and a specific act that can be labelled as ‘doing or not doing something’. The Rotterdam District Court ruled that the provision of a BMW car together with cards for obtaining free fuel should indeed be regarded as a gift based on a particular performance on the part of the employee within the meaning of Article 328ter of the Penal Code. The counsel for the defence had argued that there was no causal relationship between the gift and a performance on the part of the employee. According to the Court, no such relationship was required: ‘the assumption that this would only involve a criminal offence in case of a particular performance on the part of the accused (employee) is not correct’. The accused should have understood that the use of the car and the fuel cards served to establish, maintain or improve a relationship between the employer/employers of the accused as the principal and the company (of the giver) as the supplier, whether or not in the context of a preferred suppliership (Rotterdam District Court, 24 May 2006, LJN: AX4719). In another case, the deputy manager of a private housing corporation had a construction firm do work to his residential property at a great discount (Supreme Court, 27 November 1990, NJ 1991, 318).

‘In the course of business activity’

Article 328ter Penal Code does not explicitly restrict the criminalisation of private sector bribery to acts committed ‘in the course of business activity’, but provides that the bribe-taker is doing something or omitting to do something in the service of his employer or in the exercise of his mandate. The nature of the activities or the mandate is irrelevant; this may also involve non-commercial activities.

‘In breach of duties’

The central element in the criminalisation of private sector bribery is not the breach of duties as such, but the concealment of the gift or promise from the employer, contrary to the requirements of good faith: by concealing the acceptance of a gift or promise the employee has breached his/her duties. The obligation to inform the employer, and thereby acting contrary to good faith, has been objectified: the decisive factor is whether the employee was obliged to disclose the gift or promise in accordance with objective criteria (to be determined and assessed at external level). This also means that the employee, when in doubt as to whether he should disclose a particular gift, is obliged as well to inform or at least consult the employer.

Only benefits that can no longer be considered - on the basis of objective social standards, including recognised business practices - to be customary business gifts, have to be notified. This entails the provision that the gifts to be reported are generally already questionable in nature, or, at any rate, intended to achieve above-average influencing. The Dutch legislator leaves the decision-making about how to further handle such situations to the business community, confident that conduct will be in accordance with the applicable standards concerning responsible business practices and honest competitive conditions. Important sections of the business community have already shown, by drawing up codes of conduct and ethical codes, that they are taking this task seriously.
‘Committed intentionally’

In cases of passive private bribery (Article 328ter, paragraph 1 of the Penal Code), the requirement of intent applies to the receipt of the gift. Another important point is that the recipient should have recognised, or ‘given the circumstances, should have understood’, the purpose of the gift (Rotterdam District Court, 24 May 2006, LJN: AX4719). Furthermore, the employee’s intent will relate to the concealment of the gift or promise from the employer. It can be assumed that the employee has some time within which to make the disclosure: he will have to inform the employer within a reasonable period of time.

As pointed out under Article 21 (Bribery in the private sector) under subparagraph (a), at this moment new legislation is being prepared, which, amongst other things, amends Article 328ter of the Penal Code. The expansion of the criminalisation of private bribery is translated into concrete terms by placing the central focus of Article 328ter of the Criminal Code on conduct contrary to one's duty on the part of an employee or mandatory. It is clarified in the proposed third paragraph that acting contrary to a duty in any event also includes a failure to disclose a gift, promise or service, contrary to good faith, to which the scope of Article 328ter is currently limited. With the draft bill, also a higher maximum sentence for bribery in the private sector is being proposed: four years of imprisonment and a fine of the fifth category. This law proposal will be sent to Parliament in the first half of 2013.

For examples of case law, please refer to Article 21 (Bribery in the private sector), subparagraph (b), previous answer.

Please refer to Article 21 (Bribery in the private sector), subparagraph (a) for statistical data.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the passive bribery in the private sector has also been criminalized in article 328ter PC. This provision concerns every form of bribery that does not involve a public official, without making a distinction by sectors of society (profit/non-profit). It is also meant to comprise anyone working other than as a public official, whether or not in regular employment.

Article 328ter PC does not explicitly restrict the criminalization of private sector bribery to acts committed “in the course of business activity”, but provides that the bribe-taker acts – or omits to act - in the service of his/her employer or in the exercise of his/her mandate. The nature of the activities or the mandate is irrelevant; this may also involve non-commercial activities. This was considered by the reviewing experts as a good practice.

At the time of the country visit, new legislation was being prepared placing the central focus of article 328ter PC on conduct contrary to one's duty on the part of an employee. It was clarified that acting contrary to a duty in any event also includes a failure to disclose a gift, promise or service, contrary to good faith, to which the scope of Article 328ter is currently limited. With the draft bill, also a higher maximum sentence for bribery in the private sector is being proposed: four years of imprisonment and a fine of the fifth category.

The reviewing experts welcomed this development and concluded that the provision has been adequately implemented.
(c) Successes and good practices

- The fact that the nature of the activities is not a constituent element of the provision criminalizing bribery in the private sector and, thus, non-commercial activities may also be covered.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 321 Penal Code
Any person who intentionally and unlawfully appropriates any property wholly or partially belonging to another person which the latter has in his possession other than through the commission of an indictable offence, is guilty of embezzlement and liable to a term of imprisonment not exceeding three years or a fifth-category fine.

Article 322 Penal Code
Embezzlement committed by any person who has the property in his possession by virtue of his employment or profession, or in return for monetary consideration, renders that person liable to a term of imprisonment not exceeding four years or a fifth-category fine.

Article 23 Penal Code (Categories fines)

1. The minimum amount of the fine is € 3.
2. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
3. There are six categories:
   a. the first category, € 390;
   b. the second category, € 3,900;
   c. the third category, € 7,800;
   d. the fourth category, € 19,500;
   e. the fifth category, € 78,000;
   f. the sixth category, € 780,000.

The Netherlands provided the following commentary:
Criminal legislation in the Netherlands regards the fact that the offence of misappropriation has been committed in an official capacity as an aggravating circumstance. Pursuant to Article 322 of the Penal Code, any misappropriation of funds committed by an official charged with the supervision of said funds on the basis of his or her specific job or profession, or in return for payment, shall be subject to a
more severe sentence than he or she would have received on the basis of the offence of misappropriation as referred to in Article 321 of the Penal Code. The penalisation of the above offences under Article 322 of the Penal Code therefore serves to implement this Article of the Convention.

With regard to statistical data, the Netherlands mentioned: Article 321 Penal Code criminalizes embezzlement in a broad sense; it can apply in cases of embezzlement in the course of economic, financial or commercial activities, but also outside these activities. The numbers on prosecutions/convictions in relation to Article 321 Penal Code will include all cases of embezzlement and are therefore not relevant in this context. There are also numbers available on prosecutions/convictions for Article 322 Penal Code; these will be provided in Annex 9. It has to be noted that statistics on specific criminal offences need to be assessed with some restraint. For a short explanation, please refer to Article 15 (Bribery of national public officials), subparagraph (a).

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the Dutch PC contains general provisions on embezzlement, theft, forgery and fraud, which can be committed by all persons (articles 310, 321, 227b, 326), together with those provisions on offences committed by a civil servant while in office (articles 359, 361, 365).

The reviewing experts concluded that the provision has been adequately implemented.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Article 416 Penal Code
1. A person who:
   a. obtains, has at his disposal or transfers property or who vests a right in personam or in rem in property, or who transfers such right, knowing, at the time the property was
obtained or came under his control or at the time the right was vested, that the property had been obtained by means of a serious offence; or
b. intentionally, for motives of pecuniary gain, has at his disposal or transfers property obtained by means of a serious offence, or transfers a right in personam or in rem vested in property that was obtained by means of a serious offence,
is guilty of intentionally handling stolen property, and is liable to a term of imprisonment of not more than four years or a fine of the fifth category.
2. A person who intentionally derives advantage from the proceeds of any property obtained by means of a serious offence is liable to the same punishment.

Article 417 Penal Code
A person who by custom commits the offence of intentionally handling stolen property is liable to a term of imprisonment of not more than six years or a fine of the fifth category.

Article 417bis Penal Code
1. A person who:
a. obtains, has at his disposal or transfers property, or who vests a right in personam or in rem in respect of property or who transfers such right, where he, at the time the property was obtained or came under his control or at the time such right was vested, should reasonably have suspected the property to have been obtained by means of a serious offence;
b. for motives of pecuniary gain, has at his disposal or transfers property, or transfers a right in personam or in rem in property, where he should reasonably suspect the property to have been obtained by means of a serious offence,
is guilty of handling stolen property by negligence or carelessness, and is liable to a term of imprisonment of not more than one year or a fine of the fifth category.
2. A person who intentionally derives advantage from the proceeds of any property where he should reasonably suspect that the property was obtained by means of a serious offence is liable to the same punishment.

Article 420bis Penal Code
1. Anyone who:
a. conceals or disguises the true nature, source, location, disposition or movement of an object, or conceals or disguises who has title to the object or has it in his possession, knowing that the object derives directly or indirectly from a serious offence;
b. acquires, has in his possession, transfers or converts, or makes use of an object knowing that the object derives directly or indirectly from a serious offence.
shall be guilty of money laundering and liable to a term of imprisonment not exceeding four years or a fifth-category fine.
2. An object shall be understood to be any good or property right.

Article 420ter Penal Code
Anyone who makes a habit of money laundering shall be liable to a term of imprisonment not exceeding six years of a fifth-category fine.

Article 420quater Penal Code
1. Anyone who:
a. conceals or disguises the true nature, source, location, disposition or movement of an object, or conceals or disguises who has title to the object or has it in his possession, while he might reasonably have suspected that the object derives directly or indirectly from a serious offence;
b. acquires, has in his possession, transfers, converts or makes use of an object, while he might reasonably have suspected that the object derives directly or indirectly from a serious offence.
shall be guilty of negligent money laundering and liable to a term of imprisonment not exceeding one years or a fifth-category fine.
2. An object shall be understood to be any good or property right.

Article 420quinquies Penal Code
When sentenced for one of the offences as set forth in Articles 420bis to 420quater, inclusive, the offender may be deprived of the rights as referred to in Article 28, subsection 1, under 1°, 2° and 4°, and the offender may be denied the exercise of the profession in which he committed the offence.

Article 23 Penal Code (Categories fines)
(...)
2. The minimum amount of the fine is € 3.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
a. the first category, € 390;
b. the second category, € 3.900;
c. the third category, € 7.800;
d. the fourth category, € 19.500;
e. the fifth category, € 78.000;
f. the sixth category, € 780.000.
(...) 

Article 28 Penal Code (Deprivation of rights)
1. In the cases defined by law, a person found guilty may be deprived from the following rights under a court order:
   1. Holding office or any specific public office;
   2. Serving in the army;
   3. The right to elect members of any general representative body and to be elected as a member of such body;
   4. Being a counsel or court-appointed administrator;
   5. Exercising specific professions.
   (...)

The Netherlands has criminalized money laundering through Articles 420bis, 420ter and 420quater of the Penal Code. The provisions in their current form were first adopted in 2001. Prior to 2001, money laundering was investigated and prosecuted on the basis of the “receiving of stolen goods” (heling) offence (Articles 416, 417 and 417bis of the Penal Code).

The money laundering offenses in the Dutch Penal Code address all material elements of the offenses as defined in the UN Convention against corruption. The “conversion or transfer”, the “concealment or disguise of the nature, source, location, disposition, movement or rights and ownership” and the “acquisition, possession and use” are all explicitly covered. Dutch law also does not require proof of a specific purpose in committing any of the above mentioned acts.

Articles 420bis and 420quater of the Penal Code criminalize (1) the concealing or disguising of the true nature, source, location, disposition or movement of an object, or of the person who has title to or possession of the object and (2) the acquisition, possession, transfer, conversion or use of an object if the offender either knows or may reasonably suspected that objects stem directly or indirectly from a criminal offense. In addition, Article 420ter of the Penal Code sets out that the habitual commission of money laundering offenses under Articles 420bis and 420quater constitutes aggravating circumstances.
Article 420bis Penal Code is punished with a maximum of 4 years imprisonment and a fine of the fifth category. Article 420ter Penal Code provides for a maximum of 6 years imprisonment and a fine of the fifth category in case of habitual money laundering. Article 420quater Penal Code criminalizes the same types of conduct as mentioned in Article 420bis Penal Code, with a difference that knowledge about the criminal origin is not required. It instead punishes the perpetrator that should have reasonably known about the criminal origin of the good. Article 420quater is punished with a maximum of 1 year imprisonment and a fine of the fifth category.

‘Possession’

With respect to the offense of “possession,” the Supreme Court in a judgment of October 2, 2007 (NJ 2008, 16) held that merely being in possession of money that has been obtained by the suspect through the commission of a predicate offense constitutes money laundering pursuant to Article 420bis, paragraph 2 of the Penal Code. In some countries, the principle of double jeopardy bars the authorities from prosecuting for both the predicate offense and the money laundering offense, in a scenario where the perpetrator engages merely in possession of his criminal proceeds. There is no such barrier in the Netherlands and in such scenarios the Dutch authorities can prosecute the same individual for both the predicate offense and for money laundering.

‘Objects’

The money laundering offenses under Articles 420bis and 420quater both refer to “objects” that directly or indirectly stem from a criminal offense, whereby both provisions stipulate that the term would include “any good and property right.” “Property right” is defined in Article 6 of Book 3 of the Civil Code to cover all “rights that are, either individual or as part of another right, transferable or provide the one who is eligible [to them] with material benefits or are received in exchange for supplied or promised material remuneration”. The term “goods” is defined in Article 2 of Book 3 of the Civil Code to extend to all “material objects susceptible for human control.”

The term “objects” includes everything of value, including but not limited to money, real estate and any other property. In this respect a ruling of the Appeal Court in Amsterdam is relevant. In this ruling the court considered cash, bank accounts, apartment rights, real estate and company premises to constitute “objects that directly or indirectly stem from a criminal offense” (Hof Amsterdam July 3, 2009, Lijn: BJ1646).

Based on the broad language of Articles 2 and 6 of Book 3 of the Civil Code and case law, the Dutch money laundering provisions are applicable to assets of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets.

Money laundering and the predicate offence

Articles 420bis and Article 420quater of the Penal Code do not require that a person be convicted of a predicate offense for the prosecution to establish the illicit origin of proceeds. Money laundering is an autonomous offense under Dutch law and may be prosecuted independently from the predicate offense.

This view has also been taken by the Supreme Court in a ruling of September 28, 2004 (NJ 2007, 278), where the court clarified that it is not necessary to prove that funds or property is proceeds of a specific criminal offense but that it would be sufficient to establish that objects “must have been derived from criminal activity.” In this specific case, the Supreme Court upheld the money laundering conviction based on the conclusion that “the existence and origin of the money were to remain concealed” and thus “the possibility that the money might have been obtained legally [is] so improbable that it [can be] assume[d] that the money was derived from a criminal activity.”
In another ruling of September 27, 2005 (NJ 2006, 473), the court stated that “the circumstances of the actual case in question will have to convince the court that a transaction with the outward appearance of a money laundering construction [is in fact a transaction carried out for money laundering purposes]” whereby it is not necessary to “identify the precise offense from which the property originated” or to show that the entire funds or assets stem from a criminal activity. Funds or assets that only partially represent proceeds of crime and partially stem from licit sources are thus still considered proceeds of crime in their entirety.

In sum, Dutch law merely requires the prosecution to establish that objects are likely to be direct or indirect proceeds of crime, without the need to specify the predicate offense.

Tackling money laundering is of major importance to the Dutch government, in order to effectively combating a wide range of serious crimes, because - by concealing the criminal origin of proceeds from crimes - the perpetrators of these crimes can remain beyond the reach of investigating agencies and enjoy their ill-gotten gains in peace. In addition, the accumulated wealth gives them the opportunity to obtain positions in bona fide enterprises and undermine the government’s authority in countries with an underdeveloped legal system. It is therefore essential that the channels through which the money laundering process can be conducted are protected against abuse for criminal purposes. This protection is provided by creating transparency in the financial system, performing proper customer due diligence and disclosing unusual transactions.

The present arrangements in the Netherlands against money laundering have considerable strengths; not least the set of above described wide-ranging laws, which implement both international standards and European obligations.

Money laundering is also an important priority in the efforts of the Dutch government in tackling financial economic crime in general. Money laundering was, for example, an absolute priority in the FINEC programme. For more information on this topic, please refer to Part A of this self-assessment (General Information).

A large number of law enforcement agencies are involved in investigations of money laundering. This derives from the direction taken by the Ministry of Security and Justice to try to prosecute money laundering and deprive offenders of the proceeds of crime during each investigation related to lucrative crimes, even if the proceeds are low. This approach is illustrated by the relatively high number of prosecutions and convictions for money laundering, or money laundering and other offences.

Cooperation between the agencies involved in combating money laundering is indispensable for an effective and efficient system. This cooperation not only takes place at Ministerial level, but also at operational level. Several mechanisms are in place to coordinate policy and to jointly investigate cases (e.g. by sharing information). In some situations cooperation focuses on a particular subject, for instance the cooperation regarding combating real estate fraud, in other situations the cooperation has a broader scope.

Besides the legal stipulations with regard to money laundering, the Public Prosecution Service has issued an Instruction on Money Laundering (see Annex 15). The considerations to be made for the detection and prosecution of money laundering have succinctly been put together in this Instruction. Also included in the Instruction is that every public prosecutor’s office should consider combating money laundering to be a priority and that this should be one of the tasks of the organisation. The Instruction states that investigations into financial elements with a purpose of filling money laundering charges shall be conducted in all cases involving lucrative crime.

In a letter to the Parliament of December 2011, the Minister of Security and Justice indicated that he is reconsidering the sanctions for financial-economic crimes (Parliamentary Papers II 2011/12, 29 911, nr. 57). At this moment a new bill is being prepared which aims to expand the possibilities to combat
financial economic crime (for the Explanatory Memorandum for this law proposal, please see Annex 8).

If this law proposal is approved by the Parliament, the maximum sanction for Article 420bis Penal Code (the basis intentional crime of money laundering) will be six years imprisonment. Furthermore, the maximum penalty for Article 420ter Penal Code (habitual money laundering) will be eight years imprisonment and the maximum penalty for Article 420quater Penal Code (negligent money laundering) will be two years imprisonment. It is also being proposed to add a new category to Article 420ter Penal Code, as a qualified form of money laundering: whereby the offender misuses his profession to commit money laundering (such as tax consultants, lawyers, bankers, etc.)

For examples of case law, please refer to Annex 16.

Statistics on specific criminal offences need to be assessed with some restraint. Please also refer to the short explanation under Article 15 (Bribery of national public officials), subparagraph (a). For available statistical information, please refer to Annex 9.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the Netherlands has criminalized money-laundering through articles 420bis, 420ter and 420quater PC. The money-laundering offenses address all material elements of the offenses, as defined in article 23 of UNCAC.

Based on the broad language of articles 2 and 6 of Book 3 CC and case law, the money-laundering provisions are applicable to assets of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets.

At the time of the country visit, a new bill was being prepared aiming at expanding the possibilities to combat financial economic crime. This law proposal increases the maximum sanction for article 420bis PC to imprisonment of six years. Furthermore, the maximum penalty for article 420ter PC (habitual money laundering) will be imprisonment of eight years and the maximum penalty for article 420quater PC (negligent money laundering) will be imprisonment of two years. It was also proposed to add a new category to article 420ter PC, as a qualified form of money-laundering, whereby the offender misuses his profession to commit money-laundering (such as tax consultants, lawyers, bankers, etc.).

The reviewing experts welcomed this development and concluded that the provision has been adequately implemented.

(c) Successes and good practices

- The involvement of a large number of law enforcement agencies in investigations of money-laundering and the relatively high number of prosecutions and convictions for money-laundering and other offences (see Annex 9).
Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The money laundering offences in the Dutch Penal Code address all material elements of the offenses as defined in the UN Convention against corruption. The “conversion or transfer”, the “concealment or disguise of the nature, source, location, disposition, movement or rights and ownership” and the “acquisition, possession and use” are all explicitly covered. Dutch law also does not require proof of a specific purpose in committing any of the above mentioned acts.

For more information, please also refer to Article 23 (Laundering the proceeds of crime), subparagraph 1 (a) (i).

For examples of case law, please refer to Article 23 (Laundering the proceeds of crime), subparagraph 1 (a) (i), and Annex 16.

Please refer to Article 23 (Laundering the proceeds of crime), subparagraph 1 (a) (i) for relevant statistical data.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

See above.

The reviewing experts concluded that the provision has been adequately implemented.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The money laundering offenses in the Dutch Penal Code address all material elements of the offenses as defined in the UN Convention against corruption. The “conversion or transfer”, the “concealment or disguise of the nature, source, location, disposition, movement or rights and ownership” and the “acquisition, possession and use” are all explicitly covered. Dutch law also does not require proof of a specific purpose in committing any of the above mentioned acts.

For more information, please also refer to Article 23 (Laundering the proceeds of crime), subparagraph 1 (a) (i).

For case law, please refer to Article 23 (Laundering the proceeds of crime), subparagraph 1 (a) (i) and Annex 16.

Please refer to Article 23 (Laundering the proceeds of crime), subparagraph 1 (a) (i) for statistical data.

(b) **Observations on the implementation of the article**

See above.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 1 (b) (ii)**

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

   (b) Subject to the basic concepts of its legal system:

   (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

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**Article 45 Penal Code**

1. 1. An attempt to commit a serious offence shall be punishable if the perpetrator’s intent has manifested itself by his having begun to carry out the offence.

2. 2. The maximum principal penalty for the serious offence itself shall be reduced by one third in the case of an attempt to commit that offence.

3. 3. Where the serious offence itself is punishable by life imprisonment, a term of imprisonment not exceeding twenty years shall be imposed.
4. The additional penalties for an attempted serious offence shall be the same as those for the completed offence.

Article 47 Penal Code
1. The following persons shall be punished as perpetrators of a criminal offence:
   1° those who commit the offence or procure or assist in its commission.
   2° those who by means of gifts, promises, misuse of authority, violence, threats or deception, or by affording opportunity, means or information, intentionally solicit the commission of an offence.
2. With respect to the latter, only those acts the commission of which they have intentionally solicited and the consequences of such acts shall be taken into account.

Article 48 Penal Code
The following persons shall be punished as accessories to a serious offence:
1. those who intentionally aid and abet the commission of the offence;
2. those who intentionally provide opportunity, means or information for the commission of the serious offence.

Article 140 Penal Code
1. Participation with an organisation where there is a view to committing a crime will be punished with imprisonment of at the most six years or will receive a monetary fine of the fifth category.
2. Participation in the continuation of employment with an organisation where it has been forbidden by an irrevocable judicial decision or is legally forbidden, or with regards to an irrevocable statement as referred to in article 5a, paragraph one of the regulatory act of conflicting law corporation, and will be punished with imprisonment of one year at the most or be given a monetary fine of the third category.
3. The terms of imprisonment may be increased by a third for founders, leaders or administrators.
4. Also understood under the term participation as per paragraph one, is the granting of financial or other material support as well as seeking money or people for the purpose of the described organisation.

The Netherlands provided the following commentary:

Ancillary offences are set out in the general provisions of the Penal Code and are applicable to all specific offences set out in Book II of the Penal Code (Articles 92 to 420quinquies), including the money laundering offences. Please also refer to Article 27 (Participation and attempt), paragraph 1, 2 and 3 of this convention.

Article 45 of the Penal Code criminalizes the attempt to commit a criminal offence and provides that the offender may be sanctioned with the maximum penalty available for the attempted offense reduced by one third, or with a term of imprisonment for up to twenty years in cases where the attempted offense is punishable with life imprisonment.

Articles 47 and 48 of the Penal Code further criminalize the procuring, assisting, solicitation or aiding and abetting of an offense and stipulate that such conduct may be subject to the same sanction as the main offense.

Article 140 Penal Code stipulates that it is a criminal offense for any person to participate in an organization whose aim it is to commit a crime and sanctions such conduct with imprisonment of up to six years or a fine of up to the fifth category (78,000 euro). The term “organization” has been interpreted by the courts to mean “a structured and lasting form of collaboration between two or more persons that is directed at the commission of an offense.” A person could thus be held criminally liable for “association to commit” a money laundering offence under Article 140 of the Penal Code.
It should be added that the broad definition of money laundering (see Article 420bis (1) (a) and (b) Penal Code covers all kind of facilitating and counselling behaviour. Finally Article 140 Penal Code criminalizes the participation in a criminal organization. Providing money laundering facilities can deliver the element of participation. See Supreme Court 19 February 2008, LJN BB7115.

Please refer to Annex 16 (Case law on money laundering) for Supreme Court, 7 July 2009, LJN BI4747 and Supreme Court, 19 February 2008, LJN BB7115 for relevant case law.

For statistical data, please refer to Article 23 (Laundering the proceeds of crime), subparagraph 1 (a) (i).

(b) Observations on the implementation of the article

See above.

The reviewing experts concluded that the provision has been adequately implemented.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (a) and (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

Annex: Overview predicate offences (Annex 17)

The following texts were cited:

Articles 420bis and 420quater of the Penal Code apply to proceeds from any criminal offence. The Dutch Penal Code differentiates between “offences” and “misdemeanours”. “Offenses” are listed in Book II (Articles 94 to 420quinquis) and “misdemeanours” are set out in Book III (Articles 424 to 476) of the Penal Code. As a general rule, the maximum available sanction for misdemeanours is imprisonment for up to six months whereas the maximum sanction available for offences ranges between imprisonment for six months to imprisonment for life.

The Netherlands follows a threshold approach in defining predicate offences for money laundering. Articles 420bis and 420quater of the Penal Code are applicable to objects that were obtained through the commission of “a criminal offence“ but not to objects that stem from misdemeanours.

Article 420bis and 420quater of the Penal Code do not require that a person be convicted of a predicate offence for the prosecution to establish the illicit origins of proceeds. Money laundering is an autonomous offence under Dutch law and may be prosecuted independently from the predicate offence.
This view has also been taken by the Supreme Court in a ruling of September 28, 2004 (NJ 2007, 278), where the court clarified that it is not necessary to prove that funds or property is proceeds of a specific criminal offence but that it would be sufficient to establish that objects “must have been derived from criminal activity”.

According to the Dutch criminalisation of money laundering it is not necessary to investigate the predicate offence in order to get a conviction for money laundering. The criminalisation of money laundering and the way jurisprudence has developed make it relatively easy to get a conviction for money laundering. This is highly effective with respect to money laundering investigations and prosecutions. As a result the Netherlands have little statistical information available on the predicate offences.

The table in Annex 17 (Overview predicate offences) is used in the 2010-2011 FATF Mutual Evaluation of the Netherlands. It shows how each FATF designated category of predicate offences is criminalized under Dutch law. All listed provisions constitute offences as they are either set out in Book II of the Penal Code or in a separate statute but are punishable with imprisonment for six months or more.

For relevant case law, please refer to Annex 16 (Case law on money laundering) for Supreme Court, 28 September 2004, NJ 2007, 278.

In regards to statistical data, the Netherlands stated that, according to the Dutch criminalisation of money laundering it is not necessary to investigate the predicate offence in order to get a conviction for money laundering. The criminalisation of money laundering and the way jurisprudence has developed make it relatively easy to get a conviction for money laundering. This is highly effective with respect to money laundering investigations and prosecutions. As a result the Netherlands have little statistical information available on the predicate offences.

(b) Observations on the implementation of the article

The reviewing experts noted that the Netherlands follows a “threshold approach” in defining predicate offences for money-laundering purposes. Articles 420bis and 420quater PC are applicable to objects that were obtained through the commission of “a criminal offence” but not to objects that stem from misdemeanours. Articles 420bis and 420quater do not expressly refer to predicate offences committed abroad. However, “objects that directly or indirectly stem from an offence” are interpreted to also include objects that have been obtained through criminal conduct committed outside the Netherlands.

At the time of the country visit, a new bill was being prepared aiming at expanding the possibilities to combat financial economic crime. This law proposal increases the maximum sanction for article 420bis PC to imprisonment of six years. Furthermore, the maximum penalty for article 420ter PC (habitual money laundering) will be imprisonment of eight years and the maximum penalty for article 420quater PC (negligent money laundering) will be imprisonment of two years. It was also proposed to add a new category to article 420ter PC, as a qualified form of money-laundering, whereby the offender misuses his profession to commit money-laundering (such as tax consultants, lawyers, bankers, etc.).

The reviewing experts concluded that the provision has been adequately implemented.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:
(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Articles 420bis and 420quater of the Penal Code do not expressly refer to predicate offences committed abroad. However, “objects that directly or indirectly stem from an offence” is interpreted to also include objects that have been obtained through criminal conduct committed outside of the Netherlands. This view was also confirmed by the Supreme Court in a ruling of December 1, 1998 (NJ 1999, 470), where the court held that the Dutch money laundering provisions are, at a minimum, applicable to predicate offences that have been committed abroad if the relevant conduct has been criminalized both under Dutch law and the law of the country in which it took place.

Although, as indicated above, Articles 420bis and 420quater of the Penal Code do not expressly refer to predicate offences committed abroad, “any offence” is interpreted to include conduct within and outside the Netherlands. In line with this argument, the Supreme Court in a ruling of December 1, 1998 (NJ 1999, 470) suggested that for the money laundering provisions to apply it would be “probably not necessary” to establish that conduct committed abroad was criminalized under the law of the foreign jurisdiction so long as the conduct is an offense under Dutch law. However, as under Dutch law it is not necessary to establish exactly which predicate offence has been committed or where a predicate offence has taken place for the money laundering provisions to apply, the court has not yet had an opportunity to issue a binding ruling on this matter.

Required is the assumable criminal origin of the good, regardless where the predicate offence has taken place. See Supreme Court 28 September 2004, NJ 2007, 278: “Article 420bis is interpreted in such a manner that it is not necessary to prove that an item of value originated from a specifically indicated crime. It is not necessary to prove exactly who, how and when a specific crime was committed to prove that a good is the proceeds of crime.”

For relevant case law, please refer to Annex 16 (Case law on money laundering) for Supreme Court, 28 September 2004, NJ 2007, 278 and Supreme Court, 1 December 1998, NJ 1999, 470.

In regards to statistical data, the Netherlands stated that it is not necessary to investigate the predicate offence in order to get a conviction for money laundering. The criminalisation of money laundering and the way jurisprudence has developed make it relatively easy to get a conviction for money laundering. This is highly effective with respect to money laundering investigations and prosecutions. As a result the Netherlands have little statistical information available on the predicate offences.

(b) Observations on the implementation of the article

See above.

The reviewing experts concluded that the provision has been adequately implemented.
Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

(b) Observations on the implementation of the article

According to what has been indicated, the Secretary General of the United Nations has been provided with a copy of those laws.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that they have not implemented this provision of the Convention.

The following texts were cited:

The language of the money laundering provisions of the Penal Code includes both cases in which a person launders the proceeds of his/her own criminal conduct and cases in which a person launders the proceeds of another person’s criminal conduct. This interpretation was confirmed by the Supreme Court in a judgement of October 2, 2007 (NJ 2008, 16), where the court confirmed the lower court’s decision to convict the appellant for laundering the proceeds of his own criminal conduct.

In regards to providing examples of cases and case law, the Netherlands stated the following: The so-called self-laundering is covered by the money laundering provisions; this stems from the content of the provisions. See also Supreme Court 2 October 2007, NJ 2008, 16: “Based on the conclusion of the Solicitor-General under 8 and on the Courts interpretation of the origins of Article 420bis Penal Code, there is no reason why the origin a good from one’s own crime should limit a conviction of the person that commits the predicate offence for money laundering.” Please also refer to Annex 16 (Case law on money laundering) for Supreme Court, 2 October 2007, NJ 2006, 16.

In regards to statistical data, the Netherlands stated that self-laundering is covered by the money laundering provisions. It is therefore not possible to provide specific numbers on cases of self-laundering.
The Netherlands has indicated that it does not require any form of technical assistance.

(b) **Observations on the implementation of the article**

The reviewing experts noted that articles 420bis and 420quater PC do not require that a person be convicted of a predicate offence for the prosecution to establish the illicit origin of proceeds. Money-laundering is an autonomous offence under the Dutch legislation and may be prosecuted independently from the predicate offence. The so-called self-laundering is covered by the money-laundering provisions.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 24 Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

- **Article 416 Penal Code**
  1. A person who:
     a. obtains, has at his disposal or transfers property or who vests a right *in personam* or in *rem* in property, or who transfers such right, knowing, at the time the property was obtained or came under his control or at the time the right was vested, that the property had been obtained by means of a serious offence; or
     b. intentionally, for motives of pecuniary gain, has at his disposal or transfers property obtained by means of a serious offence, or transfers a right *in personam* or in *rem* vested in property that was obtained by means of a serious offence, is guilty of intentionally handling stolen property, and is liable to a term of imprisonment of not more than four years or a fine of the fifth category.
  2. A person who intentionally derives advantage from the proceeds of any property obtained by means of a serious offence is liable to the same punishment.

- **Article 417 Penal Code**
  A person who by custom commits the offence of intentionally handling stolen property is liable to a term of imprisonment of not more than six years or a fine of the fifth category.

- **Article 417bis Penal Code**
  1. A person who:
     a. obtains, has at his disposal or transfers property, or who vests a right *in personam* or *in rem* in respect of property or who transfers such right, where he, at the time the property was obtained or came under his control or at the time such right was vested, should reasonably have suspected the property to have been obtained by means of a serious offence;
b. for motives of pecuniary gain, has at his disposal or transfers property, or transfers a right in personam or in rem in property, where he should reasonably suspect the property to have been obtained by means of a serious offence, is guilty of handling stolen property by negligence or carelessness, and is liable to a term of imprisonment of not more than one year or a fine of the fifth category.
2. A person who intentionally derives advantage from the proceeds of any property where he should reasonably suspect that the property was obtained by means of a serious offence is liable to the same punishment.

Article 420bis Penal Code
1. Anyone who:
   a. conceals or disguises the true nature, source, location, disposition or movement of an object, or conceals or disguises who has title to the object or has it in his possession, knowing that the object derives directly or indirectly from a serious offence;
   b. acquires, has in his possession, transfers or converts, or makes use of an object knowing that the object derives directly or indirectly from a serious offence.
   shall be guilty of money laundering and liable to a term of imprisonment not exceeding four years or a fifth-category fine.
2. An object shall be understood to be any good or property right.

Article 420ter Penal Code
Anyone who makes a habit of money laundering shall be liable to a term of imprisonment not exceeding six years of a fifth-category fine.

Article 420quater Penal Code
1. Anyone who:
   a. conceals or disguises the true nature, source, location, disposition or movement of an object, or conceals or disguises who has title to the object or has it in his possession, while he might reasonably have suspected that the object derives directly or indirectly from a serious offence;
   b. acquires, has in his possession, transfers, converts or makes use of an object, while he might reasonably have suspected that the object derives directly or indirectly from a serious offence.
   shall be guilty of negligent money laundering and liable to a term of imprisonment not exceeding one year or a fifth-category fine.
2. An object shall be understood to be any good or property right.

Article 420quinquies Penal Code
When sentenced for one of the offences as set forth in Articles 420bis to 420quater, inclusive, the offender may be deprived of the rights as referred to in Article 28, subsection 1, under 1°, 2° and 4°, and the offender may be denied the exercise of the profession in which he committed the offence.

Article 23 Penal Code (Categories fines)
(…)
2. The minimum amount of the fine is € 3.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
   a. the first category, € 390;
   b. the second category, € 3,900;
   c. the third category, € 7,800;
   d. the fourth category, € 19,500;
   e. the fifth category, € 78,000;
   f. the sixth category, € 780,000.
Article 28 Penal Code (Deprivation of rights)
1. In the cases defined by law, a person found guilty may be deprived from the following rights under a court order:
   1. Holding office or any specific public office;
   2. Serving in the army;
   3. The right to elect members of any general representative body and to be elected as a member of such body;
   4. Being a counsel or court-appointed administrator;
   5. Exercising specific professions. (...)

The Netherlands provided the following commentary:

Article 24 of the convention relates to the penalisation of the act of concealing, or retaining for long periods of time, property that the individual in question is aware has been obtained by means of an act that constitutes an offence in accordance with this convention. States that are party to the convention are encouraged to consider making these acts a punishable offence. In some jurisdictions, these acts have been made a separate offence, with respect to that of money laundering and receiving stolen property. This is not the case in the Netherlands; the acts described in this Article fall within the scope of Articles 416 to 417bis (receipt of stolen property) and 420bis to 420quater (money laundering) of the Penal Code and constitute an offence pursuant to the aforementioned Articles.

For relevant case law, please refer to Article 23 (Laundering of proceeds of crime).

For statistical data, please refer to Article 23 (Laundering of proceeds of crime).

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the acts described in article 24 of UNCAC (concealment) fall within the scope of articles 416 to 417bis (receipt of stolen property) and 420bis to 420quater (money-laundering) PC and constitute offences pursuant to the aforementioned articles.

The reviewing experts concluded that the provision has been adequately implemented.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.
The following texts were cited:

Article 178 Penal Code
1. Whoever makes a gift or a promise to a judge or provides or offers him a service with a view to exerting influence on his decision in a case that is subject to his judgment will be punished with a prison sentence of at most six years or a fine in the fifth category.
2. If the gift or promise is made or the service is provided or offered with a view to obtaining a conviction in a case, the guilty person will be punished with a prison sentence of at most nine years or a fine in the fifth category.
3. Removal of the rights stated in Article 28, first paragraph, under 1°, 2° and 4° can be pronounced.

Article 284 Penal Code
1. A term of imprisonment of not more than nine months or a fine of the third category is imposed upon:
   1° a person who by an act of violence or any other act, or by threat of violence or threat of any other act, either directed against another person or against others, unlawfully compels that other person to act, to refrain from acting or to submit to anything;
   2° a person who by the threat of slander or libellous defamation compels another person to act, to refrain from acting or to submit to anything.
2. In the case defined in 2°, prosecution will take place only upon complaint by the person against whom the serious offence has been committed.

Article 285a Penal Code
1. A person who intentionally, either orally, by gesture, in writing or by image, addresses a person, in a manner that is clearly intended to affect the freedom of that person to make a truthful or conscientious statement before a judge or public servant, where he knows or has serious reason to suspect that such a statement will be made, is liable to a term of imprisonment of not more than four years or a fine of the fourth category.
2. A judge or public servant is equivalent to a judge at an international court - or person employed in the public service of an international court - that has jurisdiction pursuant to a convention to which the Kingdom of the Netherlands is a party.

Article 23 Penal Code (Categories fines)

2. The minimum amount of the fine is € 3.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
   a. the first category, € 390;
   b. the second category, € 3.900;
   c. the third category, € 7.800;
   d. the fourth category, € 19.500;
   e. the fifth category, € 78.000;
   f. the sixth category, € 780.000.

The Netherlands cited the following applicable measures:

Article 284, paragraph 1 of the Penal Code states that “a person who unlawfully compels another person, by an act of violence or any other act or by threat of violence or threat of any other act directed against that other person or others, to act, refrain from acting or to submit to anything” will be punished. In the same article, 284, paragraph 2, states that “a person who by the threat of slander or
libellous defamation compels another person to act, to refrain from acting or to submit to anything” will be punished. Article 285a of the Penal Code states that a person who in any way “expresses himself to another person, to influence that person’s freedom to make a statement in good faith to a judge or a public servant, while he knows or suspects that this statement will be made”, will be punished.

Article 285a Penal Code intends to protect the freedom of all citizens to make a statement, unhampered, before a judge or a public official. In the Explanatory Memorandum it is stated that the protected interest is not so much the truth of the testimony, but the freedom to make the statement unhampered (Parliamentary Papers II 1991/92, 22 483, nr. 3, p. 39). This was also concluded in a ruling of the Supreme Court of 30 August 2005 (NJ 2005, 544). It is not required that the intention to exert influence on the testimony, did indeed had this effect (Supreme Court 27 May 2008, NJ 2008, 315).

Article 285a Penal Code not only covers statements from witnesses and experts, but also is applicable to anyone who wants to make a statement before a judge or public official. An example can be found in a ruling of the Supreme Court on 30 August 2005 (NJ 2005; 544): a notary forbade his accountant to have a conversation with a public official from the FIOD, while threatening with dismissal. In another court case a lawyer suggested his client - through a telephone call - to contact a witness and instruct this witness to issue an exculpatory (or at least not an incriminating) statement (Court Roermond, 14 April 2004, LJN: AO7566). This case is provides an example of a conviction for Article 285a Penal Code, where someone attempted to move someone else to commit the crime of Article 285a Penal Code.

For examples of case law, please refer to Article 25 (Obstruction of justice), subparagraph (a), previous answer.

In regards to statistical data, the Netherlands stated that Article 284 Penal Code criminalizes the use of physical force, threats or intimidation in a broad sense; it can apply in cases where someone uses physical force, threats or intimidation to interfere in the giving of a testimony, but it also applies in other cases of use of physical force, threats or intimidation. The numbers on prosecutions/convictions in relation to Article 284 Penal Code will include all cases of use of physical force, threats or intimidation and are therefore not relevant in this context. There are also numbers available on prosecutions/convictions for Article 285a Penal Code; these will be provided in Annex 9. It has to be noted that statistics on specific criminal offences need to be assessed with some restraint. For a short explanation, please refer to Article 15 (Bribery of national public officials), subparagraph (a).

(b) Observations on the implementation of the article

The reviewing experts noted that the use of physical force, threats or intimidation to induce false testimony or to interfere in the giving of testimony or the production of evidence falls within the scope of article 285a PC. The use of bribery means (promise, offering or giving of an undue advantage) for the same purposes is covered by article 284, paragraph 1, PC, which criminalizes the conduct of unlawfully compelling another person “by an act of violence or any other act”. In addition, article 47, paragraph 2, PC criminalizes the act of any person “who, by means of gifts, promises, abuse of authority, use of force, threat or deception or by providing opportunity, means or information, intentionally solicit the commission of the offence”. Article 178 PC addresses cases of exerting influence, through bribery means, on the decision of judges.

The reviewing experts concluded that the provision has been adequately implemented.
Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

Article 284 Penal Code
1. A term of imprisonment of not more than nine months or a fine of the third category is imposed upon:
   1° a person who by an act of violence or any other act, or by threat of violence or threat of any other act, either directed against another person or against others, unlawfully compels that other person to act, to refrain from acting or to submit to anything;
   2° a person who by the threat of slander or libellous defamation compels another person to act, to refrain from acting or to submit to anything.
2. In the case defined in 2°, prosecution will take place only upon complaint by the person against whom the serious offence has been committed.

Article 179 Penal Code
A person who by an act of violence or any other act, or by threat of violence or any other act, compels a public servant to perform an official act or to refrain from performing a lawful official act is liable to a term of imprisonment of not more than four years or a fine of the fourth category.

Article 180 Penal Code
A person who by an act of violence or by threat of violence resists a public servant in the lawful execution of his duties or any persons who assist that public servant in so doing pursuant to a legal obligation or provide assistance at his request is guilty of resisting a public servant and is liable to a term of imprisonment of not more than one year or a fine of the third category.

Article 181 Penal Code
The offenses of coercion and resistance defined in articles 179 and 180 are punishable:
1. by a term of imprisonment of not more than five years or a fine of the fourth category, where any bodily harm ensues as a result of the serious offense or concomitant events;
2. by a term of imprisonment of not more than seven years and six months or a fine of the fifth category, where serious bodily harm ensues as a result of these;
3. by a term of imprisonment of not more than twelve years or a fine of the fifth category, where death ensues as a result of these.

Article 182 Penal Code
1. Where two or more persons jointly commit the offences of coercion and resistance defined in Sections 179 and 180, they are liable to a term of imprisonment of not more than six years or a fine of the fourth category.
2. The offender is liable:
   1. to a term of imprisonment of not more than seven years and six months or a fine of the fifth category, in the event that any bodily harm ensues as a result of the serious offence committed by him or the events brought about by him;
   2. to a term of imprisonment of not more than twelve years or a fine of the fifth category, in the event that serious bodily harm ensues as a result of these offenses or events;
   3. to a term of imprisonment of not more than fifteen years or a fine of the fifth category, in the event that death ensures as a result of these offenses or events.

Article 184 Penal Code
1. Both a person who intentionally fails to comply with an order issued or a formal request made, by virtue of a legal requirement, by a public servant charged with any supervisory task or by a public servant charged with the detection or investigation of criminal offenses or who has been authorized to detect or investigate criminal offenses, and a person who intentionally prevents, obstructs or thwarts any action undertaken by such public servants to enforce a legal requirement, are liable to a term of imprisonment of not more than three months or a fine of the second category.
2. Any person who is permanently or temporarily charged with any public service by virtue of a legal requirement is equivalent to the public servant defined in the first part of the preceding section.
   
   (...) 
4. Where, at the time the serious offense is committed, less than two years have passed since a previous conviction for a similar serious offense became final, the term of imprisonment may be increased by one third.

Article 185 Penal Code
A person who at a court session, or the place where a public servant lawfully executes his duties in public, causes a commotion and does not remove himself upon an order issued by or in the name of the competent authorities is liable to a term of imprisonment of not more than two weeks or a fine of the second category.

Article 23 Penal Code (Categories fines)
   
   (...) 
2. The minimum amount of the fine is € 3.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
   a. the first category, € 390;
   b. the second category, € 3,900;
   c. the third category, € 7,800;
   d. the fourth category, € 19,500;
   e. the fifth category, € 78,000;
   f. the sixth category, € 780,000.
   
   (...) 

The Netherlands cited the following measures:

Article 284, paragraph 1 of the Penal Code states that “a person who unlawfully compels another person, by an act of violence or any other act or by threat of violence or threat of any other act directed against that other person or others, to act, refrain from acting or to submit to anything” will be punished. In the same article, 284, paragraph 2, states that “a person who by the threat of slander or
libellous defamation compels another person to act, to refrain from acting or to submit to anything” will be punished.

Threat is made punishable in Article 284 of the Penal Code. Dutch criminal law does not make distinction in penalties for a threat against a public official or a threat against an ordinary citizen. This is in contrast to insult or physical abuse of a public official. The guidelines for the Public Prosecution Service however determine that they will ask for a higher penalty in case a public official has been a victim of threats.

In 2010 the Minister of Security and Justice requested the Public Prosecution Service to further increase the penalty to be demanded for committing violence against public officials. The public prosecutors were already demanding sentences in these cases that are 150% higher than the sentences demanded in regular cases involving violence; the Minister requested this to be increased to 200%, a three times higher sentence in cases of aggression and/or violence against police officials, ambulance service staff, fire fighters and other authorities.

A report of a research conducted by Intervict of the University of Tilburg (commissioned by the Council for the Judiciary), which was published in 2010, showed that the court usually honours the sentences demanded by the public prosecutor in cases involving public officials. The court not only honours the severity of the sentence demanded, but also the method of punishing (imprisonment, community service or fine). The investigators concluded that the guideline of the Public Prosecution Service is generally known to the courts.

In this context the crimes against public authority (Second Book, Title VIII of the Penal Code) are also relevant. Please refer to the text of Article 179, 180, 181, 182, 184 and 185 of the Penal Code.

In 2012 the Minister of Security and Justice introduced police reports by number for victims of violence against persons with a public duty. This makes it possible throughout the Netherlands for victims and witnesses to report and make statements under a number, instead of under their name and address details. The number will be an unique number, thereby offering maximum protection.

This form of reporting can be used by officials with a public duty who have been confronted with violence in connection with their work. If the reporter has doubts about filing a report because he or she feels threatened, it is important to make the threshold for filing a report as low as possible. The report may be filed by the employer on behalf of the employee, including a declaration set down in writing by the reporter, whereby the identity of that person is not disclosed. In such cases, the name, address and other personal data are not included in the report and the statement. The reporter will be indicated with a number. The employee can also file a report personally whereby his or her name will be replaced by an unique number.

The introduction of this manner of filing a report under a number takes into account the interests of victims and is expected to have a positive effect on the willingness of individuals to file a report with the police so that offenders can be dealt with.

In 2012 The Dutch Ministry of Security and Justice has also submitted a legislative proposal to the Lower House of the Parliament that would make it possible to detain a broader range of criminal suspects during the period in which they are awaiting trial, when the trial involves accelerated proceedings. Thus, the suspects would not be released before the accelerated proceedings have been conducted; in the view of the Ministry, the current Dutch criminal procedure law does not allow sufficient opportunities for such detention.

It concerns violent crime in public areas or violence against persons with an official duty, such as the police, the fire brigade and ambulance staff.

The regulation introduces a new basis for pre-trial detention when accelerated proceedings are implemented, i.e. trial within 17 days. The condition is that it concerns suspects who are expected to
receive a term of imprisonment of several weeks or months. In these cases, the ultimate punishment will usually be implemented immediately after pre-trial detention.

The reason for this proposal is that in certain circumstances, violent crime constitutes an added danger to persons or could give rise to serious disturbances of the peace or uncontrollable situations at large events. For this reason, the Minister and the State Secretary wish to introduce the possibility of pre-trial detention until the fast-track proceedings have commenced in more cases than is allowed at this time. It will become possible, for example, to place first offenders in pre-trial detention for a wider range of crimes than is currently the case. It is intended for cases in which the criminal investigation is relatively simple and can be concluded quickly. The term of seventeen days may also be used by the victim to draw up his claim for compensation against the offender. In such cases, said claim can be settled simultaneously at the hearing by the criminal court.

Quick prosecution and adjudication of those accused of these crimes (responding quickly and effectively) is necessary to make it clear to the accused and society immediately after the crime that such behaviour is unacceptable and deserving of a serious judicial response.

In regards to providing examples of cases and case law, the Netherlands stated the following: In August 2010 Public Prosecution Service reported that in 2009 10 public prosecutors were confronted with serious threats (threats of death or serious violence). Also, 29 other officials from the Public Prosecution Service were threatened or intimidated.

From those 39 cases in 2009, 7 cases involved very serious threats (for example, someone wanted to commit an attack on a public prosecutor or someone was looking for the address of a public prosecutor with the intention to take revenge on this prosecutor), 3 cases involved serious threats (for example, threats uttered by a detainee) and the remaining 29 cases involved threats that are not serious, but still frightening (for example, threatening letters or phone calls). The threatened public prosecutors were mostly involved in the fight against serious (organized) crime.

Since 2006, threats against employees of the Public Prosecution Service are being centrally registered:
2006: 24 employees
2007: 28 employees
2008: 40 employees
2009: 39 employees

The actual number of threatened public prosecutors is expected to be higher, since some of these officials do not report threats they receive.

The action the Public Prosecution Service takes in case of a threat against an employee, depends on the situation. In serious cases, the police is asked to make a threat assessment. In consultation with the person concerned, the Public Prosecution Service takes appropriate measures.

In regards to statistical data, the Netherlands stated the following: As also pointed out under Article 25 (Obstruction of justice), subparagraph (a), Article 284 Penal Code criminalizes the use of physical force, threats or intimidation in a broad sense; it is not specific for the use of physical force, threats or intimidation with the intention to interfere with the exercise of official duties by a justice or law enforcement official. The numbers on prosecutions/convictions in relation to Article 284 Penal Code are therefore not relevant in this context.

Statistics on specific criminal offences need to be assessed with some restraint. For a short explanation, please refer to Article 15 (Bribery of national public officials), subparagraph (a). Please refer to Annex 9 for statistical information on Article 179, 180, 181, 182, 184 and 185 of the Penal Code.
The Netherlands has indicated that it does not require any form of technical assistance.

(b) **Observations on the implementation of the article**

The reviewing experts noted that article 25(b) of UNCAC is implemented through articles 179 and 180 PC, which establish criminal responsibility for the acts of coercion and resistance.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 26 Liability of legal persons**

**Paragraphs 1 and 2**

1. *Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

2. *Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Annex:
- Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8)

Relevant legislation:

Article 51 Penal Code (Criminal liability legal persons)
1. Offences may be committed by natural persons and legal persons
2. If an offence is committed by a legal person, criminal proceedings may be instituted and the punishments and other measures provided for by law may be implemented where appropriate:
   a. against the legal person; or
   b. against those who ordered the commission of the offence, and those who were in control of such unlawful behaviour; or
   c. against the persons mentioned under (a) and (b) together.
3. For the purpose of the application of the above paragraphs legal persons shall be deemed to include an unincorporated company, a partnership and a special fund.

The Netherlands cited the following applicable measures:

According to article 51 of the Penal Code, a legal person can be deemed punishable for bribery (and any other punishable crime). Case law originally required (1) that the legal person perpetrates the illegal act through a natural person with the power to direct its activities; or (2) that the legal person perpetrates the illegal act through a natural person with no directive powers, but within the sphere of normal activity of the legal person, and for its benefit.
This raised concerns, notably regarding the possibility to prosecute a legal person (1) when the natural person is not identified and, thus, its “control” over the legal person’s activities cannot be determined, which may often be the case in increasingly decentralised, complex corporate structures where corporate operations and decision-making are diffuse; and (2) where the natural person “in control” is identified, but for instance due to procedural problems (death, for example) cannot be prosecuted. However, a decision of 21 October 2003 by the Supreme Court broadened the possibility to trigger liability of legal persons by providing for an autonomous liability of legal persons (Supreme Court, 21 October 2003, NJ 2006, 328). According to the Supreme Court, determining criterion for the attribution of a criminal offence to the legal person is the question whether the conduct took place or was carried out in the spirit of the legal entity. Thus, there is a jurisprudential shift of focus from a legal fiction involving a natural person, to a concept which focuses on the act committed. The decision also states that “standards for attributing conduct by a natural person to a legal entity” can also be used to trigger the liability of the legal person, but this is no longer a prerequisite.

The following was stated in the ruling of the Supreme Court on 21 October 2003 (NJ 2006, 328):

The answer to the question when an (illegal) act reasonably can be attributed to a legal person depends on the concrete circumstances of the case, among which the nature of the (illegal) act is included. Therefore it is the difficult to formulate a general rule. An important landmark is the question whether the act took place or occurred in the spirit of the legal person concerned. Such an act can in principle be attributed to the legal person.

One can speak of an act in the spirit of a legal person when one or more of the following circumstances occur:

- an act or an omission by someone who is employed by or works for the legal person;
- the act is part of the normal business processes of the legal person;
- the act was useful for the legal person in the business conducted by the legal person;
- the legal person could make a judgement whether or not the conduct should take place and such or similar behaviour was, according to the actual state of affairs by the legal person accepted or used to be accepted.

With acceptance is meant not fulfilling the care which reasonably can be expected of a legal person in view of preventing behaviour.

Jurisprudence was afterwards elaborated in amongst other cases, in Supreme Court 22 February 2011 (LJN: BN7719) and Supreme Court 24 January 2012 (LJN: BU5349).

Under Dutch law, legal persons are broadly defined. Articles 1, 2 and 3 of the Civil Code include the State, provinces, municipalities, as well as bodies empowered under the Constitution to issue regulations, and bodies ‘charged with part of the duties of government’ pursuant to the law (Article 1); religious associations (Article 2); and associations, cooperatives, mutual insurance societies, companies limited by shares, and private companies with limited liability and foundations (Article 3). Article 51, paragraph 3 of the Penal Code further specifies that ship owning firms, unincorporated associations, partnerships and special funds are also deemed equivalent to legal persons.

Civil liability of legal persons is dealt with by the Civil Code. Pursuant to the Civil Code (Article 2:20 Civil Code), legal persons may be dissolved in certain circumstances on application by the Public Prosecution Service. Such a remedy is available, for instance, where activities of a legal person are in conflict with the public order. It is conceivable that a legal person that has bribed a (foreign) public official would fit this case.

In a letter to the Parliament of December 2011, the Minister of Security and Justice indicated that he is reconsidering the fines for financial economic crimes (Parliamentary Papers I 2011/12, 29 911, nr. 57). At this moment a new bill is being prepared, which aims at making the fines for legal persons more flexible, and therefore more proportionate, dissuasive and effective in practice.
In the draft bill it is being proposed that in cases where an appropriate punishment for legal persons is necessary, a judge will have the possibility to impose a fine up to 10% of the annual turnover of the company, instead of the current maximum fine of the sixth category (max. € 780,000,-). Please also refer to the Explanatory Memorandum (Annex 8).

The Netherlands cited the following examples of implementation:

Prosecution of legal persons is a frequent phenomenon in the Netherlands. Quite a number of cases are brought before court each year. The number of out of court-settlements involving legal persons is also important.

In the largest case of real estate fraud and private corruption in the Netherlands, the ‘Klimop’-case (District Court Haarlem, LJN: BV2198, LJN: BV2202, LJN: BV2194, LJN: BM3469, LJN: BV2204, LJN: BV2200), the defendants were suspected of obscuring together more than 200 million euro from the Philips Pension Fund, the Bouwfonds and the Rabo Real Estate Group. The court found the defendants guilty and imposed fines on the legal persons involved: 32,000 euro, 1,628,000 euro, 371,000 euro, 300,000 euro, 5,000,000 euro, 350,000 euro, 2,500,000 euro, 350,000 euro and 1,200,000 euro. In addition, a total amount of almost 15,000,000 euro of illegal proceeds was confiscated from the companies involved. Apart from the court decisions in this case, there were also out of court settlements between the suspects and the fraud victims, for a total of 135,000,000 euro. In this case the suspects has to pay in total approximately 162,000,000 euro.

Another important case in which a legal person was convicted - although not for one of the offences under this Convention - is the Trafigura-case. The Court of Appeal in Amsterdam found the company Trafigura Beheer BV guilty of environmental crimes and convicted the company to pay a fine up to € 1,000,000 (Court of Appeal Amsterdam, 23 December 2011, LJN: BU9237).

Please also refer to Article 16 (Bribery of foreign public officials and officials of public international organizations) paragraph 1, Q2 for the out of court settlements in the Oil-for-Food case.

In regards to statistical data, the Netherlands stated that in Annex 18 (Overview number of prosecutions of legal persons) an overview is given of the total number of legal persons prosecuted in the last years (not only for offences established by this Convention). For involvement of legal persons in offences established by this Convention, please refer to the information on numbers of cases given under Article 15 - 25 of the Convention in this self-assessment.

(b) Observations on the implementation of the article

The reviewing experts noted that, according to article 51 PC, a legal person can be deemed *punishable for bribery (and any other punishable crime). Case law originally required that the legal person perpetrates the illegal act through a natural person with the power to direct its activities; or that the legal person perpetrates the illegal act through a natural person with no directive powers, but within the sphere of normal activity of the legal person, and for its benefit. According to the Supreme Court, the determining criterion for the attribution of a criminal offence to the legal person is the question whether the conduct took place or was carried out “in the spirit of the legal entity”.*

Under the Dutch legislation, legal persons are broadly defined. Articles 1, 2 and 3 CC include the State, provinces, municipalities, as well as bodies empowered under the Constitution to issue regulations, and bodies “charged with part of the duties of government” pursuant to the law (Article 1); religious associations (Article 2); and associations, cooperatives, mutual insurance societies, companies limited by shares, and private companies with limited liability and foundations (Article 3). Article 51, paragraph 3 PC further specifies that ship owning firms, unincorporated associations, partnerships and special funds are also deemed equivalent to legal persons.
The reviewing experts concluded that the provisions have been adequately implemented.

Article 26 Liability of legal persons

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 51 Penal Code (Criminal liability legal persons)
1. Offences may be committed by natural persons and legal persons
2. If an offence is committed by a legal person, criminal proceedings may be instituted and the punishments and other measures provided for by law may be implemented where appropriate:
   a. against the legal person; or
   b. against those who ordered the commission of the offence, and those who were in control of such unlawful behaviour; or
   c. against the persons mentioned under (a) and (b) together.
3. For the purpose of the application of the above paragraphs legal persons shall be deemed to include an unincorporated company, a partnership and a special fund.

The Netherlands cited the following applicable measures:
Article 51, paragraph 2 of the Penal Code specifies that criminal proceedings may be instituted simultaneously or separately against legal and natural persons, and that penalties may be imposed on either or both the legal and natural person. Thus, in the Netherlands it is possible to prosecute the company, the director, the employee who actually commits the criminal offence and the person who actually manages the company and the forbidden acts (if the latter is not the same person as the director). The public prosecutor has full discretionary powers to choose who will be prosecuted. This will depend on the specific circumstances of each case. Please also refer to Article 26 (Liability of legal persons), paragraph 1 and 2.

The Netherlands provided the following examples of implementation:
In the largest case of real estate fraud and private corruption in the Netherlands, ‘Klimop’-case (District Court Haarlem, LJJ:BV2198, LJJ:BV2202, LJJ:BV2194, LJJ:BM3469, LJJ:BV2204, LJJ:BV2200), the defendants were suspected of obscuring together more than 200 million euro from the Philips Pension Fund, the Bouwfonds and the Rabo Real Estate Group. In this case both the legal persons and natural persons involved were prosecuted.

The country under review indicated that no statistical data is available.

(b) Observations on the implementation of the article

The reviewing experts noted that article 51, paragraph 2 PC specifies that criminal proceedings may be instituted simultaneously or separately against legal and natural persons, and that penalties may be imposed on either or both the legal and natural person.
The reviewing experts concluded that the provision has been adequately implemented.

**Article 26 Liability of legal persons**

**Paragraph 4**

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

**Annexes:**

- Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8)
- Overview number of prosecutions of legal persons (Annex 18)

**Relevant legislation:**

Article 23 Penal Code (Categories fines)

1. A person sentenced to pay a fine is obliged to pay the amount determined by judgment of the court to the State within the period of time to be stipulated by the Public Prosecutions Department charged with the execution of the judgment.
2. The minimum amount of the fine is € 3.
3. The maximum fine that may be imposed for a criminal offence is equal to the amount of the category stipulated for that offence.
4. There are six categories:
   a. the first category, € 390;
   b. the second category, € 3,900;
   c. the third category, € 7,800;
   d. the fourth category, € 19,500;
   e. the fifth category, € 78,000;
   f. the sixth category, € 780,000.
5. The court is entitled to impose on a summary offence, and on a criminal offence, respectively, for which no fine is stipulated, a fine not exceeding the amount of the first or third category, respectively.
6. The court is entitled to impose on a summary offence, and on a criminal offence, respectively, for which a fine is stipulated, but for which no category is stipulated, a fine not exceeding the amount of the first or third category, respectively, if this amount exceeds the amount of the fine that is stipulated for the offence concerned.
7. When sentencing a legal entity, a fine may be imposed, if the category stipulated for the offence does not allow an appropriate punishment, to the amount of the category immediately above that category.
8. The provisions of the previous subsection are applicable mutatis mutandis to the sentencing of an unincorporated company, partnership or allocated funds.

The Netherlands cited the following applicable measures:
For legal persons, fines may be increased to the amount of the next category as the one provided for natural persons. For example for bribery, legal persons may therefore incur a 6th category fine. As a result, the maximum level of financial sanctions for legal persons is ten times the fine applicable to natural persons, i.e. EUR 780 000. It is worth noting that Article 57, paragraph 2 of the Penal Code allows for the cumulating of fines if several offences have occurred; for instance, where a bribery offence also constituted a false accounting and a money laundering offence, sanctions could, at least in theory, reach three times a 6th category fine or a maximum of EUR 2.34 million (since false accounting and money laundering also incur 6th category fines). Similarly, the commission of multiple bribery offences may lead to as many fines. In addition proceeds of crime can be confiscated.

It also has to be noted that legal persons can also be punished - in an efficient manner - outside criminal law. For example, in a national corruption case, the criminal case against a legal person has been conditionally dismissed (voorwaardelijk geseponeerd), because this legal person also received a - high - administrative sanction from the NMA (Netherlands Competition Authority).

Please refer to Article 26 ( Liability of legal persons) paragraph 1 and 2, and paragraph 4.

For relevant examples of cases and case law, please refer to Article 26 ( Liability of legal persons) paragraph 1 and 2.

For statistical data, please refer to Annex 18 Overview number of prosecutions of legal persons.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

At the time of the country visit, a new bill was being prepared, aimed at making the fines for legal persons more flexible, and therefore more proportionate, dissuasive and effective in practice.

Praising the national authorities for the initiative to start preparing a new bill on the sanctions against legal persons, the reviewing experts encouraged them to continue efforts to make the fines against legal persons more flexible, and therefore more proportionate, dissuasive and effective in practice.

**Article 27 Participation and attempt**

**Paragraph 1**

> 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

> Article 47 Penal Code
1. The following persons shall be punished as perpetrators of a criminal offence:
1° those who commit the offence or procure or assist in its commission.
2° those who by means of gifts, promises, misuse of authority, violence, threats or deprivation, or by affording opportunity, means or information, intentionally solicit the commission of an offence.
2. With respect to the latter, only those acts the commission of which they have intentionally solicited and the consequences of such acts shall be taken into account.

Article 48 Penal Code
The following persons shall be punished as accessories to a serious offence:
1. those who intentionally aid and abet the commission of the offence;
2. those who intentionally provide opportunity, means or information for the commission of the serious offence.

The Netherlands cited the following applicable measures:

Ancillary offences are set out in the general provisions of the Penal Code and are applicable to all specific offences set out in Book II of the Penal Code (Articles 92 to 420quinquis).

Participation in the commission of all the offences established in accordance with this Convention is criminalised in Article 47 and Article 48 of the Penal Code. Articles 47 and 48 of the Penal Code criminalize the procuring, assisting, solicitation or aiding and abetting of an offense and stipulate that such conduct may be subject to the same sanction as the main offense.

In regards to providing examples of cases and case law, the Netherlands stated that:
In one of the criminal proceedings of the Klimop-case (please also refer to the answers given under Article 26 of the Convention) a suspect was convicted for participation in money laundering, forgery and active private bribery (District Court Haarlem 27 January 2012, LJN: BW2172)

In regards to statistical data, the Netherlands stated that statistics on specific criminal offences need to be assessed with some restraint. For a short explanation, please refer to Article 15 (Bribery of national public officials), subparagraph (a). Please refer to Annex 9 for statistical information.

(b) Observations on the implementation of the article

The reviewing experts noted that articles 47 and 48 PC criminalize the procuring, assisting, solicitation or aiding and abetting of an offense and stipulate that such conduct may be subject to the same sanction as the main offence.

The reviewing experts concluded that the provision has been adequately implemented.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:
Relevant legislation:

Article 45 Penal Code
1. An attempt to commit a serious offence shall be punishable if the perpetrator’s intent has manifested itself by his having begun to carry out the offence.
2. The maximum principal penalty for the serious offence itself shall be reduced by one third in the case of an attempt to commit that offense.
3. Where the serious offence itself is punishable by life imprisonment, a term of imprisonment not exceeding twenty years shall be imposed.
4. The additional penalties for an attempted serious offence shall be the same as those for the completed offence.

The Netherlands cited the following applicable measures:

Ancillary offences are set out in the general provisions of the Penal Code and are applicable to all specific offences set out in Book II of the Penal Code (Articles 92 to 420quinquis).

Article 45 of the Penal Code criminalizes the attempt to commit a criminal offence and provides that the offender may be sanctioned with the maximum penalty available for the attempted offense reduced by one third, or with a term of imprisonment for up to twenty years in cases where the attempted offense is punishable with life imprisonment.

Pursuant to Article 45, paragraph 1 of the Penal Code, a punishable attempt occurs “where the perpetrator manifests his intention by initiating the serious offence”. Article 45, paragraph 2 prescribes a reduction in the maximum principal penalty by one-third in the case of an attempt. Article 46b of the Penal Code states that an attempt (or preparation) to commit a serious offence does not occur where the offence has not been completed due to circumstances dependent on the perpetrator’s will.

In regards to providing examples of cases and case law, the Netherlands stated that:
In 2009 the Public Prosecution Service prosecuted a businessman for, amongst others, attempted active bribery of a public official. The defendant, a trader in metals, was scammed and asked the public official (employed at the Public Prosecution Service) to help him trace his money. The businessman promised a fee of 25 percent of the recovered money to the public official.

In 2012 the Public Prosecution Service prosecuted a former director of a (city) theatre for attempted passive bribery. The former director asked the catering company of the theatre for EUR 10,000, in exchange for the continuation of its contract with the theatre and a concert hall. The catering company did not pay, after which another catering company obtained the contract.

For statistical data, please refer to Article 27 (Participation and attempt), paragraph 1.

(b) Observations on the implementation of the article

The reviewing experts noted that article 45 PC criminalizes the attempt to commit a criminal offence and provides that the offender may be sanctioned with the maximum penalty available for the attempted offense reduced by one third, or with a term of imprisonment for up to twenty years in cases where the attempted offense is punishable with life imprisonment.

The reviewing experts concluded that the provision has been adequately implemented.

Article 27 Participation and attempt

Paragraph 3
3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 46 Penal Code
1. Preparation of a crime eligible to a prison sentence of eight years or more is made punishable, when the perpetrator intentionally acquires, manufactures, imports, transfers, exports or has in his possession objects, substances, information carriers, premises or means of transportation intended to commit that crime.
2. In case of preparation of a crime, the maximum of the main penalties for the completed crime will be reduced with a half.
3. Preparation of a crime eligible to life imprisonment will be punished with a maximum imprisonment not exceeding fifteen years.
4. In case of preparation of a crime, the same additional penalties apply as for the completed crime.

(...)

The Netherlands cited the following applicable measures:

With regard to the punishable preparation of a crime, it should be noted that States are not subject to an obligation to lay down provisions in this respect for all acts punishable in accordance with this Convention. In imposing a condition in respect of the punishable preparation of a crime to the effect that this must concern an offence that carries a prison sentence of eight years or more, Dutch legislation is therefore compatible with paragraph 3 of Article 27 of the Convention.

The Netherlands indicated that no examples of cases or statistical data is available.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the preparation of a crime is punishable in cases of offences punished with penalties of more than eight years of prison.

Taking into account the optional nature of the UNCAC provision, the reviewing experts concluded that the provision has been implemented, pursuant to the choices made by the national legislator regarding the threshold of punishment for the criminal offence that triggers the criminalization of its preparation.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence
established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 70 Penal Code
1. The right to prosecute lapses upon the expiration of the period of limitation:
   1. after three years for all lesser offences;
   2. after six years for serious offences punishable by a fine, detention or imprisonment of not more than three years;
   3. after twelve years for serious offences punishable by a term of imprisonment of more than three years;
   4. after twenty years for serious offences punishable by a term of imprisonment of more than ten years.
2. Contrary to the provisions of the first sub-section, the right to prosecute does not lapse for serious offences punishable by life imprisonment.

Article 71 Penal Code
The period of limitation commences on the day following the day on which the offence was committed, except in the following cases:
1. in the case of the serious offences defined in Sections 172(1), 173(1), 173a and 173b, the period of limitation commences on the day following the day on which the serious offence came to the knowledge of the investigating officer;
2. in the case of counterfeiting or clipping of coins, on the day following the day on which the counterfeit or clipped object was used;
3. in the case of the serious offences defined in Sections 240b, 242 to 250 and 273f, committed with regard to a minor, on the day following the day on which that person reached the age of eighteen;
4. in the case of the serious offences defined in Sections 278, 279, 282 and 282a, on the day following the release or death of the person against whom the serious offence was directly committed;
5. in the case of the lesser offences defined in Sections 465, 466 and 467, on the day following the day on which the records showing these lesser offences were transferred pursuant to the instructions for the implementation of Section 18c of Book 1 of the Dutch Civil Code, to the central register referred to in Part 8 of Chapter 1 of the Dutch 1994 Births, Marriages and Death (Registration) Decree (Besluit burgerlijke stand 1994).

Article 72 Penal Code
1. Any act of prosecution shall interrupt the period of limitation, also in respect of others than the person prosecuted
2. After interruption, a new period of limitation terminates, a new one commences. The right to prosecute lapses, however, in respect of lesser offences after ten years, and in respect of serious offences after the expiration of twice the period of limitation applicable
to the serious offence, starting on the day on which the original period of limitation commenced.

Article 73 Penal Code
Suspension of prosecution for the purpose of a resolution of a preliminary issue will toll the period of limitation.

The Netherlands cited the following applicable measures:
This Article of the Convention has been implemented in the Netherlands pursuant to Article 70 of the Penal Code, which contains a general regulation in respect of forfeiture of the right to bring criminal proceedings through lapse of time. The limitation periods referred to therein do justice to the seriousness and severity of the acts punishable in accordance with this convention.
Pursuant to Article 70 of the Criminal Code, the statute of limitation is calculated on the basis of the maximum sentence for the offence; a statute of limitations of two years for misdemeanours; six years for crimes for which the maximum sentence is a fine, detention or a term of imprisonment of not more than three years; twelve years for crimes for which the maximum sentence is a term of imprisonment of more than three years; twenty years for crimes for which the maximum sentence is a term of imprisonment of more than ten years. Crimes carrying a sentence of life imprisonment do not have a statute of limitations.

Pursuant to Article 71, paragraph 1 of the Penal Code, the period of limitation begins to run on the day following the day on which the act in question was committed. Pursuant to Article 72, paragraph 1 of the Penal Code, “any act of prosecution terminates” the running of the period. An act of prosecution would for example be the opening of a preliminary inquiry or bringing charges. After the interruption, a new statute of limitations commences automatically. Under former law, the statute of limitations was suspended with every prosecutor’s act of prosecution, known by the defendant. Under a new law, which entered into force on 1 January 2006, the condition of knowledge is no longer required: the statute is suspended with every act of prosecution, whether the defendant has knowledge of that act against him/her or not. Under Article 72, paragraph 2 of the Penal Code, when a period of limitation terminates, a new one commences. The limitation period is however not to exceed twice the standard statute of limitations applicable to the particular offence (Article 72, paragraph 2 of the Penal Code). Moreover, Article 73 of the Penal Code states that suspension of a prosecution for the purpose of resolving a preliminary issue “tolls” (suspends temporarily) the limitations period.

At this moment new legislation is being prepared, which aims at (amongst other things) increasing the maximum sentences for certain criminal offences, such as bribery and money laundering. One of the reasons of these increased maximum sentences is the lengthening of the period of limitations; the higher sentences proposed in the draft bill have a longer period of limitation as a result. For more information on this draft bill, please refer to the Explanatory Memorandum (Annex 8)

For examples of implementation, please refer to Article 29 (Statute of limitations), previous answer.

In regards to examples of cases or statistical data, the Netherlands stated the following: In a criminal proceeding related to the large Dutch Construction Fraud-case, the counsel of the defendant appealed to the expired limitation period, which would mean that the right of the Public Prosecution Service to prosecute this defendant had lapsed. The defendant was accused of committing bribery offences before a change in legislation in 2001. In 2001 the maximum sentences of the bribery offences in the Penal Code were increased, with a longer period of limitation as a result. The counsel of the defendant stated that the old (and thus shorter) limitation period was applicable in this case, since his client committed his crimes before the change in legislation. The Supreme Court however ruled that, when the new maximum sentences (and new limitation periods) came in to force in 2001, the actual period of limitation for the offences committed by the defendant did not yet expire. This meant, according to the Supreme Court, that the new period of limitation was applicable in this case and this period did not expire (so the defendant could still be prosecuted) (Supreme Court 6 July 2010, LJN: BK6346).
The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that, pursuant to article 70 PC, the statute of limitations period is calculated on the basis of the maximum sentence for the offence: two years for misdemeanours; six years for crimes for which the maximum sentence is a fine, detention or a term of imprisonment of not more than three years; twelve years for crimes for which the maximum sentence is a term of imprisonment of more than three years; twenty years for crimes for which the maximum sentence is a term of imprisonment of more than ten years. Crimes carrying a sentence of life imprisonment do not have a statute of limitations.

Pursuant to article 71, paragraph 1 PC, the period of limitation begins to run on the day following the day of commission of the offence. According to article 72, paragraph 1 PC, any act of prosecution interrupts the running of the period. The statute of limitations period is interrupted with every act of prosecution, whether the defendant has knowledge of that act against him/her or not. Article 73 PC states that suspension of a prosecution for the purpose of resolving a preliminary issue “tolls” (suspends temporarily) the limitations period.

At the time of the country visit new legislation was being prepared aiming at increasing the maximum sentences for certain criminal offences, such as bribery and money laundering. One of the reasons of these increased maximum sentences is the lengthening of the period of limitations.

The reviewing experts welcomed this development and concluded that the provision has been adequately implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Annex:

- Explanatory Memorandum to the draft bill expanding the possibilities to combat financial economic crime (Annex 8)

Relevant legislation:

Article 57 Penal Code
1. In the event of the concurrence of offences that should be considered to be separate acts and constitute more than one crime liable to similar main sentences, one punishment will be imposed.
2. The maximum of this punishment is the total of the highest punishments that can be imposed for the offences, however, to the extent it concerns imprisonment or detention - no more than one third above the highest maximum.

Article 58 Penal Code
In the event of concurrence of offences that should be considered separate acts and constitute more than one crime liable to dissimilar main sentences, each of those punishments may be imposed, however, their joint duration may not - to the extent it concerns imprisonment and detention - exceed the longest by one third.

The Netherlands cited the following applicable measures:

The applicable sanctions in the Dutch penal code for the commission of offences established in accordance with this Convention are proportionate, dissuasive and effective. Sentences may range from a fine to a custodial sentence. Severity depends partly on the seriousness of the offence, and partly on factors such as the person’s age, personal circumstances, and possible recidivism. The Public Prosecution Service and the judge will take the severity of the offence into account in its decision to prosecute, stating the demand and the imposition of a sentence.

It also has to be pointed out that pursuant to Article 57, paragraph 2 of the Penal Code the maximum of the penalty is the total of the highest penalties foreseen for the offences committed, while where it concerns imprisonment or detention the maximum is not higher than one-third above the highest maximum. Article 57, paragraph 2 Penal Code allows for (endless) accumulation of fines, where imprisonment and detention are maximized.

In a letter to the Parliament of December 2011, the Minister of Security and Justice indicated that he is reconsidering the sanctions for financial economic crime. At this moment, a new bill is being prepared which aims at increasing the maximum sentences for different forms of financial economic crime (f.e. bribery and money laundering), and making them therefore even more proportionate, dissuasive and effective in practice.

Please also refer to Article 30 (Prosecution, adjudication and sanctions), paragraph 1, next questions.

Regarding criminal and non-criminal sanctions imposed, the Netherlands stated that:

Annex:

- Instruction on Large and Special Transactions (Annex 19)

Relevant legislation:

Article 9 Penal Code
1. The punishments are:
   a. main punishments
      1°. imprisonment
      2°. custody
      3°. community service
      4°. monetary fine
   b. additional punishments:
      1°. removal of certain rights
      2°. forfeiture
      3°. publicising of court decisions
2. With regards to criminal offences that are threatened with a custodial sentence or a monetary fine or with regards to violations that are threatened with a custodial sentence, a community service can be imposed instead.
3. In the case where imprisonment, custody, or community service is enforced, a monetary fine may also be imposed - replacement custody is not included in this.  
4. In the case of sentencing to imprisonment or custody, where the minimum sentence is at the most six months, the judge can also impose community service - replacement custody is not included in this.  
3. An additional punishment can, in cases where the law allows it, be imposed, both individually and jointly with main punishments and other additional punishments being imposed.

The Netherlands cited the following applicable measures:

Under Dutch criminal law, an offender can be punished by imprisonment, a fine or an alternative sanction. Alternative sanctions can either take the form of community service, or they can be designed to rehabilitate the offender. A combination of the two types of alternative sanction can also be imposed. In addition to the principal sentence, a court may also impose an additional sentence, such as the removal of certain rights.

Besides the penalties described above, the public prosecutor may ask the court to impose a court order. For instance, the court can order that certain objects, such as narcotics, weapons or pirate versions of compact discs, be withdrawn from circulation. Or it can deprive offenders of the proceeds of crime. This is often done in cases of theft, fraud or drug trafficking. The court can also order an offender to pay compensation to the party who has suffered as a result of the crime.

A more complex measure is the hospital order. If a person has a personality or psychiatric disorder that was a contributory factor in the commission of a criminal offence, the court may decide that he is suffering from diminished responsibility. In such a case, a hospital order (terbeschikkingstelling; TBS) can be imposed.

Since the disorder was a contributory factor in the criminal offence, there is a heightened risk of such individuals reoffending if they do not receive treatment for it. A court may therefore rule, as part of its judgment, that such an offender will be confined to a secure psychiatric institution, in some cases after first serving a custodial sentence.

An alternative sanction (taakstraf) consists of a community service order (werkstraf), a training order (leerstraf), or a combination of these. The court determines what kind of alternative sanction will apply and the number of hours.

The court may impose a default (or conditional) custodial sentence alongside the alternative sanction. If the offender fails to complete the alternative sanction satisfactorily, he will have to serve the custodial sentence. The public prosecutor decides whether the alternative sanction has been completed satisfactorily or whether the default sentence must be served. The convicted person can object to this decision.

It is possible for the court to impose a fine for any criminal offence. If damages are awarded, the person convicted has to pay a sum of money to compensate for the harm incurred by the victim. In the case of minor offences, the fine payable is a fixed amount. More serious offences are assigned to separate categories; a maximum fine is fixed for each category. It is up to either the court or the public prosecutor to determine the actual fine to be paid.

Prosecutions are conducted according to the principle of prosecutorial discretion (opportuniteitsbeginsel). This means that the public prosecutor can decide to settle a case outside court. This process is governed by article 74 of the Penal Code, and essentially involves the payment of a sum of money by the defendant to the State in order to avoid criminal proceedings (the so-called “transaction”). It can also involve the renunciation of title to or surrender of objects that have been seized and are subject to forfeiture and confiscation, or payment of their assessed value. Moreover, it
can involve the payment of the estimated proceeds acquired from the criminal offence, as well as compensation for any damage caused. Pursuant to article 74, paragraph 1 of the Penal Code, it is available in relation to “serious offences” excluding those for which the penalty of imprisonment is more than 6 years. The right to prosecute lapses once the conditions set in a particular case have been met.

The Instruction on Large and Special Transactions contains rules for out-of-court settlements involving high amounts of money (Annex 19). This Instruction states that if the public prosecutor decides to settle a case with a high or special transaction, in principle a press release is mandatory. The Instruction also states that large or special transactions are often applied in cases which caused public concern. Basically, in these cases the rule is: no out-of-court settlement (but instead submittal to the court), unless there is a very good reason for it. If the public prosecutor chooses for an out-of-court settlement in such a case, the proposed transaction (with motivation) has to be submitted by the Board of Procurators-General to the Minister of Security and Justice. This gives the Minister of Security and Justice the opportunity to determine whether he is prepared to be political responsible for the settlement. Pursuant to articles 127 - 129 of the Law on the Judiciary the Minister of Security and Justice can submit the case to the court.

On 1 February 2008 the new Public Prosecutor Settlement Act (Wet OM-Afdoening) came into force. This law ensures that the transaction (Article 74 Penal Code) will be gradually replaced by a new instrument: a penalty imposed by the public prosecutor (OM-strafbeschikking). This penalty imposed by the public prosecutor involves an act of prosecution, which means that, among other things, the payment of a possible fine can be enforced. A transaction, on the other hand, is an out-of-court settlement to avoid criminal prosecution and thereby has no means for enforcing payment (if someone does not meet the requirements of the transaction, the case will be brought before court instead). It is possible to attach certain conditions to the penalty imposed by the public prosecutor, for example: the confiscation of assets, compensation for victims and certain behaviour changing measures (also for legal persons).

This Public Prosecutor Settlement Act is gradually being implemented. At this point it is not possible to impose a penalty by the public prosecutor in case of, for example bribery of a (foreign) official. However, in the future this will be possible.

To conclude, it has to be noted that in the Netherlands a wide array of policies and instruments is employed to combat financial economic crime, including fiscal, administrative, preventative and penal measures. In this integrated method of tackling crime, a mix of penal, fiscal and administrative measures are used in order to “hit criminals where it hurts”. The philosophy behind this approach is to use the most effective available instrument against criminals, this is not always criminal investigation, it can also be fiscal administrative or civil measure.

(b) Observations on the implementation of the article

The applicable sanctions for the commission of offences established in accordance with the UNCAC were found to be proportionate, dissuasive and effective. Sentences may range from a fine to a custodial sentence. Severity depends partly on the seriousness of the offence, and partly on factors such as the person’s age, personal circumstances, and possible recidivism. The review team also welcomed ongoing legislative initiatives to further increase the sanctions for concrete corruption-related offences.

The reviewing experts concluded that the provision has been adequately implemented.
Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 71 Constitution
Members of the States General, Ministers, State Secretaries and other persons taking part in deliberations may not be prosecuted or otherwise held liable in law for anything they say during the sittings of the States General or of its committees or for anything they submit to them in writing.

Article 119 Constitution
Present and former members of the States General, Ministers and State Secretaries shall be tried by the Supreme Court for offences committed while in office. Proceedings shall be instituted by Royal Decree or by a resolution of the Lower House.

The Netherlands cited the following applicable measures:

This paragraph states that these types of regulations (national regulations in respect of immunities) must be based on a balanced distribution of immunities, benefits and privileges granted to officials on the one hand, and sufficient opportunity for criminal prosecution and sentencing of these individuals on the other hand. Dutch legislation only contains a limited number of special further conditions with regard to the act of exercising the right to bring criminal proceedings in connection with the office or position held by a suspect. In this context, Articles 71 and 119 of the Dutch Constitution are relevant.

Article 42, paragraph 2 of the Constitution lays down that “the King is immune”. This means that the King enjoys immunity and therefore criminal proceedings cannot be brought against him. Article 71 of the Constitution states that members of the Parliament (Staten-Generaal), Ministers, State Secretaries and other persons taking part in the deliberations may not be prosecuted or otherwise held liable in law for anything they say during the meetings of the Parliament or of its committees or for anything that they submit to them in writing.

Apart from this non-liability immunity, politicians may be investigated, prosecuted and sentenced for any offence. Nonetheless, Article 119 of the Constitution institutes a special procedure for the prosecution of certain offences by (former) members of Parliament, Ministers and State Secretaries. They shall be tried before the Supreme Court on account of an offence involving abuse of office. The order to prosecute shall be issued by the Government (by Royal Decree) or by the Lower House of Parliament. Further procedural provisions are contained in the Law on ministerial responsibility, the Law on the organization of the judiciary and the Law on criminal proceedings. The ‘offences involving abuse of office’ are enumerated in the Penal Code, and include passive bribing of domestic public officials (Articles 362 and 363 of the Penal Code).
Article 119 of the Constitution was established for two reasons: 1) to set up a special procedure aiming at providing political officials with protection against prosecution for rash reasons, and 2) to guarantee that a prosecution (against a political official) deemed necessary would certainly be initiated and could be completed within a relatively short period.

Regarding concrete instances where the issue of immunities and/or jurisdictional or other privileges accorded to public officials has arisen and addressed in official documents, the Netherlands stated the following:

The Supreme Court has confirmed in a number of decisions that the public prosecutor is not authorized to prosecute (former) Ministers and Members of Parliament on accounts of offences involving the abuse of their office. Only the Government (by a Royal Decree) and the Lower House of Parliament are authorized to order such a prosecution. See the decisions of the Supreme Court of 6 December 1985 (NJ 1986, 244), of 27 October 1989, (NJ 1990, 108), of 9 July 2004 (LJN AP1273) and of 19 October 2007 (NJ 2008, 26). The Supreme Court ruled in its decision of 2007 that article 119 of the Constitution does not violate any of the treaties that had been cited by the claimants (ICCPR, ECHR, and CAT). The claimants lodged an application with the European Court of Human Rights against this decision. The Court declared the application inadmissible because it was manifestly ill-founded (Decision of 29 September 2009 as to the admissibility of Application no. 19221/08).

(b) Observations on the implementation of the article

The reviewing experts noted that, according to article 42, paragraph 2 of the Constitution, the King enjoys immunity and therefore criminal proceedings cannot be brought against him. Article 71 of the Constitution states that members of the Parliament (Staten-General), Ministers, State Secretaries and other persons taking part in the deliberations may not be prosecuted or otherwise held liable in law for anything they say during the meetings of the Parliament or of its committees or for anything that they submit to them in writing.

Apart from this non-liability immunity, politicians may be investigated, prosecuted and sentenced for any offence. Nonetheless, Article 119 of the Constitution institutes a special procedure for the prosecution of certain offences by (former) members of Parliament, Ministers and State Secretaries. They shall be tried before the Supreme Court on account of an offence involving abuse of office. The order to prosecute shall be issued by the Government (by Royal Decree) or by the Lower House of Parliament. Further procedural provisions are contained in the Law on ministerial responsibility, the Law on the organization of the judiciary and the Law on criminal proceedings.

The Supreme Court has confirmed in a number of decisions that the public prosecutor is not authorized to prosecute (former) Ministers and Members of Parliament on accounts of offences involving the abuse of their office. Only the Government (by a Royal Decree) and the Lower House of Parliament are authorized to order such a prosecution.

The reviewing experts concluded that the provision has been adequately implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law
enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

In recent years the Dutch government intensified its measures to combat financial economic crime. In 2007 the Dutch government started a comprehensive government programme aimed at tackling financial crime - the Programme for Reinforcement of Measures against Financial and Economic Crime (FINEC) - in which all ministries and involved agencies co-operated closely. Simultaneously, the government Reinforcement Programme against Organized Crime was launched. The two programmes included differing but similar elements and were designed in a mutually reinforcing manner.

The principle guiding the Dutch Financial Crime policy is to make the Netherlands a hostile environment for committing financial crime. The Netherlands believes that this can only be achieved through a system of prevention, disruption and enforcement, operating across organisational and geographical boundaries.

The FINEC programme is an innovative, programmatic approach, which means including all relevant actors (public and private) in combination with the reinforcement of existing measures. The implementation of the reinforcement programme involves the Ministry of Security and Justice, the Ministry of Finance, the Ministry of the Interior and Home Affairs, special investigation agencies, the police, the Public Prosecution Service, along with all its specialized agencies and private sector actors (such as insurance companies and banks).

The FINEC programme lasted until 2011. The current government has more or less continued the reinforcements made in the FINEC programme through its confiscation of illicit gains programme (Programma Afpakken). This national Program, which started in February 2011, ensures that law enforcement authorities ((The Public Prosecutor, the Police, Special Investigation Services) can confiscate more money (and in a smarter and more effective way) from criminals. In the upcoming years, structurally more money has to be confiscated, ultimately resulting in an amount of 100 million euro in 2018. Through an effective and efficient use of all instruments of criminal, administrative, tax and civil law, the emphasis placed on confiscation ensures that crime does not pay.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.
(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Pursuant to Article 66 of the Code of Criminal Procedure, once a defendant has been remanded in custody the trial must commence within 104 days. In order to impose pre-trial detention there must be serious grounds for suspecting that the defendant committed a serious offence (within the meaning of Article 67 Code of Criminal Procedure). Furthermore, the judge must find that there is either an imminent risk that the defendant will flee (the judge will assess this risk based on the actions and personal circumstances of the defendant), or that there are public interest reasons why the defendant should be detained, i.e.:

- he is accused of having committed an offence which has seriously disturbed public order and attracts a sentence of 12 years or more;
- there is a serious chance that the suspect will commit another crime that carries a prison sentence of six years or more, or that will endanger the safety of the state, health or safety of persons, or that will cause a general danger to property;
- there is a considerable risk that the defendant will commit a serious offence and he has been convicted of a similarly serious offence in the last five years; or
- his detention is deemed reasonably necessary to uncover the truth.

In addition pre-trial detention should not be imposed if the judge decides that the person is unlikely to receive a custodial sentence if convicted or if the pre-trial detention period is likely to be longer than the eventual sentence passed.

Wider grounds for imposing pre-trial detention apply to non-nationals who do not have a place of residence in the Netherlands. People in this position can be subject to pre-trial detention even if they have not been accused of committing a serious offence (within the meaning of Article 67 Code of Criminal Procedure)

There are no limitations on the kind of conditions the judge can attach to release pending trial. The following are supervision measures which may be imposed:

- an order requiring the accused person to inform the competent authority of any change of residence;
- an order that the accused person not enter certain localities, places or defined areas;
- an order that the accused person remain at a specified place during specified times;
- an order limiting the right of the accused person to leave the Netherlands (defendants can be ordered to surrender their passports);
- a requirement to report at specified times to a specific authority;
- an obligation to avoid contact with specific persons in relation to the alleged offence;
- an obligation not to engage in specified activities relating to the alleged offence, including work in a specified profession or employment;
- an obligation not to drive a vehicle;
- an obligation to deposit money as a guarantee;
- an obligation to undergo therapeutic treatment or treatment for addiction;
- an obligation to avoid contact with specific objects relating to the alleged offence; and
- house arrest and electronic tagging.

Pre-trial detainees must be held in special remand centres. Compensation is available for persons who have been held in pre-trial detention and then have been subsequently acquitted. Compensation is also
available if the person has not been acquitted, but the pre-trial detention was imposed without an adequate basis or was unlawful.

(b) Observations on the implementation of the article

The reviewing experts noted that, in order to impose pre-trial detention there must be serious grounds for suspecting that the defendant committed a serious offence (within the meaning of Article 67 CPC). Furthermore, the judge must find that there is either an imminent risk that the defendant will flee (the judge will assess this risk based on the actions and personal circumstances of the defendant), or that there are public interest reasons why the defendant should be detained.

The reviewing experts concluded that the provision has been adequately implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 15
1. A convicted person sentenced to a custodial sentence of more than one year and less than two years may be released when he has been deprived of his liberty for not less than one year and when one third of the remaining term has been served.
2. A convicted person sentenced to a custodial sentence for a determinate period of which more than two years is to be executed shall be released when two thirds of that sentence have been served.
3. Paragraph one and two of this Article do not apply in case a judge decided that on the basis of Article 14a a part of the custodial sentence will conditional/suspended.

The Netherlands cited the following applicable measures:

Conditional release provisions are incorporated in the Penal Code: convicted persons with a prison sentence of at least one year qualify for conditional early release. The main aim of conditional early release is the improvement of the social safety by reducing the risk of recidivism. In addition to the mandatory general condition, the administration can attach special conditions to the release decision. The general condition is that the released prisoner will not commit further offences during the probation period and he will not behave badly otherwise. Special conditions can be related to the conduct of the released prisoner, his personality, the criminal offence and the risk of recidivism. Examples of special conditions are an alcohol ban or a compulsory treatment.
If the convicted person fails to comply with the conditions, the early release may be invoked. In that case, the convicted person has to serve (part of) the rest of his sentence.

Granting conditional release can be postponed or abandoned in certain cases. The grounds on which the conditional release can be postponed or abandoned are supplemented and amended compared to the old system of early release.

In regards to statistical data, the Netherlands stated the following:

In 2011 the Ministry of Security and Justice evaluated the Conditional Release Act. The evaluation showed that between April 2009 and July 2011 a total of 1,665 prisoners were conditionally released. In about half of these cases (53%) only the mandatory general condition applied. In the other 47% also one or more special conditions were imposed.

Within the group of early released prisoners with one or more special conditions (N = 786 persons) a total of 1,761 special conditions were imposed. The most common special condition was the obligation to periodically report to the Probation Service, followed by a (behavioural) treatment and an alcohol and drug ban. Other examples of possible special conditions are treatment in an institution, a contact restriction order and a location restriction order.

The evaluation also showed that the possibility of one or more special conditions also relates to the amount of recidivism. 7% of the persons that were convicted for the first time, were subject to a special condition, against 61% of the persons convicted for the tenth (or more) time.

(b) Observations on the implementation of the article

The reviewing experts noted that provisions enabling the conditional release of prisoners are incorporated in the Penal Code. The main aim of conditional early release is the improvement of the social safety by reducing the risk of recidivism.

The reviewing experts concluded that the provision has been adequately implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

Criminal and disciplinary proceedings may take place concurrently in the Netherlands. In this context, the stage that criminal investigations have reached shall in principle have no implications with regard to taking any disciplinary measures. The disciplinary inquiry into the facts and circumstances of the case takes place separately to criminal investigations and may lead to punishment prior to the results of such investigations. Dutch legislation therefore corresponds with this paragraph. For more information on disciplinary measures, please also refer to Article 30 (Prosecution, adjudication and sanctions), paragraph 8.
The Netherlands cited the following examples of implementation:

Appendix 2 to the Instruction regarding the Violations of Integrity Procedure within the Public Prosecution Service; this text says: “Apart from conducting criminal proceedings, the Public Prosecution Service (PPS) is obliged to assess, as a public employer, whether a civil servant has neglected his/her duty (see, for instance, the decision of the Central Appeals Tribunal of 1 November 2001, LJN: AD6321). In this context, the Central Appeals Tribunal stated the following: “The circumstance that the action of which the civil servant is accused also constitutes an offence does not affect the responsibility borne by the public employer. Disciplinary law and criminal law are two distinct frameworks, each with its own line of approach.”

In regards to statistical data, the Netherlands stated the following:
In the Social Year Report of the Central Government (Sociaal Jaarverslag Rijk) the government reports on, amongst other things, the integrity violations amongst her public officials.


<table>
<thead>
<tr>
<th>Type of violation</th>
<th>Number of suspected violations</th>
<th>Number of detected violations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abuse of function and conflict of interest</td>
<td>138</td>
<td>118</td>
</tr>
<tr>
<td>Leaking and misuse of information</td>
<td>5927</td>
<td>7144</td>
</tr>
<tr>
<td>Misuse of privileges</td>
<td>2722</td>
<td>4</td>
</tr>
<tr>
<td>Misuse of the power to legitimately use (physical) force</td>
<td>74</td>
<td>4</td>
</tr>
<tr>
<td>Undesirable manners</td>
<td>18854</td>
<td>4</td>
</tr>
<tr>
<td>Misconduct in private life</td>
<td>5539</td>
<td>1</td>
</tr>
<tr>
<td>Improper use of service resources/violating internal rules</td>
<td>408257</td>
<td>4</td>
</tr>
<tr>
<td>Misconduct according to the whistleblowers regulation</td>
<td>61</td>
<td>4</td>
</tr>
</tbody>
</table>

There were 959 suspected integrity violations in 2010, of 566 could be established that it was indeed a case of integrity violation. Compared to the number of integrity violations in 2009 (530), 2010 showed a slight increase. A possible explanation for this is the improvement of the registration.

In 2010, the number of disciplinary sanctions imposed increased slightly (compared to 2009) to 346. The most disciplinary sanctions were imposed unconditionally. In the case of forced dismissal (97 cases), 20 forced dismissals were conditional.


| Type of sanction | Number Written | reprimand | 132 | Forced dismissal | 97 | Reducing hours for leave | 40 | Financial sanction | 48 | Transfer | 14 | Other | 15 | Total | 346 |

(b) Observations on the implementation of the article

The reviewing experts noted that criminal and disciplinary proceedings may take place concurrently in the Netherlands. The disciplinary inquiry into the facts and circumstances of the case takes place separately to criminal investigations and may lead to punishment prior to the results of such investigations.

The reviewing experts concluded that the provision has been adequately implemented.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a
period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 28 Penal Code (Deprivation of rights)
1. In the cases defined by law, a person found guilty may be deprived of the following rights under a court order:
   1. Holding office or any specific public office;
   2. Serving in the army;
   3. The right to elect members of any general representative body and to be elected as a member of such body;
   4. Being a counsel or court-appointed administrator;
   5. Exercising specific professions.

Article 29 Penal Code
Expulsion of the right to hold office or hold certain offices and to serve with the armed forces may, except in the cases defined in the Second Book*, be pronounced with conviction for any malfeasance or for any offence by which the offender violated a particular official duty or for which he made use of power, opportunity or means given to him by his office.

(* Second Book: Serious offences (amongst others Titel XXVIII Malfeasances (Ambtsmisdrijven) - Articles 355-380 Penal Code)

The Netherlands cited the following applicable measures:
This paragraph encourages to provide for the option to disqualify an individual from a profession or from holding any executive position. In Dutch legislation, these punishments are defined in Article 28 of the Penal Code. Reference should also be made to Article 29 of the Penal Code, which makes it possible to declare a public servant divested of the right to hold public office upon conviction of said individual for a serious offence committed by him/her while in office or for any offence committed by the guilty person that constitutes a breach of a special official duty or in which he/she has made use of authority, opportunity of means available to him or her by virtue of his or her office.

In regards to statistical data, the Netherlands stated the following:

It appeared to be not possible - in a technical sense - to get an overview from the Public Prosecution Service on the number of cases in which a judge decided to impose a punishment as defined in Article 28 or 29 of the Penal Code.

The Research and Documentation Centre of the Ministry of Security and Justice conducted a research into the enforcement of the expulsion from a profession or removal from office in the period 1995 - 2008. The research report concluded that different sources show that, between 1995 - 2008, approximately 123 criminal cases involved an expulsion or removal (although in reality this number is expected to be higher). Expulsions or removals are predominantly imposed in sex crime cases and cases of fraud. Beside the sex crime and fraud cases, there is a group of cases involving an offence falling under the Economic Offences Act (WED). The most important punishment goal of judges and prosecutors is to prevent similar offences in the context of a profession or office. The research report
also pointed out that the Certificate of Good Behaviour (*Verklaring omtrent Gedrag*, VOG) and disciplinary law also play a certain role in preventing a convicted offender from accepting another function that will facilitate recidivism during the execution of his professional duties.

For examples of implementation, please refer to Article 30 (Prosecution, adjudication and sanctions), paragraph 7 (a), previous answer.

**Observations on the implementation of the article**

The reviewing experts noted that in the Dutch legislation, the options of disqualifying an individual from a profession or from holding any executive position are defined in article 28 PC. Article 29 PC makes it possible to declare a public servant divested of the right to hold public office upon conviction of the individual for a serious offence committed while in office or for any offence committed by the guilty person that constitutes a breach of a special official duty or in which he/she has made use of authority, opportunity of means available to him or her by virtue of his or her office.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 30 Prosecution, adjudication and sanctions**

**Subparagraph 7 (b)**

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

For further information, please refer to Article 30 (Prosecution, adjudication and sanctions), paragraph 7 (a), previous answer.

(b) **Observations on the implementation of the article**

See above. The reviewing experts concluded that the provision has been adequately implemented.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 8**

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.
Criminal and disciplinary proceedings may take place concurrently in the Netherlands. In this context, the stage that criminal investigations have reached shall in principle have no implications with regard to taking any disciplinary measures. The disciplinary inquiry into the facts and circumstances of the case takes place separately to criminal investigations and may lead to punishment prior to the results of such investigations.

The competent administrative body is empowered to initiate all relevant investigations on violations of the obligations related to integrity matters, according to the provisions of the Civil Servants Act. Some governmental agencies, including the police, have their own integrity bureau to carry out internal investigations. If the integrity-related infringement constitutes a criminal offence, such as corruption or fraud, the offence must be immediately reported to the competent law enforcement authorities. In such cases, criminal investigations can only be carried out by officials from the police or the National Police Internal Investigations Department (Rijksrecherche). Disciplinary measures may be challenged by lodging a notice of objection with the authority that took the decision. The new decision can be challenged before an administrative court, and the court’s decision may be appealed.

Disciplinary and criminal proceedings may run in parallel and sanctions may be cumulated. Relevant documents supplied during the course of a criminal investigation (e.g. official police reports) may also be used in the disciplinary procedure.

For further information, please refer to Article 30 (Prosecution, adjudication and sanctions), paragraph 6, previous answer.

(b) Observations on the implementation of the article

The reviewing experts noted that criminal and disciplinary proceedings may take place concurrently in the Netherlands. The disciplinary inquiry into the facts and circumstances of the case takes place separately to criminal investigations and may lead to punishment prior to the results of such investigations.

The reviewing experts concluded that the provision has been adequately implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Annexes:

- Factsheet Comprehensive approach to Aftercare (Annex 20)
- Summary Second measurement of the monitor of aftercare for former prisoners (Annex 21)

Relevant legislation:
Article 2 Custodial Institutions Act
1. If not determined otherwise by law, a custodial sentence or detention order shall be carried out by placing the person on which it is imposed in a penitentiary institution or by his participation in a penitentiary programme.
2. While maintaining the character of the custodial sentence or detention order, the carrying out thereof shall be aimed at preparing the person involved as much as possible for reintegration in the community.
3. Custodial sentences or detention orders shall be carried out as soon as possible after imposition of the sentence or issue of the order.
4. Persons sentenced or detained with a view to the carrying out of a custodial sentence or detention order shall not be subjected to any other restriction than those necessary to achieve the aim of the deprivation of liberty or to maintain order or safety in the institution.

The Netherlands cited the following applicable measures:

Please refer to Article 2, paragraph 2 of the Custodial Institutions Act (Penitentiaire beginselenwet) for the manner in which the Netherlands has implemented this subsection. That Article stipulates that, whilst upholding the nature of the custodial sentence or custodial measure, the enforcement of such sentence or measure shall be made as conducive as possible to preparations for the individual in question to return to society.

No special reintegration programme exists for persons convicted for offences established in accordance with this Convention. For more information on the general policy on the reintegration of prisoners in society, please refer to the Factsheet Comprehensive approach to Aftercare (Annex 20) and Summary Second measurement of the monitor of aftercare for former prisoners (Annex 21).

For examples of implementation, please refer to Article 30 (Prosecution, adjudication and sanctions), paragraph 10, previous question and the Factsheet Comprehensive approach to Aftercare (Annex 20) and Summary Second measurement of the monitor of aftercare for former prisoners (Annex 21).

For statistical data, please refer to Article 30 (Prosecution, adjudication and sanctions), paragraph 10, previous question and the Factsheet Comprehensive approach to Aftercare (Annex 20) and Summary Second measurement of the monitor of aftercare for former prisoners (Annex 21).

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that article 30, paragraph 10 of UNCAC is implemented through article 2, paragraph 2 of the Custodial Institutions Act. That Article stipulates that, whilst upholding the nature of the custodial sentence or custodial measure, the enforcement of such sentence or measure shall be made as conducive as possible to preparations for the individual in question to return to society.

The reviewing experts concluded that the provision has been adequately implemented.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:
(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Annexes:

- Instruction on Special Confiscation (Annex 22)
- Brochure Criminal Assets Deprivation Bureau (with supplementary sheets) (weblink)

Relevant legislation:

Article 33 Penal Code:
1. A penalty of forfeiture may be imposed upon conviction for any criminal offence.
2. Art. 24 is applicable*

(* Article 24 of the Penal Code says: “When determining the fine, the capacity of the accused has to be taken into account to the extent that it is necessary with a view to an appropriate punishment of the accused, without being hit disproportionately in his income and assets”)

Article 33a Penal Code:
1. The following are subject to forfeiture:
   a. objects belonging to the convicted person or objects he can use in whole or in part for his own benefit and obtained entirely or largely by means of the criminal offence;
   b. objects in relation to which the offence was committed;
   c. objects used to commit or prepare the offence;
   d. objects used to obstruct investigation of the serious offence;
   e. objects manufactured or intended for committing the serious offence;
   f. rights in rem and rights in personam pertaining to objects specified in a through e
2. Objects specified in section 1 (a)-(e), where they belong to a person other than the convicted person, can only become subject to forfeiture where:
   a. the person whom they belong had knowledge of the fact that they had been obtained by means of the criminal offence or had knowledge of the purpose or use in connection with the offence, or might have reasonably suspected such provenance, use or purpose;
   b. it has not been possible to ascertain to whom they belong.
3. Rights as specified in section 1 (f) not belonging to the convicted person, may only be forfeit where the person to whom they belong had knowledge of the fact that the objects to which these rights pertain had been obtained by means of the criminal offence, or had knowledge of the use or purpose in connection with the offence, or might have reasonably suspected such provenance, use or purpose.
4. The terms “objects” is to be taken to mean all corporeal property and all property rights.

Article 36e Penal Code:
1. Upon demand by the Public Prosecution Service, an obligation may be imposed on a person who has been convicted for a criminal offence by means of a separate court decision to pay an amount to the state intended to confiscate the proceeds of crime.
2. The obligation may be imposed on the person referred to in the first paragraph who benefitted from the criminal offence or from other criminal offences referred to there or from the proceeds from said criminal offence or other criminal offences, in respect of
which there are sufficient indications that they were committed by the convicted persons.

3. Upon demand of the Public Prosecution Service, the obligation to pay an amount to the state intended to confiscate the proceeds of crime may be imposed on persons, by means of a separate court decision, who have been convicted of a crime that is liable to a fine of the fifth category according to the statutory description, if it is likely that said criminal offences or other criminal offences have in any way resulted in the convicted person benefiting from crime. In that case, it may also be suspected that:
   a. the expenditure of the convicted person during a period of six years prior to the commission of said crime, comprises the proceeds of crime, unless it is likely that this expenditure was paid for from a legal source of income, or;
   b. objects that came into the possession of the convicted person during the period of six years prior to the commission of said crime comprise benefit as referred to in the first paragraph, unless it is likely that the acquisition of those objects was performed on the basis of a legal source of income.

4. The court may, ex officio, upon demand of the Public Prosecution Service or at the request of the convicted person, deviate from the period of six years referred to in the third paragraph and assume a shorter period.

5. The court determines the amount at which the proceeds of crime are estimated. Benefiting includes realising cost savings. The value of the objects included in the proceeds of crime by the Court, may be estimated on the basis of market value at the time of the decision or by reference to the proceeds to be achieved during a public sale, if recovery becomes necessary. The Court may set the amount to be paid lower than the estimated benefit. Upon the substantiated request of the defendant or the convicted person, the Court may, if the current and future financial capacity to be reasonably expected of the defendant or convicted person are insufficient to pay the amount to be paid, take this into account when determining the amount to be paid. In the absence of such a request, the Court may exercise this power ex officio or upon demand by the public prosecutor.

6. Objects are defined as all property and all property rights.

7. When determining the value of the proceeds of crime on the basis of the first and second paragraph concerning criminal offences committed by two or more persons, the Court may order that these persons be responsible, jointly and severally or for a part to be determined by the Court, for the joint payment obligation.

8. Claims awarded to injured third parties will be deduced when determining the amount at which the proceeds of crime are estimated.

9. When imposing the measure, the previous obligations to pay an amount to confiscate the proceeds of crime pursuant to previous decisions will be taken into account.

10. The Court may order committal for failure to comply with a judicial order in implementation of Article 577c of the Code of Criminal Procedure for a maximum term of three years which will apply as a measure.

Article 126 of the Code of Criminal Procedure

1. In case of suspicion that a crime has been committed, punishable with a fine of the fifth category and as a result of which an advantage of some importance is obtained that is capable of being expressed in money, a criminal financial investigation may be conducted, in accordance with the provisions of this part.

2. A criminal financial investigation is aimed at determining the illegal profits or advantage obtained by the suspect, in view of confiscation thereof in accordance with section 36e of the Netherlands Criminal Code.

3. The criminal financial investigation shall be conducted by virtue of an authorization from the examining magistrate, stating the reasons, which was granted at the request of the public prosecutor charged with the investigation of the criminal offence.
4. The request of the public prosecutor shall state the reasons. The request shall be submitted together with a list of goods that have already been seized in accordance with section 94a, subsections two, three and four.

5. From time to time, the public prosecutor shall, on his own accord or at the request of the examining magistrate, report on the progress of the criminal financial investigation. If he deems this necessary, in view of section 126e, subsection one, the examining magistrate shall inform the court. The examining magistrate shall notify the public prosecutor hereof.

The Netherlands cited the following applicable measures:

Confiscation of criminal proceeds is given high priority by the Dutch government. The Dutch Public Prosecution Service regards confiscation as an important part of its core responsibilities, on the principle that crime must not pay.

In the Netherlands, there are two different schemes for confiscation, i.e. “ordinary” confiscation (verbeurdverklaring, to be discussed below) and special confiscation (ontneming)

At the request of the Public Prosecution Service Office, the court may issue a “non-punitive order” for special confiscation consisting of the obligation for the offender to pay a sum of money to the State. Special confiscation consists of the imposition of an obligation on the person convicted of an offence to pay the state a sum in restitution of illicit earnings (Article 36e, par. 1 of the Penal Code). In addition to special confiscation for offences for which the accused is convicted, assets may also be confiscated for similar offences or offences for which there is a fine of at least € 45,000, for which it has become plausible to assume that they were also committed by the accused (Article 36e, par. 2 of the Penal Code). Assets may also be confiscated on conviction for an offence for which there is a potential fine of at least € 45,000, if the criminal financial investigation reveals a plausible case for other criminal activity from which the accused may have obtained illicit earnings (Article 36e, par. 3 of the Penal Code).

In addition to the normal financial investigations carried out during a criminal investigation, a special criminal financial investigation (SFO) may be initiated when a preliminary investigation has shown the likelihood of illegally obtained profits or advantages amounting to at least 12,000 Euros, and where it is also expected that the profits or advantages obtained from the commission of the offence will exceed this amount (Articles 126 to 126f of the Code of Criminal Procedure and Section 1 of the Instruction on Special Confiscation). The objective of the SFO is to determine the illegal profits of advantages obtained by the defendant in view of confiscation and can be conducted in case of suspicion of an offence carrying a fine of the fifth category. In order to deprive the profits and advantages under article 36e of the Penal Code, a criminal financial investigation is required by law.

Except for simple cases where proceeds are easily confiscated under articles 33 and 33a of the Penal Code as part of the criminal sentence (“ordinary” confiscation, please refer to Article 31 Q10), special confiscation occurs in a separate proceeding that takes place after the criminal conviction has been obtained. The proceedings can be initiated within two years following a conviction, permitting time for a thorough investigation relating to the criminal proceeds, amounts and sources. But often these investigations run already parallel to the main criminal investigation. The specialized office of the Public Prosecution Service, Bureau Ontnemingswetgeving Openbaar Ministerie (BOOM) - Criminal Assets Deprivation Bureau Public Prosecution Service, assists prosecutors with the (special) confiscation aspects of criminal prosecutions. Complex (special) confiscation cases are handled by prosecutors from BOOM.

The actual execution of confiscation and seizure measures is the responsibility of the Central Fine Collection Agency (CJIB) with an advisory role for the Public Prosecution Service. Goods that are confiscated are brought to the “Dienst Domeinen Roerende Goederen”, an agency of the Ministry of Finance. This agency is responsible for the storage and sale of confiscated goods.
Under the Dutch legislation, confiscation in general is discretionary. It is up to the court to decide whether to apply confiscation or special confiscation, and up to the Public Prosecution Service to decide whether to initiate confiscation proceedings. However, an Instruction of the Public Prosecution Service (Aanwijzing Ontneming) urges all prosecutors to initiate special confiscation proceedings when the criminal proceeds are estimated at least € 500,-. In 2009 the National Public Prosecutor’s Office issued a renewed guideline that provides arrangements for (international) confiscation. In the guideline a policy is stated outlining in detail the approach to confiscation. For more information, please refer to the Instruction on Special Confiscation.

Ordinary confiscation is a penal sanction applicable where a defendant has been convicted of any criminal offence (including corruption offences) with respect to the objects directly obtained from the criminal act, whether entirely or partly, or the instruments used or intended to be used to commit or prepare the offence.

Just as special confiscation, “ordinary” confiscation has a discretionary character and is imposed upon request of the public prosecutor.

On 1 July 2011 a new revision of the provisions on special confiscation entered into force (Act of 31 March 2011, Stb. 2011, 171). This new legislation further enlarges the possibilities for confiscating criminal proceeds. The legislation provides for:

1. an expansion of the so called “ordinary confiscation” (verbeurdverklaring);
2. the introduction of legal presumptive evidence regarding the origin of assets belonging to the defendant (also referred to as a shift of the burden of proof);
3. an extension of the so-called “third-party precautionary seizure” (anderbeslag);
4. the introduction of a frame for financial investigation pending the decision of the Court of Appeal or the Supreme Court in special confiscation proceedings;
5. the introduction of a framework for financial investigation after the confiscation order has become final (for example wire-tapping etc. in order to discover hidden property).

The new law is designed to expand the possibilities for financial investigation into the criminal proceeds order to further enhance subsequent confiscation. An important element in this legislation, concerns the proof of the legitimate origin of proceeds. The legislation provides in statutory presumptions of evidence regarding the origin of assets, belonging to the defendant. These presumptions may concern assets acquired over a period of up to six years prior to the criminal offence. The presumptions can be refuted by the defendant, on the balance of probabilities. The law significantly increases the powers of law enforcement agencies and the Public Prosecution Service tackling lucrative (organized) crime.

As a result of the new legislation, subsection a of Article 33a Criminal Code has been amended. The amendment ensured that so-called “subsequent benefits” also qualify for ordinary confiscation. For example, if the benefits of the offence were invested or transferred into other objects, these assets will also be susceptible to confiscation.

**Amendments made to Article 36e of the Criminal Code**

Besides the ordinary confiscation, article 36e of the Dutch Criminal Code provides for so called (special) confiscation of unlawfully obtained gains. At the request of the Public Prosecution Service, the person who is sentenced for a criminal offence may, by separate decision of the court, be obliged to pay a sum of money to the State in confiscation of illegally obtained profits or advantages (confiscation order).

In these proceedings presumptions of fact regarding the (unlawful) origin of assets may be used. As a result the defendant may have to demonstrate that assets were acquired in a lawful manner. Refutation of such presumptions occurs ‘on the balance of probabilities’.
As a result of the new legislation, subsection 2 of Article 36e Criminal Code has been amended. The amendments were mainly aimed at simplifying this subsection. The division into “similar offences” and “offences that are punishable with a fine of the fifth category” has lapsed. Thus, the confiscation order may be imposed on the person who gained profits or advantages by means of or from the proceeds of the criminal offence or other offences for which there is sufficient evidence that they have been committed by him.

Pursuant to subsection 3 of Article 36e, at the request of the Public Prosecution Service, a person who is sentenced for a criminal offence punishable with a fine of the fifth category and against whom, as a suspect of that criminal offence, a criminal financial investigation is conducted, may, by separate decision of the court, be obliged to pay an additional sum of money to the state in confiscation of illegally obtained profits or advantages, if, in view of that investigation, it is likely that the criminal offence or other criminal offences have in any way resulted in the convicted person having obtained illegal profits or advantages.

With the new legislation, legal presumptive evidence has been introduced. The new legislation assumes that if a person is convicted of a serious and potentially lucrative crime, all income this person enjoyed in the six years prior to the conviction and all expenditure during that period is deemed to have been originated from or to be in connection with these offences. This assumption can be refuted by the convicted person. Refutation will in such cases occur “on the balance of probabilities”. The convicted person will have to demonstrate how he acquired his assets in a lawful manner.

Article 36e Criminal Code

1. On application of the Public Prosecution Service, a person who is convicted of a criminal offence may be ordered in a separate judicial decision to pay a sum of money to the State in order to deprive him of unlawfully obtained gains.
2. This obligation may be imposed on the person referred to in subsection (1) who obtained gains by means of or from the proceeds of the criminal offence referred to in that subsection or from other criminal offences with regard to which there are sufficient indications that these offences were committed by the convicted offender.
3. On application of the Public Prosecution Service, any person who is convicted of a serious offence for which, according to the statutory definition, a fine of the fifth category may imposed, may be ordered in a separate judicial decision to pay a sum of money to the State in order to deprive him of unlawfully obtained gains, if it is shown that either said serious offence or other serious offences resulted in one way or another in the convicted offender obtaining unlawful gains. In that case it may also be presumed that:
   a. any expenditure incurred by the convicted offender in a period of six years prior to the commission of that serious offence was met from the unlawfully obtained gains, unless it is shown that this expenditure was met from a legal source of income, or;
   b. objects which became the property of the convicted offender in a period of six years prior to the commission of that serious offence involved gains as referred to in subsection (1), unless it is shown that the objects were obtained from a legal source of origin.
4. The court may, ex officio or on application of the Public Prosecution Service or of the convicted offender, derogate from the period of six years referred to in subsection (3) and take a shorter period into account.
5. The court shall set the estimated amount of the unlawfully obtained gains. Such gains shall include the saving of costs. The value of the objects which constitute, in the opinion of the court, the unlawfully obtained gains, may be estimated at their market value at the time of the decision, or by reference to the proceeds the objects would fetch at a public sale, if recovery action has to be taken. The court may set the sum of money at an amount that is lower than the estimated gains. In the determination of the amount to be paid, the court may, on reasoned application of the defendant or of the convicted offender, take into account the fact that the current and the reasonably to be expected future financial capacity of the defendant or of the convicted offender shall be insufficient to pay the
amount due. In the absence of such application, the court may exercise this power ex officio or on application of the Public Prosecution Service.
6. Objects shall mean all property of any description, whether corporeal or incorporeal.
7. In the determination of the amount of the unlawfully obtained gains under subsections (1) and (2) with regard to criminal offences committed by two or more persons, the court may determine that these persons shall be liable, jointly and severally or for a part to be determined by the court, for the total payment obligation.
8. In the determination of the amount at which the unlawfully obtained gains may be set, claims awarded by the court to injured third parties shall be deducted.
9. In the imposition of the measure, the court shall take into account previous decisions in which the defendant or the convicted offender was ordered to pay a sum of money in order to deprive him of unlawfully obtained gains.
10. Under application of Article 577c of the Code of Criminal Procedure, detention for failure to comply with a judgment may be imposed by the court for a maximum of three years and shall be deemed to be a measure.

Precautionary seizure / third-party precautionary seizure: amendments made to Article 94a, subsection 3 Code of Criminal Procedure

By transferring the ownership of assets to third parties, confiscation might easily be impeded. Therefore, subsequent to Article 94a of the Code of Criminal Procedure, prior to the final determination of the confiscation order, assets can be seized in order to ensure future enforcement of the confiscation order imposed under article 36e of the Criminal Code. Also assets, formally belonging to third parties, are susceptible for confiscation. Article 94a, subsection 3, demanded that three cumulative requirements are satisfied:

a) the object must originate (directly or indirectly) from a criminal offence;
b) the object came into the possession of the third party while that third party was aware of this criminal origin;
c) the other party was aware that, or could have reasonably suspected that, those assets came into the possession of the third party in order to impede or obstruct confiscation.

The new legislation consists of an extension of this so-called precautionary seizure/third-party precautionary seizure. As a result of the new legislation the requirement, which is generally referred to as the “requirement of criminal origin”, has lapsed. As a result, assets that belong to a third party can be seized if there are indications that the objects, all or part of them, came into the possession of the third party with the apparent intention of impeding or preventing confiscation. Hence, assets that were transferred to a third party prior to the offence committed, will also be susceptible to seizure.

Article 94a Code of Criminal Procedure
1. In the case of suspicion of a serious offence for which a fine of the fifth category may be imposed, objects may be seized in order to preserve the right of recovery in respect of any fine to be imposed for that serious offence.
2. In the case of suspicion of or conviction for a serious offence for which a fine of the fifth category may be imposed, objects may be seized in order to preserve the right of recovery in respect of an obligation to be imposed in response to that serious offence for payment of a sum of money to the State for the purpose of special confiscation of unlawfully obtained gains.
3. Objects which belong to a person other than the person on whom, in the case referred to in subsection (1), the fine may be imposed or the person who, in the case referred to in subsection (2), may be deprived of the unlawfully obtained gains, may be seized if there are sufficient indications that these objects have become, in whole or in part, the property of this other person with the evident aim of hindering or preventing the sale of these objects, and this person knew or could reasonably suspect this to be the case.
4. In the case referred to in subsection (3), other objects belonging to the person concerned may also be seized up to maximum the value of the objects referred to in subsection (3).
5. Objects shall mean all property of any description, whether corporeal or incorporeal.

Amendments with regard to financial investigation

The Code of Criminal Procedure provides a special framework for a 'financial criminal investigation' (Article 126 Code of Criminal Procedure). This framework consists of extended powers to obtain documents and other information, or to seize goods or assets, in addition to the 'normal' powers to investigate serious crime, which may also be used. This framework also provides a basis for continued investigations into financial aspects of criminal offences after the investigations into the underlying criminal offences have ended.

The new legislation clarified that the financial investigation can continue until the confiscation order has become final. Furthermore, in case of non-payment of the confiscation order, an investigation may be conducted into (the size of) the assets of the convicted person.

If there are any indications that the convicted person actually does have assets despite the fact that payment is not forthcoming, financial criminal investigation can also be conducted after the confiscation order has become final. Thus, assumed hidden assets, can be recovered.

In this extended financial investigation investigative powers may be deployed that are quite similar to the powers within the special framework for criminal investigation, mentioned in article 126 of the Code of Criminal Procedure.

The confiscation of criminal proceeds has been further stimulated by the enactment of the policy Program “Afpakken” (Programma Afpakken). This national policy Program, which started in February 2011, provides for additional funding of law enforcement authorities (The Public Prosecution Service, police services and Special Investigation Services (BOD’en) for some € 20 million annually.

Finally, a law proposal has been sent to the Parliament for approval, creating the possibility to impose precautionary seizure on the assets of the defendant on behalf of the victim (law proposal no. 33 295). With this proposal the Dutch government, among other things, wants to give content to its policy to strengthen the position of victims.

When this draft bill has been approved by the Dutch Parliament, the State will have to possibility of levying a prejudgement attachment (or precautionary seizure) of the assets of a defendant for the benefit of the victim even during the criminal investigation. In urgent cases, this precautionary seizure will also be possible when the offender is caught in the act. The police may confiscate the money and items that the suspect is carrying with him at the time of his arrest.

After the State has levied prejudgement attachment (precautionary seizure) on the assets of the defendant for the benefit of the victim, it will ultimately be the trial judge who decides on the amount of compensation. If the defendant is ordered to pay, the first to receive payment is the victim. Any remaining amount will accrue to the State to pay the fine imposed by the judge or to satisfy the demand for a confiscation order. If the judge hearing the case does not pronounce an order for compensation, the attachment (or precautionary seizure) will automatically be lifted as soon as the judgment has become final.

For examples of implementation, please refer to Article 31 (Freezing, seizure and confiscation), subparagraph 1(a), previous answer.

In regards to statistical data, the Netherlands stated the following:
The table below shows a selection of the number of confiscation measures imposed in relation to some of the Articles of the Penal Code, mentioned under Article 15 (Bribery of national public officials) - 25 (Obstruction of justice) of this Convention. The total number of cases where a confiscation measure has been imposed is as follows: 2007: 1.907; 2008: 1.712; 2009: 1.426; 2010: 1.314 and 2011: 1.319

Number of confiscation measures

It has to be emphasized that it is difficult to get an accurate picture of the total amount of money confiscated in relation to ‘corruption’-cases. The offence of bribery is often accompanied by other, more easily provable crimes. An example of this is forgery, fraud or the provision of confidential information to unauthorized people. A conviction for bribery does not always lead to a significant higher sentence. Because of his discretionary powers, a public prosecutor can choose for what offence/whence offences he will prosecute a suspect. The public prosecutor may therefore, in case of corruption, decide not to prosecute for bribery but for another (equivalent, but easier to prove) offence. This means that not all confiscations proceeds in corruption cases can be made visible in statistics. These statistics also do not show the total amount of money confiscated as a compensation for victims.

Regarding information on the amount of proceeds of offences established in accordance with this Convention confiscated, the Netherlands stated that:

For the current OECD phase III-evaluation, the Netherlands provided the evaluation team with the table below. This tables shows that in 2011 seized goods for an amount of 15.687 million euro have been confiscated. Through out-of-court settlements and transactions another 8.384 million euro has been confiscated. The court imposed confiscation measures for an amount of 20.501 million euro. This means that in 2011 for a total amount of 44.572 million euro has been confiscated.

Amounts (special) confiscation 2006-2011  200620072008200920102011Special Confiscation executed€ 17.000.000€ 23.500.000€ 23.500.000€ 39.000.000 € 33.885.000€ 28.885.000Confiscation executed unknown unknown unknown € 11.000.000 € 21.539.000€ 15.687.000Currently frozen (seized), pending treatment before court unknown unknown € 550.000.000 € 600.000.000€ 660.000.000€ 600.000.000

(b) Observations on the implementation of the article

The reviewing experts noted the two different schemes for confiscation, i.e. “ordinary” and special confiscation. Special confiscation consists of the imposition of an obligation on the person convicted of an offence to pay the state a sum in restitution of illicit earnings (article 36e, par. 1 PC).

Except for simple cases where proceeds are easily confiscated under articles 33 and 33a PC as part of the criminal sentence (“ordinary” confiscation), special confiscation occurs in a separate proceeding that takes place after the criminal conviction has been obtained. The proceedings can be initiated within two years following a conviction, permitting time for a thorough investigation relating to the criminal proceeds, amounts and sources. But often these investigations run already parallel to the main criminal investigation. The specialized office of the Public Prosecution Service (Criminal Assets Deprivation Bureau Public Prosecution Service) assists prosecutors with the (special) confiscation aspects of criminal prosecutions and is also responsible for the administration of seized or confiscated property.

Under the Dutch legislation, confiscation in general is discretionary. It is up to the court to decide whether to apply confiscation or special confiscation, and up to the Public Prosecution Service to decide whether to initiate confiscation proceedings. However, an Instruction of the Public Prosecution
Service urges all prosecutors to initiate special confiscation proceedings when the criminal proceeds are estimated at least € 500.

A special criminal financial investigation (SFO) may be initiated when a preliminary investigation has shown the likelihood of illegally obtained profits or advantages amounting to at least 12,000 Euros, and where it is also expected that the profits or advantages obtained from the commission of the offence will exceed this amount (articles 126 to 126f CPC and section 1 of the Instruction on Special Confiscation).

Newly enacted revisions of the provisions on confiscation revolve around the following:

- Expansion of “ordinary” confiscation to ensure that “subsequent benefits” (benefits derived from offences which were invested or transferred into other objects) are subject to confiscation;
- Introduction of statutory presumptions of evidence in the “special confiscation” regime. If a person is convicted of a serious and potentially lucrative crime, all income this person enjoyed within a period of six years prior to the conviction and all expenditure during that period are deemed to have been originated from, or to be in connection with, the related offence. The presumptions can be refuted by the defendant on the balance of probabilities;
- Extension of “precautionary seizure/third-party precautionary seizure”. Assets that belong to a third party can be seized if there are indications that all, or part of, the objects came into the possession of the third party with the apparent intention of impeding or preventing confiscation. Hence, assets that were transferred to a third party prior to the commission of the offence, are also subject to seizure;
- Extension of the scope and use of financial investigation to enable its continuation until the confiscation order has become final. In case of non-payment of the confiscation order, an investigation may now be conducted into (the size of) the assets of the convicted person; and
- Enabling the imposition of precautionary seizure of the assets of the defendant on behalf of the victim.

The reviewing experts concluded that the provision has been adequately implemented.

(c) Successes and good practices

- The coherent legal framework on freezing, seizure and confiscation of proceeds of crime.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

   (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The Netherlands stated the following information on the amount/types of property, equipment or other instrumentalities confiscated:

Forfeiture - Number of cases (per year)
Year 2007 2008200920102011 Number 6.133 5.857 5.304 3.807 2.903
Total value of forfeiture (per year)
The Netherlands stated the following information on recent cases in which such confiscations took place:

No specific examples can be given. However it has to be noted that in case of financial economic crimes, there will often not be tangible property, equipment or other instrumentalities used in or destined for use in these offences. Possible examples of tangible tools could however be a printer used to make fake money or equipment used for skimming credit cards. Nevertheless, precisely in this type of offences - financial economic crimes - there are documents that have to be seized in order to establish the concrete facts of the case and to prove the offence(s) in court: correspondence, contracts, accounting records, notes, both written and digital data carriers, etc. The seizure of these documents is common practice in any investigation.

(b) Observations on the implementation of the article

See above. The reviewing experts concluded that the provision has been adequately implemented.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 94 Code of Criminal Procedure
1. Open to seizure are all goods that may be conducive to disclose the truth or to demonstrate illegally obtained profits or advantage, within the meaning of section 36e of the Netherlands Criminal Code
2. Also open to seizure are all goods the confiscation of forfeiture whereof may be ordered
3. The investigating officer draws up a notice of seizure of the seizure of a good, also if the authority to seize goods is conferred to the examining magistrate or to the public prosecutor. Insofar as possible, a receipt shall be issued to the person from whom good is seized.

Article 94a Code of Criminal Procedure
1. In case of suspicion that a criminal offence has been committed, punishable with a fine of the fifth category, goods may be seized in order to safeguard the right of recourse in respect of a fine to be imposed in respect of that criminal offence
2. In case of suspicion of or conviction for a criminal offence, punishable with a fine of the fifth category, goods may be seized in order to safeguard the right of recourse in respect of an obligation to pay a sum of money to the State in connection with a criminal offence in order to forfeit illegally obtained advantages
3. Goods belonging to a person other than the person whom a fine may be imposed in the case as referred to in subsection two, or the person from whom the illegally obtained profits or advantages may be taken away, may be seized if (a) these goods proceed directly from the crime in connection with which the fine may be imposed, or in connection with which the illegally obtained profits or advantages may be taken away, and (b) there is sufficient evidence that the other person appropriated those goods in order to obstruct or prevent the selling of those goods, and (c) at the time that they became his property, that other person knew or could reasonably suspect that those goods proceeded from crime.

4. In the case as referred to in subsection three, other goods owned by the person involved may be seized as well, to a maximum value not exceeding the value of the goods referred to in subsection three.

5. Goods shall be understood to include all property and property rights.

The Netherlands cited the following applicable measures:

As the Instruction on Special Confiscation states, the objective is to prevent that proceeds of crime remain part of the wealth of offenders, for crime must not pay. This requires the imposition of a confiscation order that can be executed in practice. To this end it is necessary to levy as much precautionary seizure on the suspects’/convicts’ assets as possible. Precautionary seizure therefore plays an important role in all investigations in order to arrive at the successful completion of confiscation cases. On the one hand a criminal financial investigation aims to calculate the amount of the illegally obtained profits and advantages, on the other to trace and recover assets.

Interim measures aimed at the freezing and seizure of proceeds of crime are provided for in articles 94 and 94a of the Code of Criminal Procedure. Both a criminal investigation (article 94 of the Code of Criminal Procedure) and provisional measures in order to ensure the execution of a future -value based- confiscation order or payment of a fine (article 94a of the Code of Criminal Procedure), can serve as grounds for seizure.

The specialized office of the public prosecution service, Bureau Ontnemingswetgeving Openbaar Ministerie (BOOM) Criminal Assets Deprivation Bureau Public Prosecution Service, assists prosecutors with the (special) confiscation aspects of criminal prosecutions. Complex (special) confiscation cases are handled by prosecutors from BOOM. BOOM also plays the role of Assets Recovery Office (European Framework Decision) and of Knowledge & Expertise Centre for the Public Prosecution Service and the investigative services.

As the Instruction on Special Confiscation also states, the Criminal Assets Deprivation Bureau (BOOM) plays an important role in the tracing of assets. The Criminal Assets Deprivation Bureau has employed special investigative officers to guarantee extra attention for this essential element of the deprivation proceedings. At all stages of deprivation investigations these asset tracers may be deployed or consulted to provide support or advice on the tracing of assets. To that end, they may use their powers of investigation in order to achieve more prejudgment seizures, thereby they contribute to the successful enforcement of deprivation cases.

In practice, tracing assets generated by criminal activities is, in general, done by tracing the ‘money trail’. A foreign State may be requested to deploy all kinds of investigative means for the purpose of financial inquiries into the gathering of information about the existence, whereabouts, size and value of the illegally obtained assets. As this concerns the securing of evidence the rules of the so-called ‘standard’ mutual assistance apply. To this end ‘ordinary’ international treaties such as the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 20 April 1959, Bulletin of Treaties 1965, 10) may be referred to. For the enforcement of coercive measures, usually, a treaty basis is required. Frequently money is transferred to foreign bank accounts and in those cases the Netherlands will make a request for mutual legal assistance to that specific country to obtain all the information (about the bank account(s), transactions, related legal and natural persons) that is needed to trace the
assets. Mutual legal assistance requests are also made to get more information about the possession of real estate abroad.

For examples of implementation, please refer to Article 31 (Freezing, seizure and confiscation), paragraph 2, previous answer.

In regards to statistical data, the Netherlands stated the following:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount - value on 31 December</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>450.000.000</td>
</tr>
<tr>
<td>2008</td>
<td>552.000.000</td>
</tr>
<tr>
<td>2009</td>
<td>619.000.000</td>
</tr>
<tr>
<td>2010</td>
<td>663.000.000</td>
</tr>
<tr>
<td>2011</td>
<td>660.000.000</td>
</tr>
</tbody>
</table>

(b) Observations on the implementation of the article

The reviewing experts noted that Interim measures aimed at the freezing and seizure of proceeds of crime are provided for in articles 94 and 94a CPC.

The reviewing experts concluded that the provision has been adequately implemented.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Annexes:

- Instruction on Special Confiscation (Annex 22)
- Brochure Criminal Assets Deprivation Bureau (with supplementary sheets) (weblink)

The Netherlands cited the following applicable measures:

The specialized office of the Public Prosecution Service, Bureau Ont nemingswetgeving Openbaar Ministerie (BOOM) Criminal Assets Deprivation Bureau Public Prosecution Service is responsible for the administration of seized or confiscated property.

The BOOM’s main tasks include:
- To assist the Public Prosecution Service in the field of confiscation legislation. This includes acting as a helpdesk, sending newsletters, providing training, and the collection of data in the field of confiscation.
- The provision of case support to the public prosecutor in the application of confiscation legislation. The BOOM advisory team is also able to assist public prosecutors in the management of confiscation investigations.
- The provision of support to the Central Fine Collection Agency (CJIB), when collecting confiscation orders. To this end, a BOOM public prosecutor has been appointed to the position of National Public Prosecutor responsible for Enforcement.

For more information on the role and tasks of BOOM, please refer to the Instruction on Special Confiscation.

(b) Observations on the implementation of the article

The reviewing experts noted that the specialized office of the Public Prosecution Service (Criminal Assets Deprivation Bureau Public Prosecution Service) assists prosecutors with the (special) confiscation aspects of criminal prosecutions and is also responsible for the administration of seized or confiscated property.

The reviewing experts concluded that the provision has been adequately implemented.

Article 31 Freezing, seizure and confiscation

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Annex:

- Instruction on Special Confiscation (Annex 22)

The Netherlands cited the following applicable measures:

Unlawfully obtained profits or advantages shall be understood to mean the increase in value of the wealth of the individual involved as a result of an offence. This includes the fruits obtained as a result of this increase of wealth (consequential profit). Further, the unlawfully obtained profits or advantages may also relate to the value with which the wealth has not decreased as a result of expenses saved on.

Value confiscation is possible according to the provisions laid out in Article 36e of the Penal Code. Pursuant to case law and to the criteria included in the Instruction on Special Confiscation, the exact economic advantage is assessed via a transaction-based calculation in cases of single criminal offences, or a cash statement, or a wealth comparison in case of several criminal offences.

The Instruction on Special Confiscation also lays out several calculation methods which may be used by prosecutors in estimating and quantifying proceeds.

For examples of implementation, please refer to Article 31 (Freezing, seizure and confiscation), paragraph 4, previous answer.

For information on types and number of cases and amounts confiscated/seized, please refer to Article 31 (Freezing, seizure and confiscation), subparagraph 1 (a), subparagraph 1 (b) and paragraph 2.
(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 31 Freezing, seizure and confiscation

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention. For citations of texts and examples of implementation, please refer to Article 31 (Freezing, seizure and confiscation), paragraph 4.

For information on types and number of cases and amounts confiscated/seized, please refer to Article 31 (Freezing, seizure and confiscation), subparagraph 1 (a), subparagraph 1 (b) and paragraph 2.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 31 Freezing, seizure and confiscation

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention. For citations of texts and examples of implementation, please refer to Article 31 (Freezing, seizure and confiscation), paragraph 4.

For information on types and number of cases and amounts confiscated/seized, please refer to Article 31 (Freezing, seizure and confiscation), subparagraph 1 (a), subparagraph 1 (b) and paragraph 2.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.
Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 126nc Code of Criminal Procedure
1. In the event of a suspicion of guilt in respect of a crime, an investigative officer may, in the interest of the investigation, demand certain stored or recorded identifying data relating to a person, from the person who reasonably qualifies therefor and who, other than for the purpose of personal use, processes data.
2. Identifying data are defined as:
   a. name, address, place of residence and postal address;
   b. date of birth and gender;
   c. administrative characteristics;
   d. in the event of a legal entity, instead of data referred to under (a) and (b): name, address, postal address, legal form and registered office.
3. A demand as referred to in the first paragraph cannot be directed against the defendant. Article 96a, paragraph 3, shall apply mutatis mutandis. The demand cannot relate to personal data concerning a person’s religion or personal beliefs, race, political affiliation, health, sexual preferences or membership of a trade union.
4. A demand as referred to in the first paragraph will be made in writing and will state:
   a. an indication of the person concerned, with respect to the demand for the identifying data of such person;
   b. the identifying data that are demanded;
   c. the term within which and the manner in which the data must be provided;
   d. the legal basis of the demand.
5. In the event of an imperative necessity, a claim, as referred to in the first paragraph, can be issued orally. In such cases, an investigative officer will bring the demand in writing at a later stage, and will provide this to the person against whom the demand is directed within three days after the demand was made.
6. The investigative officer will draw up an official record of the provision of identifying data, in which he will state:
   a. the data, referred to in the fourth paragraph;
   b. the data provided;
   c. the crime and, if known, the name or otherwise a description of the defendant that is as accurate as possible;
   d. the facts or circumstances that will show that conditions, referred to in the first paragraph, have been satisfied.
7. Rules may be set, pursuant to an order in council, with respect to the investigative officer who demands the data and the manner in which the data are demanded and provided.
Article 126nd Code of Criminal Procedure
1. In the event of suspicion of a crime as described in Article 67, paragraph 1, a public prosecutor may, in the interest of the investigation, demand the provision of certain stored or recorded data from the person of whom can reasonably be expected that he has access to said data.
2. A demand as referred to in the first paragraph cannot be directed against the defendant. Article 96a, paragraph 3, shall apply mutatis mutandis. The demand cannot relate to personal data concerning a person’s religion or personal beliefs, race, political affiliation, health, sexual preferences or membership of a trade union.
3. A demand as referred to in the first paragraph will be made in writing and will state:
   a. if known, the name or otherwise a description that is as accurate as possible of the person or persons in respect of whom the data are demanded;
   b. a description that is as accurate as possible of the data that are demanded and the term within which as well as the manner in which these have to be provided;
   c. the legal basis of the demand.
4. The demand can be issued orally in the event of an imperative necessity. In such cases, a public prosecutor will bring the demand in writing at a later stage, and will provide this to the person against whom the demand is directed within three days after the demand was made.
5. A public prosecutor will have an official report drawn up of the provision of the data, which will state:
   a. the data, referred to in the third paragraph;
   b. the data provided;
   c. the crime and, if known, the name or otherwise a description of the defendant that is as accurate as possible;
   d. the facts or circumstances that will show that conditions, referred to in the first paragraph, have been satisfied.
   e. the reason why the data have been demanded in the interest of the investigation.
6. In the event of a suspicion of a crime other than as referred to in the first paragraph, a public prosecutor may, in the interest of the investigation, bring a demand, as referred to in said paragraph, with the advance authorisation of the examining magistrate. The examining magistrate will grant the authorisation on demand of the public prosecutor. The second to the fifth paragraph will apply accordingly. Article 126l, seventh paragraph, will apply mutatis mutandis.
7. Rules may be set, pursuant to an order in council, with respect to the the manner in which the data are demanded and provided.

The Netherlands cited the following applicable measures:

When it concerns a criminal investigation, neither confidentiality nor secrecy can impede requests for information on bank, financial or commercial records. For more information on bank secrecy, please refer to Article 40 (Bank secrecy).

For examples of implementation, please refer to Article 31 (Freezing, seizure and confiscation), paragraph 7, previous and next answer.

In regards to statistical data, the Netherlands stated the following: It is not possible to provide an indication of the total of requests based on Article 126nc and 162nd of the Code of Criminal Procedure. Nevertheless, it is possible to provide some numbers on these requests done by the Criminal Assets Deprivation Bureau of the Public Prosecution Service (BOOM). Approximately BOOM requests 150 - 200 times a year for information based on Article 126nc and 126nd of the Code of Criminal Procedure (identifying data and information relating to financial transactions). These numbers do not include the requests done by investigative authorities (such as the police). These numbers also do not include information requests send to telecom providers, notaries, the Chamber of Commerce, etc.
(b) **Observations on the implementation of the article**

The reviewing experts took into account the confirmation of the national authorities that bank secrecy does not pose difficulties in corruption-related investigations. Article 126nd CCP foresees the authority to order information about banking transactions in case of a suspicion of a crime (for which pre-trial detention is allowed).

As reported during the country visit, the requirement is that the crime should be punished by a maximum imprisonment of at least four years, or that the crime is mentioned separately as a category in article 67, paragraph 1, CCP. The latter category includes relevant financial-economic crimes established, for example, in articles 321 (embezzlement), 323a (abuse of public money), 417bis (negligent receipt of stolen property) and 420quater (negligent money-laundering) PC. With the draft bill that, among others, intends to increase the maximum sanctions for articles 328ter (bribery in the private sector) and 177a and 362 (bribery of a public official) PC, the possibility to order bank information will be foreseen for these crimes as well.

Praising the national authorities for the initiative to start preparing a new bill that increases the maximum sanctions for bribery in the public sector (article 177a PC) and in the private sector (article 328ter PC), the reviewing experts encourage them to complete the process of enacting the bill in order to increase the possibilities for the collection and submission of bank information for domestic investigations (which require a threshold of four years of imprisonment of the criminal offence under investigation).

**Article 31 Freezing, seizure and confiscation**

**Paragraph 8**

8. *States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

On 1 July 2011 a new revision of the provisions on confiscation entered into force (Act of 31 March 2011, Stb. 2011, 171). This new legislation further enlarges the possibilities for confiscating criminal proceeds. Among other things, the legislation provides for the introduction of legal presumptive evidence regarding the origin of assets belonging to the defendant (also referred to as a shift of the burden of proof). The legislation provides in statutory presumptions of evidence regarding the origin of assets, belonging to the defendant. These presumptions may concern assets acquired over a period of up to six years prior to the criminal offence. The presumptions can be refuted by the defendant, on the balance of probabilities. The law significantly increases the powers of law enforcement agencies and the Public Prosecution Service in tackling lucrative (organised) crime. Please also refer to Article 31 (Freezing, seizure and confiscation), subparagraph 1(a).

For examples of implementation, please refer to Article 31 (Freezing, seizure and confiscation), paragraph 8, previous answer.
(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented (see also above under article 31 subparagraph 1(a)).

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 94a Code of Criminal Procedure
1. In case of suspicion that a criminal offence has been committed, punishable with a fine of the fifth category, goods may be seized in order to safeguard the right of recourse in respect of a fine to be imposed in respect of that criminal offence
2. In case of suspicion of or conviction for a criminal offence, punishable with a fine of the fifth category, goods may be seized in order to safeguard the right of recourse in respect of an obligation to pay a sum of money to the State in connection with a criminal offence in order to forfeit illegally obtained advantages
3. Goods belonging to a person other than the person whom a fine may be imposed in the case as referred to in subsection two, or the person from whom the illegally obtained profits or advantages may be taken away, may be seized if (a) These goods proceed directly from the crime in connection with which the fine may be imposed, or in connection with which the illegally obtained profits or advantages may be taken away, and (b) There is sufficient evidence that the other person appropriated those goods in order to obstruct or prevent the selling of those goods, and (c) at the time that they became his property, that other person knew or could reasonably suspect that those goods proceeded from crime
4. In the case as referred to in subsection three, other goods owned by the person involved may be seized as well, to a maximum value not exceeding the value of the goods referred to in subsection three.
5. Goods shall be understood to include all property and property rights.

The Netherlands cited the following applicable measures:

Under Article 94a, paragraph 3 and 4 of the Code of Criminal Procedure seizure of proceeds also covers goods belonging to third persons where the third party knew or should reasonably have suspected that the goods represent the proceeds of crime. Such persons may also be ordered to pay an amount of money equivalent to the proceeds held. Gifts are subject to these provisions and may also be addressed through a civil revocatory action. Article 94a, paragraph 3 and 4 of the Code of Criminal Procedure applies to both natural and legal persons, and accordingly assets transferred to legal entities are covered as long as there is a demonstration of knowledge on the part of the legal entity.
In order to be able to seize proceeds from a third party, this third party has to know or should reasonably have suspected that the goods represent the proceeds of crime. This provision protects the rights of bona fide third parties.
(b) **Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

(c) **Successes and good practices**

- The possibility of pre-trial voluntary asset forfeiture, as reported during the country visit: While not a formal procedure, the reviewers praised the Dutch authorities for the national experiences in some high-profile corruption cases of offering defendants the option of voluntary pre-trial asset forfeiture, which can then be taken into account at sentencing. It should be noted that this approach is in many ways desirable from victims’ perspectives, as it means they can receive compensation immediately instead of waiting for the conclusion of the trial (which may take years).

**Article 31 Freezing, seizure and confiscation**

**Paragraph 10**

> 10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

**Annexes:**

- Factsheet Comprehensive approach to Aftercare (Annex 20)
- Summary Second measurement of the monitor of aftercare for former prisoners (Annex 21)

**Relevant legislation:**

Article 2 Custodial Institutions Act

1. If not determined otherwise by law, a custodial sentence or detention order shall be carried out by placing the person on which it is imposed in a penitentiary institution or by his participation in a penitentiary programme.

2. While maintaining the character of the custodial sentence or detention order, the carrying out thereof shall be aimed at preparing the person involved as much as possible for reintegration in the community.

3. Custodial sentences or detention orders shall be carried out as soon as possible after imposition of the sentence or issue of the order.

4. Persons sentenced or detained with a view to the carrying out of a custodial sentence or detention order shall not be subjected to any other restriction than those necessary to achieve the aim of the deprivation of liberty or to maintain order or safety in the institution.

The Netherlands cited the following applicable measures:

Please refer to Article 2, paragraph 2 of the Custodial Institutions Act (Penitentiaire beginselenwet) for the manner in which the Netherlands has implemented this subsection. That Article stipulates that,
whilst upholding the nature of the custodial sentence or custodial measure, the enforcement of such sentence or measure shall be made as conducive as possible to preparations for the individual in question to return to society.

No special reintegration programme exists for persons convicted for offences established in accordance with this Convention. For more information on the general policy on the reintegration of prisoners in society, please refer to the Factsheet Comprehensive approach to Aftercare (Annex 20) and Summary Second measurement of the monitor of aftercare for former prisoners (Annex 21).

For examples of implementation and statistics. Please refer to Article 30 (Prosecution, adjudication and sanctions), paragraph 10, previous question and the Factsheet Comprehensive approach to Aftercare (Annex 20) and Summary Second measurement of the monitor of aftercare for former prisoners (Annex 21).

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Annex:

The Netherlands cited the following applicable measures:

In the Dutch legal system there is no specific law on witness protection. The whole system is legally constructed under one provision in the Dutch Code of Criminal Procedure and elaborated in various administrative orders, merely describing the procedure. The absence of a detailed legal framework does not prevent the application of a full range of protection measures (temporary change of identity, resettlement en and financial support, among others). Policy, coupled with the agreements signed with witnesses admitted to the programme, provide a framework for the programme’s operations.

There is a legal basis however for general protective measures for witnesses, experts and victims during the court proceedings, like (for example) voice-distortion, disguise with wigs, glasses, make-up, video-conference etc. These measures also apply to ‘ordinary’ cases ad witnesses who do not warrant relocation; they may be ordered in the pre-trial or trial phase to provide physical security.
Beside this, there is a general police function deriving directly from the responsibility of the police to protect the life and safety of people, temporary change of residence, regular patrolling around the house of the witness, escort to and from the court, provision of emergency contact etc.

In addition there is a legal provision for witnesses to give anonymous testimony. This requires not only physical protection of the witness but -more important- protection of the paper-trail.

The Netherlands indicated that no specific registrations are kept regarding the protection of witnesses, except for witnesses in a witness protection programme.

More information regarding protected persons is not available. It is Witness Protection Unit’s policy to work tailor-made according to safety-requirements and other needs in each individual project.

(b) Observations on the implementation of the article

The reviewing experts noted that in the Dutch legal system the whole system of witness protection is legally constructed under one provision in the Dutch Code of Criminal Procedure and elaborated in various administrative orders, merely describing the procedure.

As reported during the country visit, based on the Dutch Code of Criminal Procedure, the Police Act 2012 and the administrative orders, a full range of protection measures is applicable (among others the temporary change of identity, resettlement and financial support). Policy, coupled with the (civil law) agreements signed with witnesses admitted to the programme, provide a framework for the programme’s operations.

The Dutch Code of Criminal Procedure also provides a legal basis for general protective measures for witnesses, experts and victims during the court proceedings. These measures also apply to ‘ordinary’ cases and witnesses who do not warrant relocation; they may be ordered in the pre-trial or trial phase to provide physical security.

In addition, the Dutch Code of Criminal Procedure provides a legal provision for witnesses to give anonymous testimony. This requires not only physical protection of the witness, but – more important – protection of the paper-trail.

The average duration of a witness protection programme is about 3 years. More specific a small amount of WPP-projects takes 8 years or more, whereas most projects have a duration of 1 to 5 years.

The reviewing experts concluded that the provision has been adequately implemented.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (a)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

For citations of texts and examples of implementation, please refer to Article 32 (Protection of witnesses, experts and victims), subparagraph 1.

No specific registrations are kept regarding the protection of witnesses or experts, except for witnesses in a witness protection programme.

(b) Observations on the implementation of the article

See above. The reviewing experts concluded that the provision has been adequately implemented.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (b)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

   (b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

For citations of texts and examples of implementation, please refer to Article 32 (Protection of witnesses, experts and victims), subparagraph 1.

(b) Observations on the implementation of the article

See above. The reviewing experts concluded that the provision has been adequately implemented.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:
In case of witness protection, it is possible for the witness protection programme-units to strike a Memorandum of Understanding (MoU) on the basis of which relocation of protected persons can happen. For every case, there will be a separate MoU, therefore (and for security reasons) it is not possible to provide that kind of MoU’s.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 32 Protection of witnesses, experts and victims

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The target group for witness protection is defined in Article 3 Decree Witness Protection (Besluit Getuigenbescherming): “protective measures can be taken in regard to witnesses as referred to in the articles 226a, 226g or 226k of the Code of Criminal Procedure, or other persons who have cooperated with the authority assigned to trace and prosecute in criminal cases, to the extent that is, as a result of that cooperation and the ensuing government action, there is an urgent necessity for witness protection”. That includes victims as well, as long as they comply with that definition.

For examples of implementation, please refer to Article 32 (Protection of witnesses, experts and victims), paragraph 4, previous answer.

No specific registrations are kept regarding the protection of victims.

No specific registrations are kept in regard to on the number of victims who have been permitted to give testimony in a manner that ensures their safety, such as video or other communications technology.

No specific registrations are kept in regard to information on the number of victims that have been relocated to other States through arrangements or agreements.

(b) Observations on the implementation of the article

The reviewing experts noted that the target group for witness protection is defined in article 3 of the Decree on Witness Protection: “protective measures can be taken in regard to witnesses as referred to in the articles 226a, 226g or 226k CPC, or other persons who have cooperated with the authority assigned to trace and prosecute in criminal cases, to the extent that is, as a result of that cooperation and the ensuing government action, there is an urgent necessity for witness protection”. That includes victims as well, as long as they comply with the definition.

The reviewing experts concluded that the provision has been adequately implemented.
Article 32 Protection of witnesses, experts and victims

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Article 302 Code of Criminal Procedure
1. At a court session, a victim or next of kin may give testimony of the impact on them caused by the offence with which the defendant is charged, as referred to in the second sub-section.
2. The right to give testimony in court may be exercised if the charge concerns a serious offence as defined in law punishable by a term of imprisonment of eight years or more, or one of the serious offences referred to in Sections 240b, 247, 248a, 248b, 249, 250, 273f, 285, 285b, 300(2) and (3), 301(2) and (3), 306 to 308 and 318 of the Dutch Penal Code and Section 6 of the Dutch 1994 Road Traffic Act (Wegenverkeerswet 1994).

Article 12 Code of Criminal Procedure
1. If someone is not prosecuted, if charges are dropped, or if the case ends by the issue of a settlement, the directly affected person may file a written complaint with the Court of Appeals within the district in which the decision was taken to dismiss the case, to drop the charges, or to issue the settlement. If the decision was taken by a public prosecutor working with the National Public Prosecutor’s Office or with the National Public Prosecutor’s Office for Financial, Economic and Environmental Offences, the Court of Appeals in The Hague has jurisdiction.
2. A directly affected person is taken to include a legal entity that, based on its object and its actual operations, promotes an interest that is directly affected by the decision to dismiss a case or to drop charges.

Article 51a Code of Criminal Procedure
1. Anyone who directly has sustained damage/loss as a result of a criminal offence may join a claim for civil damages as the injured party.
2. If the person referred to in the first sub-section has died as a result of the criminal offence, his heirs may join a claim for civil damages acquired under universal title as well as the persons referred to in Section 108(1) and (2) of Book 6 of the Dutch Civil Code in respect of the claims referred to in that section.
3. The persons referred to in the first and second sub-sections may also join a partial claim for civil damages.

The Netherlands cited the following applicable measures:
In the past, the authorities were more concerned with punishing the perpetrators of crime. In recent years, government policy has shifted towards improving the position of victims as well as punishing offenders. The government is working to strengthen the rights of victims in criminal proceedings. One way of doing so is to give victims the right to information, both about the proceedings and about the scope for claiming damages. Compensation is also better regulated. In addition, victims and surviving relatives have the right to be treated with respect, to be given the assistance of an interpreter and/or lawyer, and in certain cases to present their point of view in court. These rights are laid down in the Victims’ Status (Legal Proceedings) Act, which entered into effect on 1 January 2011.
One example of these developments also is the right to speak during court hearings, granted to victims in the Netherlands in 2005. The implementation of this right was accompanied by the possibility for victims to submit a written statement (instead). Therefore there are three ways in which the victim can exercise his/her right to speak: 1) speak in court, 2) submit a written statement, or 3) submit a written statement and speak in court.

This right to speak has primarily been granted to enable the victim (or his/her surviving relatives) to express the distress suffered by him/her/them before the court in a public hearing and confront the suspect with that distress.

The victim exercising his/her right to speak is not considered a witness, which means that the defendant's lawyer may not cross examine the victim or ask questions directly. The right to speak is exercised during the examination of the court, after having discussed the facts of the case and the personal circumstances of the suspect. Before the public prosecutor states the demand, the victim has a right to speak. The public prosecutor may refer to the victim's statement in his closing speech demanding the sentence.

The right to speak or make a written statement is intended for the victims of crimes punishable with a prison sentence of eight years or more and a number of other offences listed in the Penal Code and traffic accidents resulting in death or serious injury.

Another example is the possibility to start an Article 12 Sv-procedure. The public prosecutor may decide not to prosecute a case or to settle it out of court, while interested parties, like a victim, may want that the case will be brought before court. In that case, those directly involved may initiate a special complaints procedure and submit the case directly to a court of appeal. This procedure has been laid down in Article 12 et seq. of the Code of Criminal Procedure (In Dutch indicated with the abbreviation ‘Sv.’) Consequently, reference is often made to a ‘12 Sv-procedure’ or to a ‘complaint procedure for non-prosecution’. This procedure is available to any interested party and does not require assistance of a lawyer.

The Court of Appeal will include the technical aspects of the case (such as the demonstrability) and the general interest in its decision whether to prosecute. The Court of Appeal will study the documents, request advice and summon the complainant and the accused to be heard. The Court of Appeal subsequently issues advice to the Public Prosecution Service.

Following the substantive handling, the Court of Appeal may declare the complaint to be well-founded. If the complainant is successful, this means that the Court of Appeal sees reason to submit the case to a court. It does not mean that the case will end in a conviction. This is up to the District Court. The Court of Appeal only assesses whether there are aspects that have to be assessed by a criminal court.

For examples of implementation, please refer to Article 32 (Protection of witnesses, experts and victims), paragraph 5, previous answer.

In regards to statistical data, the Netherlands stated the following:

Research carried out in 2010, by the Research and Documentation Centre (Wetenschappelijk Onderzoek- en Documentatiecentrum, WODC) of the Ministry of Security and Justice in cooperation with INTERVICT (a research institute of Tilburg University), shows that between 230 and 260 person each year make use of the right to speak, including some 50 surviving relatives. Surviving relatives and victims of serious crime in particular tell their story during the hearing. The option of drawing up a written statement was exercised approximately 3000 times a year.

No further information is available.
The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

For public servants, there is procedure by which a public servant can report suspected unethical conduct, by using the whistleblower’s procedure, as defined by the Central and Local Government Personnel Act. In the Netherlands, officials reporting a situation of abuse enjoy protection pursuant to Article 125quinquies, paragraph 3 of the Central and Local Government Personnel Act. Civil servants can report irregularities to their direct supervisor, or if this is not possible, to a confidential adviser. The supervisor or the adviser notifies the competent authority, who begins an inquiry. The Central and Local Government Personnel Act offers legal protection to civil servants who report suspected unethical behaviour using this procedure, in good faith.

In 2010, a new Whistleblower Regulation for Central Government and Police entered into force (Bulletin of Acts and Decrees 2009, 572). In line with this new regulation for Central Government and Police, similar whistleblower provisions have been established for the Ministry of Defence, including all (external) divisions within its responsibility, and for the government authorities at provincial and municipal level.

These (re)new(ed) whistleblower regulations contain several improvements. The improvements with regard to the protection of public official whistleblowers are:

- In addition to the already existing legal protection for whistleblowers, the renewed regulation contains an explicit obligation for the competent authority to protect the whistleblower when (s)he is a victim of actual harassment, mobbing, intimidation or aggression by colleagues.
- ‘Good employership’ involves that the competent authority offers the intimidated whistleblower de facto protection under those circumstances.
- The opportunity to report to a confidential integrity counselor a misconduct or a breach of ethical standard which can cause major damage to the public service.
- An obligation for all officials within the organization who are involved in handling an open report of a misconduct or a breach of ethical standard to protect the identity of the whistleblower (from being identified by other people in- or outside the organization).
- A financial compensation (in advance) for part of the costs of judicial procedures when the whistleblower - in spite of a ban on prejudice - is dismissed or otherwise is infringed on his rights, will challenge the decision with professional judicial assistance (‘equality of arms’).
- A financial compensation (afterwards) for actual and in reasonableness payable legal costs with regard to professional judicial assistance by a third party when the adverse decision is revoked by the competent authority in a complaint procedure or when the decision is set aside by an administrative judge. The latter compensation is limited (€ 5,000) and from this compensation the advance must be deducted.
Since 1 October 2012 a newly established ‘National Independent Advise and Information Point / Centre for Whistleblowing’ (the Commissie Advies- en verwijspunt klokkenluiden - CAVK) started its activities. This centre acts as a point of support for (potential) whistleblowers in both the public and the private sector, who have questions concerning whistleblowing. Mainly potential whistleblowers who observed a possible misconduct in their organization and that are not sure how to handle this information can contact the centre. The identity of the potential whistleblower will be protected (confidentiality). The CAVK only advises and refers whistleblowers to the competent authority, and has no task or competence to examine, inspect or investigate cases. The CAVK creates a ‘safe haven’ for potential whistleblowers to get independent advise. It is based on the model of the UK independent non-governmental organization Public Concern at Work, except that it is funded by the government and will be evaluated after two years’ operation, after which there may be more formal legislation on whistleblowing.

It should furthermore be noted that the legal position of employees that report misconduct to management or to government authorities is protected through Dutch labour laws and the Civil Code. Dismissal in the case of whistleblowing provides for a civil cause of action, so that the judge can decide on the reasonableness of the dismissal. In case of unreasonable dismissal, the employee can be entitled to financial compensation.

Discussions in Parliament on further action, especially covering the private sector, are ongoing. On 14 May 2012, for example, a draft law on whistleblower protection was presented by MPs. However, this draft law will first require discussion within all legislative bodies before it could be enacted.

Citizens are also able to report an offence anonymously via the “meld misdaad anoniem” (‘report crime anonymously’) anonymous hotline. It is also possible to make an anonymous report via the National Police Internal Investigations Department (Rijksrecherche).

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that for public servants, there is a whistleblower procedure by which a public servant can report suspected unethical conduct, as defined by the Central and Local Government Personnel Act. In the Netherlands, officials reporting a situation of abuse enjoy protection pursuant to Article 125quinquies, paragraph 3 of the Central and Local Government Personnel Act. Civil servants can report irregularities to their direct supervisor, or if this is not possible, to a confidential adviser. The supervisor or the adviser notifies the competent authority, which begins an inquiry. The Central and Local Government Personnel Act offers legal protection to civil servants who report suspected unethical behaviour using this procedure, in good faith.

In 2010, a new Whistleblower Regulation for Central Government and Police entered into force. In line with this new regulation, similar whistleblower provisions have been established for the Ministry of Defence, including all (external) divisions within its responsibility, and for the government authorities at provincial and municipal level.

Since 1 October 2012 a newly established “National Independent Advise and Information Point / Centre for Whistleblowing” started its activities. This centre acts as a point of support for (potential) whistleblowers in both the public and the private sector, who have questions concerning whistleblowing.

Discussions in Parliament on further action in this field, especially covering the private sector, are ongoing. A draft law on the creation of a safe house, in addition to the aforementioned Advice Centre, for whistleblowers was approved by the Lower House of Parliament on 17 December 2013 and, at the time of the last stages of the country review, was to be discussed and approved by the Senate. The safe
house will combine the advice and support to whistleblowers and independent research into major violations of integrity and will be part of the bureau of the National Ombudsman. The new institute will be given the authority to investigate abuses within both the public and private sector.

The review team welcomed these developments and encouraged the national authorities to complete the process of enacting new legislation in this field.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 3:40 Civil Code
1. A legal act that, by its contents or necessary implications, violates public morality or public order, is null and void.
2. A legal act that violates a statutory provision of mandatory law is null and void; yet, if this statutory provision merely intends to protect one of the parties to a multilateral legal act, then such a legal act can only be deemed voidable, unless the necessary implications of the provision dictate otherwise.
3. The preceding sub-section does not concern statutory provisions that do not purport to render a conflicting legal act invalid.

Article 6:104 Civil Code
If someone, who is liable towards another person on the basis of tort or non-performance, has gained a profit because of this tort or non-performance, the court may, upon the request of the injured person, estimate the damage/loss in line with the amount of this profit or part thereof.

Article 6:162 Civil Code (Unlawful act)
1. Anyone who commits an unlawful act vis-à-vis another person, which can be attributed to the former, shall be obliged to compensate the damage sustained by the other person as a consequence of such act.
2. An unlawful act shall be considered an infringement of a right or an act/omission contrary to a statutory duty or proper behaviour in social life under any unwritten rule, unless there is a ground for justification.
3. An unlawful act may be attributed to the perpetrator, if it is due to the perpetrator’s fault or due to a cause for which the perpetrator can be held responsible according to the law or general practice.

Article 6:170 Civil Code
The person in whose service a subordinate fulfils his duty is liable for damage/loss caused to a third party by a fault of this subordinate, if the risk of the fault has been increased by the assignment to fulfil this duty, and the person in whose service the subordinate was, had - because of the legal relationship between him and the subordinate - control over the behaviour which constituted the fault. 

(...)

Article 6:172 Civil Code
If a representative, in the exercise of his powers vested in him under the authorization of representation, commits a fault which causes damage/loss to a third party, then the represented principal, as well, is liable towards this third party.

The Netherlands cited the following applicable measures:
The Dutch legislation incorporates various means of contesting agreements that have involved corruption. This type of legal act may be void, on the grounds of incompatibility with public morality or public order (Article 3:40 of the Civil Code). If this is not the case, an agreement concluded between a person issuing bribes (or a company issuing bribes) and the company or authority accepting said bribes may, under certain circumstances be declared void on the ground of vitiated consent. A condition in respect of the act of invoicing error or deceit is that it must be established that the agreement would not have been concluded, or would not have been concluded in accordance with the agreed conditions, if the bribery had not taken place. Furthermore, it may be possible to institute proceedings on the basis of an unlawful act. After all, the perpetrator has acted contrary to the principles of social propriety (Article 6:162 Civil Code). By committing an illicit act, the person issuing the bribe is liable to pay compensation to the company or authority that has accepted said bribe. In this respect, compensation due to losses incurred and loss of profit may be demanded. It is also possible for the court to order the person issuing the bribe to surrender any profits (Article 6:104 Civil Code). Compensation may also consist of the revocation of an agreement a provision expressly highlighted in Article 34 of this convention. It should also be noted that, in the event that the bribery is actually committed by an employee of the person or company issuing the bribe, the actions of the employee may be equated with those of the company issuing the bribe. This means that the illicit act is deemed to have been committed by the company issuing the bribe. The liability of this company may however also be based on other grounds. As the employer of the individual who has actually carried out the act of bribery, the company issuing the bribe is liable in respect of any illicit acts committed by said individual (Article 6:170, paragraph 1 Civil Code and Article 6:172 Civil Code).

In re-implementing Directives 2004/17/EC and 2004/18/EC from the European Commission, the Netherlands established under Article 2.86 of the Public Procurement Act the mandatory exclusion of tenderers convicted of corruption and financial crime offences, including (foreign) bribery. Under Article 2.88 of the Act, a contracting authority may choose not to apply mandatory exclusion for "compelling public-interest reasons; or if, in the contracting authority’s judgment, the contractor or tenderer has taken adequate measures to restore the betrayed confidence; or if, in the contracting authority’s judgment, exclusion is not a proportional sanctions, in light of the time which has passed since the conviction and given the subject matter of the contract.” Both articles are directly implemented from the EC Directives.

Contracting authorities do not always consult the debarment lists of the international financial institutions in assessing a tenderer’s application. However, a self-declaration by the company expressly indicating whether they are subject to any grounds for exclusion from the procedure is required. The winning tenderers must also submit a “certificate of good conduct”, which is issued by the Ministry of Justice and Security. The Ministry of Security and Justice maintains a database of convictions of legal and natural persons, which is referred to in assessing the application for the certificate. A conviction on (foreign) bribery is a cause for not issuing a certificate of good conduct if in the four years preceding the application of such a certificate, the conviction has become irrevocable.

The Netherlands has indicated that it does not require any form of technical assistance.
(b) Observations on the implementation of the article

The reviewing experts noted that the Dutch legislation incorporates various means of contesting agreements that have involved corruption. This type of legal act may be void, on the grounds of incompatibility with public morality or public order (article 3:40 CC) or on the ground of vitiated consent.

In re-implementing Directives 2004/17/EC and 2004/18/EC of the European Commission, the Netherlands established under article 2.86 of the Public Procurement Act the mandatory exclusion of tenderers convicted of corruption and financial crime offences, including (foreign) bribery. The winning tenderers must also submit a “certificate of good conduct”, which is issued by the Ministry of Justice and Security. The Ministry of Security and Justice maintains a database of convictions of legal and natural persons, which is referred to in assessing the application for the certificate. A conviction on (foreign) bribery is a cause for not issuing a certificate of good conduct if in the four years preceding the application of such a certificate, the conviction has become irrevocable.

The reviewing experts concluded that the provision has been adequately implemented.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 51a Code of Criminal Procedure
1. Anyone who directly has sustained damage/loss as a result of a criminal offence may join a claim for civil damages as the injured party.
2. If the person referred to in the first sub-section has died as a result of the criminal offence, his heirs may join a claim for civil damages acquired under universal title as well as the persons referred to in Section 108(1) and (2) of Book 6 of the Dutch Civil Code in respect of the claims referred to in that section.
3. The persons referred to in the first and second sub-sections may also join a partial claim for civil damages.

The Netherlands cited the following applicable measures:

For possibilities to start legal proceedings according to civil law, please refer to the explanation to Article 34 (Consequences of acts of corruption), Q2 for the provisions made by Dutch law in this respect.

Dutch law also provides for the possibility for injured parties to have their claim for the compensation of damage included in the criminal proceedings. Article 51a of the Code of Criminal Procedure states that an injured party who has suffered direct damage due to a crime may claim damages as a part of the penal process. They can submit a claim for compensation by presenting themselves as the injured party against the suspect. In this way an injured party can prevent having to initiate civil proceedings
against the suspect. Direct damage is suffered where a person has been injured by the violation of a legal provision that protects his/her interests. Since, for example, the offence of bribing a (foreign) public official is, amongst other things, designed to combat unfair competition, a competitor who has been injured by bribery could make such a claim by joining the proceedings as an injured party. Moreover, pursuant to Article 36f of the Penal Code, the judge in a criminal matter may \textit{ex officio} order compensation for damages incurred by a victim to be paid to the State for his/her benefit. Compensation for damage can also be part of an out of court settlement pursuant to Article 74 Penal Code. The Public Prosecution Service has broad discretionary powers to dismiss cases notably through the process of out of court settlements. This process is governed by Article 74 of the Penal Code, and essentially involves the payment of a sum of money by the defendant to the State in order to avoid criminal proceedings (the so-called ‘transaction’). It can also involve, amongst other things, a compensation of any damage caused.

As pointed out under Article 31 (Freezing, seizure and confiscation), subparagraph 1(a), Q2, a law proposal has been sent to the Parliament for approval, creating the possibility to impose precautionary seizure on the assets of the defendant on behalf of the victim (law proposal no. 33 295) With this proposal the Dutch government, among other things, wants to give content to its policy to strengthen the position of victims.

When this draft bill has been approved by the Dutch Parliament, the State will have to possibility of levying a prejudgement attachment of the assets of a defendant for the benefit of the victim even during the criminal investigation. In urgent cases, this precautionary seizure will also be possible when the offender is caught in the act. The police may confiscate the money and items that the suspect is carrying with him at the time of his arrest.

After the State has levied prejudgement attachment (precautionary seizure) on the assets of the defendant for the benefit of the victim, it will ultimately be the trial judge who decides on the amount of compensation. If the defendant is ordered to pay, the first to receive payment is the victim. Any remaining amount will accrue to the State to pay the fine imposed by the judge or to satisfy the demand for a confiscation order. If the judge hearing the case does not pronounce an order for compensation, the attachment (or precautionary seizure) will automatically be lifted as soon as the judgment has become final.

The Netherlands cited the following examples of implementation:
In the Klimop-case, the largest case of real estate fraud and private corruption, out of court settlements were reached between the suspects and the fraud victims, for a total of 135.000.000 euro. Together with the fines imposed by the court and the confiscation of illegal proceeds, a total amount of approximately 162.000.000 euro had to be paid by the suspects.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the Dutch legislation provides for the possibility for injured parties to have their claim for the compensation of damage included in the criminal proceedings. Article 51a CPC states that an injured party who has suffered direct damage due to a crime may claim damages as a part of the penal process. They can submit a claim for compensation by presenting themselves as the injured party against the suspect.

The reviewing experts concluded that the provision has been adequately implemented.

\textbf{Article 36 Specialized authorities}
Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Annex:
- Instruction on the Duties and Deployment of the National Police Internal Investigations Department (Annex 24)

The Netherlands cited the following applicable measures:
Pursuant to Article 36 of the Convention, States are obliged to have at their disposal individuals or authorities that are specialised in the criminal prosecution of corruption. In the Netherlands this is the National Police Internal Investigations Department (Rijksrecherche) and the National Public Prosecutor in respect of combating corruption.

Various investigative authorities in the Netherlands are responsible for detecting corruption offences and can carry out investigations: the police, the National Police Internal Investigations Department (NPIID) and the Fiscal Intelligence and Investigation Service (FIOD).

For the investigation of corruption offences it is extremely important that these are carried out in an independent and autonomous manner. In the most cases this is guaranteed with the involvement of the police, the Public Prosecution Service and the judge of instruction (rechter-commissaris). Nevertheless there can occur cases in where even the semblance of partiality must be avoided. This is for example the case when the suspicion of the crime relates to investigating authorities or investigating officials. For these investigations the deployment of the National Police Internal Investigations Department (NPIID). For this purpose, the NPIID has been placed at some distance from the police and, in terms of administration and authority, falls directly under the Board of Procurators General. The NPIID is a Special Investigation Service of the Dutch police, and has the same investigative powers as the regular police.

The function of the NPIID is to be an investigative authority with a focus on the detection of punishable crimes committed by (semi-governmental) officials. The investigation must involve a crime that may have been committed and which could reasonably expected to affect the integrity of the way in which the government functions. The NPIID will only be deployed in the case no other investigative authority is capable of carrying out an (impartial) investigation. The decision whether the NPIID will be involved is decided by a commission called the Coordination Committee Rijksrecherche (CCR). The CCR is made up of the holder of the NPIID portfolio within the Board of Procurators-General, the chief public prosecutor of the National Public Prosecutor’s Office and the director of the NPIID. The CCR is assisted by the National public prosecutor on corruption-cases and Rijksrecherche-affairs. The CCR will decide per case about the deployment of the NPIID.

In 2000, the Ministry of Justice (now: Ministry of Security and Justice) created a National public prosecutor for corruption-cases and Rijksrecherche-affairs. This National public prosecutor for corruption-cases and Rijksrecherche-affairs is employed within the National Public Prosecutor’s Office.
This National public prosecutor is responsible for executing and coordinating of (possible) criminal prosecutions on corruption offences. He can advise or assist in or direct national corruption investigations. Furthermore he is responsible for the coordination and control of the Criminal Intelligence Unit (CIE) of the NPIID and he works very closely with the NPIID. In his tasks, the National public prosecutor on corruption-cases and Rijksecherche-affairs is supported by a senior legal officer. The position of the National public prosecutor and the senior legal officer are firmly anchored within the Public Prosecution Service. Their role and reputation has been strengthened inside and outside the Public Prosecution Service in recent years.

For examples of implementation, please refer to Article 36 (Specialized authorities), previous answer.

The Netherlands cited the following applicable measures:
In the Netherlands, investigations into circumstances or acts that may affect the integrity of public authorities and that have been committed by natural persons or legal entities charged with a public task are carried out by the National Police Internal Investigations Department. For this purpose, the National Police Internal Investigations Department has been placed at some distance from the police and, in terms of administration and authority, falls directly under the Board of Procurators-General. Prosecutions are conducted according to the principle of prosecutorial discretion (opportunitieitsbeginsel). Article 167 of the Code of Criminal Procedure delegates the decision to prosecute to the Public Prosecution Service. A public prosecutor has broad discretionary powers - although limited by the general Instructions for prosecution - in if, how and for what offences he/she will prosecute. The rationale for the delegation of power under Article 167 of the Code of Criminal Procedure is to prevent criminal proceedings from becoming dependent on political considerations.

The Netherlands provided the following information on how staff is selected and trained:
The National Public Prosecutor for corruption-cases, the Senior Legal Officer for corruption-cases, and also all of the investigators of the National Police Internal Investigations Department are senior positions. The selection for those positions is comparable to the selection for other government jobs, but only open to applicants with senior experience. Furthermore, for those positions the highest possible level of screening is required. Those screenings are carried out by the General Intelligence and Security Service.

Within the context of the Programme “Reinforcing the measures for combating financial-economic crime” (FINEC Programme) of the Ministry of Security and Justice, National Police Internal Investigations Department (NPIID) has received in 2008 an increased 1,2 million Euros for the combating corruption. These permanent extra financial resources enable the NPIID to extend its capacity significantly, with approximately 12 fte (to a total of approximately 100 employees) at the end of 2012.

The NPIID has invested these extra financial resources mainly in the recruitment of specialists. Currently the NPIID has appointed several financial investigators (financieel rechercheurs), crime analysts (misdaadanalisten), digital information investigators (digitale rechercheurs) and an intelligence investigator (informatierechercheur). These specialists are deployed in national and international criminal investigations related to possible financial-economic crimes.

De NPIID spends an average of 2% of its annual budget on staff training. This involves, among other things, courses that are relevant for tackling corruption, such as a course on money laundering and on public procurement. These courses are aimed at improving the quality and knowhow of the employees of the NPIID.

Every year a training course on combating corruption is conducted by the Stichting Studiecentrum Rechtspleging (SSR) - the training institute of judiciary and employees of the Public Prosecution Service. This course is attended by members of the judiciary, the Public Prosecution Service and the NPIID. The SSR also provides courses on other forms of financial economic crime.
The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that various investigative authorities in the Netherlands are responsible for detecting corruption offences and can carry out investigations: the police, the National Police Internal Investigations Department (NPIID) and the Fiscal Intelligence and Investigation Service (FIOD). The NPIID is a Special Investigation Service, under the authority of the Board of Procurators-General of the Dutch Public Prosecution Service and has the same investigative powers as the regular police.

The function of the NPIID is to be an investigative authority with a focus on the detection of punishable crimes committed by (semi-governmental) officials. The investigation must involve a crime that may have been committed and which could reasonably expect to affect the integrity of the way in which the government functions. The NPIID will only be deployed in the case no other investigative authority is capable of carrying out an (impartial) investigation.

In 2000, the Ministry of Justice created a National public prosecutor for corruption-cases, who is employed within the National Public Prosecutor’s Office. This National public prosecutor is responsible for executing and coordinating of (possible) criminal prosecutions on corruption offences. He can advise or assist in or direct national corruption investigations. Furthermore he is responsible for the coordination and control of the Criminal Intelligence Unit (CIE) of the NPIID and works very closely with the NPIID.

The reviewing experts concluded that the provision has been adequately implemented.

(c) Successes and good practices

- The existence of courts, as well as investigative and prosecutorial authorities which are specialized in fraud and financial crime, including corruption, especially in view of the challenges involved in successfully prosecuting complex fraud and financial crime in many jurisdictions where judges are unfamiliar with the intricacies and technical details of these crimes.

Article 37 Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Annex:
Instruction on Promises to Witnesses in Criminal Proceedings (Annex 25)
For examples of implementation, please refer to Article 37 (Cooperation with law enforcement authorities), paragraph 1, previous answer.

(b) Observations on the implementation of the article

Based on the information under this provision of the UNCAC, as well as the general information provided by the Dutch authorities (see the introductory part of the present report), the reviewing experts noted that prosecutions in the Netherlands are conducted according to the principle of prosecutorial discretion. This means that the public prosecutor can decide to prosecute/not to prosecute a case, and how to prosecute (for instance, bring a case to court, or settle a case outside court). The process of out-of-court settlement is governed by article 74 PC, and essentially involves the payment of a sum of money by the defendant to the State in order to avoid criminal proceedings (the so-called “transaction”). It can also involve the renunciation of title to or surrender of objects that have been seized and are subject to forfeiture and confiscation, or payment of their assessed value. Moreover, it can involve the payment of the estimated proceeds acquired from the criminal offence, as well as compensation for any damage caused. Pursuant to article 74, paragraph 1 PC, it is available in relation to “serious offences” excluding those for which the penalty of imprisonment is more than 6 years. The right to prosecute lapses once the conditions set in a particular case have been met.

The Instruction on Large and Special Transactions contains rules for out-of-court settlements involving high amounts of money. Full immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence is not possible.

The reviewing experts concluded that the provision has been adequately implemented.

Article 37 Cooperation with law enforcement authorities

Paragraph 2

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

For citation of texts and examples of implementation, please refer to Article 37 (Cooperation with law enforcement authorities), paragraph 1.

(b) Observations on the implementation of the article

See above. The reviewing experts concluded that the provision has been adequately implemented.

Article 37 Cooperation with law enforcement authorities

Paragraph 3
3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that they have not implemented this provision of the Convention.

The Netherlands elaborated that current legislation provides the possibility to reduce the sentence demanded by the public prosecutor to (a maximum of) 50%. Full immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offense is not possible.

With regards to the steps or action (and related timeframe) that domestic or other authorities would need to take to ensure full compliance with the provision under review, the Netherlands referred to Article 37 (Cooperation with law enforcement authorities), paragraph 3, previous answer.

(b) Observations on the implementation of the article

See above. The reviewing experts concluded that the provision has been adequately implemented.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

For all relevant information, please refer to Article 32 (Protection of witnesses, experts and victims), paragraph 1.

(b) Observations on the implementation of the article

The reviewing experts noted that target group for witness protection is defined in article 3 of the Decree on Witness Protection: “protective measures can be taken in regard to witnesses as referred to in the articles 226a, 226g or 226k CPC, or other persons who have cooperated with the authority assigned to trace and prosecute in criminal cases, to the extent that is, as a result of that cooperation and the ensuing government action, there is an urgent necessity for witness protection”. This provision would be fulfilled in accordance with what is provided in the witness protection regime, it being useful for an improved and more complete evaluation that practical examples of application be provided.

The reviewing experts concluded that the provision has been adequately implemented.

Article 37 Cooperation with law enforcement authorities

Paragraph 5
5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The country under review indicated that no information is available regarding texts or implementation pertaining to this article.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the Instruction on Promises to Witnesses in Criminal Proceedings (Annex 25) provides very detailed guidance for the treatment of crown witnesses by the domestic competent authorities.

No information was made available to the reviewing experts on the implementation of the – optional - paragraph 5 of article 37 of the UNCAC through the conclusion of agreements with other States parties.

Article 38 Cooperation between national authorities

Subparagraph (a) and (b)

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Articles 160-162 of the Code of Criminal Procedure provide guidelines which require that individuals report knowledge of serious criminal offences to criminal investigators (160), the right to report if they have knowledge of an offence which has been committed (161),
and "public bodies and civil servants who have knowledge, in the execution of their duties, of a crime in which they are to be charged with the investigation, must report this immediately, with delivery of the items regarding the crime, to a public prosecutor..."

(162)

Article 161 Code of Criminal Procedure
Anyone who has knowledge of a criminal offence committed has the power to report it to the police.

Article 162 Code of Criminal Procedure
1. Public boards and public servants who during the lawful execution of their duties become aware of a criminal offence, while not being in charge of the investigation thereof, shall be obliged to immediately report such offence to the Public Prosecutor or one of his Assistant Public Prosecutors and must hand over any documents relating to the case:
   a. If the offence is a serious offence by a public servant defined in Title XXVIII of the Second Book of the Dutch Criminal Code, or
   b. If the offence is perpetrated by a public servant who violated an extraordinary official duty in doing so or took advantage of any power, opportunity or means granted to such person on account of their office, or
   c. If the offence caused a scheme for the implementation or enforcement of which such person was in charge to be breached or to be unlawfully used.

(…)

The Netherlands cited the following applicable measures:

Cooperation and consultation between investigative authorities and other government organizations is given shape by means of different obligations and structures. Examples are iCOV, the LIEC/RIEC’s and the FEC.

In order to ensure that effective action can be taken on a nation-wide level against this illegal money, a coherent approach is needed, combined with an intensified exchange of information. The Criminal and Unaccountable Assets Infobox (Infobox Crimineel and Onverklaarbaar Vermogen) (iCOV) is developed within this framework. The aim of this partnership between the Tax and Customs Administration, Fiscal Intelligence and Investigation Service (FIOD), Public Prosecution Service (OM), the police, and the Financial Intelligence Unit (FIU) is to use information sharing to identify (unaccountable) assets and expose money laundering and fraud constructions, so that criminal or unaccountable assets can be traced and confiscated, tax evasion can be reduced, or certain amounts owed to the government can still be collected (collection box function). During a subsequent phase, other government parties will be able to join the iCOV, with the idea being to involve semi-public and private parties at a later date.

The Financial Expertise Centre (FEC) (<http://www.fec-partners.nl/en> ) is a partnership between authorities that have supervisory, control, prosecution or investigation tasks in the financial sector and was founded to strengthen the integrity of the sector. It does this by taking preventive action to identify and combat threats to this integrity. The FEC also plays an important role in providing and disseminating information. By arranging for FEC partners and observers to exchange information, knowledge and skills among themselves, the FEC can act effectively and efficiently. Its joint approach enables it to tackle specific problems and have a wide-ranging effect.

The National and Regional Centres for Information and Expertise (LIEC/RIEC’s) were established to support cooperation between penal, fiscal and administrative parties, in the fight against organised crime. The RIECs form a shared service organisation for the capacity and expertise of administrative measures. Said cooperation is designed to bring about the more intensive exchange of information.
between all partners involved. In addition, they facilitate the mutual coordination of penal, fiscal and administrative enforcement action at regional level.

With regard to offences committed by officials and other criminal offences, Article 162 of the Code of Criminal Procedure, stipulates that officials who are aware of such acts are obliged to report them to the Public Prosecution Service.

Public bodies, public servants and independent administrative authorities can learn of offences in the performance of their duties, without being in charge of the investigation of such offences. In respect of a number of those offences, those public bodies and public servants have an obligation to report them. This (special) obligation to report offences is provided for in Section 162 Code of Criminal Procedure. The obligation to report offences applies to the offences described in Articles 362, 363, 364 and 364a of the Penal Code (c.f. Article 162 subparagraph 1 (a) of the Code of Criminal Procedure), among others. Strictly speaking, this obligation does not apply to the bribery provisions of Articles 177, 177a, 178 and 178a of the Penal Code, as Article 162 of the Code of Criminal Procedure does not explicitly refer to them. However, this concerns the active side of passive corruption indicated in Article 362 et seq of the Penal Code, and behaviour which is punishable under Articles 177-178 Penal Code will therefore fall under the scope of Article 162 Code of Criminal Procedure.

In regards to statistical data, the Netherlands stated that due to the different possibilities of sharing information mentioned in the previous answer, it is not possible to provide information on the number of times and cases in which information has been shared.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that Cooperation and consultation between investigative authorities and other government organizations is given shape by means of different obligations and structures. The Criminal and Unaccountable Assets Infobox (ICOV) is developed within this framework. The aim of this partnership between the Tax and Customs Administration, Fiscal Intelligence and Investigation Service (FIOD), Public Prosecution Service (OM), the police, and the Financial Intelligence Unit (FIU) is to use information sharing to identify (unaccountable) assets and expose money-laundering and fraud constructions, so that criminal or unaccountable assets can be traced and confiscated, tax evasion can be reduced, or certain amounts owed to the government can still be collected.

The Financial Expertise Centre (FEC) is a partnership between authorities that have supervisory, control, prosecution or investigation tasks in the financial sector and was founded to strengthen the integrity of the sector. It takes preventive action to identify and combat threats to this integrity. The FEC also plays an important role in providing and disseminating information.

The National and Regional Centres for Information and Expertise (LIEC/RIEC’s) were established to support cooperation between penal, fiscal and administrative parties, in the fight against organized crime. The RIECs form a shared service organization for the capacity and expertise of administrative measures. In addition, they facilitate the mutual coordination of penal, fiscal and administrative enforcement action at regional level.

The reviewing experts concluded that the provision has been adequately implemented.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1
1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

No information on cooperation in specific corruption-cases can be given. There are different forms in which the Dutch government and the private sector cooperate in the fight against financial-economic crimes. Some examples will be mentioned below.

Under the responsibility of the Ministry of Security and Justice a multidisciplinary anti-corruption task force has been set up, the “Platform on Fighting Corruption”. The platform aims at promoting awareness and common actions in the fight against national and international corruption by optimising the exchange of knowledge and information. One goal of this platform is to establish and maintain good communication with the private sector and civil society. Participants of the anti-corruption task force are representatives from the government, scientific area, private sector, and civil society. The platform meets four times a year. Main topic is preventing and combating national and international corruption.

With regard to creating more awareness among companies, since 2006 the National public prosecutor on corruption-cases and Rijksrecherche-affairs repeatedly entered into a dialogue with the private sector.

According to Dutch law (Prevention of Money Laundering and the Financing of Terrorism Act), financial institutions are obliged to report any transactions in regard to which there are reasonable grounds to suspect that the funds relate to money laundering. In the past, the duty to identify clients and report unusual transactions applied exclusively to traders in designated goods of great value, but from now on these duties also apply to all traders who accept cash payments of 15,000 euros or more. Examples of institutions that have an obligation to report unusual transactions to FIU-Netherlands (<http://en.fiu-nederland.nl/> ) are banks, credit institutions, investment institutions, money transaction offices, life insurers and insurance brokers, credit card companies, casinos, accountants and tax consultants.

Another example of cooperation between national authorities and the private sector is the role of accountants/auditors in the detection of fraud and corruption. The Netherlands Institute of Chartered Accountants (NBA) provides training courses to the accounting and auditing profession, which included components on bribery. In 2012 all auditors in public practice and government auditors are required to follow a 12 hours training course on ‘professional scepticism’. This course is intended to raise professional scepticism of the auditors involved, including the awareness that fraud might have occurred. The Netherlands implemented the Clarified International Standards on Auditing (ISA) (Nadere Voorschriften Controle- en overige Standaarden - ‘NV-COS’) in 2010. The requirements for accountants and external auditors to report suspicions of fraud are based on ISA 240 and ISA 250. Accordingly, when auditing a company’s annual accounts, auditors are obliged to hold an additional investigation “upon suspicion of fraudulent actions with regard to the annual accounts.” If the investigation strengthens or confirms the auditor’s suspicions, the auditor must report the suspicions to management and subsequently verify whether adequate action has been taken. If the fraud is material to the financial statements and adequate action has not been taken by management, the auditor is obliged to report the suspicions to the Dutch police, after which the public prosecutor will take appropriate action. The term “fraud” applied in the ISA standards would cover suspicions of (foreign)
bribery. Auditors are also obliged to report unusual transactions, which may uncover foreign bribery, pursuant to the Dutch anti-money laundering requirements.

Auditors who inform the relevant authorities of suspected fraud are not liable for any breach of confidentiality. The Dutch anti-money laundering legislation ("WWFT") also provides protection from both criminal and civil liability when reporting unusual transactions.

Dutch authorities have also collaborated with the private sector to promote company internal controls, ethics and compliance programmes. In 2012, the Ministries of Economic Affairs, Security and Justice, and Foreign Affairs developed a detailed brochure on foreign bribery ("Honest Business without Corruption") in partnership with a number of Dutch business associations (VNO-NCW, SME Netherlands and the Dutch Chapter of the International Chamber of Commerce). The brochure highlights inter alia the importance of establishing a code of conduct, whistleblowing mechanisms, policies on gifts and hospitality, internal control and accounting systems, and anti-corruption contractual provisions when dealing with agents and other third parties.

(b) Observations on the implementation of the article

The reviewing experts noted that under the responsibility of the Ministry of Security and Justice, a multidisciplinary anti-corruption task force has been set up, the "Platform on Fighting Corruption". The platform aims at promoting awareness and common actions in the fight against national and international corruption by optimizing the exchange of knowledge and information. One goal of this platform is to establish and maintain good communication with the private sector and civil society. Participants of the anti-corruption task force are representatives from the government, scientific area, private area and civil society. The platform meets four times a year. Its main topic is preventing and combating national and international corruption.

The Dutch authorities have also collaborated with the private sector to promote company internal controls, ethics and compliance programmes. Another example of cooperation between national authorities and the private sector is the role of accountants/auditors in the detection of fraud and corruption. The Netherlands Institute of Chartered Accountants (NBA) provides training courses to the accounting and auditing profession, which included components on bribery.

According to the Prevention of Money Laundering and the Financing of Terrorism Act, financial institutions are obliged to report any transactions in regard to which there are reasonable grounds to suspect that the funds relate to money-laundering.

The reviewing experts concluded that the provision has been adequately implemented.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.
The following texts were cited:

Relevant legislation:

Article 161 Code of Criminal Procedure
Anyone who has knowledge of a criminal offence committed has the power to report it to the police.

The Netherlands cited the following applicable measures:

Under the Dutch law, all persons have the right to file a complaint at the police or public prosecutor on the grounds of a suspicion of a crime. The existence of such a complaint however is not mandatory for the prosecution of corruption offences.

The reorganisation of the police will simplify the procedure for persons to report a crime. The introduction of the national police force will soon enable anybody to report a crime within 24 hours, wherever it suits him or her. It will no longer be necessary to go to the police station in the municipality where the crime has been committed. Anybody calling the police to report a crime will receive ‘tailored’ treatment. Depending on the nature of the crime, the report can be made through the Internet, by telephone, at home or at the police station.

A simple and customer-friendly uniform reporting procedure will be established for the police, which will be identical in all parts of the country. At this time, there are still major differences between the reporting procedures in the 25 police forces.

In addition to the ‘tailored’ reporting, a nationwide tracking system for the reporting of crimes will be introduced, enabling citizens to find out what action has been taken after they made the report.

Citizens are also able to report an offence anonymously via the “meld misdaad anoniem” (‘report crime anonymously’) anonymous hotline. It is also possible to make an anonymous report via the National Police Internal Investigations Department (Rijksrecherche).

The Netherlands stated the following regarding financial incentives are offered to encourage such reports:

The Special Investigation Funds Regulations (Circulaire bijzondere opsporingsgelden) regulates the granting of special investigation funds. It is not possible to give specific information on the amount of money or types of cases where financial incentives are granted.

The authorities in the Netherlands are permitted to pay money for information obtained from citizens who are registered as an informant with the Criminal Intelligence Unit (Criminele Inlichtingen Eenheid). This also happens in cases of corruption (mainly domestic bribery).

The Netherlands stated that it is not possible to give specific information on anonymous reports that have contributed to the investigation and/or prosecution of an offence established in accordance with the Convention. It is however possible to mention that, with regard to cases of domestic bribery, investigations are regularly started on the basis of information of the Criminal Intelligence Unit (Criminele Inlichtingen Eenheid).

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.
Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following legislation were cited:

Relevant legislation:

Article 67 Code of Criminal Procedure
1. A pre-trial detention order may be issued on the basis of suspicion of:
   a. a serious offence which carries a statutory term of imprisonment of at least four years;
   b. any of the serious offences defined in articles 132, 138a, 138b, 139c, 139d(1) and (2), 141a, 161sexies(1)° and (2), 137e(2), 137d(2), 137e(2), 137g(2), 184a, 254a, 248d, 248e, 285(1), 285b, 300(1), 321, 323a, 326c(2), 350, 350a, 351, 395, 417bis and 420quater of the Penal Code;
   c. any of the serious offences defined in: article 122(1) of the Animal Health and Welfare Act [Gezondheids- en Welzijnswet voor Dieren]; article 175(2)(b) or (3) in conjunction with (1)(b) of the Road Traffic Act 1994; article 30(2) of the Civil Authority Special Powers Act [Wet Buitengewone Bevoegdheden Burgerlijk Gezag]; articles 52, 53(1) and 54 of the Conscientious Objections against Military Service Act [Wet Gewetensbezwaren Militaire Dienst]; article 31 of the Betting and Gaming Act [Wet op de Kansspelen]; article 11(2) of the Opium Act [Opiumwet]; article 55(2) of the Weapons and Ammunition Act [Wet Wapens en Munitie]; articles 5:56, 5:57 and 5:58 of the Financial Supervision Act [Wet op het Financieel Toezicht]; article 11 of the Temporary Home Exclusion Order Act [Wet Tijdelijk Huisverbod].
2. The order may also be issued if it cannot be established that the suspect has his permanent place of residence or abode in the Netherlands and he is suspected of a serious offence which is tried by the District Courts and which carries a statutory term of imprisonment.
3. The preceding subsections of this article shall apply only if it can be shown on the basis of facts or circumstances that there are serious suspicions against the suspect.
4. In derogation of subsection (3), serious suspicions shall not be required for a remand in custody order in the case of suspicion of a terrorism offence.

Article 126nc Code of Criminal Procedure
1. In the event of a suspicion of guilt in respect of a crime, an investigative officer may, in the interest of the investigation, demand certain stored or recorded identifying data relating to a person, from the person who reasonably qualifies therefor and who, other than for the purpose of personal use, processes data.
2. Identifying data are defined as:
   a. name, address, place of residence and postal address;
   b. date of birth and gender;
   c. administrative characteristics;
   d. in the event of a legal entity, instead of data referred to under (a) and (b): name, address, postal address, legal form and registered office.
3. A demand as referred to in the first paragraph cannot be directed against the defendant. Article 96a, paragraph 3, shall apply mutatis mutandis. The demand cannot relate to personal data concerning a person’s religion or personal beliefs, race, political affiliation, health, sexual preferences or membership of a trade union.
4. A demand as referred to in the first paragraph will be made in writing and will state:
   a. an indication of the person concerned, with respect to the demand for the identifying
data of such person;
   b. the identifying data that are demanded;
   c. the term within which and the manner in which the data must be provided;
   d. the legal basis of the demand.
5. In the event of an imperative necessity, a claim, as referred to in the first paragraph,
can be issued orally. In such cases, an investigative officer will bring the demand in
writing at a later stage, and will provide this to the person against whom the demand is
directed within three days after the demand was made.
6. The investigative officer will draw up an official record of the provision of identifying
data, in which he will state:
   a. the data, referred to in the fourth paragraph;
   b. the data provided;
   c. the crime and, if known, the name or otherwise a description of the defendant that is as
accurate as possible;
   d. the facts or circumstances that will show that conditions, referred to in the first
paragraph, have been satisfied.
7. Rules may be set, pursuant to an order in council, with respect to the investigative
officer who demands the data and the manner in which the data are demanded and
provided.

Article 126nd Code of Criminal Procedure
1. In the event of suspicion of a crime as described in Article 67, paragraph 1, a public
prosecutor may, in the interest of the investigation, demand the provision of certain stored
or recorded data from the person of whom can reasonably be expected that he has access
to said data.
2. A demand as referred to in the first paragraph cannot be directed against the defendant.
Article 96a, paragraph 3, shall apply mutatis mutandis. The demand cannot relate to
personal data concerning a person’s religion or personal beliefs, race, political affiliation,
health, sexual preferences or membership of a trade union.
4. A demand as referred to in the first paragraph will be made in writing and will state:
   a. if known, the name or otherwise a description that is as accurate as possible of the
person or persons in respect of whom the data are demanded;
   b. a description that is as accurate as possible of the data that are demanded and the term
within which as well as the manner in which these have to be provided;
   c. the legal basis of the demand.
4. The demand can be issued orally in the event of an imperative necessity. In such cases,
a public prosecutor will bring the demand in writing at a later stage, and will provide this
to the person against whom the demand is directed within three days after the demand
was made.
5. The public prosecutor will have an official report drawn up of the provision of the data,
which will state:
   a. the data, referred to in the third paragraph;
   b. the data provided;
   c. the crime and, if known, the name or otherwise a description of the defendant that is as
accurate as possible;
   d. the facts or circumstances that will show that conditions, referred to in the first
paragraph, have been satisfied.
   e. the reason why the data have been demanded in the interest of the investigation.
6. In the event of a suspicion of a crime other than as referred to in the first paragraph, a
public prosecutor may, in the interest of the investigation, bring a demand, as referred to
in said paragraph, with the advance authorisation of the examining magistrate. The
examining magistrate will grant the authorisation on demand of the public prosecutor.
The second to the fifth paragraph will apply accordingly. Article 126l, seventh paragraph, will apply mutatis mutandis.

7. Rules may be set, pursuant to an order in council, with respect to the manner in which the data are demanded and provided.

The Netherlands cited the following applicable measures:

Unlike some other European countries, banking secrecy is not laid down in law in the Netherlands. It is however assumed that, pursuant to the requirement to act with due care when carrying out activities in relation to banking, banking secrecy forms part of the contractual relationship between the bank and its client. The term “banking secrecy” is therefore understood to refer to an obligation on the part of the bank to process client information in a confidential manner. This “banking secrecy” cannot however be invoked in the event of a request pursuant to the Code of Criminal Procedure for the provision of certain banking information for the purpose of carrying out criminal investigations.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts took into account the confirmation of the national authorities that bank secrecy does not pose difficulties in corruption-related investigations. Article 126nd CCP foresees the authority to order information about banking transactions in case of a suspicion of a crime (for which pre-trial detention is allowed).

As reported during the country visit, the requirement is that the crime should be punished by a maximum imprisonment of at least four years, or that the crime is mentioned separately as a category in article 67, paragraph 1, CCP. The latter category includes relevant financial-economic crimes established, for example, in articles 321 (embezzlement), 323a (abuse of public money), 417bis (negligent receipt of stolen property) and 420quater (negligent money-laundering) PC. With the draft bill that, among others, intends to increase the maximum sanctions for articles 328ter (bribery in the private sector) and 177a and 362 (bribery of a public official) PC, the possibility to order bank information will be foreseen for these crimes as well.

Praising the national authorities for the initiative to start preparing a new bill that increases the maximum sanctions for bribery in the public sector (article 177a PC) and in the private sector (article 328ter PC), the reviewing experts encourage them to complete the process of enacting the bill in order to increase the possibilities for the collection and submission of bank information for domestic investigations (which require a threshold of four years of imprisonment of the criminal offence under investigation) (see also under article 31, paragraph 7, of the UNCAC).

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:
Relevant legislation:

Article 8 Judicial Data and Criminal Records Act
(…)
5. For the purpose of criminal procedure, judicial data may be provided to court officers or other authorities abroad.

Article 2 Judicial Data and Criminal Records Act
1. For the purpose of proper criminal procedure, Our Minister processes judicial data in the judicial records.
2. By order in council, the data which must be considered judicial data is defined.

Article 9 Judicial Data and Criminal Records Decree
1. Based on international obligations, judgements handed down by courts other than Dutch courts, are considered judicial data.
2. The first sub-section applies by analogy to settlements by criminal courts abroad that have come to the knowledge of Our Minister, and insofar as the offence for which the punishment has been imposed is a criminal offence under Dutch law.
3. Article 7(1)(j) applies by analogy.

Article 10 Judicial Data and Criminal Records Decree
The judicial data must originate from:
- the Dutch Public Prosecution Service;
- the Dutch courts;
- foreign courts;
- Our Minister;
- the Fine Collection Agency (Centraal Justitieel Incassobureau)
- investigating officers

Article 43a Penal Code
Without prejudice to the provisions of Article 10, the term of imprisonment or detention by which a serious offence is punishable may be increased by one third, if, at the time the serious offence was committed, less than five years had passed since the date that a previous conviction to a term of imprisonment for a similar serious offence had become final and conclusive. The five-year period is extended by the period of time during which the sentenced person had been lawfully deprived of his liberty.

The Netherlands cited the following applicable measures:

In the Dutch system of maximum statutory sentences, the idea is that these maximum sentences provide scope to take into account previous convictions. This may also include relevant foreign convictions. Recidivism is therefore regarded as a general ground for an increase in penalty. See Article 43a Penal Code.

As a member of the European Union, the Netherlands is also party to the European Criminal Records Information System (ECRIS) This computerised system was established in April 2012 to achieve an efficient exchange of information on criminal convictions between EU countries. It establishes an electronic interconnection of criminal records databases to ensure that information on convictions is exchanged between EU countries in a uniform, speedy and easily computer-transferable way. The system gives judges and prosecutors easy access to comprehensive information on the offending history of any EU citizen, no matter in which EU countries that person has been convicted in the past. All EU countries have implemented the system in April 2012. General principles governing the exchange of information and the functioning of the system are regulated in the Framework Decision on exchange of information on criminal records and in the Decision on the establishment of ECRIS.
The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that recidivism is regarded as a general ground for an increase in penalty, also taking into account previous convictions in a foreign jurisdiction. As a member of the European Union, the Netherlands is also party to the European Criminal Records Information System (ECRIS). This computerized system was established in April 2012 to achieve an efficient exchange of information on criminal convictions between EU countries. It establishes an electronic interconnection of criminal records databases to ensure that information on convictions is exchanged between EU countries in a uniform, speedy and easily computer-transferable way. The system gives judges and prosecutors easy access to comprehensive information on the offending history of any EU citizen. General principles governing the exchange of information and the functioning of the system are regulated in the Framework Decision on exchange of information on criminal records and in the Decision on the establishment of ECRIS.

The reviewing experts concluded that the provision has been adequately implemented.

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Relevant legislation:

Article 2 Penal Code
Dutch criminal law applies to anyone who commits an offence in the Netherlands.

The Netherlands cited the following applicable measures:

Article 2 of the Penal Code provides for jurisdiction on the basis of the principle of territoriality. Dutch criminal law applies to anyone who commits an offence in the Netherlands.

The principle of territoriality is given a wide scope in Dutch law. This is the result of the so-called ‘doctrine of ubiquity’, which means - briefly put - that an offence may have several loci delicti. If a part of the criminal provision is fulfilled in the Netherlands, the Netherlands will have - jointly - jurisdiction pursuant to the principle of territoriality. An example of the application of the doctrine of ubiquity is the case in which an offensive document was sent from the Netherlands to the UK. The Supreme Court ruled that the place from which the document had been sent also classified as a locus delicti (Supreme Court, 4 February 1958, NJ 1958, 294), in addition to the UK where the offensive document had taken its effect. The doctrine of ubiquity also applies to forms of participation. Examples include cases of co-perpetration in which the various perpetrators commit acts in different countries (see, inter alia, Supreme Court, 13 April 1999, NJ 1999, 538, in which the Netherlands was classified as the locus delicti of the attempt to import a consignment of drugs into the Netherlands,
even though this consignment had been intercepted at the Spanish-French border: the reasoning was
that since a number of preparatory actions had taken place in the Netherlands (car rental), the attempt
had commenced in the Netherlands).

The doctrine of ubiquity can also be applied to participation in a criminal organisation (Article 140 of
the Penal Code), for instance with regard to an organisation in another country which has the intention
to commit crimes in the Netherlands (Supreme Court, 18 December 2001, NJ 2003, 315).

(b) Observations on the implementation of the article

The reviewing experts noted that article 2 PC provides for jurisdiction on the basis of the principle of
territoriality. The principle of territoriality is given a wide scope in the Dutch legislation. This is the
result of the so-called “doctrine of ubiquity”, which means that an offence may have several loci
delicti. If a part of the criminal offence is fulfilled in the Netherlands, the Netherlands will have -
jointly - jurisdiction pursuant to the principle of territoriality.
The reviewing experts concluded that the provision has been adequately implemented.

Article 42 Jurisdiction

Subparagraph 1 (b)

1. Each State Party shall adopt such measures as may be necessary to establish its
jurisdiction over the offences established in accordance with this Convention when:

   (b) The offence is committed on board a vessel that is flying the flag of that State
   Party or an aircraft that is registered under the laws of that State Party at the time that
   the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:
   Article 3 Penal Code
   Dutch criminal law applies to anyone who commits an offence outside the Netherlands on
   board of a Dutch vessel or aircraft.

(b) Observations on the implementation of the article

The reviewing experts noted that, according to article 3 PC, the Dutch criminal law applies to anyone
who commits an offence outside the Netherlands on board of a Dutch vessel or aircraft.

The reviewing experts concluded that the provision has been adequately implemented.

Article 42 Jurisdiction

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its
jurisdiction over any such offence when:
   (a) The offence is committed against a national of that State Party; or
(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Article 4 Penal Code
Dutch criminal law applies to anyone who, outside of the Netherlands, is guilty of:

(…)
9. one of the crimes, described in articles 177 and 177a, insofar as the crime was committed against a Dutch person or a Dutch public official and the crime is punishable in the country where it was committed.
10. any of the crimes described in Articles 177, 177a, 225, 227b and 323a, insofar as the offence was committed by a Dutch public official or by a person in the public service of an international organisation based in the Netherlands, and is liable to punishment under the law of the country where it was committed.
(…)

The Netherlands cited the following applicable measures:

Article 4 (under 10) of the Penal Code establishes jurisdiction (limited passive nationality and personality principle) over active bribery of public officials committed abroad, in case the public official in question has Dutch nationality, subject to dual criminality. Article 4 (under 11) of the Penal Code establishes jurisdiction (limited active nationality and personality principle) over active bribery of public officials abroad in cases which the bribe-giver is a Dutch public official or a person in the service of an international organisation based in the Netherlands, subject to dual criminality.

The requirement of double criminality applies here. The requirement of double criminality means that the crime should be liable to punishment in the country where it was committed. In other words, this does not concern the actual liability to prosecution of the crime. In this connection, the Supreme Court ruled - for example - that it is irrelevant that offences are extinguished by limitation under the law of the other country (Supreme Court, 18 December 2001, NJ 2002, 300). Under settled case law, furthermore, the qualification of the offence does not have to be the same in both countries (Supreme Court, 2 February 1903, W 7880). The decisive factor is whether the criminalisation in the other country in essence protects the same right. Therefore it is irrelevant whether drug trafficking is prosecuted as ‘import of hazardous substances’ in the foreign state, while under Dutch law it is classified as import of narcotics (Supreme Court, 4 February 2003, LJN: AF0451).

(b) Observations on the implementation of the article

The reviewing experts noted that article 4 PC establishes jurisdiction on the basis of the passive personality principle, subject to the requirement of double criminality.

The reviewing experts concluded that the provision has been adequately implemented.

Article 42 Jurisdiction

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:
(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Article 5 Penal Code
1. Dutch criminal law applies to a Dutch citizen who has committed outside the Netherlands:
1°. one of the crimes described in Chapters I and II of the Second Book and in Articles 197a, 197b, 197c, 206, 237, 272, 273, as well as - to the extent this concerns a crime directed against the administration of justice by the International Criminal Court, as intended in Article 70, first paragraph, of the Statute of Rome - in Articles 177, 177a, 178, 179, 180, 189, 200, 207a, 285a and 361;
2° an offence which is considered a crime under Dutch criminal law and which is liable to punishment under the law of the country where it was committed;
(…)
2. Prosecution of the offences described in the first paragraph under 2° and 3° can also take place if the suspect only becomes a Dutch citizen after having committed the offence.

Article 6 Penal Code
Dutch criminal law applies to:
1°. a Dutch public official who, outside of the Netherlands, commits one of the crimes described in Chapter XXVIII of the Second Book;
2°. a person in the public service of an organisation governed by international law, which is situated in the Netherlands, who commits one of the offences described in Articles 362 to and incl. 364a outside of the Netherlands.

The Netherlands cited the following applicable measures:

Under Article 5 of the Penal Code, Dutch criminal law extends to any Dutch person who commits a crime abroad. This therefore applies to all actions of bribery of public officials that are criminalised in the Penal Code (including the extension to foreign public officials pursuant to Articles 178a and 364a of the Penal Code), as well as to active and passive private corruption.

The requirement of double criminality applies here (Article 5, subparagraph 1 (2) of the Penal Code). The requirement of double criminality means that the crime should be liable to punishment in the country where it was committed. In other words, this does not concern the actual liability to prosecution of the crime. In this connection, the Supreme Court ruled - for example - that it is irrelevant that offences are extinguished by limitation under the law of the other country (Supreme Court, 18 December 2001, NJ 2002, 300). Under settled case law, furthermore, the qualification of the offence does not have to be the same in both countries (Supreme Court, 2 February 1903, W 7880). The decisive factor is whether the criminalisation in the other country in essence protects the same right. Therefore it is irrelevant whether drug trafficking is prosecuted as ‘import of hazardous substances’ in the foreign state, while under Dutch law it is classified as import of narcotics (Supreme Court, 4 February 2003, LJN: AF0451).

An example of the application of the active personality principle is the case in which a Dutchman had committed private corruption in the UK (Amsterdam Court of Appeal, 4 April 2003, NJ 2003, 291).
In addition, the active personality principle as laid down in Article 5 of the Penal Code also applies to Dutch legal entities. This will even be the case if criminal liability of legal entities is unknown in the law of the foreign state (Supreme Court, 18 October 1988, NJ 1989, 496).

Article 6 of the Penal Code provides for jurisdiction with regard to public office offences committed by Dutch public officials outside the Netherlands (Article 6, subparagraph 1 of the Penal Code). The term ‘public office offences’ applies to the criminal provisions on passive bribery of public officials (Articles 362 to and incl. 364a of the Penal Code). Article 6, subparagraph 2 of the Penal Code declares the Dutch criminal statutes applicable to acts of passive bribery of public officials - ‘Articles 362 to 364a inclusive of the Penal Code’ - committed by persons in the public service of an international organisation based in the Netherlands who are bribed abroad. Neither situation requires double criminality.

(b) Observations on the implementation of the article

The reviewing experts noted that, under Article 5 PC, the Dutch criminal law extends to any Dutch person who commits a crime abroad (active personality principle), subject to the requirement of double criminality. In addition, the active personality principle also applies to Dutch legal entities. This will even be the case if criminal liability of legal entities is unknown in the law of the foreign State.

Article 6 PC provides for jurisdiction with regard to public office offences committed by Dutch public officials outside the Netherlands (article 6, subparagraph 1 PC). The term “public office offences” applies to the criminal provisions on passive bribery of public officials (articles 362 to and incl. 364a PC). Double criminality is not required in this case.

The reviewing experts concluded that the provision has been adequately implemented.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Article 2 Penal Code
Dutch criminal law applies to anyone who commits an offence in the Netherlands.

The Netherlands cited the following applicable measures:

Article 2 of the Penal Code provides for jurisdiction on the basis of the principle of territoriality. Dutch criminal law applies to anyone who commits an offence in the Netherlands.
The principle of territoriality is given a wide scope in Dutch law. This is the result of the so-called ‘doctrine of ubiquity’, which means - briefly put - that an offence may have several loci delicti. If a part of the criminal provision is fulfilled in the Netherlands, the Netherlands will have - jointly - jurisdiction pursuant to the principle of territoriality. The doctrine of ubiquity also applies to forms of participation. Examples include cases of co-perpetration in which the various perpetrators commit acts in different countries (see, inter alia, Supreme Court, 13 April 1999, NJ 1999, 538, in which the Netherlands was classified as the locus delicti of the attempt to import a consignment of drugs into the Netherlands, even though this consignment had been intercepted at the Spanish-French border: the reasoning was that since a number of preparatory actions had taken place in the Netherlands (car rental), the attempt had commenced in the Netherlands).

The doctrine of ubiquity can also be applied to participation in a criminal organisation (Article 140 of the Penal Code), for instance with regard to an organisation in another country which has the intention to commit crimes in the Netherlands (Supreme Court, 18 December 2001, NJ 2003, 315).

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Article 4 Penal Code

Dutch criminal law applies to anyone who, outside of the Netherlands, is guilty of:

(…)

9. one of the crimes, described in articles 177 and 177a, insofar as the crime was committed against a Dutch person or a Dutch public official and the crime is punishable in the country where it was committed.

(…)

The Netherlands cited the following applicable measures:

Under the universality or protective principle, anyone who commits designated offences against the interest of the Dutch State or Dutch financial interests outside Dutch territory falls under Dutch criminal law jurisdiction.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.
Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Article 4a Penal Code
1. Dutch criminal law is applicable to any person whose process of criminal prosecution has been transferred from another country to the Netherlands on the grounds of a treaty, in which treaty such criminal prosecution by the Netherlands has been authorised.

(…)

Article 552x Code of Criminal Procedure
The public prosecutor who receives a direct request from a foreign authority to institute criminal proceedings, shall notify the Minister of Justice of the request, and shall submit his advice, together with the necessary documents.

Article 552y Code of Criminal Procedure
1. The Minister of Justice shall reject a request from a foreign authority to institute criminal proceedings, if it may be determined immediately that
   a. the request pertains to an alien who has his fixed domicile or residence outside the Netherlands;
   b. the offence for which the criminal proceedings are requested
      1°. is not punishable under Netherlands law;
      2°. is of a political nature, or relates to a criminal offence of a political nature;
      3°. is a military offence;
   c. the right to prosecute for an offence for which criminal proceedings are requested is precluded under Netherlands law or under the laws of the state that makes the request for reason of lapse of time;
   d. the request for criminal proceedings is intended to affect the person to whom it concerns because of his religious, ideological, or political beliefs, or his nationality, race, or the ethnic group to which he belongs;
   e. criminal proceedings in the Netherlands would be in violation of the provisions of section 68 of the Criminal Code.
2. The condition as referred to in the preamble of paragraph 1 and under (a) is not applicable if the request pertains to criminal proceedings related to the confiscation of illegally obtained profits or advantages, within the meaning of Title IIIb of Book IV.

Article 552z Code of Criminal Procedure
1. With the exception of the instance mentioned in the previous section, the Minister of Justice shall send the request for criminal proceedings and the documents added thereto, to the public prosecutor of the court in the district in which the person to whom the request pertains has his fixed domicile or residence. The request shall not be sent if the
public prosecutor has already submitted his advice to the Minister of Justice in accordance with the provisions of Article 552x.

(...)

Article 552aa Code of Criminal Procedure
1. The public prosecutor to whom the request for criminal proceedings is sent in accordance with the provisions of the previous Article, shall notify the Minister of Justice of his advice.
2. The person to whom the request pertains shall be heard by the public prosecutor in respect therewith, or shall in any event be properly summoned to do so, if the request is based on a treaty and the authority of the Netherlands to institute criminal proceedings arises from this treaty.

Article 552bb Code of Criminal Procedure
1. As soon as possible after he has received the advice of the public prosecutor, the Minister of Justice shall take a decision, whereby the request for criminal proceedings shall either be granted or denied.
2. The Minister shall in any event deny a request if one of the grounds as set forth in Article 552y appear to exist.
3. Furthermore, the Minister shall deny a request that is not based on a treaty, if in the opinion of the Public Prosecutions Department it is not possible to prosecute the person to whom the request pertains for the charge in the Netherlands.
4. If the request is based on a treaty, the Minister shall observe the grounds for denying a request for criminal proceedings stated therein.

Article 552cc Code of Criminal Procedure
Before deciding on the request for criminal proceedings, the Minister of Justice may ask the authorities of the state from where the request originated to provide further information, within a period of time to be stipulated by him, if there is a need to do so in view of the decision to be taken on the request.

Article 552dd Code of Criminal Procedure
1. For as long as the investigation has not commenced by the time of the hearing, the Minister of Justice may withdraw a request for criminal proceedings, if circumstances have been brought to light in the preliminary inquiry, or otherwise, that, had they been known when the request was decided, the request would have been denied.
2. The granting of a request for criminal proceedings may also be withdrawn if the punishment to which the suspect is sentenced cannot be executed.

Article 552ee Code of Criminal Procedure
1. The Minister of Justice shall inform the public prosecutor and the authorities of the state from where the request originated of his decision to the request for criminal proceedings.
2. He shall also inform these authorities of the outcome of the criminal proceedings that are instituted in response to the request.

The Netherlands cited the following applicable measures:

The Dutch Extradition Act stipulates that extradition can only take place on the basis of a treaty. Article 51a of this Extradition Act allows the UN Convention against Corruption to be used as such a treaty. As Article 5 of the Dutch Extradition Act states, also dual criminality (and at least a maximum imprisonment of one year) is required for extradition. Grounds for refusal of extradition requests are set out in the Extradition Act and include the following:
• The offence with respect to which the request is made punishable with the death penalty in the requesting state and the Minister of Security and Justice has not received an undertaking from the requesting state that the death penalty will not be imposed.
• Criminal proceedings are pending in the Netherlands.
• The person has been prosecuted and either been acquitted or convicted under Dutch law.
• The statute of limitations on the penalty has lapsed.
• The Minister of Security and Justice is of the view that the prosecution abroad is motivated by the suspect’s religious or political convictions, his nationality, race or population group, or that the suspect would suffer from exceptional hardship due to his youth, age or ill-health.
• The investigation seems to be in relation to a political offence

Article 4 of the Extradition Act prohibits the extradition of Dutch nationals unless the Minister of Security and Justice obtains an adequate guarantee from the requesting country that if the extradited Dutch national was to be sentenced to imprisonment by the foreign court, the person would be allowed to serve the sentence in the Netherlands. Extradition for the execution of a sentence is therefore not possible.

If the extradition is refused on the ground of nationality, the Netherlands can generally take over the proceedings from the requesting state. The case shall be submitted to the competent authorities for the purpose of prosecution. In that situation cooperation between central authorities is important and therefore takes place.

Pursuant to Articles 552t and 552w of the Code of Criminal Procedure, the transfer of criminal proceedings to another country is possible with or without a treaty for serious offences. The process of transferring proceedings to another State is initiated by a submission by the public prosecutor of a motivated application to the Minister of Security and Justice. If he accepts the request of the public prosecutor, it is then formally submitted to the authorities of the requested state. A corresponding process applies where the Netherlands is requested by another State to take over proceedings (pursuant to Article 552x - 552h Code of Criminal Procedure).

The general principle in either case is that the transfer must be in the interest of the administration of justice. Moreover, where a treaty does not exist between the Netherlands and the requesting State, a transfer is only possible where the requesting State and the Netherlands have jurisdiction under their domestic laws.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The country under review Article 42 (Jurisdiction), paragraph 3 for cited texts.
(b) **Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 42 Jurisdiction**

**Paragraph 5**

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

In order to avoid double jeopardy consultation with another State, when this other State is conducting an investigation, prosecution or judicial proceedings in respect of the same conduct, is essential. But also with a view to an effective approach in the respective cases in both countries - when there is no risk for double jeopardy (for example, when, in case of foreign bribery, one country prosecutes the bribe-giver and the other country prosecutes the bribe-taker) - consultation is important.

An example can be found in the proposed amendments to the Instruction on Investigation and Prosecution of Corruption of Foreign Officials. One of these proposed changes concerns emphasizing a more active approach when another country has already started a criminal investigation in a case where the Netherlands also has jurisdiction. If a criminal investigation started abroad, the Dutch law enforcement authorities should contact their foreign counterpart in order to discuss and coordinate their respective actions. It is also being recommended to search for possibilities for cooperation with other countries in a very early stage. Please also refer to Article 16 (Bribery of foreign public officials and officials of public international organizations), paragraph 1.

(b) **Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 42 Jurisdiction**

**Paragraph 6**

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The Netherlands did not cite texts or provide examples of implementation.
The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Chapter IV. International cooperation

Assessing the Dutch legal framework and practice generally in the field of international cooperation in criminal matters, the reviewing experts identified as a good practice the establishment of a comprehensive legal framework on international cooperation in criminal matters which encompasses all forms of international cooperation.

Another good practice which was highlighted by the review team was the fact that the Netherlands handles a high volume of MLA and international cooperation requests with an impressive level of execution. The efficient operations of the Netherlands in this sphere are carried out both by regular law enforcement authorities, but also through the effective use of specialized agencies, to deal with requests involving particularly complex and serious offences, including offences covered by the Convention. The effective use of this unique organizational structure merits recognition as a success and good practice under the Convention.

On another cross-cutting issue, the reviewing experts recommended that the Dutch authorities continue efforts to put in place and render fully operational an information system compiling in a systematic manner information on extradition and mutual legal assistance cases, with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements; in doing so, devote more human resources and make a greater effort to maintain statistics regarding compliance with chapter IV of the UNCAC.

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article
The Netherlands cited the following applicable measures:

There are two Acts relevant for extradition in the Netherlands: the Extradition Act (Uitleveringswet) and the Surrender Act (Overleveringswet). Most extradition cases in the Netherlands are being dealt with under the Surrender Act, which is applicable to extradition cases between Member States of the European Union, following the EU Council Framework Decision on the European Arrest Warrant (2002/584/JHA).

The extradition procedures under the Surrender Act and the Extradition Act are to a large extent identical. Nevertheless, there are some important differences, notably concerning the applicable timeframes, the competent authorities and legal remedies.

Under the Extradition Act, the Ministry of Security and Justice acts as a central authority. After a request for extradition has been received, it will be transmitted to a public prosecutor. The case will be considered by a District court with a possibility to submit an appeal before the Supreme Court. In case the courts find that extradition is admissible, the Minister of Security and Justice subsequently decides if the request will be executed.

Under the Surrender Act, the public prosecutor at the District Court of Amsterdam is the central authority to which European Arrest Warrants should be send. The District Court of Amsterdam is exclusively competent to consider European Arrest Warrants. The case has to be considered within a timeframe of 60 days, which can be extended with another 30 days.

The decision of the Amsterdam District Court has a direct effect. It is not possible to file an appeal against the decision of the Amsterdam District Court. The Minister of Security and Justice plays no role in the procedure.

The Dutch Extradition Act stipulates that extradition can only take place on the basis of a treaty. Article 51a of this Extradition Act allows, amongst others, the OECD Convention on combating bribery of foreign public officials in international business transactions, the Criminal law convention on corruption of the Council of Europe, the UN Convention against transnational organized crime and the UN Convention against corruption to be used as such a treaty. Article 51a of the Extradition Act only applies to cases where an international instrument specifically aimed at extradition (for example bilateral treaties, European Convention on Extradition, etc.) is not at hand.

Basic requirements for extradition under both the Extradition Act and the Surrender Act are the following:

- the request is sufficiently documented;
- dual criminality (commission of an offence for which at least a maximum imprisonment of one year can be given by the requesting state or an executable sentence of at least four months) (as an exception, dual criminality is not required for a list of offences as indicated in the EU Council Framework decision on the European Arrest Warrant);
- the person to be surrendered cannot immediately prove his innocence; and
- grounds for refusal are not applicable.

With regard to the requirement of dual criminality, it should be added that not the legal qualification of the behaviour but the conduct itself is leading in establishing dual criminality.

A difference in law between the Netherlands and the requesting state is not in itself an obstacle for extradition.

The country under review cited the following texts:

Article 2 Extradition Act
Extradition shall not take place except in pursuance of a treaty.
Article 5 Extradition Act
1. Extradition may be granted only for the purpose of:
   a. a criminal investigation instituted by the authorities of the requesting state because of a suspicion that the person claimed is guilty of an offence for which a custodial sentence of one year or more may be imposed under the law of both the requesting state and the Netherlands
   b. enforcing a custodial sentence of four months or more to be served by the person claimed in the territory of the requesting state for an offence as referred to under (a).
2. For the purposes of the preceding paragraph, an offence punishable under the law of the Netherlands shall be taken to include an offence violating the legal order of the requesting state if the same violation of the Dutch legal order is punishable under the law of the Netherlands or that of Bonaire, Sint Eustatius and Saba.
3. If, in the case of paragraph 1 (b), the judgment imposing the custodial sentence was given in absentia, extradition shall be allowed only if the person claimed has had or will still be given an adequate opportunity to defend himself.

Article 6 Extradition Act
1. The minimum period of one year laid down in Article 5, first paragraph, under a, shall not apply to extradition to Member States of the European Union, as far as an applicable treaty between the Netherlands and these Member States do not foresee in another minimum period.
2. The minimum period of four months laid down in Article 5, first paragraph, under b, shall not apply to extradition to Belgium or Luxembourg.

Article 51a Extradition Act
1. As regards the offences referred to in paragraph 2, which are punishable pursuant to the treaties referred to in that paragraph, extradition may be granted to states party to the relevant treaty.
2. Paragraph 1 relates to:
   (...) 
   - the offences referred to in Articles 177 and 177a of the Penal Code or Articles 183 and 183a of the Penal Code BES*, provided that the offence falls within the definitions of paragraph 1 and 2 of Article 1 of the Convention on combating bribery of foreign public officials in international business transactions, concluded at Paris on 17 December 1997;
   - the offences referred to in Articles 177 to 178 incl., 328ter and 362 to 364 incl. of the Penal Code or Articles 183 to 184 incl., 341ter and 378 to 380 incl. of the Penal Code BES, provided that the offence falls within the definitions of Articles 2 to 11 incl. of the Criminal Law Convention on Corruption, concluded at Strasbourg on 27 January 1999;
   (...) 
   - the offences referred to in Articles 140, 177 to 178 incl., 284, 285a, 362 to 364 incl., 416 and 420bis to 420quater incl. of the Penal Code, or Articles 146, 183 to 184 incl., 297, 298a, 378 to 380 incl., 431 and 435a to 435c incl. of the Penal Code BES, provided the offence falls within the definitions of Articles 5, 6, 8 and 23 of the Convention against transnational organized crime, concluded at New York on 15 November 2000, and offences with a maximum penalty of at least four years imprisonment, provided that the offence falls within the definition of Article 3, paragraph 1 (b) of that convention.
   (...) 
   - the offences referred to in Articles 177, 177a, 178, 284, 285a, 310, 321, 322, 326, 328ter, 359 to 366 incl., 376, 416, 417, 417bis, 420bis, 420ter and 420quater of the Penal Code, or Articles 183, 183a, 184, 297, 298a, 323, 334, 335, 339, 341ter, 375 to 382 incl., 392, 431, 432, 432bis, 435a, 435b and 435c of the Penal Code BES, provided that the offence falls within the definitions of Articles 15 to 17 incl., 19 and 21 to 25 incl. of the Convention against corruption, concluded at New York on 31 October 2003;
   (...)
3. Extradition pursuant to paragraph 1 shall be effected subject to the provisions of this Act and, if no other extradition treaty applies, to the provisions of the European Convention on Extradition of 13 December 1957.

* Penal Code BES is the Penal Code of the Caribbean part of the Netherlands (Bonaire, Sint Eustatius and Saba, also the BES-islands).

Article 2 Surrender Act
1. A European arrest warrant can only be issued for acts punishable by the law of the issuing Member State by a custodial sentence of a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

(…)

Article 5 Surrender Act
Surrender shall only take place to issuing judicial authorities of other Member States of the European Union, in compliance with the provisions of, or by virtue of, this Act.

Article 6 Surrender Act
1. Surrender of a Dutch person may be allowed where requested because of a criminal investigation against that person if, in the opinion of the executing judicial authority, it is guaranteed that, if he is given a non-suspended custodial sentence in the issuing Member State for acts for which surrender can be allowed, he will be able to serve that sentence in the Netherlands.
2. Surrender of a Dutch person shall not be allowed if the person is requested for execution of a custodial sentenced imposed upon him by final judgment.
3. If surrender is refused solely on the grounds of paragraph 2, the public prosecutor shall notify the issuing judicial authority of the willingness to take over execution of the judgment.
4. The public prosecutor shall immediately notify Our Minister of any surrender with return guaranteed as per paragraph 1, and of any refusal of surrender under the declaration of willingness to take over execution of the foreign judgment in the terms of paragraph 3.
5. Paragraphs 1 - 4 shall also apply to an alien with a residence permit for an indefinite time, where he can be prosecuted in the Netherlands for the acts underlying the European arrest warrant and provided he is expected not to forfeit his right of residence in the Netherlands as a result of a sentence or order imposed upon him after surrender.

Article 7 Surrender Act
1. Surrender shall only be allowed for:
   a. a criminal investigation instigated by authorities of the issuing Member State, where the issuing judicial authority suspects that the requested person has committed:
      1. an act specified as punishable in the law of the issuing Member State and also included on the list in Annex 1 to this Act, on which the law of the issuing Member State imposes a maximum custodial sentence of at least three years; or
      2. another act which is punishable under the laws both of the issuing Member State and of the Netherlands, by maximum custodial sentence of at least twelve months;
   b. serving of a custodial sentence of four or more months by the requested person in the territory of the issuing Member State for an act as per 1 and 2.
2. The list referred to in paragraph 1 (a) (1) may be revised by decree-law if the Council of the European Union decides to extend or amend the punishable offences listed on it. Such a decree-law shall be proposed no earlier than four weeks after submission of the draft to both chambers of the States-General.
3. For the purpose of paragraph 1 (a) (2), an act punishable by Dutch law shall also mean an act which offends against the legal order of the requesting state, while the
same offence against the Dutch legal order is punishable under Dutch law.

4. Article 51a of the Extradition Act shall apply accordingly to surrender between the Member States of the European Union.

The Netherlands cited the following examples of implementation:

Extradition is only possible when it concerns a crime which is punishable under both Dutch law and the law of the requesting state (for an exception to this rule, please refer to the previous answer). If a request is based on offences, listed in the Convention, it is unlikely that dual criminality will raise a problem as the majority of the offences are also criminal offences under Dutch law. So far, no extradition requests based on the UN Convention against Corruption were made to the Netherlands in which dual criminality was an issue. The Netherlands can however provide an example of an extradition request which was solely based on the UN Convention against Corruption.

If a person is wanted for crimes that are covered by the Convention, such a person can be registered in an international database, such as the Interpol database, of wanted persons. If such a person is traced in the Netherlands, in principle that person can be arrested in the view of his extradition.

So far no extradition cases, based solely on this Convention, have been assessed by a court in the Netherlands. The Ministry of Security and Justice did, however, receive a request for extradition which was solely based on this Convention (as no other treaties were applicable) from country X. The wanted person is sought for the crime of embezzlement by a public official.

According to the authorities of country X the wanted person resides in the Netherlands. The wanted person could not be traced by the Netherlands and does not appear in any Dutch register. Therefore the request for extradition has not been presented to a court yet and the Netherlands asked country X for additional information about the possible place of residence of the wanted person.

(b) Observations on the implementation of the article

The reviewing experts noted that a two-tier system on extradition has been put in place in the Netherlands. With regard to other Member States of the European Union, the surrender of fugitives is carried out in line with the requirements of the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States of the European Union. The Framework Decision was domesticated through the Surrender Act. With regard to other countries, the Extradition Act is applicable.

The reviewing experts concluded that the provision has been adequately implemented.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:
The Dutch law does not permit the extradition of a person for the offences covered by this Convention that are not punishable under Dutch criminal law. Article 5 of the Dutch Extradition Act states that dual criminality (and at least a maximum imprisonment of one year) is required for extradition. Almost all of the offences in the Convention are covered in the Dutch Penal Code. Although Article 18 (Trading in influence) and Article 20 (Illicit enrichment) have not as such been implemented in Dutch legislation, the underlying behaviour of these offences can in practice be covered by offences as attempt to bribery and negligent money laundering. For more information, please also refer to Article 18 (Trading in influence) and Article 20 (Illicit enrichment).

The country under review cited the following texts:

**Article 5 Extradition Act**
1. Extradition may be granted only for the purpose of:
   a. a criminal investigation instituted by the authorities of the requesting state because of a suspicion that the person claimed is guilty of an offence for which a custodial sentence of one year or more may be imposed under the law of both the requesting state and the Netherlands
   b. enforcing a custodial sentence of four months or more to be served by the person claimed in the territory of the requesting state for an offence as referred to under (a).
2. For the purposes of the preceding paragraph, an offence punishable under the law of the Netherlands shall be taken to include an offence violating the legal order of the requesting state if the same violation of the Dutch legal order is punishable under the law of the Netherlands or that of Bonaire, Sint Eustatius and Saba.
3. If, in the case of paragraph 1 (b), the judgment imposing the custodial sentence was given in absentia, extradition shall be allowed only if the person claimed has had or will still be given an adequate opportunity to defend himself.

**Article 7 Surrender Act**
1. Surrender shall only be allowed for:
   a. a criminal investigation instigated by authorities of the issuing Member State, where the issuing judicial authority suspects that the requested person has committed:
      1. an act specified as punishable in the law of the issuing Member State and also included on the list in Annex 1 to this Act, on which the law of the issuing Member State imposes a maximum custodial sentence of at least three years; or
      2. another act which is punishable under the laws both of the issuing Member State and of the Netherlands, by maximum custodial sentence of at least twelve months;
   b. serving of a custodial sentence of four or more months by the requested person in the territory of the issuing Member State for an act as per 1 and 2.
2. The list referred to in paragraph 1 (a) (1) may be revised by decree-law if the Council of the European Union decides to extend or amend the punishable offences listed on it. Such a decree-law shall be proposed no earlier than four weeks after submission of the draft to both chambers of the States-General.
3. For the purpose of paragraph 1 (a) (2), an act punishable by Dutch law shall also mean an act which offends against the legal order of the requesting state, while the same offence against the Dutch legal order is punishable under Dutch law.
4. Article 51a of the Extradition Act shall apply accordingly to surrender between the Member States of the European Union.

(b) **Observations on the implementation of the article**

The reviewing experts noted that Netherland’s legislation does not allow for extradition in the absence of dual criminality. However, this provision of the Convention is optional in nature and a flexible approach is taken to the interpretation of this requirement, as noted above.
The fact that the Netherlands has a flexible approach on the issue of double criminality and has criminalized as “equivalent conduct offences” UNCAC offences would seem to reduce any concerns on requirements for double criminality.

It should be noted that almost all the offences established in the Convention are criminalized in the Dutch legal system. The Dutch authorities explained that in those cases, other typologies may be used to grant extradition. For instance, although trading in influence and illicit enrichment have not as such been implemented in the Dutch legal system, the underlying behaviour of these offences can in practice be covered by offences as attempt to bribery and negligent money-laundering.

c) Successes and good practices

- The flexible interpretation of the double criminality requirement based on the underlying conduct of the offence.

**Article 44 Extradition**

**Paragraph 3**

> 3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands cited the following applicable measures:

Paragraph 3 of Article 51a of the Extradition Act stipulates that extradition pursuant to paragraph 1 of Article 51a shall be effected subject to the provisions of the Extradition Act, and, if no other extradition treaty applies, to the provisions of the European Convention on Extradition. Article 2, paragraph 2 of the European Convention on Extradition stipulates that if the request for extradition included several separate offences each of which is punishable under the laws of the requesting and the requested state, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested state shall also have the right to grant extradition for the latter offences.

The following texts were cited:

**Article 51a Extradition Act**

1. As regards the offences referred to in paragraph 2, which are punishable pursuant to the treaties referred to in that paragraph, extradition may be granted to states party to the relevant treaty.
2. Paragraph 1 relates to:
   
   (...)  
   
   - the offences referred to in Articles 177 and 177a of the Penal Code or Articles 183 and 183a of the Penal Code BES*, provided that the offence falls within the definitions of paragraph 1 and 2 of Article 1 of the Convention on combating bribery of foreign public officials in international business transactions, concluded at Paris on 17 December 1997;
- the offences referred to in Articles 177 to 178 incl., 328ter and 362 to 364 incl. of the Penal Code or Articles 183 to 184 incl., 341ter and 378 to 380 incl. of the Penal Code BES, provided that the offence falls within the definitions of Articles 2 to 11 incl. of the Criminal Law Convention on Corruption, concluded at Strasbourg on 27 January 1999;  

(...)  

- the offences referred to in Articles 140, 177 to 178 incl., 284, 285a, 362 to 364 incl., 416 and 420bis to 420quater incl. of the Penal Code, or Articles 146, 183 to 184 incl., 297, 298a, 378 to 380 incl., 431 and 435a to 435c incl. of the Penal Code BES, provided the offence falls within the definitions of Articles 5, 6, 8 and 23 of the Convention against transnational organized crime, concluded at New York on 15 November 2000, and offences with a maximum penalty of at least four years imprisonment, provided that the offence falls within the definition of Article 3, paragraph 1 (b) of that convention.  

(...)  

- the offences referred to in Articles 177, 177a, 178, 284, 285a, 310, 321, 322, 326, 328ter, 359 to 366 incl., 376, 416, 417, 417bis, 420bis, 420ter and 420quater of the Penal Code, or Articles 183, 183a, 184, 297, 298a, 323, 334, 335, 339, 341ter, 375 to 382 incl., 392, 431, 432, 432bis, 435a, 435b and 435c of the Penal Code BES, provided that the offence falls within the definitions of Articles 15 to 17 incl., 19 and 21 to 25 incl. of the Convention against corruption, concluded at New York on 31 October 2003;  

(...)  

3. Extradition pursuant to paragraph 1 shall be effected subject to the provisions of this Act and, if no other extradition treaty applies, to the provisions of the European Convention on Extradition of 13 December 1957.  

Article 2 European Convention on Extradition  

(...)  

2. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.  

(...)  

(b) Observations on the implementation of the article  

The reviewing experts took into account the explanations provided by the Dutch authorities during the country visit that the practice based on the reported provision of the European Convention on Extradition is also applicable in extradition relations with countries that are not parties to this instrument.  

The reviewing experts concluded that the provision has been adequately implemented.  

Article 44 Extradition  

Paragraph 4  

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.
(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:

The Dutch Extradition Act stipulates that extradition can only take place on the basis of a treaty. Article 51a of this Extradition Act allows, amongst others, the OECD Convention on combating bribery of foreign public officials in international business transactions, the Criminal law convention on corruption of the Council of Europe, the UN Convention against transnational organized crime and the UN Convention against corruption to be used as such a treaty.

The Netherlands will make sure that corruption offences are included in the scope of every international instrument on extradition that it concludes, because the fight against corruption is considered to be an important priority in the field of international policy.

Grounds for refusal of extradition requests are set out in the Extradition Act and include the following:

- The offence with respect to which the request is made punishable with the death penalty in the requesting state and the Minister of Security and Justice has not received an undertaking from the requesting state that the death penalty will not be imposed.
- Criminal proceedings are pending in the Netherlands.
- The person has been prosecuted and either been acquitted or convicted under Dutch law.
- The statute of limitations on the penalty has lapsed.
- The Minister of Security and Justice is of the view that the prosecution abroad is motivated by the suspect’s religious or political convictions, his nationality, race or population group, or that the suspect would suffer from exceptional hardship due to his youth, age or ill-health.
- The investigation seems to be in relation to a political offence.

Grounds for refusal of extradition requests under the Surrender Act include the following:

- Criminal proceedings are pending in the Netherlands.
- The person has been prosecuted and either been acquitted or convicted under Dutch law (or the law of an EU-Member State).
- The statute of limitations on the penalty has lapsed.
- The requested person had not yet reached the age of 12 at the time the offence was committed.
- In the opinion of the court, there is justified suspicion, that granting the request would lead to flagrant breach of the fundamental rights of the person concerned, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 11 of the Extradition Act sets out the types of offences which may not be considered “political offences”. Although the offences covered by the UN Convention against corruption are not mentioned in Article 11 of the Extradition Act, they are not considered by Dutch law as political offences.

The following texts were cited:

Article 11 Extradition Act

1. Extradition shall not be granted for offences of a political nature, including offences connected therewith.
2. An attempt on the life or liberty of a Head of State or a member of the reigning House shall not be regarded as an offence of a political nature within the meaning of the provisions of the preceding paragraph.
3. The first paragraph shall not apply to extradition for one of the offences described in article 1 and 2 of the European Convention on the Suppression of Terrorism, Article 2 of the Convention for the Suppression of Terrorist Bombings, Article 2 of the International Convention for the Suppression of the Financing of Terrorism and Article 7 of the
Convention on Nuclear Safety (…), Article 2 of the International Convention for the Suppression of Acts of Nuclear Terrorism, Articles 3, 3bis, 3ter or 3quater of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (…), and Articles 2, 2bis or 2ter of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (…), Articles 5, 6, 7 and 9 of the European Convention on the Prevention of Terrorism, to a state which is obliged in a corresponding case not to refuse extradition to the Netherlands on account of the political nature of the offence.

4. Offences under military law which are not also indictable offences under the general criminal law of the Netherlands, and fiscal offences, shall not constitute grounds for extradition unless specifically provided for by treaty.

5. The provisions of the preceding paragraph relating to offences under military law shall not apply to extradition to Belgium or Luxembourg.

Article 51a Extradition Act

1. As regards the offences referred to in paragraph 2, which are punishable pursuant to the treaties referred to in that paragraph, extradition may be granted to states party to the relevant treaty.

2. Paragraph 1 relates to:

(…)

- the offences referred to in Articles 177 and 177a of the Penal Code or Articles 183 and 183a of the Penal Code BES, provided that the offence falls within the definitions of paragraph 1 and 2 of Article 1 of the Convention on combating bribery of foreign public officials in international business transactions, concluded at Paris on 17 December 1997;
- the offences referred to in Articles 177 to 178 incl., 328ter and 362 to 364 incl. of the Penal Code or Articles 183 to 184 incl., 341ter and 378 to 380 incl. of the Penal Code BES, provided that the offence falls within the definitions of Articles 2 to 11 incl. of the Criminal Law Convention on Corruption, concluded at Strasbourg on 27 January 1999;

(…)

- the offences referred to in Articles 140, 177 to 178 incl., 284, 285a, 362 to 364 incl., 416 and 420bis to 420quater incl. of the Penal Code, or Articles 146, 183 to 184 incl., 297, 298a, 378 to 380 incl., 431 and 435a to 435c incl. of the Penal Code BES, provided that the offence falls within the definitions of Articles 5, 6, 8 and 23 of the Convention against transnational organized crime, concluded at New York on 15 November 2000, and offences with a maximum penalty of at least four years imprisonment, provided that the offence falls within the definition of Article 3, paragraph 1 (b) of that convention.

(…)

- the offences referred to in Articles 177, 177a, 178, 284, 285a, 310, 321, 322, 326, 328ter, 359 to 366 incl., 376, 416, 417, 417bis, 420bis, 420ter and 420quater of the Penal Code, or Articles 183, 183a, 184, 297, 298a, 323, 334, 335, 339, 341ter, 375 to 382 incl., 392, 431, 432, 432bis, 435a, 435b and 435c of the Penal Code BES, provided that the offence falls within the definitions of Articles 15 to 17 incl., 19 and 21 to 25 incl. of the Convention against corruption, concluded at New York on 31 October 2003;

(…)

3. Extradition pursuant to paragraph 1 shall be effected subject to the provisions of this Act and, if no other extradition treaty applies, to the provisions of the European Convention on Extradition of 13 December 1957.

The Netherlands cited the following sample of relevant extradition treaties

**Multilateral extradition instruments:**

European Convention on Extradition

European Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States
Multilateral instruments providing a basis for extradition:
OECD Convention on combating bribery of foreign public officials in international business transactions
Criminal law Convention on corruption of the Council of Europe
United Nations Convention against Transnational Organized Crime
United Nations Convention against Corruption

Bilateral extradition treaties (with an indication of the requirements regarding the applicability of these instruments on extradition):
Netherlands - Canada (general; min. 1 year imprisonment)
Netherlands - United States of America (general; more than 1 year imprisonment)
Netherlands - Australia (general; min. 1 year imprisonment)
Netherlands - Hong Kong (general; min. 1 year imprisonment)
Netherlands - Argentina (list of offences) (old Treaty)
Netherlands - Surinam (general; reciprocity)
Netherlands - Trinidad and Tobago (general; min. 1 year imprisonment)
Netherlands - Mexico (list of offences) (old Treaty)

Article 51a of the Extradition Act only applies in cases where an international instrument specifically aimed at extradition (for example bilateral treaties, European Convention on Extradition, etc) is not at hand. Therefore also, the latter bilateral instruments are not listed under Article 51a of the Extradition Act.

The Netherlands informed they have not received extradition requests based on offences falling under the Convention.

(b) Observations on the implementation of the article

The reviewing experts noted that article 11 of the Extradition Act sets out the types of offences which may not be considered “political offences”. Although the offences covered by the UNCAC are not mentioned, they are not considered by Dutch law as political offences. A request for extradition in relation to an UNCAC offence could not be denied on this basis.

This provision of the Convention also requires that States parties must include all offences established in accordance with the Convention in any extradition treaties they have in place with other States.

The reviewing experts concluded that the provision has been adequately implemented.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:
The Dutch Extradition Act stipulates that extradition can only take place on the basis of a treaty (Article 2). Article 51a of this Extradition Act allows, amongst others, the OECD Convention on combating bribery of foreign public officials in international business transactions, the Criminal law convention on corruption of the Council of Europe, the UN Convention against transnational organized crime and the UN Convention against corruption to be used as such a treaty.

The following texts were cited:

Article 2 Extradition Act
Extradition shall not take place except in pursuance of a treaty.

Article 51a Extradition Act
1. As regards the offences referred to in paragraph 2, which are punishable pursuant to the treaties referred to in that paragraph, extradition may be granted to states party to the relevant treaty.
2. Paragraph 1 relates to:
   
   (...) 
   
   - the offences referred to in Articles 177 and 177a of the Penal Code or Articles 183 and 183a of the Penal Code BES, provided that the offence falls within the definitions of paragraph 1 and 2 of Article 1 of the Convention on combating bribery of foreign public officials in international business transactions, concluded at Paris on 17 December 1997;
   
   - the offences referred to in Articles 177 to 178 incl., 328ter and 362 to 364 incl. of the Penal Code or Articles 183 to 184 incl., 341ter and 378 to 380 incl. of the Penal Code BES, provided that the offence falls within the definitions of Articles 2 to 11 incl. of the Criminal Law Convention on Corruption, concluded at Strasbourg on 27 January 1999;
   
   (...) 
   
   - the offences referred to in Articles 140, 177 to 178 incl., 284, 285a, 362 to 364 incl., 416 and 420bis to 420quater incl. of the Penal Code, or Articles 146, 183 to 184 incl., 297, 298a, 378 to 380 incl., 431 and 435a to 435c incl. of the Penal Code BES, provided the offence falls within the definitions of Articles 5, 6, 8 and 23 of the Convention against transnational organized crime, concluded at New York on 15 November 2000, and offences with a maximum penalty of at least four years imprisonment, provided that the offence falls within the definition of Article 3, paragraph 1 (b) of that convention.
   
   (...) 
   
   - the offences referred to in Articles 177, 177a, 178, 284, 285a, 310, 321, 322, 326, 328ter, 359 to 366 incl., 376, 416, 417, 417bis, 420bis, 420ter and 420quater of the Penal Code, or Articles 183, 183a, 184, 297, 298a, 323, 334, 335, 339, 341ter, 375 to 382 incl., 392, 431, 432, 432bis, 435a, 435b and 435c of the Penal Code BES, provided that the offence falls within the definitions of Articles 15 to 17 incl., 19 and 21 to 25 incl. of the Convention against corruption, concluded at New York on 31 October 2003;
   
   (...) 
   
   3. Extradition pursuant to paragraph 1 shall be effected subject to the provisions of this Act and, if no other extradition treaty applies, to the provisions of the European Convention on Extradition of 13 December 1957.

Article 7 Surrender Act

(...) 

4. Article 51a of the Extradition Act shall apply accordingly to surrender between the Member States of the European Union.

For examples of implementation, please refer to the answer given under Article 44 (Extradition), paragraph 1.

(b) Observations on the implementation of the article
The reviewing experts noted that Netherlands makes extradition conditional on the existence of an extradition treaty and considers the UNCAC as a legal basis for extradition. So far no extradition cases based solely on the UNCAC have been assessed by a court in the Netherlands.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 44 Extradition**

**Subparagraph 6**

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it makes extradition conditional on the existence of a treaty

The country under review considers the UNCAC as the legal basis for extradition in respect to any offence to which this article applies.

The Netherlands confirmed that it has informed the Secretary-General of the United Nations as prescribed above.

(b) **Observations on the implementation of the article**

The reviewing experts noted that the Netherlands makes extradition conditional on the existence of a treaty and considers the Convention as a legal basis to provide extradition. Furthermore, the Netherlands has informed the Secretary-General of the United Nations that it takes the UNCAC as a legal basis for cooperation on extradition with other States parties to the Convention (notification of 22 June 2010).

The reviewing experts concluded that the provision has been adequately implemented.

**Article 44 Extradition**

**Paragraph 7**

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands cited the following applicable measures:
The Dutch Extradition Act stipulates that extradition can only take place on the basis of a treaty (Article 2). Article 51a of this Extradition Act allows, amongst others, the OECD Convention on combating bribery of foreign public officials in international business transactions, the Criminal law convention on corruption of the Council of Europe, the UN Convention against transnational organized crime and the UN Convention against corruption to be used as such a treaty.

The following texts were cited:

Article 2 Extradition Act
Extradition shall not take place except in pursuance of a treaty.

Article 51a Extradition Act
1. As regards the offences referred to in paragraph 2, which are punishable pursuant to the treaties referred to in that paragraph, extradition may be granted to states party to the relevant treaty.
2. Paragraph 1 relates to:
(...)
- the offences referred to in Articles 177 and 177a of the Penal Code or Articles 183 and 183a of the Penal Code BES, provided that the offence falls within the definitions of paragraph 1 and 2 of Article 1 of the Convention on combating bribery of foreign public officials in international business transactions, concluded at Paris on 17 December 1997;
- the offences referred to in Articles 177 to 178 incl., 328ter and 362 to 364 incl. of the Penal Code or Articles 183 to 184 incl., 341ter and 378 to 380 incl. of the Penal Code BES, provided that the offence falls within the definitions of Articles 2 to 11 incl. of the Criminal Law Convention on Corruption, concluded at Strasbourg on 27 January 1999;
(...)
- the offences referred to in Articles 140, 177 to 178 incl., 284, 285a, 362 to 364 incl., 416 and 420bis to 420quater incl. of the Penal Code, or Articles 146, 183 to 184 incl., 297, 298a, 378 to 380 incl., 431 and 435a to 435c incl. of the Penal Code BES, provided the offence falls within the definitions of Articles 5, 6, 8 and 23 of the Convention against transnational organized crime, concluded at New York on 15 November 2000, and offences with a maximum penalty of at least four years imprisonment, provided that the offence falls within the definition of Article 3, paragraph 1 (b) of that convention.
(...)
- the offences referred to in Articles 177, 177a, 178, 284, 285a, 310, 321, 322, 326, 328ter, 359 to 366 incl., 376, 416, 417, 417bis, 420bis, 420ter and 420quater of the Penal Code, or Articles 183, 183a, 184, 297, 298a, 323, 334, 335, 339, 341ter, 375 to 382 incl., 392, 431, 432, 432bis, 435a, 435b and 435c of the Penal Code BES, provided that the offence falls within the definitions of Articles 15 to 17 incl., 19 and 21 to 25 incl. of the Convention against corruption, concluded at New York on 31 October 2003;
(...)
3. Extradition pursuant to paragraph 1 shall be effected subject to the provisions of this Act and, if no other extradition treaty applies, to the provisions of the European Convention on Extradition of 13 December 1957.

(b) Observations on the implementation of the article

The reviewing experts noted that Netherlands make extradition conditional on the existence of an extradition treaty. Hence, this provision is not applicable to the Netherlands. The legal basis for extradition can be found in the United Nations Convention against Corruption.

Consequently, Article 44, paragraph 7 of the Convention is not directly relevant to the Netherlands.
Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:

The Dutch Extradition Act stipulates that extradition can only take place on the basis of a treaty. Dual criminality (and at least a maximum imprisonment of one year) is required under Article 5(1) (a) and (b) of the Extradition Act.

Articles 8, 9, 10 and 11 of the Extradition Act describe the grounds for refusal upon which a request for extradition can be refused - in addition to the condition of an applicable treaty, dual criminality and a maximum imprisonment of at least 1 year.

The Surrender Act replaces the Extradition Act as regards the Member States of the European Union. Article 2 of the Surrender Act says that an European arrest warrant can only be issued for acts punishable by the law of the issuing Member State by a custodial sentence of a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months. Chapter two, Section 1 of the Surrender Act contains the conditions for extradition, including the grounds upon which the Netherlands may refuse extradition.

The following texts were cited:

Chapter 2 Extradition Act: Conditions governing extradition (Articles 2 - 12 Extradition Act)

Article 2 Extradition Act
Extradition shall not take place except in pursuance of a treaty.

Article 3 Extradition Act
If a treaty deviating from this Act is presented to the States-General for approval, We shall at the same time submit a Bill to amend the present Act.

Article 4 Extradition Act
1. Nationals of the Netherlands shall not be extradited.
2. Paragraph 1 shall not apply if the extradition of a Dutch national is requested for a criminal investigation concerning him and in Our Minister’s opinion there is an adequate guarantee that if he is sentenced to a non-suspended custodial sentence in the requesting state for offences for which his extradition may be permitted he will be allowed to service this sentence in the Netherlands.

Article 5 Extradition Act
1. Extradition may be granted only for the purpose of:
a. a criminal investigation instituted by the authorities of the requesting state because of a suspicion that the person claimed is guilty of an offence for which a custodial sentence of
one year or more may be imposed under the law of both the requesting state and the Netherlands;
b. enforcing a custodial sentence of four months or more to be served by the person claimed in the territory of the requesting state for an offence as referred to under (a).
2. For the purpose of the preceding paragraph, an offence punishable under the law of the Netherlands shall be taken to include an offence violating the legal order of the requesting state if the same violation of the Dutch legal order is punishable under the law of the Netherlands or that of Bonaire, Sint Eustatius and Saba.
3. If, in the case of paragraph 1 (b), the judgment imposing the custodial sentence was given in absentia, extradition shall be allowed only if the person claimed has had or will still be given an adequate opportunity to defend himself.

Article 6 Extradition Act
1. The minimum period of one year laid down in Article 5, paragraph 1(a) shall not apply to extradition to Member States of the European Union, as far as an applicable Treaty between the Netherlands and these Member States applies another minimum period.
2. The minimum period of four months laid down in Article 5, paragraph 1(b) shall not apply to extradition to Belgium or Luxembourg.

Article 7 Extradition Act
For the purpose of this act:
a. non-punitive measures depriving a person of his liberty imposed by the court in addition to or instead of a penalty shall be equated with custodial sentences;
b. custodial sentences (including non-punitive measures as referred to under (a)) for life or for an indefinite period shall be equated with custodial sentences of more than one year.

Article 8 Extradition Act
If the offence in respect of which extradition is requested carries the death penalty under the law of the requesting state, the person claimed shall not be extradited unless in Our Minister’s opinion there is an adequate guarantee that this penalty, if imposed, will not be carried out.

Article 9 Extradition Act
1. Extradition of the person claimed shall not be granted for an offence in respect of which:
a. criminal proceedings are pending against him in the Netherlands at the time a decision on the request for extradition is being made;
b. he has been prosecuted in the Netherlands, if renewed prosecution is precluded on the grounds of Article 255, paragraph 1 or 2, Article 255a, paragraph 1 or 2 of the Code of Criminal Procedure or Article 282, paragraph 1 and 2 of the Code of Criminal Procedure BES;
c. he has been acquitted or the charges against him have been dismissed by final judgment of a Dutch court or another court has made a similar irrevocable decision in his respect;
d. he has been convicted by final judgment of a court in cases in which:
  1. the sentence or order imposed has already been served, or
  2. such sentence or order is not capable of immediate enforcement or further enforcement, or
  3. the conviction entails a finding of guilt without imposing a penalty or non-punitive order, or
  4. the final judgment originates from a Dutch court and the power of extradition is not reserved by treaty in such a case;
e. prosecution or, if extradition has been requested in order to enforce a penalty or non-punitive order, punishment has been barred by lapse of time under Dutch law.
2. An exception shall be made to the opening words and (a) of the preceding paragraph in cases in which Our Minister in deciding to grant the request for extradition at the same time orders that the prosecution be terminated.

3. An exception shall be made to the opening words and (b) of paragraph 1 in cases in which the prosecution in the Netherlands has been terminated either because the criminal law of the Netherlands has proved to be inapplicable by reason of Articles 2-8* of the Penal Code or Articles 2-8* of the Penal Code BES or because preference has been given to trial abroad.

* Jurisdiction of the Netherlands

Article 10 Extradition Act
1. Extradition shall not be granted in cases in which in Our Minister’s opinion there are good grounds for believing that if the request were to be granted the person claimed would be prosecuted, punished or otherwise harmed on account of his religious or political convictions, nationality or race or of the population group to which he belongs.

2. Extradition shall not be granted in cases in which in Our Minister’s opinion its consequences would cause exceptional hardship to the person claimed on account of his youth, old age or ill health.

Article 11 Extradition Act
1. Extradition shall not be granted for offences of a political nature, including offences connected therewith.

2. An attempt on the life or liberty of a Head of State or a member of the reigning House shall not be regarded as an offence of a political nature within the meaning of the provisions of the preceding paragraph.

3. The first paragraph shall not apply to extradition for one of the offences described in article 1 and 2 of the European Convention on the Suppression of Terrorism, Article 2 of the Convention for the Suppression of Terrorist Bombings, Article 2 of the International Convention for the Suppression of the Financing of Terrorism and Article 7 of the Convention on Nuclear Safety (...), Article 2 of the International Convention for the Suppression of Acts of Nuclear Terrorism, Articles 3, 3bis, 3ter or 3quater of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (...), and Articles 2, 2bis or 2ter of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (...), Articles 5, 6, 7 and 9 of the European Convention on the Prevention of Terrorism, to a state which is obliged in a corresponding case not to refuse extradition to the Netherlands on account of the political nature of the offence.

4. Offences under military law which are not also indictable offences under the general criminal law of the Netherlands, and fiscal offences, shall not constitute grounds for extradition unless specifically provided for by treaty.

5. The provisions of the preceding paragraph relating to offences under military law shall not apply to extradition to Belgium of Luxembourg.

Article 12 Extradition Act
1. Extradition shall not be granted except on the general condition that the person claimed will not be prosecuted, punished or restricted in his personal freedom in any other way in respect of offences committed before the time of his extradition and for which he has not been extradited, except with the explicit consent of Our Minister.

2. Our Minister may give the consent referred to in the preceding paragraph with respect to:

   a. offences for which the person claimed could have been extradited to the state requesting consent by virtue of the applicable treaty;
b. other offences, in so far as these are punishable both under the law of the state requesting consent and under that of the Netherlands and the possibility of extradition in respect thereof is not precluded by Articles 8-11 of this Act.

3. Furthermore, extradition shall not granted except on the general condition that the person claimed will not, without the explicit consent of Our Minister, be delivered to the authorities of a third state in respect of offences committed before the time of his extradition. Such consent may be given as regards offences for which the person claimed could have been extradited by the Netherlands to the third state.

4. The decision of Our Minister regarding a request for consent as referred to in paragraph 1 and 3 shall be communicated through diplomatic channels to the state making such request, unless some other way has been provided for by treaty.

(…)

6. As regards Member States of the European Union, exceptions in cases other than those referred to in the preceding paragraph may be provided for by treaty.

Article 2 Surrender Act

1. A European arrest warrant can only be issued for acts punishable by the law of the issuing Member State by a custodial sentence of a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

(…)

Chapter 2 Surrender Act: Surrender by the Netherlands, Section 1: Conditions for surrender (Article 5 - 14 Surrender Act)

Article 5 Surrender Act

Surrender shall only take place to issuing judicial authorities of other Member States of the European Union, in compliance with the provisions of, or by virtue of, this Act.

Article 6 Surrender Act

1. Surrender of a Dutch person may be allowed where requested because of a criminal investigation against that person if, in the opinion of the executing judicial authority, it is guaranteed that, if he is given a non-suspended custodial sentence in the issuing Member State for acts for which surrender can be allowed, he will be able to serve that sentence in the Netherlands.

2. Surrender of a Dutch person shall not be allowed if the person is requested for execution of a custodial sentenced imposed upon him by final judgment.

3. If surrender is refused solely on the grounds of paragraph 2, the public prosecutor shall notify the issuing judicial authority of the willingness to take over execution of the judgment.

4. The public prosecutor shall immediately notify Our Minister of any surrender with return guaranteed as per paragraph 1, and of any refusal of surrender under the declaration of willingness to take over execution of the foreign judgment in the terms of paragraph 3.

5. Paragraphs 1 - 4 shall also apply to an alien with a residence permit for an indefinite time, where he can be prosecuted in the Netherlands for the acts underlying the European arrest warrant and provided he is expected not to forfeit his right of residence in the Netherlands as a result of a sentence or order imposed upon him after surrender.

Article 7 Surrender Act

1. Surrender shall only be allowed for:

a. a criminal investigation instigated by authorities of the issuing Member State, where the issuing judicial authority suspects that the requested person has committed:

1. an act specified as punishable in the law of the issuing Member State and also included on the list in Annex 1 to this Act, on which the law of the issuing Member State imposes a maximum custodial sentence of at least three years; or
2. another act which is punishable under the laws both of the issuing Member State and of the Netherlands, by maximum custodial sentence of at least twelve months;
b. serving of a custodial sentence of four or more months by the requested person in the territory of the issuing Member State for an act as per 1 and 2.
2. The list referred to in paragraph 1 (a) (1) may be revised by decree-law if the Council of the European Union decides to extend or amend the punishable offences listed on it. Such a decree-law shall be proposed no earlier than four weeks after submission of the draft to both chambers of the States-General.
3. For the purpose of paragraph 1 (a) (2), an act punishable by Dutch law shall also mean an act which offends against the legal order of the requesting state, while the same offence against the Dutch legal order is punishable under Dutch law.
4. Article 51a of the Extradition Act shall apply accordingly to surrender between the Member States of the European Union.

Article 8 Surrender Act
For the purposes of this Act, life sentences and custodial sentences of indefinite period shall be equated to custodial sentences longer than twelve months.

Article 9 Surrender Act
1. Surrender of the requested person shall not be permitted for an act concerning which:
   a. criminal proceedings are in progress against him in the Netherlands;
   b. he has been prosecuted in the Netherlands but renewed prosecution is precluded under Article 255, paragraphs 1 and 2, or Article 255a, paragraphs 1 and 2 of the Code of Criminal Procedure; or he is not being prosecuted in the Netherlands because he has met the conditions of Article 74 of the Penal Code.
   c. he can no longer be prosecuted under the law of another Member State, as a result of a final ruling given in that Member State concerning the same act;
   d. he has been acquitted or discharged from prosecution by final judgment of a Dutch judge, or a judge of another Member State of the European Union or of a third country has given a corresponding final ruling concerning him;
   e. he has been sentenced by final judgment in cases where:
      1. the sentence or order imposed has already been served;
      2. the sentence or order imposed is no longer eligible for execution or further execution;
      3. the sentence and conviction do not entail imposition of a punishment or order;
      4. the imposed punishment or order is served in the Netherlands;
   f. under Dutch law, legal authority can be exercised but prosecution or, where surrender is requested for execution of a sentence or order, punishment are statute-barred.
2. Exceptions from paragraph 1a shall be possible in cases in which Our Minister, on the advice of the public prosecutor’s office, and prior to the decision to surrender, has ordered the prosecution to be suspended.
3. Exceptions from paragraph 1b shall be possible in cases in which prosecution is suspended in the Netherlands, either because Dutch criminal law appeared inapplicable on the grounds of one of Articles 2 - 8 of the Penal Code, or because trial abroad was preferred.

Article 10 Surrender Act
Surrender shall not be allowed if the requested person had not yet reached the age of 12 at the time the offence was committed.

Article 11 Surrender Act
Surrender shall not be allowed in cases in which, in the opinion of the court, there is justified suspicion, based on facts and circumstances, that granting the request would lead to flagrant breach of the fundamental rights of the person concerned, as guaranteed by the

Article 12 Surrender Act
Surrender shall not be allowed if the European arrest warrant concerns execution of a judgment given in absentia without the suspect being summoned in person or otherwise personally notified of the date and place of the proceedings at the session, unless the issuing judicial authority gives sufficient guarantee that the requested person will, after surrender, be given the opportunity to apply for and be present at a retrial.

Article 13 Surrender Act
1. Surrender shall not be allowed if the European arrest warrant concerns an offence which:
   a. is regarded as having been committed in whole or in part in the territory of the Netherlands or outside the Netherlands on board a Dutch vessel or aircraft; or
   b. was committed outside the territory of the issuing state, while under Dutch law no prosecution could be brought if the offence had been committed outside the Netherlands.
2. At the public prosecutor’s request, and only in the terms of paragraphs 1(a) and 1(b), a refusal of surrender shall be waived, unless, in the opinion of the court, the public prosecutor could not reasonably make such a request.

Article 14 Surrender Act
1. Surrender shall only be allowed on the general condition that the requested person shall not be prosecuted, punished or have his personal freedom otherwise curtailed because of acts committed before the time of his handover and for which he is not being handed over, unless:
   a. the requested person, despite having had the opportunity to leave, has not, within 45 days of final release, left the territory of the Member State to which he is surrendered or if, having left that territory, he has returned to it;
   b. the acts do not carry a custodial sentence;
   c. the criminal prosecution does not lead to imposition of an order curtailing freedom;
   d. the matter at issue is execution of a non-custodial sentence, including a substitute sentence, e.g. for non-payment of a fine;
   e. the requested person has expressly consented to prosecution after his surrender; or
   f. authorisation was applied for to the public prosecutor for this purpose beforehand and was obtained.
2. Surrender shall further only be allowed on the general condition that the requested person shall not be placed at the disposal of the authorities of another Member State of the European Union for acts committed before the time of his surrender, unless:
   a. the requested person, despite having had the opportunity to leave, has not, within 45 days of final release, left the territory of the Member State to which he is surrendered or if, having left that territory, he has returned to it;
   b. after surrender, the requested person expressly consented to it; or
   c. authorisation was applied for to the public prosecutor for this purpose beforehand and was obtained.
3. At the request of the issuing judicial authority, and on the basis of the submitted European arrest warrant with translation, the public prosecutor shall give the authorisation mentioned in paragraph 1f or 2c concerning acts for which, under this Act, surrender could have been allowed. The decision on a request shall, in any case, be made within thirty days of receipt.
4. Surrender shall further only be allowed on the general condition that the requested person shall not be placed at the disposal of the authorities of a third state for acts committed before the time of his surrender, unless authorisation is applied for to Our Minister for this purpose, and obtained.
With regard to information on conditions and grounds upon which extradition requests were refused, the Netherlands stated:

No example can be provided of an extradition case relating to corruption which was refused on the basis of this Article

(b) Observations on the implementation of the article

The reviewing experts noted that under the Extradition Act and the Surrender Act, the offence for which extradition is sought must be punishable by imprisonment of at least 12 months. Specific examples of where extradition requests have been refused on the basis that these minimum sentence have not been met have not been provided.

The grounds for refusal of extradition requests are set out in the Extradition Act and include the following: death penalty in the requesting State and lack of assurances that the death penalty will not be imposed; pending criminal proceedings in the Netherlands; ne bis in idem; political offences; lapse of time; expected discriminatory treatment in the requesting State on account of the person’s religious or political convictions, nationality, race or population group, or that the suspect would suffer from exceptional hardship due to his youth, age or ill-health; justified suspicion that granting the request would lead to flagrant breach of the fundamental rights of the person concerned, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms; and execution of a judgment in absentia in the requesting State with lack of assurances that the person sought will, after surrender, be given the opportunity to apply for and be present at a retrial. Similar grounds for refusal are set forth in the Surrender Act.

The reviewing experts concluded that the provision has been adequately implemented.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:

The Minister of Security and Justice is the central authority in extradition cases under the Extradition Act. Extradition requests must be send through the diplomatic channels, however in some treaties direct delivery to the Ministry of Security and Justice is allowed. Extradition requests based on the UN Convention against Corruption have to be send through diplomatic channels.

Upon verification that the legal requirements under the Extradition Act are met, the Minister of Security and Justice transmits the request to a public prosecutor. The case will be considered by a District court with a possibility to submit an appeal before the Supreme Court. In case the court finds that extradition is admissible, the Minister of Security and Justice subsequently decides if the request will be executed.
Detailed provisions on how and the timeframes within which extradition requests are to be dealt with as well as the requirements such requests must meet are set out in Part B of the Extradition Act. Once the court has decided whether a specific request meets the requirements under Dutch law, the Minister of Security and Justice is required under Article 33 of the Extradition Act to decide “as soon as possible” whether a request is to be granted.

The length of an extradition procedure invariably depends on whether the person appeals against the decision of the court and/or the Minister of Security and Justice.

The implementation of the European Framework Decision on the European Arrest Warrant in the Dutch Surrender Act has simplified and sped up the procedures for extradition from the Netherlands to a Member-State of the European Union.

There are simplified procedures of extradition in place. Please refer to Part E of the Extradition Act (Part E, Articles 41-45 Extradition Act) and Part E of the Surrender Act (Part E, Articles 39-43 Surrender Act).

The following texts were cited:

Chapter 3 Extradition Act - Extradition procedure, Part E - Expedited procedure (Articles 41 - 45)

Article 41 Extradition Act
1. An alien whose provisional arrest or extradition has been requested by another state may - not later than the day prior to that set for the hearing by the district court in accordance with Article 24 - declare that he agrees to immediate extradition.
2. In so far as not otherwise provided for by treaty, a declaration in accordance with the preceding paragraph may be made only before an examining magistrate responsible for dealing with criminal matters.
3. In making such a declaration, the alien may be assisted by a counsel. Should he appear without counsel his attention shall be drawn to this right by the authority empowered to receive the declaration.
4. Before he makes the declaration, the alien shall be informed of the possible consequences thereof. An official record shall be made of the declaration.
5. The authority before whom the declaration is made shall send the official record thereof to the public prosecutor who has been concerned under this Act with the request for provisional arrest or the request for extradition.

Article 42 Extradition Act
1. After a declaration has been made in accordance with Article 41, the public prosecutor may decide that the alien should be surrendered to the authorities of the state making the request for provisional arrest or the request for extradition.
2. The preceding paragraph shall not apply:
   a. if, under any of the provisions of Articles 2 and 9, extradition cannot be granted for the offence or offences in connection with which the provisional arrest or extradition has been requested;
   b. if it appears that criminal proceedings are pending in the Netherlands against the alien or if he has been sentenced by a Dutch court and all or part of such sentence can still be enforced.
3. The public prosecutor shall inform Our Minister forthwith of every decision taken pursuant to paragraph 1 of this Article.

Article 43 Extradition Act
1. If the public prosecutor has decided in accordance with Article 42 that the alien shall be surrendered to the authorities of the other state, Article 23 shall not apply.
2. If the application referred to in Article 23 has already been lodged with the court, this shall then be withdrawn forthwith. The court registrar shall then return the request for extradition, together with the documents pertaining to it, to the public prosecutor.
3. The public prosecutor shall inform the person claimed of the withdrawal of such application.

Article 44 Extradition Act
1. After the day on which he has made the declaration referred to in Article 41, the alien may be kept in custody on remand or in police detention for not more than twenty days.
2. The preceding paragraph shall not apply if the public prosecutor has decided that no effect will be given to the declaration, and the request for extradition, together with the documents pertaining to it, has been submitted to the district court in accordance with Article 23, paragraph 1.
3. The period referred to in paragraph 1 of this Article may, upon the application of the public prosecutor, be extended by the court. Article 38, paragraph 1 and 2, shall apply mutatis mutandis.
4. Extension may take place only if extradition cannot be effected within the period of twenty days owing to circumstances of an exceptional nature.

Article 45 Extradition Act
1. If Article 42, paragraph 1 applies, the public prosecutor shall, after consulting the competent foreign authorities, without delay fix the time and place at which extradition will take place.
2. With a view to extradition in pursuance of the provisions of this Part, the public prosecutor may if necessary order that the alien be arrested. Article 40, paragraph 2 and 3, shall apply mutatis mutandis.
3. In the event of extradition by virtue of the provisions of this Part, Article 12 shall not apply.

Chapter 2 Surrender Act - Surrender by the Netherlands, Section 2 - Surrender procedure, Part E - Abbreviated procedure (Articles 39 - 43)

Article 39 Surrender Act
1. A requested person reported on the Schengen information system for the purpose of arrest with a view to surrender or for whom a European arrest warrant has been received may declare, no later than the day before that appointed for the court hearing as per Article 24, that he consents to his immediate surrender.
2. A declaration as per paragraph 1 may be made before any public prosecutor at the time of taking into custody. After this, the declaration can only be made before the public prosecutor at Amsterdam District Court or before the examining judge. A declaration, once made, cannot be withdrawn.
3. The requested person may use the assistance of a legal counsel when making the declaration. If he appears without such counsel, the judicial authority authorised to receive such a declaration may draw his attention to this.
4. Before making the declaration, the requested person shall be warned of its possible consequences, especially as prescribed in Article 43.3. A record of the declaration shall be drawn up.
5. The examining judge before whom the declaration is made shall immediately send the record of it to the public prosecutor.

Article 40 Surrender Act
1. No later than ten days after a declaration has been made as per Article 39, the public prosecutor shall decide whether to place the requested person at the disposal of the issuing judicial authority from which the report on the Schengen information system or the European arrest warrant emanated.
2. Paragraph 1 shall not apply:
a. if, in accordance with one of Articles 6.2 and 9 - 11, surrender cannot take place for the act or acts for which the alert or European arrest warrant was issued;
b. if it appears that criminal proceedings are under way in the Netherlands against the requested person or that a Dutch judge has delivered a criminal judgment against him which is still enforceable, in whole or in part.
3. The public prosecutor shall immediately notify the issuing judicial authority of every decision made by virtue of paragraph 1 of this Article.

Article 41 Surrender Act
1. If the public prosecutor has decided, in accordance with Article 40, to place the requested person at the disposal of the issuing judicial authority of the other Member State, Article 23.2 shall not apply.
2. If the request as per Article 23.2 has already been submitted to the court, it shall immediately be withdrawn. The clerk of the court shall then return the European arrest warrant and related documents to the public prosecutor.
3. The public prosecutor shall notify the requested person of the withdrawal of such request.

Article 42 Surrender Act
1. After the date of the declaration as per Article 39, the requested person may only continue in custody or detention a maximum of 20 days.
2. Paragraph 1 shall not apply if the public prosecutor has decided not to act on the declaration and the European arrest warrant has been passed to the court as per Article 23.2.
3. The court may extend the deadline set in paragraph 1 of this Article, at the public prosecutor’s request, in each case by a maximum of 30 days, and only if the actual surrender could not take place within the 20-day deadline, due to special circumstances.

Article 43 Surrender Act
1. If Article 40.1 applies the public prosecutor, in consultation with the competent foreign authorities, shall immediately decide the time and place at which actual surrender is to take place.
2. Where necessary to actual surrender as per this Article, the public prosecutor may order the detention of the requested person for a maximum of three days. If actual surrender could not take place within the three-day deadline, the public prosecutor may extend the detention order once, for a maximum of three days. Article 37 paragraphs 2 and 3 shall apply accordingly.
3. In case of surrender as per this Article, Article 14 shall not apply.

The Netherlands cited the following examples of implementation:

In extradition procedures (both under the Extradition Act and the Surrender Act), the court will not assess the evidence in the underlying criminal case.
The extradition procedure according to Dutch law contains a court session, an appeal procedure and a decision from the Ministry of Security and Justice.

A shorter procedure is also possible; the Dutch law offers the possibility for the wanted person to be extradited via the so called shortened procedure. This means that, after the arrest, the wanted person has to declare in front of the judge that he agrees with his extradition. In that case he will be extradited within 20 days. A consequence of choosing this shortened procedure is that the rule of speciality is renounced by the wanted person, meaning that the wanted person can be prosecuted in the requested state for more offences than for which the extradition is requested. Generally 20% of all persons
choose for this procedure. No such procedure occurred in a case relating to crimes punishable according to the UN Convention against Corruption.

On the average length of time for an extradition procedure executed by the Netherlands, the Netherlands informed that the European Arrest Warrant should be processed in 30 days plus 6 days, while the normal district court procedure takes about 3 months. The whole extradition procedure could take one or one and a half years.

(b) Observations on the implementation of the article

The reviewing experts noted that the formalities and information necessary in order to process a request for extradition are found in Part E of the Extradition Act (Part E, Articles 41-45 Extradition Act) and Part E of the Surrender Act (Part E, Articles 39-43 Surrender Act).

The length of extradition proceedings invariably depends on whether the person appeals against the decision of the court and/or the Minister of Security and Justice. There are simplified procedures of extradition in place (Part E of the Extradition Act), whereby the person sought has to declare in front of the judge that he agrees with his extradition. In that case, he/she will be extradited within 20 days. A consequence of choosing this shortened procedure is that the rule of speciality is renounced by the wanted person. No such procedure occurred in a case relating to crimes punishable according to the UNCAC. In relation to surrender procedures to other European Union Member States, the EAW process has contributed to substantially shortening the period needed for the surrender of a fugitive to another EU Member State.

The Netherlands also provided further explanation about the not analysis of the evidence on the underlying criminal case.

The reviewing experts concluded that the provision has been adequately implemented.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

Chapter III Extradition Act - Extradition procedure, Part A - Provisional arrest (Articles 13-17)

Article 13 Extradition Act
1. In so far as this is provided for by treaty, the provisional arrest of an alien in the Netherlands may be ordered - in the cases described in the following paragraph - at the request of the competent authority of another state if there is good reason to expect that a request for his extradition capable of being granted will shortly be made by that state.
2. Provisional arrest may be ordered when requested:
a. in connection with a criminal investigation instituted because the alien is suspected of being guilty of an offence in respect of which a person may be remanded in custody under the law of the Netherlands;
b. with a view to giving effect to a custodial sentence or a non-punitive order as mentioned in Article 7(a);
c. in cases other than provided for in (a) and (b) if the alien has no fixed abode or place of residence in the Netherlands.

(…)

Article 14 Extradition Act
1. Any public prosecutor or assistant public prosecutor may order that an alien be provisionally arrested in accordance with Article 13.
2. Within twenty-four hours of being provisionally arrested the alien shall be brought before the public prosecutor or assistant public prosecutor who issued the warrant for his provisional arrest.
3. After hearing the alien, the public prosecutor or assistant public prosecutor may order that he be remanded in custody for forty-eight hours from the time of the provisional arrest. The assistant public prosecutor shall inform the public prosecutor in writing of his order as soon as possible.
4. The period of the remand in custody may be extended once for forty-eight hours by the public prosecutor.
5. The alien may be released at any time by the public prosecutor. If the remand in custody has not been extended, the assistant public prosecutor who issued the warrant for provisional arrest shall also have this power.

Article 15 Extradition Act
1. The examining magistrate in charge of dealing with criminal matters at the court of the district in which an alien has been remanded in custody in accordance with Article 14 may order the alien's further remand in custody at the request of the public prosecutor at such district court.
2. Before making an order under the preceding paragraph, the examining magistrate shall hear the alien if possible.

Article 16 Extradition Act
1. An alien whose remand in custody has been ordered by the examining magistrate in accordance with Article 15 shall be released, subject to the possibility of further deprivation of his liberty for other reasons:
a. as soon as this is ordered by the district court, the examining magistrate or the public prosecutor ex officio or at the request of the alien or his counsel;
b. as soon as the period has elapsed within which, according to the applicable treaty, his provisional arrest must be followed by a request for extradition, if no such request has yet been made;
c. as soon as the remand in custody has lasted for twenty days.
(…)

Article 17 Extradition Act
Our Minister shall be notified forthwith of every decision made pursuant to any of the provisions of Articles 13-16.

Chapter III Extradition Act - Extradition procedure, Part D - Continued deprivation of liberty and removal from the Netherlands (Articles 37-40)

Article 37 Extradition Act
1. Deprivation of liberty ordered in pursuance of Article 27 shall be terminated - subject to the possibility of further deprivation of liberty on other grounds - as soon as:
a. this is ordered by the district court or by the public prosecutor, either ex officio or at the request of the person in custody or his counsel, or by the Supreme Court in its decision on an appeal in cassation;
b. the custody has lasted for thirty days unless the district court has meanwhile extended this period upon the application of the public prosecutor.
2. The public prosecutor shall in any event order that the deprivation of liberty be terminated as soon as he has been notified of a decision by Our Minister refusing the request for extradition.

Article 38 Extradition Act
1. The period referred to in Article 37(b) may be extended for not more than thirty days at a time.
2. The court shall not give a decision on an application for an extension until after the person in custody has been heard in respect thereof.
3. Extension may take place only in cases in which:
   a. the court's judgment regarding the request for extradition has not yet become final or has become final less than thirty days prior to the request for an extension;
   b. Our Minister has deferred a decision in accordance with Article 33, paragraph 3;
   c. extradition has also been requested by a third state and Our Minister has not yet made a decision relating to the request of that state;
   d. extradition has meanwhile been granted but has not yet been able to take place.

Article 39 Extradition Act
1. After all or part of the request for extradition has been granted, the person claimed shall be surrendered to the authorities of the requesting state as quickly as possible, at a time and place to be decided by Our Minister after consulting the said authorities.
2. The decision regarding the time and place of extradition may be deferred if and for as long as criminal proceedings are pending in the Netherlands against the person claimed or if he has been sentenced by a Dutch court and such sentence can still be executed in whole or in part.
3. In the cases provided for in the preceding paragraph, Our Minister may, if he considers that there are suitable grounds, order that the person claimed be provisionally and immediately surrendered to the authorities of the requesting state for the purpose of trying him in that state's territory.
4. If the preceding paragraph is applied to a claimed person who is serving a custodial sentence, the time during which he is surrendered to the authorities of the requesting state shall be deducted from the term of his sentence.

Article 40 Extradition Act
1. If this is necessary for the purposes of Article 39, paragraph 1 or 3, the person claimed shall be arrested under a warrant issued by a public prosecutor on the instruction of Our Minister.
2. If the person claimed is not taken over by the competent foreign authorities at the time and place fixed by Our Minister, such person may, after the time and place of his extradition have again been fixed, be re-arrested if necessary, in accordance with the preceding paragraph.
3. Deprivation of liberty based solely on a warrant for arrest under paragraph 1 or 2 of this Article shall not under any circumstances last longer than forty-eight hours.

Chapter 2 Surrender Act - Surrender by the Netherlands, Section 2 - Surrender procedure, Part A - Provisional arrest (Articles 15-19)

Article 15 Surrender Act
The provisional arrest of a requested person who is in the Netherlands may be ordered on the basis of a report in the Schengen information system, as per Article 4.1.

Article 16 Surrender Act
An alien arrested under Article 54.4 of the Code of Criminal Procedure may, by order of the public prosecutor or deputy public prosecutor, be held in the district of arrest if there is good cause to expect that an alert as per Article 4.1 will be issued concerning him without delay, or that a European arrest warrant will be received. Article 61.2 of that Code shall apply accordingly.

Article 17 Surrender Act
1. Any public prosecutor or deputy public prosecutor shall be authorised to order the provisional arrest of a requested person in the terms of Article 15.
2. If the public prosecutor or deputy as per paragraph 1 cannot be expected to be present, any investigating officer shall be authorised to arrest the requested person, but is bound to ensure that he is brought before the public prosecutor or deputy public prosecutor as soon as possible.
3. Having heard the requested person, any public prosecutor or deputy may order that he be held in custody for three days from the time of provisional arrest. The public prosecutor at Amsterdam District Court may extend the period of custody once, by three days.
4. If the requested person is arrested and held in custody outside Amsterdam district, he shall be handed over to the public prosecutor at Amsterdam District Court within the periods stated in paragraph 3.
5. Paragraph 4 may be ignored if the requested person has stated to the public prosecutor in the district of his arrest that he consents to immediate surrender, the public prosecutor at Amsterdam District Court has decided to place the requested person at the issuing authority’s disposal, and actual surrender can take place by the deadlines of paragraph 3.
6. The public prosecutor at Amsterdam District Court may set the requested person at liberty at any time.

Article 18 Surrender Act
1. At the request of the public prosecutor at Amsterdam District Court, the examining judge may order the detention of the requested person.
2. Before issuing an order as per paragraph 1, the examining judge shall, if possible, hear the requested person.

Article 19 Surrender Act
A requested person whose detention is ordered as per Article 18 shall be set free, without prejudice to the possibility of further deprivation of liberty on another count:
a. if so ordered by the court, the examining judge or the public prosecutor, officially or at the request of the requested person or his counsel;
b. if the detention has lasted twenty days and no European arrest warrant has yet been received.

Chapter 2 Surrender Act - Surrender by the Netherlands, Section 2 - Surrender procedure, Part B - Arrest (Articles 20-21)

Article 20 Surrender Act
1. A European arrest warrant not sent to the public prosecutor shall be forwarded to him immediately.
2. A European arrest warrant may only be dealt with if it meets the requirements described in Article 2.
3. If the public prosecutor considers that a European arrest warrant does not meet the requirements of Article 2, he shall offer the issuing judicial authority an opportunity to complete or improve it.

4. If, in the opinion of the public prosecutor, particulars supplementary to the European arrest warrant are necessary, specifically relating to Articles 7 - 9 and 11 - 13, he shall give the issuing judicial authority the opportunity to supplement or improve them, allowing for the periods stated in Article 22.

Article 21 Surrender Act
1. The requested person may be arrested without further formalities on the basis of a European arrest warrant which meets the requirements of Article 2.
2. Paragraph 1 shall not apply as long as the requested person enjoys immunity from criminal prosecution and execution of penalties in the Netherlands. The issuing judicial authority shall be immediately informed of the nature of such immunity, and asked to report as soon as the immunity is lifted.
3. If the requested person has already been provisionally arrested as per Article 17, the provisional arrest shall be converted to arrest as per paragraph 1 from the date on which the public prosecutor dealt with the arrest warrant as per Article 20.2. The requested person shall be notified of the conversion and informed that the arrest will continue until the court has decided on his imprisonment.
4. A requested person arrested as per paragraph 1 shall be brought before the public prosecutor or, in his absence, the deputy public prosecutor in the district of his arrest, within 24 hours.
5. The public prosecutor or deputy public prosecutor as per paragraph 4 may order that the requested person remain in custody for three days from the time of provisional arrest.
6. If the requested person is arrested and placed in custody outside Amsterdam district, he shall be transferred to the public prosecutor at Amsterdam District Court within the custody term.
7. Paragraph 4 shall not apply if the requested person has stated to the public prosecutor in the district of arrest that he consents to his immediate surrender, the public prosecutor at Amsterdam District Court has decided to place the requested person at the disposal of the issuing judicial authority, and actual surrender can take place within the custody term.
8. Having heard the requested person, the public prosecutor at Amsterdam District Court may order him to remain in custody until the court has decided on his imprisonment.
9. The custody order may be lifted at any time, either by the Court of Amsterdam or by the public prosecutor in Amsterdam, officially or at the request of the requested person or of his counsel.

Chapter 2 Surrender Act - Surrender by the Netherlands, Section 2 - Surrender procedure, Part D - Continued detention and actual surrender (Articles 33-38)

Article 33 Surrender Act
Detention ordered by virtue of Article 27, without prejudice to the possibility of further deprivation of liberty on other grounds, shall end provided
a. the court or public prosecutor so orders, either officially or at the request of the requested person or his counsel;
b. ten days have elapsed since the date of the verdict unless the court, at the public prosecutor’s request, has meanwhile extended the detention.

Article 34 Surrender Act
1. Detention as per Article 33.b may be extended for a maximum of ten days.
2. Notwithstanding paragraph 1, detention may be extended by a maximum of thirty days each time if:
   a. the International Criminal Court or other international tribunal has requested extradition or surrender and Our Minister has not yet decided on the request; b. surrender
has been allowed, but it has not been possible to complete the actual surrender by the set deadline.
3. The requested person shall be given the opportunity to be heard concerning the extension request.

Article 35 Surrender Act
1. As soon as possible after the verdict allowing surrender in whole or in part, and no later than ten days after the date of the verdict, the requested person shall actually be surrendered. The public prosecutor, in consultation with the issuing judicial authority, shall decide the time and place.
2. If special circumstances mean that actual surrender cannot take place by the deadline set in paragraph 1, a new date shall be set by mutual consultation. Actual surrender shall then take place no later than ten days after the set date.
3. As an exception, the actual surrender may be omitted where there are serious humanitarian reasons against actual surrender, especially where it is irresponsible for the requested person to travel, given his state of health. The issuing judicial authority shall immediately be informed of this. The public prosecutor, in consultation with the issuing judicial authority, shall decide the time and place at which actual surrender can yet take place. Actual surrender shall then take place no later than ten days after the set date.
4. The detention of the requested person shall end on expiry of the deadlines of paragraphs 1 - 3.

Article 36 Surrender Act
1. The decision on the time and place of actual surrender shall stand if, and as long as, the requested person is under criminal prosecution in the Netherlands, or a criminal judgment delivered against him by a Dutch judge is still enforceable, in whole or in part.
2. In the cases envisaged in paragraph 1 Our Minister, on the advice of the Public Prosecutor’s Office, may rule that the requested person be placed immediately at the provisional disposal of the issuing judicial authority, and on what terms.
3. If paragraph 2 applies, the public prosecutor shall give notice that the requested person is to be placed provisionally at the disposal of the issuing judicial authority, with which he shall also agree terms in writing.
4. If the requested person to whom paragraph 3 applies receives a custodial sentence, the time during which he was at the disposal of the issuing judicial authority abroad shall be deducted from the time of his sentence.

Article 37 Surrender Act
1. If necessary for the application of Article 35(1) or (2), the requested person shall be arrested for a maximum of three days by order of the public prosecutor. If actual surrender cannot take place within the three-day period, the public prosecutor may extend the order for the arrest for a maximum of three days.
2. After the public prosecutor has extended the deadline of paragraph 1, only the court may extend it, for a maximum of ten days, at the public prosecutor’s request.
3. Extension as per paragraph 2 shall only be granted when special circumstances prevented actual surrender within the six-day period as per paragraph 1.

Article 38 Surrender Act
On actual surrender, the public prosecutor shall inform the issuing judicial authority or designated central authority, as the case may be, of the duration of the detention of the requested person, with a view to his surrender.

Regarding information on recent court or other cases in which a person whose extradition was sought and who was present in its territory has been taken into custody and cases in which other appropriate
measures were taken to ensure his or her presence at extradition proceedings, the Netherlands stated that:

It is common practice that persons who are sought for extradition are arrested and held in custody prior to their court session and extradition. Once a person is arrested he will be brought before an examining judge. The examining judge will then consider whether the conditions according to article 67a of the Code of Criminal Procedure have been met.

Only when certain conditions are met, such as a current address in the Netherlands combined with the absence of flight risk, can the Court decide to release the person from custody.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:

The Netherlands can extradite its nationals, although only for the purpose of prosecution (and not for the execution of a sentence), under the guarantee that if the extradited Dutch national was to be sentenced to imprisonment in the requesting state, the person would be allowed to serve the sentence in the Netherlands on the basis of a transfer of the execution of the sentence (Article 4, paragraph 2, Extradition Act) (Article 6 Surrender Act).

If extradition is refused on the grounds of nationality, the Netherlands can, on the basis of Article 552x (and further) of the Code of Criminal Procedure, take over the prosecution from another state.

The Netherlands provided the following information on recent court or other cases submitted for prosecution by its authorities:

Under the principle ‘aut dedere, aut iudicare’, the Netherlands in principle can consider starting a prosecution if extradition is denied.

There is no legal obligation to do so. It is however common practice, before the decision is made to bring a request for extradition before a court that the Netherlands informs the requesting state that
extradition cannot take place as the situation as mentioned in paragraph 11 occurs and offers the requesting state, when legally possible, to transfer the criminal proceedings.

The following texts were cited:

Article 4 Extradition Act
1. Nationals of the Netherlands shall not be extradited.
2. Paragraph 1 shall not apply if the extradition of a Dutch national is requested for a criminal investigation concerning him and in Our Minister’s opinion there is an adequate guarantee that if he is sentenced to a non-suspended custodial sentence in the requesting state for offences for which his extradition may be permitted he will be allowed to serve this sentence in the Netherlands.

Article 4a Penal Code
1. Dutch criminal law is applicable to any person whose process of criminal prosecution has been transferred from another country to the Netherlands on the grounds of a treaty, in which treaty such criminal prosecution by the Netherlands has been authorised.

(...) 

Article 552x Code of Criminal Procedure
The public prosecutor who receives a direct request from a foreign authority to institute criminal proceedings, shall notify the Minister of Justice of the request, and shall submit his advice, together with the necessary documents.

Article 552y Code of Criminal Procedure
1. The Minister of Justice shall reject a request from a foreign authority to institute criminal proceedings, if it may be determined immediately that
   a. the request pertains to an alien who has his fixed domicile or residence outside the Netherlands;
   b. the offence for which the criminal proceedings are requested
      1°. is not punishable under Netherlands law;
      2°. is of a political nature, or relates to a criminal offence of a political nature;
      3°. is a military offence;
   c. the right to prosecute for an offence for which criminal proceedings are requested is precluded under Netherlands law or under the laws of the state that makes the request for reason of lapse of time;
   d. the request for criminal proceedings is intended to affect the person to whom it concerns because of his religious, ideological, or political beliefs, or his nationality, race, or the ethnic group to which he belongs;
   e. criminal proceedings in the Netherlands would be in violation of the provisions of section 68 of the Criminal Code.
2. The condition as referred to in the preamble of paragraph 1 and under (a) is not applicable if the request pertains to criminal proceedings related to the confiscation of illegally obtained profits or advantages, within the meaning of Title IIIb of Book IV.

Article 552bb Code of Criminal Procedure
1. As soon as possible after he has received the advice of the public prosecutor, the Minister of Justice shall take a decision, whereby the request for criminal proceedings shall either be granted or denied.
2. The Minister shall in any event deny a request if one of the grounds as set forth in Article 552y appear to exist.
3. Furthermore, the Minister shall deny a request that is not based on a treaty, if in the opinion of the Public Prosecutions Department it is not possible to prosecute the person to whom the request pertains for the charge in the Netherlands.
4. If the request is based on a treaty, the Minister shall observe the grounds for denying a request for criminal proceedings stated therein.

Article 552cc Code of Criminal Procedure
Before deciding on the request for criminal proceedings, the Minister of Justice may ask the authorities of the state from where the request originated to provide further information, within a period of time to be stipulated by him, if there is a need to do so in view of the decision to be taken on the request.

Article 552dd Code of Criminal Procedure
1. For as long as the investigation has not commenced by the time of the hearing, the Minister of Justice may withdraw a request for criminal proceedings, if circumstances have been brought to light in the preliminary inquiry, or otherwise, that, had they been known when the request was decided, the request would have been denied.
2. The granting of a request for criminal proceedings may also be withdrawn if the punishment to which the suspect is sentenced cannot be executed.

Article 552ee Code of Criminal Procedure
1. The Minister of Justice shall inform the public prosecutor and the authorities of the state from where the request originated of his decision to the request for criminal proceedings.
2. He shall also inform these authorities of the outcome of the criminal proceedings that are instituted in response to the request.

For examples of implementation, please refer to the previous and next answer.
The Netherlands can provide the following example:

State X requested the extradition of a wanted person living in the Netherlands. The wanted person is suspected of money laundering, fraud and corruption. The wanted person has the Dutch nationality and there is no applicable treaty making it possible for the wanted person to be extradited with the guarantee that the sentence can be served in the Netherlands. The Netherlands requires this guarantee in order for an extradition of a Dutch national to take place. As such guarantee could not be granted the Netherlands has informed State X about the possibility to transfer their criminal proceedings to the Netherlands.

(b) Observations on the implementation of the article

Netherland’s ability to extradite its own nationals was favourably noted. Such extradition is allowed only for the purpose of prosecution (and not for the execution of a sentence), under the guarantee that if the extradited Dutch national was to be sentenced to imprisonment in the requesting State, he/she would be allowed to serve the sentence in the Netherlands on the basis of a transfer of the execution of the sentence (article 4, paragraph 2 of the Extradition Act and article 6 of the Surrender Act). In practice, where a request for extradition is refused on the ground of nationality, the Dutch authorities normally forward the case to the prosecution authorities without delay, in application of the principle “aut dedere aut judicare”.

The reviewing experts concluded that the provision has been adequately implemented.
Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:

Dutch citizens can be extradited on the basis of Article 4 of the Extradition Act. However, the extradition can only take place for prosecution purposes (not for the execution of a sentence) and under the condition that the extradited person can serve his sentence in the Netherlands.

In the Netherlands, the procedure has been laid down in the Enforcement of Criminal Judgments (Transfer) Act (WOTS). Since 1 November 2012, the WOTS is only applicable to countries outside the European Union or EU-countries that have not implemented the WETS yet.

A Dutch citizen who is serving a prison sentence in a country outside the European Union may qualify for a transfer to the Netherlands in order to serve his sentence in the Netherlands. The WOTS is applicable to the transfer of sentenced persons from more than 60 countries that have signed the Convention on the Transfer of Sentenced Persons or countries with which the Netherlands has signed international treaties on the transfer of sentenced persons.

The WOTS prescribes that a sentenced person who wishes to serve his sentence in the Netherlands will have to submit a request to this end to the local authorities from the prison where he is being held. Conditions to serve a sentence in the Netherlands on the basis of the WOTS:

- The sentenced person is a Dutch citizen (or a foreign national with a Dutch residence permit)
- The sentenced person is domiciled or habitually resident in the Netherlands.
- The Netherlands has entered into a convention with the relevant country.
- It is no longer possible to appeal against the sentence (the judgment is final).
- The remaining sentence is at least 6 months at the moment that the Netherlands will take over the sentence.
- The sentenced person submits a request to the sentencing country, and this country will submit a request to the Netherlands.
- Both the Netherlands and the other country agree to the transfer and the manner in which the sentence in the Netherlands will be continued.

If the country in which the Dutch citizen is serving his sentence is a Member State of the European Union, since 1 November 2012 the applicable rules are different from those that apply when the country is not a Member State of the European Union.

European countries have together drawn up a single European convention concerning this subject, which is applicable to all EU Member States. In the Netherlands, the procedure to implement this convention has been laid down in the Judgments in Criminal Matters (Mutual Recognition and Enforcement) Act (WETS). The basic principle of the WETS is that the authorities of the European Member States determine mutually whether it is possible to transfer the sentence. In order to realise a
transfer, both countries must have transposed the agreements of the European Convention into national legislation. Since 1 November 2012 the EU Framework Decision 909 is implemented in the Netherlands.

Conditions to enable a sentenced person to serve out the remainder of a sentence in the Netherlands on the basis of the WETS:

- The homeland is no longer in a position to simply refuse to carry out the remainder of a sentence from another Member State. This refusal is subject to clear rules.
- The sentenced person's consent to the transfer is no longer required. It is, however, still possible for the sentenced person to personally start the transfer procedure by submitting a request to the local authorities. The sentence imposed in the European Member State may be adjusted only on points agreed in advance. A sentence taken over by the Netherlands must have been imposed for an offence that is also punishable in the Netherlands, and will always be adjusted to be in line with the maximum sentence applicable for such offence in the Netherlands. In addition, the principle applies that the Netherlands takes over the foreign sentence without adjustment.
- The Member States have agreed on the terms for the recognition decision and the transfer.

A transfer procedure takes about, on average, 6 - 20 months. The Department International Transfer Sentenced Persons (afdeling Internationale Overdracht Strafvonnissen, IOS) of the Correctional Institutions Agency (Dienst Justitiële Inrichtingen, DJI) is responsible for the transfer procedures.

The following texts were cited:

Enforcement of Criminal Judgments (Transfer) Act (Wet Overdracht Tenuitvoerlegging Strafvonnissen, WOTS)

Judgments in Criminal Matters (Mutual Recognition and Enforcement) Act (Wet wederzijdse erkenning en tenuitvoerlegging van strafvonnissen, WETS)

Article 4 Extradition Act
1. Nationals of the Netherlands shall not be extradited.
2. Paragraph 1 shall not apply if the extradition of a Dutch national is requested for a criminal investigation concerning him and in Our Minister’s opinion there is an adequate guarantee that if he is sentenced to a non-suspended custodial sentence in the requesting state for offences for which his extradition may be permitted he will be allowed to serve this sentence in the Netherlands.

The Netherlands cited the following examples of implementation:

In the case of extradition the court in Amsterdam has received the assurance of the foreign authorities that should the person concerned receive a custodial sentence in that foreign country following his extradition, he will be transferred to the Netherlands to serve the sentence under the condition that the procedure of conversion shall be applied.

The person still has to request his transfer to the Netherlands. The basis of the transfer is a treaty, mostly the Convention on Transfer of Sentenced Persons.

The handling of the file is based on the Dutch law, being the Enforcement of Criminal Judgments (Transfer) Act (Wet Overdracht Tenuitvoerlegging Strafvonnissen, WOTS)

The Netherlands provided the following information on court or other recent cases of conditional extradition or surrender:
It is common practice that the Netherlands, under the conditions set forth in paragraph 12 of the UN Convention against corruption extradites its own nationals to states with which it has a treaty concerning the transfer of sentenced persons.

**WOTS: no examples available yet**

WOTS: For example: Mr. X is extradited to Germany. The court in Amsterdam has decided on his extradition on 17 May 2011. He is transferred to Germany on 9 June 2011. He is sentenced on 9 December 2011 by a German Court to 3 years and 9 months. The request for transfer is received on 29 March 2012 by the Dutch authorities. Mr. X is transferred to the Netherlands and on 4 September 2012 by Dutch court convicted to 30 months.

Annum figures WOTS: estimated 75 cases per year

**Observations on the implementation of the article**

(b) The reviewing experts noted that the provision is implemented given that the Netherlands only extradites its nationals for trial and not for serving the sentence.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 44 Extradition**

**Paragraph 13**

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

In the case of refusal of extradition the sentence can be taken over by the Netherlands. The basis of the transfer is always a treaty, in this case it can be for example the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences, the European Convention on the International Validity of Criminal Judgments and the Additional Protocol on the Convention on the Transfer of Sentenced Persons.

The handling of the file is based on the Dutch law, being the Enforcement of Criminal Judgments (Transfer) Act (Wet Overdracht Tenuitvoerlegging Strafzinnen, WOTS).

Since 1 November 2012 the EU Framework Decision 909 is implemented in the Netherlands, a transfer of a sentence can be based on Judgments in Criminal Matters (Mutual Recognition and Enforcement) Act (Wet wederzijdse erkenning en tenuitvoerlegging van strafzinnen, WETS), when the foreign country has implemented that same EU Framework Decision in national law. In WETS the chosen procedure is continued enforcement.

For examples of implementation, please refer to the previous and next answer.
In regard to information on court or other recent cases in which such a sentence has been enforced, the Netherlands provided the following information:

WETS: no examples available yet
WOTS: for example: Mr. X, Dutch national, is sentenced to 3 years in Germany. Mr. X was allowed to leave Germany in an earlier stage. Germany would now like to transfer the verdict to the Netherlands on the basis of the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences. Chosen procedure in this case in the Netherlands is continued enforcement. The Court of Arnhem advises the Dutch authorities about the transfer. When the advice is positive, the Netherlands agree and takes over the execution of the sentence by handing the file over to the Public Prosecutor. The Public Prosecutor takes the person into custody and manages the execution.

(b) Observations on the implementation of the article

The reviewing experts noted that, in the case of refusal of extradition requested for the purpose of enforcement of a sentence, the sentence can be taken over by the Netherlands. The basis of the transfer is always a treaty (the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences, the European Convention on the International Validity of Criminal Judgments and the Additional Protocol on the Convention on the Transfer of Sentenced Persons). The handling of the file is based on the Enforcement of Criminal Judgments (Transfer) Act. Since 1 November 2012 the EU Framework Decision 2008/909 is implemented in the Netherlands, allowing the mutual recognition and enforcement of sentences within the EU framework.

The reviewing experts concluded that the provision has been adequately implemented.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following measures:

In the Netherlands, persons that are subject to extradition are guaranteed fair treatment at all stages of the proceedings, including enjoyment of all rights and guarantees provided by Dutch law. For example, detention in the context of an extradition procedure is in line with the normal detention procedures. An example of this can be found in Article 54 of the Extradition Act:

Aliens held in police detention or remanded in custody by order of the court in pursuance of this Act shall be treated as suspects subjected to a similar measure under the Code of Criminal Procedure. Another example is Article 61 of the Surrender Act:

Persons placed in custody or detention by virtue of this Act or whose arrest or imprisonment is ordered shall be treated as suspects subject to appropriate order by virtue of the Code of Criminal Procedure.
(b) Observations on the implementation of the article

The reviewing experts noted that articles 54 of the Extradition Act and 61 of the Surrender Act make reference to the specific provisions of the Criminal Procedural Code which provide a series of fundamental protections for all persons subject to the criminal process in the Netherlands and, consequently, guarantee the rights of individuals subject to extradition proceedings.

Persons that are subject to extradition are guaranteed fair treatment at all stages of the proceedings, including enjoyment of all rights and guarantees provided by the Dutch legislation.

The reviewing experts concluded that the provision has been adequately implemented.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person’s position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

Article 8 Extradition Act
If the offence in respect of which extradition is requested carries the death penalty under the law of the requesting state, the person claimed shall not be extradited unless in Our Minister’s opinion there is an adequate guarantee that this penalty, if imposed, will not be carried out.

Article 10 Extradition Act
1. Extradition shall not be granted in cases in which in Our Minister’s opinion there are good grounds for believing that if the request were to be granted the person claimed would be prosecuted, punished or otherwise harmed on account of his religious or political convictions, nationality or race or of the population group to which he belongs.
2. Extradition shall not be granted in cases in which in Our Minister’s opinion its consequences would cause exceptional hardship to the person claimed on account of his youth, old age or ill health.

Article 11 Surrender Act
Surrender shall not be allowed in cases in which, in the opinion of the court, there is justified suspicion, based on facts and circumstances, that granting the request would lead to flagrant breach of the fundamental rights of the person concerned, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms concluded in Rome on 4 November 1950.
Article 11 Surrender Act
Surrender shall not be allowed in cases in which, in the opinion of the court, there is justified suspicion, based on facts and circumstances, that granting the request would lead to flagrant breach of the fundamental rights of the person concerned, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms concluded in Rome on 4 November 1950.

For examples of implementation, please refer to the previous answer.

(b) Observations on the implementation of the article

The reviewing experts noted that the expression “otherwise harmed” of the Extradition Act, is broad enough to fully capture the cause of prejudice as it appears on the Convention Against Corruption. Article 10 of the Extradition Act provides protections to individuals whose extradition has been sought for the purpose of discrimination against that person on account of his/her race, religion, nationality, ethnic origin or political views. This would appear to mirror the requirements of this provision of the Convention.

The reviewing experts concluded that the provision has been adequately implemented.

Article 44 Extradition
Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

Article 11 Extradition Act

(…) 4. Offences under military law which are not also indictable offences under the general criminal law of the Netherlands, and fiscal offences, shall not constitute grounds for extradition unless specifically provided for by treaty.

(…)  

The Netherlands cited the following applicable measures:

This is not a ground for refusal of a request. Requests that concern fiscal (tax) issues can only be carried out under the Extradition Act if a treaty is applicable.

For examples of implementation, please refer to the previous answer.

(b) Observations on the implementation of the article

The Netherlands indicated in its response that where a case involves tax matters, such a case will not be considered to constitute a ground for extradition unless specifically provided for by treaty, as required under article 11 of the Extradition Act.
The reviewing experts noted that extradition cannot be refused on the ground that the offence involves fiscal matters.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 44 Extradition**

**Paragraph 17**

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands cited the following applicable measures:

Article 33 of the Extradition Act states that if extradition has been declared inadmissible by final judgment of a court, the request shall be refused. If extradition has been declared inadmissible solely on account of the inadequacy of the documents submitted, the Minister of Security and Justice may postpone his decision. In that event the Minister will give the authorities of the requesting state the opportunity to submit additional documents within such reasonable time as he may specify.

The country under review cited the following texts:

**Article 33 Extradition Act**
1. After Our Minister has received the documents in accordance with Article 32, he shall decide as soon as possible on the request for extradition.
2. If extradition has been declared inadmissible by final judgment of a court, the request shall be refused.
3. If extradition has been declared inadmissible solely on account of the inadequacy of the documents submitted, Our Minister may defer a decision. The same shall apply if extradition has been declared admissible, but Our Minister deems further documents necessary to enable him to take a proper decision.
4. In the event that Our Minister defers his decision, he shall give the authorities of the requesting state the opportunity to submit additional documents within such reasonable time as he may specify.
5. If the additional documents requested are not produced within the time set, Our Minister shall refuse the request for extradition.
6. Our Minister's decision regarding a request for extradition shall be communicated to the requesting state through diplomatic channels unless some other way has been provided for by treaty.

The Netherlands cited the following examples of implementation:

It is common practice that the Dutch authorities in principle consult the requesting State when certain issues raised need clarification. Such issues can concern the statute of limitations, a ground for refusal of an extradition. The Netherlands gives the requesting State an opportunity to provide all legal provisions concerning the statute of limitations and all information relevant for the specific request for extradition.

(b) **Observations on the implementation of the article**
The reviewing experts noted on article 33 of the Extradition Act which outlines the procedure that must be followed for the submission and processing of a request for extradition. Under this procedure, where there the competent judge considers that the information provided by the requesting State is insufficient, the judge may defer his decision, giving the opportunity to provide the referenced documentation. In a reasonable time limit within which that additional information must be provided, otherwise it shall refuse the request of extradition. According to the reported legislation, the requesting State Party is only given the opportunity to make clarifications in the case of understanding that there are defects in the documentation presented.

Notwithstanding this, it was clarified that it is a common practice that Dutch authorities consult the requesting State Party when certain questions require clarification.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 44 Extradition**

**Paragraph 18**

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands stated that there are no other relevant bilateral or multilateral agreement(s) or arrangement(s) related to extradition that have not already been mentioned in previous answers related to this article.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) **Observations on the implementation of the article**

The reviewing experts noted that the Netherlands has entered into a wide range of international agreements in the field of extradition.

The Netherlands is bound by regional instruments on extradition such as the European Convention on Extradition and its two Additional Protocols and the (sui generis) European Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States; and multilateral instruments providing a basis for extradition such as the OECD Convention on combating bribery of foreign public officials in international business transactions, the Council of Europe Criminal Law Convention on Corruption and the United Nations Convention against Transnational Organized Crime (UNTOC). Bilateral extradition treaties with 18 countries and territories were also reported.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 45 Transfer of sentenced persons**
States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

Annex:

- Overview transfer of sentenced persons per country (Annex 26)

Relevant legislation:

Multilateral instruments:

- Convention on the Transfer of Sentenced Persons, Strasbourg, 21 March 1983
- Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences, Brussels, 13 November 1991
- European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, Strasbourg, 30 November 1964
- Schengen Agreement, 19 June 1990, Article 68
- EU Framework Decision 2008/909/JHA 27 November 2008

Bilateral instruments:

- Agreement between the Kingdom of the Netherlands and the Kingdom of Morocco concerning the transfer of sentenced persons, Rabat, 30 November 1999.
- Treaty between the Kingdom of the Netherlands and the Kingdom of Thailand on the transfer of offenders and on co-operation in the enforcement of penal sentences, The Hague, 23 August 2004.
- Agreement between the Kingdom of the Netherlands and the Republic of Venezuela on the Transfer of Sentenced Persons, Caracas, 08 November 1996.
- Agreement on the transfer of sentenced persons between the Government of the Kingdom of the Netherlands and the Government of the Republic of Zambia, Lusaka, 20 November 2007
- Treaty on the transfer of sentenced persons and the execution of sentences imposed by criminal judgements between the Kingdom of the Netherlands and the Federative Republic of Brazil (this treaty has not yet entered into force, but negotiations have been concluded).
- Treaty on the transfer of sentenced persons between the Kingdom of the Netherlands and the Republic of Peru (this treaty has not yet entered into force, but negotiations have been concluded).

The Netherlands cited the following examples of implementation:

All the files on the basis of the conventions/treaties named above, are handled by the Dutch legislation of the Enforcement of Criminal Judgments (Transfer) Act (Wet Overdracht Tenuitvoerlegging Strafvonnissen, WOTS) and the Judgments in Criminal Matters (Mutual Recognition and Enforcement) Act (Wet wederzijdse erkenning en tenuitvoerlegging van strafvonnissen, WETS)
According to the information received during the on-site visit, the AIRS is no longer taking care of the transfer of sentenced persons. Its mandate is now focused on the extradition, mutual legal assistance requests and transfer of criminal proceedings.

Information about bilateral treaties with 4 countries was provided by the Netherlands.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the Dutch legislation of the Enforcement of Criminal Judgments (Transfer) Act and the Judgments in Criminal Matters (Mutual Recognition and Enforcement) Act govern the transfer of prisoners into and out of the Netherlands. The Netherlands has concluded four bilateral treaties on transfer of prisoners. Moreover, the country is a party to relevant regional instruments such as the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offender (1964); the Convention on the Transfer of Sentenced Persons (1983); the Additional Protocol on Convention on the Transfer of Sentenced Persons (1997); the European Convention on the International Validity of Criminal Judgments (1970); and the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences (1991).

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:

As a relatively small country with a globally-oriented economy, the Netherlands attaches great importance to multilateral and international relations. The Netherlands is internationally very active and has strong commitment with international cooperation and information sharing.

The Netherlands is party to several multilateral and bilateral international agreements concerning general mutual assistance in criminal matters. They mostly deal with judicial and police co-operation in criminal matters in general and not with corruption in particular. However, requests for mutual assistance concerning corruption can be made and executed on the basis of the existing treaties.

Apart from the applicable treaties, Dutch legislation provides possibilities for assisting foreign countries in criminal matters. The Netherlands do not have in place overarching legislation for the provision of mutual legal assistance in criminal matters, but may grant such assistance directly based on the provisions of Title 10 of the Code of Criminal Procedure. The Dutch Code of Criminal Procedure permits judicial authorities to respond to requests for MLA in the broadest possible sense; a treaty is not required. This is different when the evidence sought can only be obtained using compulsive measures. Such requests require a treaty. No specific grounds exist for refusing assistance.
in corruption cases, other than the general legal grounds for refusal as stated in Dutch law and the bilateral and multilateral mutual legal assistance treaties.

The provisions of the Enforcement of Criminal Judgments (Transfer) Act further regulate assistance in the identification, tracing, seizing and confiscation of proceeds and instrumentalities of crime upon foreign request.

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

Annex:


Relevant legislation:

Code of Criminal Procedure, Title 10 International legal assistance, Section 1 General provisions (Articles 552h-552q)

Article 552h Code of Criminal Procedure
1. The following articles of this title apply to requests for legal assistance by authorities of a foreign state in connection with a criminal case, made and addressed to an agency of the law or the police in the Netherlands, which may or may not be identified by name, insofar as the disposal is not covered by this provision or in pursuance of other laws.
2. Requests for legal assistance are requests to carry out investigation activities or cooperate with these, send documents, dossiers or pieces of evidence or provide information, or to serve or issue documents, or send notices or communications to third parties, whether or not this is done jointly.

Article 552i Code of Criminal Procedure
1. If the request is not addressed to a public prosecutor, the addressee shall immediately pass it on to the public prosecutor in the district where the requested action must be carried out or where the request is received, or to the public prosecutor of the National Public Prosecutor’s Office or of the National Public Prosecutor’s Office for Financial, Economic and Environmental Offences.
2. If the request is solely for information and no coercive measures or competences are required as referred to in Articles 126g to 126z, Articles 126zd to 126zu and Article 126gg, and the application of Article 126ff is necessary, the request does not have to be passed on.
3. A note is kept of every request that is granted in accordance with paragraph 2, in a register for which the model is determined by the Minister. The note shall always contain the nature of the request, the capacity of the party making the request and the action taken in respect of the request.
4. In disposing of a request, the authority competent in pursuance of paragraph 2 observes the general and special instructions given by the public prosecutor.

Article 552j Code of Criminal Procedure
The public prosecutor who receives the request decides immediately on the action to be taken in respect of that request. If actions have to be carried out in more than one district, the public prosecutor is competent to deal with the whole request in each of those districts. The public prosecutor who is dealing with the whole request shall call on the assistance of the public prosecutions department in other legal districts for its execution,
if necessary. In the interests of disposing of the request quickly and efficiently, it can be transferred to a colleague in another district.

Article 552k Code of Criminal Procedure
1. Insofar as the request is based on a convention, the provisions are observed as far as possible.
2. In cases where the request concerned is reasonable but not based on a convention, and in cases where the applicable convention does not require the request to be complied with, the request shall be granted, unless compliance conflicts with a legal regulation or an instruction of the Minister of Justice.

Article 552l Code of Criminal Procedure
1. The request shall not be carried out:
a. in cases in which there are grounds to suspect that it was made for an investigation, instituted with the aim of prosecuting, punishing or in any other way affecting the suspect in connection with his religious, philosophical or political convictions, his nationality, race, or the group of the population to which he belongs;
b. insofar as compliance would involve cooperating with a prosecution or adjudication which is irreconcilable with the principle underlying Article 68 of the Code of Criminal Procedure and Article 255, paragraph 1 of that code;
c. insofar as it is made for an investigation into acts for which the suspect is being prosecuted in the Netherlands.
2. In the cases in which there are grounds for suspicion as referred to sub a of the previous paragraph, the request is presented to the Minister of Justice.

Article 552m Code of Criminal Procedure
1. Requests for an investigation into criminal acts of a political nature, or facts related to this, shall be granted only in accordance with an authorisation by the Minister of Justice. This authorisation can only be given for requests which are based on a convention, and only after consultation with the Minister of Foreign Affairs. The decision on the request is notified to the authorities of the requesting state by diplomatic means.
2. Paragraph 1 does not apply to a request by the authorities of a state which is party to the European Convention on the Suppression of Terrorism (Treaty Series, 1977, 63) or the Agreement on the application of that convention between the member states of the European Communities (Treaty Series, 1980, 14) with regard to one of the criminal acts referred to in Article 1 or Article 2 of that European Convention or the European Convention on the Prevention of Terrorism (Treaty Series, 2006, 34), or a request from the authorities of a state which is party to the Protocol to the Convention drawn up on 16 October 2001 in Luxembourg, on Mutual Assistance in Criminal Matters between the Member States of the European Union (Treaty Series, 2001, 187).
3. Requests made for an investigation into criminal acts related to charges, taxes, customs, excise, or related facts, with regard to which compliance could be important for the State Tax Administration, or requests related to data which are held by the State Tax Administration or have become known to employees of that service in the performance of their duties, are granted only with the authorisation of the Minister of Justice. This authorisation shall only be granted for requests which are based on a convention and only after consultation with the Minister van Finance.

Article 552n Code of Criminal Procedure
1. The public prosecutor passes a request from a foreign legal authority that is subject to compliance and based on a convention to the supervisory judge:
a. if it involves questioning persons who are not prepared to appear voluntarily and make the requested declaration;
b. if it involves cooperating with an examination by or under the supervision of a foreign legal authority of a witness or expert by video conference;
c. if there has been an express request for a sworn declaration, or a declaration made before the court;
d. if it is necessary to seize pieces of evidence with a view to achieving the desired result.
2. In cases other than those referred to in the previous paragraph, the public prosecutor can pass the request from a foreign legal authority to the examining judge.
3. The request is submitted by means of a written demand which describes the activities required from the examining judge.
4. The demand referred to in the previous paragraph can be withdrawn at any time.

Article 552o Code of Criminal Procedure
1. Insofar as the demand referred to in Article 552n, paragraph 3, has been made with a view to granting a request from a foreign legal authority which is subject to compliance and is based on a convention, it has the same legal consequences as a demand to institute a preliminary judicial investigation as regards:
a. the powers of the examining judge with regard to the suspects, witnesses and experts to be examined by him, as well as those in respect of ordering the extradition or transfer of pieces of evidence, taking measures in the interests of the investigation, having a DNA test carried out, and ordering the taking of cell material for that purpose, the searching of places and seizing of pieces of evidence;
b. the powers of the public prosecutor;
c. the rights and duties of the persons to be examined by the examining judge;
d. the assistance of a lawyer;
e. the actions of the registrar of the court.
2. In deviation from paragraph 1, a demand as referred to in Article 552n, paragraph 3, which is made with a view to granting a request from a foreign legal authority which is subject to compliance and based on a convention, to cooperate with an examination by him or under his supervision of a witness or expert by video conference, has the same legal consequences as a demand to institute a preliminary judicial investigation as regards the application of Articles 190, paragraphs 1 and 4, 191, paragraphs 1 and 4, 210, paragraph 1, second sentence, 213, 214, 215, 217 to 219a, 221 to 225, 226, 226a, paragraph 1, 226c, paragraph 1, 226f and 236.
3. Pieces of evidence which would be subject to be seized in accordance with paragraph 1 of this article are those pieces of evidence which would be subject to this if the act in connection with which the legal assistance was requested was committed in the Netherlands, and that act can give rise to extradition to the requesting state.
4. Unless the applicable convention provides otherwise, no coercive measures can be used to comply with a request for legal assistance, except in accordance with the previous paragraph.

Article 552oa Code of Criminal Procedure
1. Insofar as a request from a foreign authority that is subject to compliance and based on a convention allows this, the powers described in Articles 126l, 126m, 126nd, paragraph 6, 126ne, paragraph 3, 126nf, 126ng, 126s and 126t, 126ue, paragraph 3, 126uf, 126ug, 126zf, 126zg, 126zn, paragraph 3, 126zn and 126zo can be carried out.
2. Other powers described in titles IVa to Vc and Ve of Book I can be carried out and Article 126ff can be applied if a request for assistance that is subject to compliance allows for this.
3. Unless the applicable convention provides otherwise, no use can be made of the powers described in titles IVa to Vc and Ve to comply with the request for legal assistance, and Article 126ff cannot be applied except in accordance with the previous paragraphs.
4. The public prosecutor can issue official reports and other objects obtained by means of the application of powers described in Articles 126l, 126m, 126nd, paragraph 6, 126ne, paragraph 3, 126nf, 126s, 126t, 126ue, paragraph 3, and 126uf to the foreign authorities, insofar as the court gives leave for this, taking the applicable convention into account.
5. Articles 126aa, paragraph 2, as well as 126bb to 126dd apply correspondingly. Article 126cc applies only insofar as the official reports and other objects concerned have not been issued to the foreign authorities. The public prosecutor ensures that an interested party can inspect the official reports and other objects relating to him at any time.

Article 552ob Code of Criminal Procedure
1. Insofar as a convention provides for this, telecommunications can be tapped at the request of a foreign authority with a view to direct channelling to another country. Article 126m, paragraph 1, and Article 126t, paragraph 1, apply correspondingly.
2. If the tapped and directly channelled telecommunication relates to a user of telecommunications who is in Dutch territory, conditions are imposed on the channelling, in that the data obtained by tapping the telecommunication:
   a. insofar as these contain statements made by or to a person who could claim exemption from giving evidence on the basis of Article 218 if he were asked about the content of those statements as a witness, may not be used and must be destroyed; and
   b. may only be used for the criminal investigation in the context of which the request for legal assistance was made, and that the prior consent must have been requested and been obtained for the use of the data for any other purpose.
3. Article 126bb applies correspondingly.

Article 552oc Code of Criminal Procedure
1. A notification on the basis of a convention from the competent authorities of another state about the intention to tap phones or telecommunications of a user who is in Dutch territory is passed immediately to the public prosecutor appointed for this purpose by the Board of procurators-general.
2. The public prosecutor immediately passes the notification to the examining judge in a written demand requesting authorisation to grant agreement to the intention to tap phones or telecommunications by the competent foreign authorities, within the period imposed in the applicable convention.
3. The examining judge decides on the demand, taking into account the provision of the applicable convention and the provisions in or in pursuance of Article 126m or 126t.
4. If the authorisation is granted, the public prosecutor informs the authorities that sent the notification within the period imposed in the applicable convention, that he agrees to the intention to tap the telephones or telecommunication of a user in Dutch territory. The conditions imposed by the examining judge apply to this, as well as the conditions that the data obtained by tapping the telecommunications of the user during his stay in Dutch territory:
   a. insofar as these contain statements made by or to a person who could claim exemption from giving evidence on the basis of Article 218 if he were asked about the content of those statements as a witness, they may not be used and must be destroyed; and
   b. they may only be used for the criminal investigation in the context of which the request for legal assistance was made, and that the prior consent must have been requested and been obtained for the use of the data for any other purpose.
5. If the authorisation is granted, Article 126bb applies correspondingly.
6. If the authorisation is not granted, the public prosecutor informs the authorities that sent the notification within the period imposed in the applicable convention that he does not agree to the intention to tap the phones or telecommunication, and insofar as it is necessary, demands that the tapping is immediately terminated.
7. A statement as referred to in paragraph 6, which relates to tapping that has already started, also notes that the data obtained by tapping the telecommunications of the user during his stay in Dutch territory may not be used and must be destroyed, unless this use is permitted by the Minister of Justice in connection with a new request to this end in special cases and under further conditions, taking the applicable convention into account.

Article 552p Code of Criminal Procedure
1. The examining judge requests that, after enclosing the official records of the examinations conducted by him and of those of his other activities, these are returned to the public prosecutor as quickly as possible.
2. The pieces of evidence seized by the examining judge and the data carriers in his possession on which data are recorded which were collected with the use of powers pertaining to criminal procedure, are made available to the public prosecutor, insofar as the court permits this, taking into account the applicable convention.
3. Unless it is probable that the persons with a right to the pieces of evidence that were seized are not residing in the Netherlands, the consent required in pursuance of the previous paragraph shall be granted only under the condition that it is agreed when the documents are issued to the foreign authorities that these will be returned as soon as the necessary use has been made of them for the criminal proceedings.
4. The provisions of and in pursuance of Articles 116 to 119, 552a and 552ca to 552e apply correspondingly as regards what is stated in paragraph 1 to paragraph 3. The court which is competent to grant the consent required in pursuance of paragraph 2 of this article takes the place of the court competent in accordance with those articles.

Article 552q Code of Criminal Procedure
1. Serving and issuing documents to third parties to comply with a request for legal assistance, takes place with the corresponding application of the legal regulations in respect of serving and issuing Dutch documents with a similar scope.
2. If an express preference has been given in a request that is subject to compliance, for serving or issuing documents to the addressee in person, this is acted upon as far as possible.

All the conventions and agreements below may serve as a treaty basis under Title 10 of the Code of Criminal Procedure:
- European Convention on Mutual Assistance in Criminal Matters
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
- Second Protocol to the European Convention on Mutual Assistance in Criminal Matters
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime
- United Nations Convention against Transnational Organized Crime
- United Nations Convention against Corruption
- United Nations Convention against illicit trafficking in narcotic drugs and psychotropic substances
- Council of Europe Criminal Law Convention on Corruption
- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union
- Protocol to the EU Convention on Mutual Legal Assistance
- Framework Decision on the application of the principle of mutual recognition to confiscation orders
- Council of Europe Convention on Laundering, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism
- Schengen Implementation Agreement 1990
- Prüm Treaty (within EU)
- Senningen Treaty (with Belgium and Luxemburg)
- OECD Convention on combating bribery of foreign public officials in international business transactions
- Treaty between Belgium, Germany, Spain, France, Luxemburg, the Netherlands and Austria on the cross-border cooperation
- Bilateral treaties with the United States of America, Germany, Canada, Australia, Suriname, Hong Kong, Argentina, Mexico, Bahamas, Pakistan, Liberia, Kenya, India, New Zealand, Uganda, Malawi, Tanzania, Trinidad and Tobago

As indicated above, the types of assistance the Netherlands may grant in criminal investigations based on a request from abroad are set out under Title 10 of the Code of Criminal Procedure.
Pursuant to Article 552h of the Code of Criminal Procedure, requests by foreign authorities for assistance in criminal cases may be:

- Requests to carry out or assist in investigations
- Requests to supply documents, files or evidence, or provide information
- Requests to serve documents on or issue documents to third parties

Furthermore, Article 552i, paragraph 2 of the Code of Criminal Procedure indicates that coercive measures are also available (but have to be treaty-based). Assistance may be granted if a criminal investigation has been initiated in the requesting country and the various legal requirements under Dutch law are met.

In this connection, the mutual legal assistance could therefore be afforded on the basis of reciprocity, except in the case of coercive measures.

For examples of implementation, please refer to the previous answer, and the answers to the following questions on Article 46.

(b) Observations on the implementation of the article

The reviewing experts noted that the Netherlands does not have in place overarching legislation for the provision of mutual assistance in criminal matters, but may grant such assistance directly based on the CPC. The CPC permits judicial authorities to respond to MLA requests in the broadest possible sense. Without a treaty, cooperation is still possible albeit more limited, as it cannot involve coercive measures. The same rule applies in case of reciprocity.

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

The Netherlands can grant mutual legal assistance requests concerning a legal person. The same possibilities are available for these requests as they are for mutual legal assistance requests concerning natural persons. Please also refer to Article 46, paragraph 1.

The Netherlands cited the following examples of implementation:

The Netherlands receives a number of requests concerning criminal investigations against legal persons. In general, the Netherlands are able to execute requests regarding information about a legal
entity fully and promptly. National legislation permits Dutch judicial authorities to respond to requests for mutual legal assistance concerning legal entities in broad terms. Within this framework, the national investigative measures to request financial and transaction information, as well as information on owners and legal persons, can be used. The Netherlands can provide the following example: Country X has requested assistance regarding an investigation of a legal person which was suspected of bribery. Possibly, money that was used for the bribes came from Dutch bank accounts. Therefore country X wanted information regarding those bank accounts and the hearing of employees of the Dutch bank. The requested assistance was executed and the documents were sent to the country X.

(b) Observations on the implementation of the article

The reviewing experts took into account the confirmation provided by the Dutch authorities that assistance may also be provided in relation to offences involving legal persons.

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Subparagraph 3 (a, b, c, d, e, f, g, h, i)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;
(b) Effecting service of judicial documents;
(c) Executing searches and seizures, and freezing;
(d) Examining objects and sites;
(e) Providing information, evidentiary items and expert evaluations;
(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
(g) Identifying or tracing proceeds of crime, property, instrumentalities or her things for evidentiary purposes;
(h) Facilitating the voluntary appearance of persons in the requesting State Party;
(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands can provide all the above mentioned forms of legal assistance if requested in a criminal investigation on the basis of the Code of Criminal Procedure and Conventions.

Legal assistance can only be rendered if there is a treaty between the Netherlands and the requesting country. An UN Treaty can serve as such. Without a treaty, cooperation is still possible albeit more limited: no coercive measures can be applied and no statement under oath can be taken.

(a) Taking evidence or statements from persons

Upon request by a foreign authority, Dutch law enforcement authorities may take evidence or voluntary witness statements from persons based on Articles 552i and 552n (2) of the Code of Criminal Procedure. The taking of evidence or statements from persons therefore does not require a treaty basis and may be carried out even in the absence of dual criminality.
Requests involving solely the obtaining of information and not requiring any coercive measures may be enforced directly by law enforcement authorities without requiring court or prosecutorial involvement based on Articles 552i and 552n(2) of the Code of Criminal Procedure.

In cases where a person is not prepared to appear voluntarily to make the requested declaration, or the foreign authority expressly requests a sworn declaration by the witness or a suspect, the prosecutor may apply to the examining judge for issuance of an order based on Articles 552n (1) and 552o (1) of the Code of Criminal Procedure. A treaty basis and dual criminality is required for the judge to issue such an order.

(b) Effecting service of judicial documents

Article 552q of the Code of Criminal Procedure allows for foreign documents to be served in the Netherlands upon request by a foreign authority. The Dutch rules and regulations for the serving and issuing of domestic documents apply. No treaty basis or dual criminality is required.

(c) Executing searches and seizures, and freezing

Article 552n in conjunction with Article 552o (3) of the Code of Criminal Procedure allows for the seizing of evidence, including documents and evidence held by financial institutions. Information and documents held by lawyers, notaries or tax accountants is however subject to legal privilege, which can be lifted in only very limited cases.

Following the seizure, a court order is required before the documents may be handed over to the requesting jurisdictions, whereby the court does not review the case on its merits but merely checks whether the legal requirements for the provision of MLA are met. A treaty basis as well as involvement of an extraditable offense is required in all cases.

Requests for the search of premises may only be ordered by an examining magistrate on the basis of Articles 552n and 552o of the Code of Criminal Procedure and in all cases require a treaty basis and involvement of an extraditable offense. Article 552oa of the Penal Code also provides that the premises of financial institutions may be subject to search and financial and transaction records be subject to seizures just like any other evidence or premises.

In the absence of a treaty base or an extraditable offense, requests for the seizing of evidence and/or the search of premises may only be granted if a financial investigation can be initiated in the Netherlands based on Article 126 of the Code of Criminal Procedure.

Article 94 and 94a of the Code of Criminal Procedure creates the possibility of freezing. For more information on Article 94 and 94a of the Code of Criminal Procedure, please refer to Article 31 (Freezing, seizure and confiscation), paragraph 2.

(d) Examining objects and sites

Requests for the search of premises may only be ordered by an examining magistrate on the basis of Articles 552n and 552o of the Code of Criminal Procedure and in all cases require a treaty basis and involvement of an extraditable offense. Article 552oa of the Penal Code also provides that the premises of financial institutions may be subject to search and financial and transaction records be subject to seizures just like any other evidence or premises.

(e) Providing information, evidentiary items and expert evaluations
The production of documents and other evidence may be compelled based on a foreign request pursuant to Article 552oa (2) in conjunction with Articles 126nc, 126nd and 126ne of the Code of Criminal Procedure. Neither a treaty basis nor the involvement of an extraditable offense is required for the taking of such measures. If a request relates to an offense under paragraph 67 of the Code of Criminal Procedure, which covers a number of offenses punishable with imprisonment for four years or more, the production order may be based on a prosecutorial decision. In all other cases, production orders must be issued by an examining judge upon request by the public prosecutor. When such an order is issued by an examining judge, a treaty base is required (Article 552n paragraph 2 Code of Criminal Procedure).

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records

Information and evidence obtained or compelled by law enforcement authorities based on a prosecutorial decision or a decision by the examining magistrate may be provided to the requesting authorities without any restrictions or conditions. Copies of financial transaction records may thus also be provided in such cases.

Where evidence and documents were seized, however, such evidence may be provided to foreign authorities only based on judicial consent by a Dutch court. Article 552p (3) of the CPC provides that the court may grant its consent only if the foreign authorities agree to return the documents and data as soon as possible.

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes

Mutual legal assistance in criminal matters concerning interim measures and confiscation of proceeds of crime is based on the general provisions of Articles 552h to 552hh of the Code of Criminal Procedure, Articles 13 to 13f, 31a and 51 to 55 of the Enforcement of Criminal Judgments (Transfer) and the applicable bilateral and multilateral international agreements.

The Netherlands are able to provide the following assistance: (i) open a special financial criminal investigation (SFO), if the investigation in the requesting State has not yet resulted in a confiscation order (Article 13 of the Enforcement of Criminal Judgments (Transfer) Act and Article 126 and 126f of the Code of Criminal Procedure); (ii) order seizure; (iii) enforcing foreign confiscation orders; (iv) taking over either the criminal proceedings as a whole or the separate proceeding to bring about confiscation.

(h) Facilitating the voluntary appearance of persons in the requesting State Party

The procedure as described under sub b is one of the ways the Netherlands can facilitate in the voluntary appearance of a person in the requesting State Party.

There are no other articles in the Dutch law obliging the Netherlands to facilitate such an appearance.

Please also refer to Article 46 (Mutual legal assistance), paragraph 1.

The Netherlands did not provide examples of implementation

The Netherlands receives a number of requests for assistance as mentioned in sub a-i from Article 46 (Mutual legal assistance) paragraph 3. One of the examples is the following:

On the basis of the UN Convention against corruption state X asked the Netherlands, in April 2008, for legal assistance. The criminal investigation concerned a national of state X who was suspected of
embezzlement while acting in an official capacity. The suspect had fled the country and was, at the
time of the request, living in the Netherlands. State X requested the Netherlands for:
- observation and monitoring of the suspect
- information concerning date of entry in to the Netherlands
- tracing of possessions and financial assets of the suspect
- conduct a house search in order to freeze and confiscate (financial) possessions of the suspect

The Netherlands conducted a Criminal Financial Investigation in order to execute the request. All the
requested assistance was conducted and the information and seized goods were handed over to state X.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Subparagraph 3 (j) and (k)

3. Mutual legal assistance to be afforded in accordance with this article may be
requested for any of the following purposes:

(j) Identifying, freezing and tracing proceeds of crime in accordance with the
provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this
Convention

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

The Netherlands has had a central unit for the confiscation of the proceeds of crime since 1993, the
Proceeds of Crime Bureau (BOOM), which is part of the Public Prosecution Service. Under EU
Council Decision 2007/845/JHA, all EU Member States must establish a National Assets Recovery
Office (ARO). The BOOM was designated by the Minister of Security and Justice as the Netherlands’
ARO, and has been operational as such since 1 January 2010. It serves as the Dutch centre of expertise
and national office dealing with legal assistance in respect of the confiscation of the proceeds of crime.
Requests from EU countries for legal assistance falling into this category may be sent directly to the
ARO. Requests from outside the EU must be channelled via the central authority, i.e. the Ministry of
Security and Justice. The Dutch ARO also has other duties concerning the provision of information to
foreign countries and the management of pre-judgement seizures.

Article 13 of the Enforcement of Criminal Judgements (Transfer) Act lays down rules governing the
way in which such requests (requests related to the identification, freezing, seizure, or confiscation of
proceeds from crime) from foreign countries can be acted upon. The Act sets out the conditions which
a foreign request for legal assistance must meet and what coercive measures may be employed.
As part of the implementation of Council Framework Decision 2003/577/JHA of 22 July 2003 on the
execution in the EU of orders freezing property or evidence, rules were incorporated into Articles
552j to 552vv of the Penal Code making it possible to carry out rapid and effective seizure actions in
response to a freezing order issued by an European or other foreign judicial authority.

The Netherlands have pursued an active asset-sharing policy for many years. Within the European
Union (Council Framework Decision on mutual recognition of confiscation orders) and countries with

224
which the Netherlands have an asset sharing agreement, such as the United States and the United Kingdom, assets could be shared equally between the requesting and requested states. In addition, multilateral conventions such as the Council of Europe Convention on Money Laundering 2005 and the UN Convention against Transnational Organized Crime 2000 and the UN Convention against Corruption 2004 can serve as a legal basis to share assets with other countries.

The Netherlands have the following instruments in place with specific grounds for asset sharing:
- Agreement between the Netherlands and the United States of America 1992
- Treaty between the Netherlands and the United Kingdom 1993
- The EU Council Framework Decision on mutual recognition of confiscation decisions
- The Council of Europe Convention on Money Laundering 2005
- The UN Convention against Transnational Organized Crime 2000
- The UN Convention against Corruption 2004

The Netherlands can apply asset sharing where appropriate, even without the basis of an international instrument, since confiscated proceeds of offences belong to the State.

The country under review did not provide examples of implementation: The Netherlands can provide the assistance as mentioned under subparagraphs 3 a and k, and refers to the example given under Article 46 (Mutual legal assistance), paragraph 3 a-I.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Paragraph 4

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

Article 17 of the Police Data Act indicates that information can be exchanged by the police to the extent necessary for the proper implementation of the police task. Article 5:1 of the Police Data Decree stipulates that information can be exchanged by the police in the event of the detection of a serious crime. Article 46 of the Schengen Agreement says that the spontaneous exchange of information (i.e. without a foreign request) is possible, if the information is important for the receiving country to combat future criminal offences, for the prevention of criminal offences and to advert threats to public order and security.

For cooperation among members of the EU, pursuant to Article 7 of the EU’s Framework Decision, information and intelligence can be provided by law enforcement agencies, without the need for any prior request, in cases where there are factual reasons to believe that the information and intelligence could assist in the detection, prevention, or resolution of a concluding catalogue of offences.
The country under review did not provide examples of implementation. It is common practice that the Netherlands exchanges information without a prior request when it assumes that this information can be useful to another State. Such information can be shared on a police-to-police basis as well as transferred by the judicial authorities of the Netherlands. For this type of assistance no treaty basis is necessary.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Paragraph 5

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

It stems from the principle of speciality (specialiteitsbeginsel/beginsel van doelbinding) that underlies the international system of mutual legal assistance between states, as also expressed in Article 5:1 of the Police Data Decree. For the use of information for other purposes than foreseen in the provision of mutual legal assistance, prior consent from the requested authority is necessary. An example of this principle can be found in Article 23 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union:

Article 23 (Personal data protection)
1. Personal data communicated under this Convention may be used by the Member State to which they have been transferred:
   (a) for the purpose of proceedings to which this Convention applies;
   (b) for other judicial and administrative proceedings directly related to proceedings referred to under point (a);
   (c) for preventing an immediate and serious threat to public security;
   (d) for any other purpose, only with the prior consent of the communicating Member State, unless the Member State concerned has obtained the consent of the data subject.

The country under review did not provide examples of implementation:
The exchange of information with Europol and its Member States is, for example, based on the principle of speciality. This exchange of information can be done through Interpol, Europe or SIRENE.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:

Unlike some other European countries, banking secrecy is not laid down in law in the Netherlands. It is however assumed that, pursuant to the requirement to act with due care when carrying out activities in relation to banking, banking secrecy forms part of the contractual relationship between the bank and its client. The term “banking secrecy” is therefore understood to refer to an obligation on the part of the bank to process client information in a confidential manner. When it concerns a criminal investigation, neither confidentiality or secrecy can impede requests for legal assistance. This “banking secrecy” cannot however be invoked in the event of a request pursuant to the Code of Criminal Procedure for the provision of certain banking information for the purpose of carrying out criminal investigations.

Bank secrecy is an unknown phenomenon in the Dutch legal system. Information of bank accounts can be ordered by using a coercive measure. Many requests that the Netherlands receives concern information of bank accounts, which are in principle executed if the requirements of Dutch law to use the coercive measure have been fulfilled. According to Dutch law bank information can be ordered when the minimum punishment of the crime committed is 4 years.

In the last few years the Netherlands has provided all kinds of information about bank accounts, including checks, bank statements, authorized persons and personal details to several other countries. This was all in reaction to mutual legal assistance requested to the Netherlands.

The Netherlands cited the following texts:

Article 126nc Code of Criminal Procedure
1. In the event of a suspicion of guilt in respect of a crime, an investigative officer may, in the interest of the investigation, demand certain stored or recorded identifying data relating to a person, from the person who reasonably qualifies therefor and who, other than for the purpose of personal use, processes data.
2. Identifying data are defined as:
   a. name, address, place of residence and postal address;
   b. date of birth and gender;
   c. administrative characteristics;
d. in the event of a legal entity, instead of data referred to under (a) and (b): name, address, postal address, legal form and registered office.

3. A demand as referred to in the first paragraph cannot be directed against the defendant. Article 96a, paragraph 3, shall apply mutatis mutandis. The demand cannot relate to personal data concerning a person’s religion or personal beliefs, race, political affiliation, health, sexual preferences or membership of a trade union.

4. A demand as referred to in the first paragraph will be made in writing and will state:
   a. an indication of the person concerned, with respect to the demand for the identifying data of such person;
   b. the identifying data that are demanded;
   c. the term within which and the manner in which the data must be provided;
   d. the legal basis of the demand.

5. In the event of an imperative necessity, a claim, as referred to in the first paragraph, can be issued orally. In such cases, an investigative officer will bring the demand in writing at a later stage, and will provide this to the person against whom the demand is directed within three days after the demand was made.

6. The investigative officer will draw up an official record of the provision of identifying data, in which he will state:
   a. the data, referred to in the fourth paragraph;
   b. the data provided;
   c. the crime and, if known, the name or otherwise a description of the defendant that is as accurate as possible;
   d. the facts or circumstances that will show that conditions, referred to in the first paragraph, have been satisfied.

7. Rules may be set, pursuant to an order in council, with respect to the investigative officer who demands the data and the manner in which the data are demanded and provided.

Article 126nd Code of Criminal Procedure

1. In the event of suspicion of a crime as described in Article 67, paragraph 1, a public prosecutor may, in the interest of the investigation, demand the provision of certain stored or recorded data from the person of whom can reasonably be expected that he has access to said data.

2. A demand as referred to in the first paragraph cannot be directed against the defendant. Article 96a, paragraph 3, shall apply mutatis mutandis. The demand cannot relate to personal data concerning a person’s religion or personal beliefs, race, political affiliation, health, sexual preferences or membership of a trade union.

4. A demand as referred to in the first paragraph will be made in writing and will state:
   a. if known, the name or otherwise a description that is as accurate as possible of the person or persons in respect of whom the data are demanded;
   b. a description that is as accurate as possible of the data that are demanded and the term within which as well as the manner in which these have to be provided;
   c. the legal basis of the demand.

4. The demand can be issued orally in the event of an imperative necessity. In such cases, a public prosecutor will bring the demand in writing at a later stage, and will provide this to the person against whom the demand is directed within three days after the demand was made.

5. The public prosecutor will have an official report drawn up of the provision of the data, which will state:
   a. the data, referred to in the third paragraph;
   b. the data provided;
   c. the crime and, if known, the name or otherwise a description of the defendant that is as accurate as possible;
   d. the facts or circumstances that will show that conditions, referred to in the first paragraph, have been satisfied.
e. the reason why the data have been demanded in the interest of the investigation.

6. In the event of a suspicion of a crime other than as referred to in the first paragraph, a public prosecutor may, in the interest of the investigation, bring a demand, as referred to in said paragraph, with the advance authorisation of the examining magistrate. The examining magistrate will grant the authorisation on demand of the public prosecutor. The second to the fifth paragraph will apply accordingly. Article 126l, seventh paragraph, will apply mutatis mutandis.

7. Rules may be set, pursuant to an order in council, with respect to the the manner in which the data are demanded and provided.

The Netherlands did not provide examples of implementation:

(b) Observations on the implementation of the article

The reviewing experts noted that, under the Dutch law, bank information may be ordered when the minimum punishment for the crime committed is four years (see also under articles 31, paragraph 7, and 40 of the Convention).

Regarding this threshold, the Dutch authorities informed that bank secrecy is not a ground for refusal of MLA requests. In this connection, the reviewing team praised the national authorities for the initiative to start preparing a new bill that increases the maximum sanctions for bribery in the public sector (article 177a PC) and in the private sector (article 328ter PC), encouraged them to complete the process of enacting the bill in order to increase the possibilities for obtaining and providing bank information and evidence under mutual legal assistance (which requires a threshold of four years of imprisonment of the criminal offence under investigation).

Article 46 Mutual legal assistance

Subparagraph 9 (a)

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:

The Netherlands require dual criminality for certain types of legal assistance, such as extradition and coercive measures, and for the execution of foreign verdicts. Mutual legal assistance for non-coercive measures can be provided in the absence of dual criminality. In Dutch legal assistance practice the requirement of dual incrimination does not include the condition that offences must have the same statement and particulars or must be composed of the same elements.

In the occasion a criminal offence mentioned in the UN Convention against corruption does not constitute a criminal offence according to Dutch law a request will be executed as long as no coercive measures are needed for the execution.

The Netherlands receives numerous requests, based on other treaties, that concern acts that cannot be defined as criminal acts according to Dutch law. These requests are executed, not using coercive measures for its execution.
(b) Observations on the implementation of the article

The reviewing experts noted that the Netherlands requires dual criminality for certain types of legal assistance involving coercive measures, and for the execution of foreign verdicts. Mutual legal assistance for non-coercive measures can be afforded in the absence of dual criminality. The principle of dual criminality is assessed by seeking equivalent criminal conduct, despite the fact that the criminal act might be named differently in the requesting State.

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Subparagraph 9 (b)

9.(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

Coercive measures are all measures involving the limitation of freedom of movement and/or the seizure of goods. An example is Article 552n, subparagraph 1(a) Code of Criminal Procedure:
1. The public prosecutor passes a request from a foreign legal authority that is subject to compliance and based on a convention to the supervisory judge:
   a. if it involves questioning persons who are not prepared to appear voluntarily and make the requested declaration;
   (...) Another examples is Article 552oa Code of Criminal Procedure in combination with Article 126l Code of Criminal Procedure. Article 552oa Code of Criminal Procedure
1. Insofar as a request from a foreign authority that is subject to compliance and based on a convention allows this, the powers described in Articles 126l, 126m, 126nd, paragraph 6, 126ne, paragraph 3, 126nf, 126ng, 126s and 126t, 126ue, paragraph 3, 126uf, 126ug, 126zf, 126zg, 126zn, paragraph 3, 126zn and 126zo can be carried out.
   (...) Article 126l Code of Criminal Procedure
1. Where there is a suspicion of a serious offence as defined in Section 67(1), which given its nature or the coherence with other serious offences committed by the suspect, results in a serious breach of legal order, the public prosecutor may order, if the investigation so urgently requires, an investigating officer (...) to record confidential communications with a technical aid.
   (...) In explaining what matters it considers to be of a de minimis nature, the Netherlands elaborated:
In principle, no requirements apply regarding the kind of criminal offence in the Netherlands for granting legal assistance. Nevertheless, in order to use coercive measures or special investigative techniques, Article 67 Code of Criminal Procedure has to apply to the criminal offence. Article 67 of the Code of Criminal Procedure determines for which criminal offences pre-trial detention (voorlopige hechtenis) may be ordered.

Examples of non-coercive measures are the hearing conducted by the police and gathering information from Dutch registers concerning specific legal entities or persons.

With regard to cases in which it refused mutual legal assistance on the ground of absence of dual criminality, the Netherlands stated that:

No example can be given of a request concerning criminal act mentioned in the UN Convention against Corruption. It is, however, common practice to execute a request, not using coercive measures, when the crime committed is not punishable under Dutch law.

(b) Observations on the implementation of the article

See above. The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Subparagraph 9 (c)

9. (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

Dual criminality is not mandatory for less intrusive and non-compulsory measures.

With regard to dual criminality, it has to be noted that it is not an obstacle if the requesting country has categorised the offence differently under its own laws. Instead, it is examined if the facts mentioned in the request would be punishable in the Netherlands.

For examples of implementation, please refer to the answers provided in Article 46 (Mutual legal assistance) paragraph 9 sub a and sub b.

(b) Observations on the implementation of the article

See above. The reviewing experts concluded that the provision has been adequately implemented.
10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

The conditions as mentioned in this paragraph are not as such written in the Dutch law. It is however common practice that this condition is (fully) agreed upon between the Netherlands and the requesting state party.

In regards to providing examples of implementation, the Netherlands stated the following:

No example is available of a request for assistance concerning a criminal act covered by the Convention. However, the Netherlands are under its law able to comply with a request to transfer persons temporarily when the conditions of Article 46, paragraph 10 of the UN Convention against Corruption are met.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Subparagraph 11 (a, b, c, d)

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:

The conditions as mentioned in this paragraph are not as such written in the Dutch law. It is however common practice that this condition is (fully) agreed upon between the Netherlands and the requesting state party.

It is common practice that the above mentioned conditions have to be agreed upon before a temporary transfer can be allowed.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.
Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article
The conditions as mentioned in this paragraph are not as such written in the Dutch law. It is however common practice that this condition is (fully) agreed upon between the Netherlands and the requesting state party.

The Netherlands cited the following applicable measures:

It is a standard condition that needs to be agreed upon before a temporary transfer can take place.

(b) Observations on the implementation of the article
The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article
The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:
The central authority in the Netherlands is the Department on International Legal Cooperation on Criminal Matters (Afdeling Internationale Rechtshulp in Strafzaken, AIRS) of the Ministry of Security and Justice.

The Netherlands has designated as a central authority for MLA requests the Department on International Legal Cooperation on Criminal Matters (AIRS) of the Ministry of Security and Justice. Requests are normally sent from the Central Authority to its counterpart, but networks such as INTERPOL and EUROPOL may be used for the exchange of information.

The Netherlands informed that the competent national authority is adequately equipped in terms of expertise, financial resources and technological means to cope with requests of international cooperation. It keeps effective communication with its counterparts in other jurisdictions to coordinate diverse aspects of international cooperation.

(b) Observations on the implementation of the article

The Netherlands has indicated that the Department on International Legal Cooperation on Criminal Matters (Afdeling Internationale Rechtshulp in Strafzaken, AIRS) of the Ministry of Security and Justice is the central authority responsible for receiving and handling requests for mutual legal assistance (notification to the Secretary-General of the United Nations of 3 May 2011).

The review team also noted that under the Extradition Act, the Ministry of Security and Justice acts as a central authority. Under the Surrender Act, the public prosecutor at the District Court of Amsterdam is the central authority to which European Arrest Warrants should be sent.

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

Article 552h Code of Criminal Procedure
1. The following articles of this title apply to requests for legal assistance by authorities of a foreign state in connection with a criminal case, made and addressed to an agency of the law or the police in the Netherlands, which may or may not be identified by name, insofar as the disposal is not covered by this provision or in pursuance of other laws.
2. Requests for legal assistance are requests to carry out investigation activities or cooperate with these, send documents, dossiers or pieces of evidence or provide information, or to serve or issue documents, or send notices or communications to third parties, whether or not this is done jointly.
Article 552k Code of Criminal Procedure

1. Insofar as the request is based on a convention, the provisions are observed as far as possible. 

(…)

For the exact content of the request, the Netherlands takes the requirements laid down in the applicable treaty into account.

For examples of implementation, please refer to the answer under Article 46 (Mutual legal assistance), paragraphs 15 and 16.

The Netherlands informed the Secretary-General of the United Nations that the acceptable languages for the submission of mutual legal assistance requests are English or Dutch (notification of 22 June 2010). The Dutch authorities informed that each treaty applicable in the Netherlands has a provision about the acceptable languages.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Paragraph 15 and 16

15. A request for mutual legal assistance shall contain:
   (a) The identity of the authority making the request;
   (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
   (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
   (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
   (e) Where possible, the identity, location and nationality of any person concerned; and
   (f) The purpose for which the evidence, information or action is sought.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

The information that should be included in a request, as mentioned in Article 15 of the UN Convention against Corruption, is in line with the relevant Dutch jurisprudence and international legal instruments. The Netherlands only execute requests for assistance that include all the mentioned information.

It is current practice that, if the Netherlands needs additional information, it will offer the requesting country to provide the additional information. This occurs on a regular basis, therefore there are numerous examples of correspondence between the requested States and the Netherlands.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.
Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

Article 552k Code of Criminal Procedure
1. Insofar as the request is based on a convention, the provisions are observed as far as possible.

(...)

For examples of implementation, please refer to the previous and next answer.

Regarding requests executed in ways specified in the request other than those envisaged in its domestic law, the Netherlands stated that:

Certain states require, according to their legal system, evidence to be presented in a way which is different from the procedures to be followed in the Netherlands. This means that when a request for assistance is sent to the Netherlands, in order for the requesting State to present it as evidence, the execution should take place according to their request. As long as this does not conflict with Dutch law, the Netherlands will execute it as requested. No example can be provided of a request concerning a crime covered by the Convention, but there are numerous requests based on other treaties in which the Netherlands has executed the request in such a way as required by the requesting state.

(b) Observations on the implementation of the article

The reviewing experts noted that the execution of MLA requests can be carried out in accordance with the procedure specified in the request, as long as this does not conflict with the Dutch legislation.

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.
(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands cited the following applicable measures:

Receiving a request for a hearing by videoconference is very common in the Netherlands. There are therefore numerous examples of such requests.

Such requests are in principle executable, unless the requests concerns the hearing of a suspect. The Netherlands does not allow the hearing of a suspect by videoconference. Therefore the Netherlands returns these requests, offering to conduct the hearing in person.

The following texts were cited:

*Article 52n Code of Criminal Procedure*

1. The public prosecutor passes a request from a foreign legal authority that is subject to compliance and based on a convention to the supervisory judge:

   

   (…) 

   b. if it involves cooperating with an examination by or under the supervision of a foreign legal authority of a witness or expert by video conference:

   

   (…) 

(b) **Observations on the implementation of the article**

Although the use of testimonial evidence acquired by videoconference is not regulated in the domestic legislation, the Dutch authorities explained that receiving a request for a hearing by videoconference is a common practice in the Netherlands. Such requests are in principle executable, unless the requests concern the hearing of a suspect.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 19**

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

For citations of texts, please refer to Article 46 paragraph 5, for information on the principle of speciality.

The Netherlands provided the following examples of implementation:
The authorities of country X have sent a request for assistance regarding a criminal investigation against persons suspected of bribing an official. After receiving the request the executing authority in the Netherlands wanted to start a Dutch criminal investigation, (partly) based on the information provided in the request.

For that reason, besides asking for additional information to execute the request, the Netherlands asked country X for permission to use the information for a Dutch investigation and for close cooperation with country X to solve the criminal investigation.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands confirmed that it fully implemented this provision of the Convention.

The following texts were cited:

An example is Article 23 paragraph 5 Code of Criminal Procedure in combination with Article 552p Code of Criminal Procedure. For an explanation, please refer to Article 46 (Mutual legal assistance), paragraph 20, next answer.

The Netherlands provided the following examples of implementation:

In the Netherlands the court should decide whether or not goods, that were seized on the basis of a request for legal assistance, can be handed over to the requesting state.

The court session in which this issue is dealt with is public, allowing the suspect and the interested party to attend the court session. The only exception on this court session being public is when the requesting party explicitly asked for a confidential treatment of the request and its execution as it will jeopardize the investigation, pursuant to Article 23, paragraph 5 of the Code for Criminal Procedure.

In general, requests concerning the UN Convention against Corruption, contain a paragraph asking for confidential treatment, which means that the court session will not be public. That is why the Netherlands cannot provide an example of paragraph 20 of Article 46 of the Convention concerning a request concerning a criminal act mentioned in the UN Convention against Corruption.

With requests concerning other criminal acts it is common to consult the requesting party on how to proceed with their request, explaining the issue described above. After informing the requested country it can be agreed upon that, in the interest of the investigation, the requesting country asks for confidentiality resulting in the court session not being public.

Regarding other types of requests it is in general possible to treat them as confidential and not disclosing the information to the (legal representative of the) suspect.
(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Subparagraph 21 (a, b, c, d)

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;
(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereigny, security, ordre public or other essential interests;
(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

In the absence of a treaty base, the types of assistance the Netherlands is able to provide is limited to the obtaining of publicly available information, the obtaining of evidence that is provided by a suspect or witness voluntary or on the basis of a production order. Coercive measures such as searches and seizures of evidence may be taken only on the basis of a multilateral or bilateral treaty providing for search and seizure.

Where a treaty basis is required, mutual legal assistance cannot be provided merely on the basis of assurance of reciprocity, for example, through a letter rogatory. Given the Netherlands’s ratification of considerable amount of conventions, a large number of countries around the world can be considered to have a treaty basis.

Article 5521 of the Code of Criminal Procedure sets out further grounds for refusal. Mutual legal assistance requests may be refused if:

- There are grounds to suspect that the investigation for which the request was made was instituted in the foreign country based on religious, philosophical (i.e. humanitarian or other beliefs), or political motives or based on the suspect’s nationality, race or ethnicity.
- Granting the request would incur double jeopardy.
- The suspect is currently prosecuted in the Netherlands.

For certain forms of mutual legal assistance, dual criminality is required.

Additionally, pursuant to Article 552m of the Code of Criminal Procedure, the cases for which a request may only be granted with the authorisation of the Minister of Security and Justice include the following:

- Offences of a “political nature” or offences “connected therewith” (the Minister may only authorise the granting of such a request where it is base don a treaty and after consultation with the Minister of Foreign Affairs (552m (1) Code of Criminal Procedure). Article 552m (2)
provides an exception to this requirement where a request is made in relation to terrorist activities). Such an offence refers to a crime against national security or against heads and representatives of friendly states and felonies that interfere with the exercise of constitutional government.

- Requests for information from the tax department (The Minister may only authorise the granting of such a request where it is based on a treaty and after consultation with the Minister of Finance)

The existence of any ground for refusal is determined by the Ministry of Security and Justice. In cases where the execution of a request requires a judicial order, such as for example in relation to search warrants, the court may also deny a requested measure based on grounds for refusal as indicated above.

Regarding court or other cases in which it refused mutual legal assistance, the Netherlands stated: In April 2011 country X requested the Netherlands for assistance in a criminal investigation against persons involved in bribery and tax evasion. Custom officers forged documents to avoid the payment of tax for imported goods.

As the information requested concerned custom related crimes the Ministry of Security and Justice had to provide an authorization for the collection of such evidence. But, for such an authorization it is necessary that the request is based on a treaty. In this case the UN Convention against corruption was not applicable and there was no other applicable treaty between country X and the Netherlands. That is why the Netherlands had to refuse the execution of the request.

The evaluation of the grounds for rejection of assistance is done by the Minister’s office.

(b) Observations on the implementation of the article

Article 5521 CPC sets out the grounds for refusal of MLA requests which include: possible discriminatory treatment in the requesting State on account of religious, philosophical (i.e. humanitarian or other beliefs), or political motives or based on the suspect’s nationality, race or ethnicity; double jeopardy; pending prosecution in the Netherlands. Additionally, article 552m CPC further refers to: the nature of the offence in question as an offence of political nature (with the exception of terrorist activities).

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:

That the offence is also considered to involve fiscal matters is not a ground for refusal of the MLA-request. Requests that concern fiscal (tax) issues can only be carried out if a treaty is applicable and if the Minister of Finance gives permission to execute the request in question.

The Netherlands cited the following texts:
Article 552m Code of Criminal Procedure

(…)

3. Requests made for an investigation into criminal acts related to charges, taxes, customs, excise, or related facts, with regard to which compliance could be important for the State Tax Administration, or requests related to data which are held by the State Tax Administration or have become known to employees of that service in the performance of their duties, are granted only with the authorisation of the Minister of Justice. This authorisation shall only be granted for requests which are based on a convention and only after consultation with the Minister van Finance.

The Netherlands provided the following examples of implementation:

In the context of the 2010/2011 FATF-evaluation of the Netherlands, the Netherlands reported that between 2007 and 2009 438 requests for mutual legal assistance were forwarded to the Ministry of Finance for advice, none of which were denied based on the involvement of fiscal matters.

(b) Observations on the implementation of the article

The reviewing experts noted that the fiscal nature of the offence is not a ground for refusal of MLA requests.

The reviewing experts concluded that the provision has been adequately implemented

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

If the Netherlands refuses a request for assistance the grounds for refusal are in principle explained to the requesting State.

(b) Observations on the implementation of the article

In the absence of ad hoc legislative provision on the matter, the Dutch authorities explained that the provision of reasons for any refusal of mutual legal assistance requests constituted common practice.

The reviewing experts concluded that the provision has been adequately implemented

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status
and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

The Minister of Security and Justice in the Netherlands is the central authority in international cooperation on criminal matters and receives all requests for mutual legal assistance either directly or through diplomatic channels. However, the Netherlands receive a large part (about 40 percent) of its requests from other EU countries. These may be sent directly to the International Assistance Centres (Internationale Rechtshulpcentra, IRC’s).

Upon receipt of a request, the Ministry of Security and Justice verifies that all legal requirements under Dutch law, such as (if necessary) dual criminality and the existence of a treaty basis, are met and forwards the request to one of the International Assistance Centres (Internationale Rechtshulpcentra, IRC’s) for execution. Requests that fall within the competence of the regional prosecutor are forwarded to the relevant regional IRC for execution. Cases that fall within the competency of the national prosecutor are within the national IRC’s mandate.

The IRC’s have been set up in the Netherlands exclusively to register, deal with and coordinate the execution of mutual legal assistance requests in criminal matters. Structurally IRC’s are part of the public prosecutor’s office. IRC staff consists of both law enforcement officers and public prosecutors. The IRC’s are responsible for an efficient and speedy execution of requests. The establishment of the IRC’s in 2003 significantly improved the efficiency with which mutual legal assistance requests were handled, as IRC staff is now fully devoted to the issue of mutual legal assistance, whereas before prosecutors dealt with the provision of mutual legal assistance as part of their regular jobs. The IRC’s also function as a knowledge and expertise centre for international assistance.

There is also a national computer tracking system, used by the police and prosecutors for international legal assistance. This enables them to deal with requests swiftly and efficient.

The Netherlands provided the following examples of implementation: The Netherlands in principle takes into account the deadlines mentioned by the requesting State and will make an effort to execute the request before the deadline expires. Please also refer to the previous and next answer.

The Netherlands stated the following regarding the customary length of time between receiving requests for mutual legal assistance and responding to them:

A specific answer to this question cannot be given because the length of time between the receiving of the request and the execution of the request depends on the circumstances of the case, such as the amount of assistance requested, the complexity of the criminal investigation and the information provided.

The length of time to grant or refuse mutual legal assistance depends on the complexity of the request. It could be expedited in some hours or it could take one month.

It was said during the on-site visit that with the revision of the judicial map of the Netherlands, there have been proposals to provide each unit with its own IRC. IRCs could contribute to trace corruption cases. The system is being improved with the use of the database that prevents double execution.

(b) Observations on the implementation of the article
The reviewing experts took into account the aforementioned clarifications of the Dutch authorities regarding the time needed to execute an MLA request, particularly that the length of time would depend on the nature of the request, type of assistance and the complexity of the matter.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 25**

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands stated that the condition as mentioned in this paragraph is not as such specifically written in Dutch law.

Regarding cases in which it postponed the provision of mutual legal assistance on the ground that it interfered with an ongoing investigation, prosecution or judicial proceeding, the Netherlands stated the following: There are numerous examples concerning requests that are sent to the Netherlands while criminal investigations, prosecution or judicial proceedings are still pending. The Netherlands then informs that State that no execution can then take place. Under the Dutch law, this is a mandatory reason for denying a request.

(b) **Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 26**

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The Netherlands stated that if possible, it does consult with the requesting State to discuss the further proceedings and/or alternatives for the execution of the request.
(b) **Observations on the implementation of the article**

In the absence of ad hoc legislative provision on the matter, the Dutch authorities explained there is a common practice to consult with the requesting State to discuss the further proceedings for the execution of an MLA request.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 27**

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands stated that the condition as mentioned in this paragraph is not as such written in Dutch law. It is however common practice that this condition is (fully) agreed upon between the Netherlands and the requesting state party.

(b) **Observations on the implementation of the article**

In the absence of ad hoc legislative provision on the matter, the Dutch authorities explained that there is a common practice on the safe conduct of witnesses.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Paragraph 28**

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.
(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands stated that in principle the execution of the requests is dealt with without issues about the costs of execution being raised.

In case of extraordinary costs, the Netherlands may contact the Requesting state and ask it to contribute with the expenses.

(b) **Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Subparagraph 29 (a)**

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands confirmed that it fully implemented this provision of the Convention.

The Netherlands stated that it provides such information upon request and if the Code of Criminal Procedure so permits. Please also refer to Article 46 (Mutual legal assistance), paragraph 1, 2 and 3.

(b) **Observations on the implementation of the article**

The reviewing experts noted that documents available to the public would be then provided to the requesting State, if allowed by the Code of Criminal Procedure.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 46 Mutual legal assistance**

**Subparagraph 29 (b)**

29. The requested State Party:

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) **Summary of information relevant to reviewing the implementation of the article**
The Netherlands stated that in principle provides such information upon request and if the Code of Criminal Procedure so permits. Please also refer to Article 46 (Mutual legal assistance), paragraph 1, 2 and 3.

(b) Observations on the implementation of the article

The reviewing experts noted that the Code of Criminal procedure has set clear guidelines on the disclosure of semi-public information.

The reviewing experts concluded that the provision has been adequately implemented.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands stated that there is no specific agreement or arrangement that gives practical effect to and is based on the provisions of the UN Convention against corruption. Nevertheless, all the existing instruments (mentioned in the previous answers) can be used to give effect to the commitments under the United Nations Convention against Corruption.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that the Netherlands is bound by regional instruments on MLA (or with provisions on MLA), including: the European Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols; the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime; the Council of Europe Criminal Law Convention on Corruption; the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Protocol; the EU Framework Decision on the application of the principle of mutual recognition to confiscation orders; and the Schengen Implementation Agreement. Other multilateral conventions which are applicable in this field include the UNTOC and the United Nations Convention against illicit trafficking in narcotic drugs and psychotropic substances. Bilateral treaties on MLA with 21 countries and territories were also reported.

The reviewing experts concluded that the provision has been adequately implemented.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this
Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following applicable measures:

Pursuant to Articles 552t and 552w of the Code of Criminal Procedure, the transfer of criminal proceedings to another country is possible with or without a treaty for serious offences. The process of transferring proceedings to another State is initiated by a submission by the public prosecutor of a motivated application to the Minister of Security and Justice. If he accepts the request of the public prosecutor, it is then formally submitted to the authorities of the requested state. A corresponding process (pursuant to Articles 552x - 552ii of the Code of Criminal Procedure) applies where the Netherlands is requested by another State to take over proceedings.

The general principle in either case is that the transfer must be in the interest of the administration of justice. Moreover, where a treaty does not exist between the Netherlands and the requesting State, a transfer is only possible where the requesting State and the Netherlands have jurisdiction under their domestic laws.

A possible reason to take over a criminal proceeding ‘in the interest of the administration of justice’ is when all - or most of - the evidence is present in the Netherlands or when the suspect lives in the Netherlands.

The country under review cited the following texts:

Article 4a Penal Code
1. Dutch criminal law is applicable to any person whose process of criminal prosecution has been transferred from another country to the Netherlands on the grounds of a treaty, in which treaty such criminal prosecution by the Netherlands has been authorised.
   
   (…)

Article 552t Code of Criminal Procedure
1. If the public prosecutor deems it in the interest of a proper administration of justice that a foreign state initiates criminal proceedings against a suspect of a crime of which the public prosecutor is charged with the prosecution, the public prosecutor will, while presenting - as far as possible - the criminal file, request the Minister of Justice to provoke a criminal proceeding in the foreign state.

   (…)

Article 552w Code of Criminal Procedure
The Minister of Justice will notify the public prosecutor, which has made request as referred to in Article 552t of the Code of Criminal Procedure, in writing about the decision he has taken in this respect and about the decision received by the authorities of the foreign state in response to the request done.

Article 552y Code of Criminal Procedure
1. The Minister of Justice shall reject a request from a foreign authority to institute criminal proceedings, if it may be determined immediately that
   a. the request pertains to an alien who has his fixed domicile or residence outside the Netherlands;
   b. the offence for which the criminal proceedings are requested
      
      1°. is not punishable under Netherlands law;
      2°. is of a political nature, or relates to a criminal offence of a political nature;
      3°. is a military offence;
c. the right to prosecute for an offence for which criminal proceedings are requested is precluded under Netherlands law or under the laws of the state that makes the request for reason of lapse of time;
d. the request for criminal proceedings is intended to affect the person to whom it concerns because of his religious, ideological, or political beliefs, or his nationality, race, or the ethnic group to which he belongs;
e. criminal proceedings in the Netherlands would be in violation of the provisions of section 68 of the Criminal Code.
2. The condition as referred to in the preamble of paragraph 1 and under (a) is not applicable if the request pertains to criminal proceedings related to the confiscation of illegally obtained profits or advantages, within the meaning of Title IIIb of Book IV.

Article 552bb Code of Criminal Procedure
1. As soon as possible after he has received the advice of the public prosecutor, the Minister of Justice shall take a decision, whereby the request for criminal proceedings shall either be granted or denied.
2. The Minister shall in any event deny a request if one of the grounds as set forth in Article 552y appear to exist.
3. Furthermore, the Minister shall deny a request that is not based on a treaty, if in the opinion of the Public Prosecutions Department it is not possible to prosecute the person to whom the request pertains for the charge in the Netherlands.
4. If the request is based on a treaty, the Minister shall observe the grounds for denying a request for criminal proceedings stated therein.

Article 552cc Code of Criminal Procedure
Before deciding on the request for criminal proceedings, the Minister of Justice may ask the authorities of the state from where the request originated to provide further information, within a period of time to be stipulated by him, if there is a need to do so in view of the decision to be taken on the request.

Article 552dd Code of Criminal Procedure
1. For as long as the investigation has not commenced by the time of the hearing, the Minister of Justice may withdraw a request for criminal proceedings, if circumstances have been brought to light in the preliminary inquiry, or otherwise, that, had they been known when the request was decided, the request would have been denied.
2. The granting of a request for criminal proceedings may also be withdrawn if the punishment to which the suspect is sentenced cannot be executed.

Article 552ee Code of Criminal Procedure
1. The Minister of Justice shall inform the public prosecutor and the authorities of the state from where the request originated of his decision to the request for criminal proceedings.
2. He shall also inform these authorities of the outcome of the criminal proceedings that are instituted in response to the request.

For the transfer of criminal proceedings the following agreements are also relevant:
- European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 20 April 1959, Article 21
- Agreement between the Kingdom of the Netherlands and the Federal Republic of Germany to supplement and facilitate the implementation of the European Convention on Mutual Assistance in Criminal Matters, 30 August 1979, Article XI
- Benelux Extradition Convention, 27 June 1962, Article 42

No example of a transfer of criminal proceedings concerning corruption is available, but regarding other criminal acts the transfer of criminal proceedings is common practice. Many requests for the transfer of criminal proceedings come from Germany and Belgium and concern criminal acts such as theft, fraud, drug-related crimes and sexual offences.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts noted that, pursuant to articles 552t and 552w CPC, the transfer of criminal proceedings to another country is possible with or without a treaty for serious offences. The process of transferring proceedings to another State is initiated by a submission by the public prosecutor of a motivated application to the Minister of Security and Justice. If he accepts the request of the public prosecutor, it is then formally submitted to the authorities of the requested State. A corresponding process applies where the Netherlands is requested by another State to take over proceedings (pursuant to article 552x - 552h CPC). The general principle in either case is that the transfer must be in the interest of the administration of justice. Moreover, where a treaty does not exist between the Netherlands and the requesting State, a transfer is only possible where the requesting State and the Netherlands have jurisdiction under their domestic laws.

The reviewing experts concluded that the provision has been adequately implemented

Article 48 Law enforcement cooperation

Subparagraph 1 (a)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

Within their mandate all competent authorities are able to cooperate with their foreign counterparts.
This cooperation takes place on several levels (operational, policy, administrative) and subjects/topics/themes.

There are a number of mechanisms and channels facilitating prompt exchanges of information directly between counterparts. Below some examples of these mechanisms and channels:

- The BOOM international contact point
The Netherlands has had a central unit for the confiscation of the proceeds of crime since 1993, the Proceeds of Crime Bureau (Bureau Onderneming Openbaar Ministerie, BOOM), which is part of the Public Prosecution Service. Under EU Council Decision 2007/845/JHA, all EU Member States must establish a National Assets Recovery Office (ARO). The BOOM was designated by the Minister of Security and Justice as the Netherlands’ ARO, and has been operational since 1 January 2010. It serves as the Dutch centre of expertise and national office dealing with legal assistance in respect of the confiscation of the proceeds of crime. Requests from EU countries for legal assistance falling into this category may be sent directly to the ARO. Requests from outside the European Union must be channelled via the central authority, i.e. the Ministry of Security and Justice. The Dutch ARO also has other duties concerning the provision of information to foreign countries and the management of pre-judgement seizures.

- CARIN
In October 2002 a conference was held in Dublin, co-hosted by the Criminal Assets Bureau Ireland and Europol. The conference was attended by representatives of all Member States of the EU, including the Netherlands, and some applicant-Member States together with Europol and Eurojust. Participants were drawn from law enforcement agencies and judicial authorities within Member States. The objective was to present recommendations dealing with the subject of identifying, tracing and seizing the profits of crime. One of the recommendations was to look at the establishment of an informal network of contact points and a cooperative group in the area of criminal asset identification and recovery. The name agreed for the group was the Camden Assets Recovery Inter-Agency Network (CARIN). The aim of CARIN is to enhance the effectiveness of efforts in depriving criminals of their illicit profits. Membership of the group improves cross-border and inter-agency cooperation as well as information exchange, within and outside the European Union. The official start of CARIN took place during the CARIN Establishment Congress in The Hague in 2004.

- Liaison officers
KLPD liaison officers are usually stationed in countries that maintain considerable criminal contact with the Netherlands or countries whose legal systems strongly differ from those familiar to us. Liaison officers bridge linguistic and cultural gaps. They maintain contacts with investigation services respecting their national and local procedures. They solve problems and communication disturbances, exchange information and by doing so look after the Dutch interests in requests for formal legal aid in criminal cases and a number of investigation procedures. Liaison officers work alone, or occasionally with one or two colleagues. They usually work with the help of a local assistant from a bureau located at a Dutch embassy or consulate. The work area of the KLPD liaison officers often cover other countries in the region or continent where they are positioned. There are liaison officers from the KLPD (and the KMar, the Military Police; if there is no liaison officer from the KLPD, the KMar liaison officer is not only responsible for military police tasks, but also for ordinary police tasks) in the following countries:

Spain (Madrid - KLPD)
Italy (Rome - KLPD)
France (Paris and Lille - KLPD)
Portugal (Lissabon - KLPD)
Russia (Moscow - KLPD)
Romania (Boekarest - KLPD)
Serbia (Belgrade - KLPD)
Bosnia-Herzegovina (Sarajevo - Kmar)
Turkey (Ankara - KLPD)  
Morocco (Rabat - KLPD)  
Nigeria (Abudja - Kmar)  
Kenya (Nairobi - Kmar)  
United Arabic Emirates (Dubai - KLPD)  
United States (Washington - KLPD)  
Curaçao (Willemstad - KLPD)  
Colombia (Bogota - KLPD)  
Venezuela (Caracas - KLPD)  
Suriname (Paramaribo - KLPD)  
Peru (Lima - Kmar)  
China (Beijing - KLPD)  
China (Hongkong - Kmar)  
Thailand (Bangkok - KLPD)  
Malaysia (Kuala Lumpur - Kmar)  
Pakistan (Islamabad - Kmar)  
Australia (Canberra - KLPD)  

- MoU’s

Building on their co-operation in an earlier World Bank-initiated investigation on bribery and subsequent enforcement action by Dutch authorities, two high-level missions took place in 2012 to further explore the possibilities to co-operate more closely in the fight against corruption. This resulted in the signing of a Memorandum of Understanding with the World Bank by the Dutch Minister of Security and Justice at 21 February 2012. In signing this MoU, the Dutch authorities will be able to detect instances of possible fraud and corruption faster with the help of the World Bank. With the view to facilitating the effective discharge of the respective mandates, the Dutch authorities and the World Bank will cooperate closely with each other and consult each other on a regular basis on matters of mutual interest, for example:

- provide one another (spontaneously or upon request) with information of relevance for the detection, substantiation and prevention of fraud and corruption in connection with conduct which may constitute a serious crime under national legislation or a sanctionable offence under World Bank Group rules and policies.
- to undertake joint activities and collaborate when appropriate in each Party’s efforts to detect, substantiate and prevent fraud and corruption.
- to engage one another on relevant activities which they organize and undertake, and which may be of common interest in the execution of their mandates.
- to provide for an appropriate mechanism for the reciprocal referral of inquiries and recommendations pertaining to investigations and actions residing within the mandate and jurisdiction of the respective parties.
- to designate contact points to facilitate and expedite the effective and confidential transmission of information exchanged.
- to meet periodically to identify possible priority areas for cooperation that present common strategy or operational objectives.

For more information on MoU, please also refer to Article 48 (Law enforcement cooperation), subparagraph 1(e).

- FIU.NET
FIU.NET is a decentralised computer network supporting the FIUs in the European Union in their fight against money laundering. In 2009, 20 FIUs in the EU were connected to one another via FIU.NET and six were in the process of getting connected. More information on FIU.NET can be found on <http://www.fiu.net/>.
- **Interpol**  
The Netherlands is a full member of Interpol and exchanges international relevant information with National Central Bureaus (NCBs) of other connected countries via the secured 24/7 network, insofar as this is possible on the basis of national legislation and international (bilateral and multilateral) treaties.

- **Europol**  
Through the National Unit, the Netherlands makes use of the secured mail system SIENA (Secure Information Exchange Network Application) in order to exchange relevant information with both the EU partners as with Europol. In common cases the Netherlands can also make use of Europol support (when there is a reason for doing so) regarding the drafting of analyses (strategic, tactical or operational) insofar as this fits within the remit of Europol.

- Other channels such as Eurojust, the Egmont Group and OLAF (L’Office Europeén de Lutte Antifraud, European Anti-fraud Office)

For examples of implementation, please refer to Article 48 (Law enforcement cooperation), paragraph 1a, previous and next answers.

Examples of relevant databases through which information can be shared are the following:

- Schengen Information System; in its future form (SIS II), this system is particularly focused on international alerts and European Arrest Warrants.
- Interpol; this system particularly facilitates the exchange of messages. It also facilitates international alerts (particularly outside the EU).
- Europol; in addition to the facilitation of the exchanges of messages, this system offers a data management that is divided into various components, namely the Europol Information System (EIS), the Europol Analysis System (EAS) and a temporary information file in accordance with Article 10, paragraph 4 of the Council Decision on Europol.

(b) **Observations on the implementation of the article**

The reviewing experts noted that the Dutch law enforcement authorities engage in broad, consistent and effective cooperation with international counterparts to combat transnational crime, including UNCAC offences; and that the exchange of information is possible through numerous channels of communication.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (b) (i), (ii) and (iii)**

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:
(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

Conducting inquiries with respect to the topics mentioned in this subparagraph is part of the general framework on mutual legal assistance and international law enforcement cooperation in the Netherlands.

The Proceeds of Crime Bureau operating within the Public Prosecution Service serves as the Dutch centre of expertise and national office dealing with legal assistance in respect of the confiscation of the proceeds of crime.

Please also refer to Article 48 (Law enforcement cooperation), subparagraph 1(a).

For examples of implementation, please refer to the previous answer.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 48 Law enforcement cooperation

Subparagraph 1 (c)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

   (c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

Conducting inquiries with respect to the topics mentioned in this subparagraph is part of the general framework on mutual legal assistance and international law enforcement cooperation in the Netherlands.

Please also refer to Article 48 (Law enforcement cooperation), subparagraph 1(a).

For examples of implementation, please refer to the previous answer.

(b) Observations on the implementation of the article
The reviewing experts concluded that the provision has been adequately implemented.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (d)**

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

   (d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) **Summary of information relevant to reviewing the implementation of the article**

Conducting inquiries with respect to the topics mentioned in this subparagraph is part of the general framework on mutual legal assistance and international law enforcement cooperation in the Netherlands.

Please also refer to Article 48 (Law enforcement cooperation), subparagraph 1(a).

For examples of implementation, please refer to Article 48 (Law enforcement cooperation), subparagraph 1(c), previous answer.

(b) **Observations on the implementation of the article**

The reviewing experts noted that through the National Unit, the Netherlands makes use of the secured mail system SIENA (Secure Information Exchange Network Application) in order to exchange relevant information with both the EU partners as with Europol. According to the information provided, the provision is fully fulfilled.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (e)**

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

   (e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(a) **Summary of information relevant to reviewing the implementation of the article**
Within the European Union there is much cooperation on many criminal matters. Outside the European Union there is a worldwide system of liaison officers. The Netherlands also concludes Memorandums of Understanding (MoUs) with countries outside the European Union to cooperate with those countries on criminal matters. As part of these MoUs the Netherlands exchanges information with these countries and conducts (and welcomes) onsite visits in order to take note and learn from each other’s legal and criminal systems.

For more information on international police cooperation, please also refer to the Brochure ‘Policing in the Netherlands, Chapter 8, p. 54-56 (Annex 3)

Please also refer to Article 48 (Law enforcement cooperation), subparagraph 1(a).

The Netherlands provided the following examples of implementation:

Currently, the Netherlands is setting up a collaboration with the Public Prosecution Service of Suriname and Indonesia. The Netherlands also received delegations from China in the context of the fight against corruption.

For information on the current liaison officer positions, please refer to Article 48 (Law enforcement cooperation), subparagraph 1(a).

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (f)**

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Important examples are the Dutch administrative approach to (organized) crime and the international exchange of information by the Dutch Authorities.

Administrative authorities can and often play an important role in the prevention and fight against (organized) crime, because many illegal activities depend on the use of an infrastructure which is regulated by means of for example licensing and spatial planning. Denying criminals the use of the legal infrastructure to facilitate illegal activities is here defined as the ‘administrative approach to (organized) crime’.

The objective is to ensure that the authorities do not facilitate illegal criminal activities, but that they cooperate with the judicial and police services in combating criminal organizations and their infrastructure at all fronts. The success of the administrative approach depends largely on the level of
information available to administrative bodies and security partners as regards criminal developments. Excellent information exchange between all parties is vital.

During the development of this administrative approach, it has become clear that European and international cooperation is a prerequisite for expanding the authorities’ coverage of criminal activities and organisations that can be addressed using this approach. Good information exchange is essential not only at local, regional and national level, but also at European level. After all, organised crime all too often tends to be international in nature. The free movement of persons and the right of establishment across the EU make Member States especially vulnerable to the unrestrained mobility of criminal groups and activities. Administrative bodies have an essential role to play, also at European level, in preventing and fighting illegal activities.

The need for alternative and complementary measures to prevent and disrupt serious and organised crime, and especially the administrative approach, has been called for and underlined in numerous EU fora and policy documents. The administrative approach was subject to a range of initiatives, among them, the delivery of an EU handbook by the Hungarian Presidency on complementary approaches to combat serious and organised crime and the creation of the Informal Network of contact points responsible for the administrative approach.

The Informal Network has been established to promote, strengthen and develop the role of administrative authorities within an increasingly multidisciplinary fight against (organised) crime at the EU level. In addition to the already existing EU police cooperation (including, through EUROPOL) and judicial cooperation (including, through EUROJUST) special attention should be devoted to the development of EU cooperation with administrative authorities through the Informal Network. Its main objective is to establish a sound and sustainable basis for administrative cooperation. Furthermore its objective is to strengthen and develop awareness of the administrative capabilities which exist and the benefits of using such tools as part of a multidisciplinary approach to combat organised crime. This network reports, via the Presidency of the Council, on the conclusions of its meetings to COSI and the competent Council working party.

The Informal Network on the administrative approach is meant to explore and could ultimately propose new initiatives in developing the administrative approach (for example in the field of strengthening the exchange of information between administrative bodies and traditional law enforcement organizations in and between EU Member States). The informal network is requested by COSI to address a selection of the EU policy cycle priorities. The work programme of this network is expected to be discussed in COSI in 2013.

As part of this informal network, The NL has taken the initiative - with financial support of the European Commission - to start a project to assess the possibilities to strengthen the exchange of information between administrative bodies and traditional law enforcement organizations in and between EU Member States, making use of existing instruments for international exchange of information and limitations stemming from national legislation. The aim of this project is twofold. First, it seeks to explore to what extent in a selection of 10 EU member states apply administrative measures to prevent and combat (organized) crime, what legal framework underlies these interventions and to study experiences, problems and solutions. Secondly, because of the free movement of persons, goods and services within the EU, it is also of primary importance to study the legal framework for the sharing of information for administrative purposes at the EU level.

Based on different legal instrument, the Dutch Tax Authorities can exchange fiscal information, upon request or spontaneously, with foreign counterparts. This can also involve information on possible corrupt payments. The Netherlands has signed 86 Double Taxation Convention, covering 90 jurisdictions, that provide for exchange of information in tax matters. The Netherlands also signed Tax Information Exchange Agreements with 28 jurisdictions. This network of 114 agreements allows for exchange of information with 118 jurisdictions. Currently, 96 of these agreements are in force. In some of these agreements language has been included allowing for tax information to be used in
criminal investigations. The Netherlands is also a Party to the Convention on Mutual Administrative Assistance in Tax Matters, which allows information received for tax purposes to be used for non-tax purposes and therefore to be passed to law enforcement authorities to be used in criminal investigations with the permission of the country providing the information.

Similarly, the 2011 European Union Directive on Administrative Cooperation in the Field of Taxation provides that information and documents received in accordance with the Directive may be used for other purposes than for the administration and enforcement of taxes covered by the Directive if the Member State providing the information grants its permission. An EU Member State providing such information is obliged to grant its permission if it could use the information for similar purposes domestically.

For examples of implementation, please refer to the previous answer.

(b) Observations on the implementation of the article

The reviewing experts noted that the Netherlands is a full member of Interpol and exchanges relevant information with National Central Bureaus (NCBs) of other connected countries via the secured I 24/7 network, insofar as this is possible on the basis of national legislation and international (bilateral and multilateral) treaties.

Through the National Unit, the Netherlands makes use of the secured mail system SIENA (Secure Information Exchange Network Application) in order to exchange relevant information with both the EU partners as with Europol.

The reviewing experts concluded that the provision has been adequately implemented.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands cited the following texts:

Examples of applicable bilateral or multilateral agreements are the following:
- The Memorandum of Understanding concerning cooperation in the fields of police, justice and immigration between Belgium, the Netherlands and Luxembourg (Senningen Memorandum of 4 June 1996).
- Treaty between the Kingdom of the Netherlands and the Federal Republic of Germany concerning cross-border cooperation by the police and in criminal law matters.
These treaties constitute the basis for the cooperation within the Euregional Police Information Coordination Centre (EPICC), which is located on Dutch territory (Heerlen). In this EPICC, Dutch, Belgian and German investigative officers physically work together.

There is also a Border Coordination Centre in Goch, Germany, where the German Bundespolizei en de Dutch military police (Koninklijke Marechaussee, Kmar) physically work together and exchange information.

For information on law enforcement cooperation provided or received making use of bilateral or multilateral agreements or arrangements, including international or regional organizations, please refer to Article 48 (Law enforcement cooperation), paragraph 1(e).

The Netherlands indicated that it considers the UNCAC as the basis for law enforcement cooperation in respect of the offences covered by this Convention.

(b) Observations on the implementation of the article

The reviewing experts noted that the Netherlands is a full member of Interpol and exchanges relevant information with National Central Bureaus (NCBs) of other connected countries via the secured I 24/7 network, insofar as this is possible on the basis of national legislation and international (bilateral and multilateral) treaties.

Through the National Unit, the Netherlands makes use of the secured mail system SIENA (Secure Information Exchange Network Application) in order to exchange relevant information with both the EU partners as with Europol.

The reviewing experts also took into account the confirmation provided by the Dutch authorities that the UNCAC is considered as a legal basis for law enforcement cooperation in respect of the offences covered by this Convention.

The reviewing experts concluded that the provision has been adequately implemented.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

The arrival of modern information and communication technology has drastically changed society. The increasing dependence on modern technology is making society and the economy vulnerable. A society without internet is now barely imaginable. Digital security - or cyber security - is crucial for the proper functioning of society and the economy. That is why the Dutch government has taken the initiative of setting up a National Cyber Security Strategy called ‘Strength through Cooperation’. The strategy is based on an integral approach by the government and the business and scientific communities. Cyber security affects all sections of society and cooperation between all sectors is therefore essential in order to increase resilience against disruptions. In January 2012, the National Cyber Security Center was opened in the Netherlands. Tactical and operational knowledge and expertise from public and private sectors is centralized here to get a better understanding of developments, threats and trends, and to support incident management and crisis
decision-making in the field of cyber security. For more information on this National Cyber Security Center, please refer to <https://www.ncsc.nl/english>.

Recently the European Cybercrime Centre in the Hague was officially opened. The European Union aims to make this special European Cybercrime Centre instrumental in fighting, amongst others, identity theft and fraud.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

The reviewing experts concluded that the provision has been adequately implemented.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

One way the Netherlands cooperates with other countries in a criminal investigation is with the instrument of the Joint Investigation Team (JIT). The JIT has been used several times with different countries. The main objective of a JIT is to obtain information and evidence about the crime for the investigation of which it has been established.

The legal framework for setting up a Joint Investigation Team between Member States of the European Union can be found in Article 13 of the 2000 Convention on Mutual Assistance in Criminal Matters between Member States as well as in the Framework Decision on Joint Investigation Teams from 2002, which was adopted in view of the slow progress towards ratification of the Convention on Mutual Assistance in Criminal Matters between Member States. This legal framework has been implemented in the Member States in different ways. While some countries have adopted specific laws on JIts or have inserted JIT provisions in their Codes of Criminal Procedure, others have simply referred to the direct applicability of the 2000 Convention on Mutual Assistance in Criminal Matters between Member States in their legislation. The 2000 Convention on Mutual Assistance in Criminal Matters between Member States has entered into force in the majority of Member States. The Framework Decision itself will cease to have effect once the 2000 Convention on Mutual Assistance in Criminal Matters between Member States has entered into force in all the Member States.

The Netherlands cited the following texts:

Annex:

- Instruction on International Joint Investigation Teams (Annex 28)

Relevant legislation:

Article 552qa Code of Criminal Procedure

259
1. Insofar as provided in a convention/treaty or in the implementation of a Council Framework Decision, the public prosecutor may, for a limited period, set up a joint investigation team with the competent authorities of other Member States for the purpose of carrying out criminal investigations together. (…) 
2. The public prosecutor and the competent authorities of the Member States concerned must lay down the formation of a joint investigation team in a written agreement between the Member States concerned. 
3. The agreement referred to in the second sub-section will in any case specify the object, the limited period of existence, the place of establishment and the composition of the joint investigation team, the investigative powers to be exercised by Dutch officers on non-Dutch territory and the investigative powers to be exercised by foreign investigating officers on Dutch territory, as well as the obligation upon foreign investigating officers to comply with a summons as referred to in Section 210 or a summons as referred to in Section 260.

Article 552qb Code of Criminal Procedure
Investigative powers are exercised on Dutch territory for the purpose of the investigation by the joint investigation team, referred to in Section 552qa, with due observance of the provisions set out in or pursuant to this Code of Criminal Procedure and the treaties/conventions in force in the Member States involved in the joint investigation team.

Article 552qc Code of Criminal Procedure
Documents drawn up by foreign members of the joint investigation team referred to in Section 552qa, regarding official acts in respect of the investigation and prosecution carried out abroad in the context of the investigation by the joint investigation team, have the evidential value in the Netherlands that is also given to documents concerning similar official acts performed by Dutch officers in the Netherlands, on the understanding that their evidential value does not exceed that which they have under the laws of the Member States from which the foreign members originate.

Article 552qd Code of Criminal Procedure
1. Exhibits and data carriers containing data confiscated or gathered in the Netherlands with any power granted under criminal procedure for the purpose of the investigation by the joint investigation team, referred to in Section 552qa, which is established outside the Netherlands, may be made available immediately and provisionally to the investigation team. 
2. The public prosecutor involved in the joint investigation team attaches the condition to the provisional making available of the data, referred to in the first sub-section, that Dutch law remains applicable in full to those exhibits and data carriers, and that the use thereof as evidence is not possible until they have definitively been made available. 
3. The public prosecutor may definitively make available the exhibits and data carriers referred to in the first sub-section to the joint investigation team established abroad insofar as the District Court has granted leave to do so. (…)

Article 13 (Joint investigation teams) Convention on Mutual Assistance in Criminal Matters between Member States
1. By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team. The composition of the team shall be set out in the agreement. A joint investigation team may, in particular, be set up where: a. a Member State’s investigations into criminal offences require difficult and demanding investigations having links with other Member States;
b. a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved. A request for the setting up of a joint investigation team may be made by any of the Member States concerned. The team shall be set up in one of the Member States in which the investigations are expected to be carried out.

2. In addition to the information referred to in the relevant provisions of Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3. A joint investigation team shall operate in the territory of the Member States setting up the team under the following general conditions:
   a. the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
   b. the team shall carry out its operations in accordance with the law of the Member State in which it operates. The members of the team shall carry out their tasks under the leadership of the person referred to in subparagraph (a), taking into account the conditions set by their own authorities in the agreement on setting up the team;
   c. the Member State in which the team operates shall make the necessary organisational arrangements for it to do so.

4. In this Article, members of the joint investigation team from Member States other than the Member State in which the team operates are referred to as being ‘seconded’ to the team.

5. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Member State of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Member State where the team operates, decide otherwise.

6. Seconded members of the joint investigation team may, in accordance with the law of the Member State where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Member State of operation and the seconding Member State.

7. Where the joint investigation team needs investigative measures to be taken in one of the Member States setting up the team, members seconded to the team by that Member State may request their own competent authorities to take those measures. Those measures shall be considered in that Member State under the conditions which would apply if they were requested in a national investigation.

8. Where the joint investigation team needs assistance from a Member State other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.

9. A member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Member State which has seconded him or her for the purpose of the criminal investigations conducted by the team.

10. Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Member States concerned may be used for the following purposes:
   a. for the purposes for which the team has been set up;
   b. subject to the prior consent of the Member State where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Member State concerned or in respect of which that Member State could refuse mutual assistance;
c. for preventing an immediate and serious threat to public security, and without prejudice to subparagraph (b) if subsequently a criminal investigation is opened;
d. for other purposes to the extent that this is agreed between Member States setting up the team.

11. This Article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

12. To the extent that the laws of the Member States concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Member States setting up the joint investigation team to take part in the activities of the team. Such persons may, for example, include officials of bodies set up pursuant to the Treaty on European Union. The rights conferred upon the members or seconded members of the team by virtue of this Article shall not apply to these persons unless the agreement expressly states otherwise.

For examples of implementation, please refer to Article 49 (Joint investigations), previous and next answer.

The Netherlands provided the following information on all joint investigations and joint investigative bodies:

Apart from the parallel criminal investigations between states (particularly in the border areas) and the many investigations that take place between to or more EU Member States at Eurojust, in recent years about 20 joint investigation teams have been set up in which the Netherlands cooperates with other EU Member States.

Example of a specific Joint Investigation Team (example provided to the evaluation team of the OECD phase 3-evaluation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions):

Case X started on information presented by the World Bank to the Netherlands. This case is about a Dutch firm that is suspected of bribing foreign officials, including a World Bank employee, in order to win World Bank bids. This World Bank employee is a resident of the United Kingdom, and therefore the UK also wanted to investigate this case. The case of the Netherlands is revolves around the Dutch company, the UK case is built around the British World Bank employee. The Dutch and the UK law enforcement-colleagues had a meeting about this case in The Hague, facilitated by Eurojust, to discuss the best way(s) to cooperate and share information. On the 24th of October 2011 a Joint Investigation Team was formed between the Netherlands and the UK. The Netherlands and the UK are JIT-partners and Eurojust is a so-called ‘third-party-member’ and also advisor.

In the JIT, everything is coordinated. For example, warrants for house-searches were executed at the same date and time in both countries. Law enforcement officials from both countries were present at the searches and interrogations. Any information gained during the investigation has been exchanged constantly, without having to make new requests for mutual legal assistance all the time. The law enforcement officials involved indicated that the JIT saves a lot of time and makes the cooperation between both countries a lot easier. They stated that, in general, the JIT-form is a good recommendation in foreign corruption cases, because of all the international dimensions.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) Observations on the implementation of the article

262
The reviewing experts noted that investigating authorities in the Netherlands make use of the mechanism of joint investigation teams (JITs), in particular with civil law jurisdictions in Europe, using the 2000 Convention on Mutual Assistance in Criminal Matters between Member States of the European Union, as well as the Framework Decision on Joint Investigation Teams of 2002 (the latter will cease to have effect once the 2000 Convention enters into force in all the Member States). In recent years, about 20 joint investigation teams have been set up in which the Netherlands cooperates with other EU Member States.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 50 Special investigative techniques**

**Paragraph 1**

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands cited the following applicable measures:

The law prohibits harmful or dangerous substances or goods from entering the market; objects of which the presence/possession is prohibited pursuant to the law due to their harmful effect to public health or their danger to security. If an investigative officer is aware of the location of prohibited objects (like weapons and drugs) through using one of the special investigative powers, he is under obligation to seize these substances or goods. The obligation to seize the objects is prescribed in Article 126ff of the Code of Criminal Procedure. The seizure may only be postponed if this is in the interest of the investigation and if seizure is to be effected at a later date. This is governed by a stringent approval procedure: the Board of Procurators General must agree on a decision not to seize the objects. This decision must be presented in advance to the Minister of Security and Justice. The postponement of the seizure has, in fact, created the power to effect a controlled delivery.

Please also refer to the Instruction for requests for assistance in cross-border surveillance (paragraph 2.3 “Controlled delivery”).

Since the act governing special investigative means (BOB Act) came into force, a large number of special investigative means have been regulated in the Code of Criminal Procedure. The rule for all these powers is that their use must be in the interest of the investigation and a public prosecutor must give an order to apply a particular measure. They can almost always be used within the framework of corruption investigations. No firm limits have been laid down for the duration of these measures. In practice, however, they are usually recommended for a period of four weeks and around the time that the order is coming to an end, an assessment of the situation and as to whether the order can be extended is made.

The following special investigative means can be used during an investigation on corruption:

- systematic observation (126g)
- infiltration (126h)
- pseudo-purchase or pretending to provide a service (126i)
- systematically obtaining information (126j)
- entering a closed place (126k)
- direct monitoring of conversations (126l)
- telephone and e-mail tapping (126m)
- telephone print (126n)
- 126nd en 126nc (opvragen van informatie, zoals bankgegevens)

The evidence derived from the use of special investigative techniques is admissible in court proceedings.

The Netherlands cited the following texts:

- Instruction on Requests for Assistance in Cross-border Surveillance (Annex 29)

Relevant legislation:

Article 552oa Code of Criminal Procedure
1. In so far as provided for by a request subject to being granted and based on a treaty by a foreign authority, the powers described in the articles 126l, 126m, 126nd, 6th paragraph, 126ne, 3rd paragraph, 126nf, 126ng, 126s and 126t, 126ue, 3rd paragraph, 126uf, 126ug, 126zf, 126zg, 126zm, 3rd paragraph, 126zn and 126zo can be exercised.

(...)

Article 126g Code of Criminal Procedure
1. Where a serious offence is suspected, the public prosecutor may order, in the interest of the investigation, that an investigating officer systematically shadow a person or systematically observe that person’s presence or behaviour.
2. If the suspicion concerns a serious offence as defined in Section 67(1), which given its nature or the coherence with other serious offences committed by the suspect, results in a serious breach of legal order, then with a view to implementing the order the public prosecutor may, in the interest of the investigation, determine that an enclosed place, not being a residential property, is to be accessed without permission of the party entitled to those premises.
3. The public prosecutor may determine, with a view to implementing the order, that technical means be used, insofar as they are not used for recording confidential communications. Technical means are not carried on a person’s body, unless that is done with that person’s permission.
4. The order is given for a period of not more than three months. It may be extended every time for another three-month period.

(...)
7. As soon as the conditions referred to in the first sub-section are no longer met, the public prosecutor directs that the implementation of the order is to be terminated.
8. The order may be changed, supplemented, extended or terminated, which must be done in writing, stating the reasons for such change, supplement, extension or termination. In urgent cases, the decision may be given orally. In that case, the public prosecutor must put that decision in writing within three days.
9. An order as referred to in the first sub-section may also be given to public servants of a foreign state. By order in council, requirements may be attached to these persons. Subsections two to eight apply by analogy.

Article 126h Code of Criminal Procedure
1. Where there is a suspicion of a serious offence as defined in Section 67(1), which given its nature or the coherence with other serious offences committed by the suspect,
results in a serious breach of legal order, the public prosecutor may order, if the investigation so urgently requires, an investigating officer (...) to take part in or give his cooperation to a group of persons, within which circle it can be reasonably suspected that serious offences are being plotted or committed.

2. In the implementation of the order, the investigating officer is not allowed to induce another person to commit other criminal offences than those on which his intent was already focused in advance.

(...) 

Article 126i Code of Criminal Procedure

1. In the case of a suspicion of a serious offence as defined in Section 67(1), the public prosecutor may order, in the interest of the investigation, an investigating officer to:
   a. appropriate property from the suspect,
   b. appropriate from the suspect data that is stored, processed or transmitted by way of an automated system, via a public communications network, or
   c. render services to the suspect.

2. In the implementation of the order, the investigating officer is not allowed to induce a suspect to commit other criminal offences than those on which his intent was already focused in advance.

(...) 

Article 126j Code of Criminal Procedure

1. Where there is a suspicion of a serious offence, the public prosecutor may, in the interest of the investigation, order an investigating officer (...) - without it being known that the latter is acting as investigating officer - to systematically collect information on the suspect.

2. The order is given for a period of not more than three months. The term of validity may be extended every time for a period of not more than three months.

(...) 

Article 126k Code of Criminal Procedure

1. Where there is a suspicion of a serious offence as defined in Section 67(1), the public prosecutor may order, in the interest of the investigation, an investigating officer to access an enclosed place, not being residential premises, without permission from the party entitled to the same, or to use a technical aid, in order to:
   a. record those enclosed place,
   b. secure traces there, or
   c. install a technical aid there, in order to be able to establish that a particular item of property is present or has been moved.

(...) 

Article 126l Code of Criminal Procedure

1. Where there is a suspicion of a serious offence as defined in Section 67(1), which given its nature or the coherence with other serious offences committed by the suspect, results in a serious breach of legal order, the public prosecutor may order, if the investigation so urgently requires, an investigating officer (...) to record confidential communications with a technical aid.

2. In the interest of the investigation, the public prosecutor may direct that, for the implementation of the order, an enclosed place, not being residential premises, is to be accessed without permission from the party entitled to such premises. He may direct that residential premises be accessed, for the implementation of the order, without permission from the party entitled to those premises, if the investigation so urgently requires and if the suspicion concerns a serious offence punishable by a term of imprisonment of eight years or more as defined at law. (...) 

(...) 

265
4. The order is subject to written authorization, to be granted by the examining judge upon the request of the public prosecutor. The authorization concerns all parts of the order. If in the implementation of the order residential premises may be accessed, that is explicitly stated in the authorization.
5. The order is given for a period of not more than four weeks. The term of validity may be extended every time by a period of not more than four weeks.

(...) 

Article 126m Code of Criminal Procedure
1. Where there is a suspicion of a serious offence as defined in Section 67(1), which given its nature or the coherence with other serious offences committed by the suspect, results in a serious breach of legal order, the public prosecutor may order, if the investigation so urgently requires, an investigating officer to record, with a technical aid, communications not intended for the public at large, that take place using the services of a communications service provider.

(...) 

5. The order, referred to in the first sub-section, is subject to written authorization, to be granted by the examining judge at the request of the public prosecutor. (…)
6. Insofar as it is explicitly required in the interest of the investigation, and if the first provisions of the first sub-section are applied, the person who is suspected to know how the communications are encrypted may be demanded to give his cooperation in the decryption of the data, either by making this knowledge available or by undoing the encryption.

(...) 

Article 126n Code of Criminal Procedure
1. Where there is a suspicion of a serious offence as defined in Section 67(1), the public prosecutor may, in the interest of the investigation, demand a communications service provider to provide information on a user of such service and the traffic relating to that user. The demand must relate to data that are specified by order in council, and may concern data that:
   a. is processed at the time of the demand, or
   b. is processed after the time of the demand.
2. The demand referred to in the first sub-section may be addressed to any communications service provider. (…)

(...) 

Article 126ff Code of Criminal Procedure
1. An investigating officer acting in pursuance of a warrant as defined in title IV to title V and Vb, is obliged to make use of his legal competence to seize an object, if the investigating officer, by implementing the warrant, acquires knowledge of the location of objects whose presence or possession is prohibited under the law because of their harmfulness for human health or their security risks. The seizure may only be postponed in the interest of the investigation, with the aim to seize these objects at a later date.
2. The obligation to seizure, referred to in paragraph 1, shall not apply in case the public prosecutor recommends otherwise on the basis of a substantial investigative interest.

The Netherlands provided the following examples of implementation:

In the Netherlands, all special investigative techniques are admitted in corruption-cases. Both in domestic and foreign bribery, and in bribing officials as well as bribing within the private sector. All special investigative techniques are widely used in those cases and also admitted by the Court. The Dutch public prosecutor considers the broad variety in special investigative techniques to be sufficient.
(b) Observations on the implementation of the article

The reviewing experts noted that in the Netherlands, all special investigative techniques are admitted in corruption-cases and in both domestic and foreign bribery cases, as well as cases of bribery in the public and the private sector. No firm limits have been laid down for the duration of these measures. In practice, however, they are usually recommended for a period of four weeks and around the time that the order is coming to an end, an assessment of the situation and as to whether the order can be extended is made. The evidence derived from the use of special investigative techniques is admissible in court proceedings.

The reviewing experts concluded that the provision has been adequately implemented.

Article 50 Special investigative techniques

Paragraph 2

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

(a) Summary of information relevant to reviewing the implementation of the article

Most general bilateral and/or multilateral agreements allow the use of special investigative techniques. In the following bilateral or multilateral agreements the use of special investigative techniques in the context of cooperation at the international level is explicitly allowed:

- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union
- Schengen Agreement, 26 March 1995
- Agreement between the Kingdom of the Netherlands, the Kingdom of Belgium and the Grand Duchy of Luxembourg concerning cross-border policing, 8 June 2004
- Prüm Treaty, 27 May 2005
- New bilateral treaty with the United States of America

(b) Observations on the implementation of the article

The reviewing experts noted that most general bilateral and/or multilateral agreements allow the use of special investigative techniques (in particular, the 2000 Convention on Mutual Assistance in Criminal Matters between Member States of the European Union, the 1995 Schengen Agreement and the 2007 Prüm Treaty).

The reviewing experts concluded that the provision has been adequately implemented.

Article 50 Special investigative techniques

Paragraph 3
3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands stated that although a treaty basis is required for the deployment of special investigative techniques, this criterion is broadly explained.

(b) **Observations on the implementation of the article**

The reviewing experts noted that, although a treaty basis is required for the deployment of special investigative techniques, this criterion is applied with enough flexibility to provide the assistance requested.

The reviewing experts concluded that the provision has been adequately implemented.

**Article 50 Special investigative techniques**

**Paragraph 4**

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) **Summary of information relevant to reviewing the implementation of the article**

The Netherlands stated that this is common practice. For example in drug-related cases; when the goods (the drugs) are controlled delivered, the authorities can replace the drugs with dummies. This practice has not been applied to corruption cases yet.

The Netherlands has indicated that it does not require any form of technical assistance.

(b) **Observations on the implementation of the article**

The reviewing experts concluded that the provision has been adequately implemented.
Mechanism for the Review of the United Nations Convention against Corruption

Country Review Report
of
the Netherlands

List of Annexes

Annex 1 Brochure Public Prosecution Service
Annex 2 Brochure National Prosecutor's Office
Annex 3 Brochure 'Policing in the Netherlands'
Annex 4 Brochure 'Working on a Safe and Just Society'
Annex 5 Brochure National Police
Annex 6 Memorandum on the prevention of corruption
Annex 7 Instruction on Investigation and Prosecution of Corruption of Officials in the Netherlands
Annex 8 Explanatory Memorandum to the draft bill Amendment to the Criminal Code, the Code of Criminal Procedure and the Economic Offences Act with a view to expanding the possibilities of investigation and prosecution, as well as the prevention, of financial economic crime (expansion of the possibilities to combat financial economic crime)
Annex 9 Statistical information on offences (2006 – 2011)
Annex 10 Instruction on the Investigation and Prosecution of Corruption of Foreign Officials
Annex 11 Revised Instruction on the Investigation and Prosecuting of Foreign Corruption
Annex 12 Article 'Foreign corruption - a domestic matter'
Annex 14 Brochure 'Honest Business without corruption'
Annex 15 Instruction on Money Laundering
Annex 16 Case law on money laundering
Annex 17 Overview predicate offences
Annex 18 Overview number of prosecutions of legal persons
Annex 19 Instruction on Large en Special Transactions
Annex 20 Factsheet Comprehensive approach to Aftercare
Annex 21 Summary Second measurement of the monitor of aftercare for former prisoners
Annex 22 Instruction on Special Confiscation
Annex 23 Instruction on the Protection of Persons, Objects and Services
Annex 24 Instruction on the Duties and Deployment National Police Internal Investigations Department
Annex 25 Instruction on Promises to Witnesses in Criminal Proceedings
Annex 26 Overview transfer of sentenced persons per country
Annex 27 Instruction on the Information Exchange for the Purpose of Mutual Assistance in Criminal Matters (Section 552i of the Dutch Code of Criminal Procedure)
Annex 28 Instruction on International Joint Investigation Teams
Annex 29 Instruction on Requests for Assistance in Cross-border Surveillance (2010A017)