

The Netherlands

I Brief introduction to the Legal System of the Netherlands

The Dutch legal system - in particular, the Civil and Criminal Codes - is primarily based on the Napoleonic codes, therefore dating back to the beginning of the 19th century. At the basis of the Napoleonic codes was Roman law and its tenets are still clearly present all through the Codes, though they have been very much modernized during the nineteenth, twentieth and twenty-first centuries.

Jurisprudence is based on Acts as interpreted by the Courts, especially the Supreme Court, but the rule of law is prevalent. The Constitution does not prevail over posterior Acts of Parliament, but Treaties do to the extent that direct application is possible, as in the case of civil rights.

The legislative power is in the hands of the Government and Parliament, members of Parliament having a right to propose their own draft legislation. The Government is dissolved if it loses the Parliament's confidence

In Dutch Courts, trial by jury is nonexistent.

II Anticorruption Laws in the Netherlands

Relevant are articles 177, 177a, 178a, 362 and 363 of the Criminal Code. These were last modified in 2001, mainly to implement the OECD Convention which was ratified in 1999. In these articles, bribery is defined as the providing or promising of a gift or service to a public official with the intention of influencing him to act contrary to, or not to act in conformity with, his obligations as an official; or for officials, to have acted contrary to or not to have acted in conformity with their obligations. "Official" includes foreign officials and those in the

service of state owned and international organizations. Acts of bribery, including “passive” bribery i.e. the accepting of bribes, are punishable with various terms of imprisonment or fines.

The Criminal Code Amendment Act 2001 has also brought these extensions:

- The providing of a benefit is now a crime also in relation to performances of a public official within his authority.
- Inclusion of passive bribery.
- The giving, promising and accepting of “services” is included (travel, sexual services, commissionerships).
- Former and future, foreign and international public officials are included.
- Maximum punishment is increased from 2 to 4 years imprisonment (active bribery) and from 3 months to 2 years (passive) respectively.
- Increase of maximum term of imprisonment (+ 2 years) for Cabinet ministers, mayors, members of parliament, etc.
- “Facility payments” have been made punishable, i.e. bribes to persuade an official to accelerate the completion of a (legal) performance. However, as a policy such acts are not being prosecuted.

Section 2:10 of the Civil Code includes provisions requiring companies to correctly keep books and records recording all transactions and enabling the preparation of true and fair financial statements.

III Assessment

The Netherlands were evaluated by the OECD Working Group in December of 2012. This was a Phase 3 evaluation and it was very critical of the Netherlands implementation of the OECD Convention, noting in particular its “serious concerns that the overall results of foreign bribery investigations and prosecutions to date are too low. Eleven years after the entry into force of the Convention in the Netherlands, no individual or company has been sanctioned for foreign bribery. Out of 22 foreign bribery allegations received by the Dutch law enforcement authorities, 14 have not triggered the opening of any investigation, in part due to a lack of resources. Only two foreign bribery cases have led to prosecutions, which at time of writing are scheduled to go to trial in 2013, and four cases are the subject of ongoing investigations.”¹

¹ Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the Netherlands, December 2012, at 5.

The Netherlands joined GRECO in 2001 and has been evaluated in each of GRECO's three cycles. GRECO criticizes the country's limiting its jurisdiction to the Netherlands. Foreign officials, not standing in Dutch governmental service or in the service of an international organization having its seat in the Netherlands, who are bribed by Dutch persons outside of the Netherlands cannot be prosecuted in the Netherlands. The Netherlands, as many other countries, has not opted to be a party to the UN-sponsored International Anti-Corruption Academy.

The Netherlands is ranked #9 in the 2012 Transparency International Corruption Perceptions Index, which suggests that corruption itself is not a problem in the country.

IV Texts

- Criminal Code, incorporating Criminal Code Amendment Act 2001.
www.overheid.nl
- Civil Code, section 2:10 www.overheid.nl