

THE NETHERLANDS

● Limited enforcement

3.1% of global exports

Investigations and cases

In the period 2016-2019, the Netherlands opened 16 investigations, commenced two cases and concluded three cases with sanctions.

Foreign bribery investigations are conducted by the Fiscal Intelligence and Investigations Service (FIOD) and the Netherlands Public Prosecution Service (NPPS). These investigations take a long time to conclude, due to their international and complicated nature.¹

In March 2019, a **Shell** statement on its website said that the NPPS was preparing charges against the company over an allegedly corrupt deal in Nigeria relating to an exploration licence for an oil block.² According to news reports, although the funds were paid to the Nigerian government, the money went to a company linked to a former oil minister.³

Prosecutors in a parallel case in Italy reportedly claim that Shell and Eni knew that most of the US\$1.3 billion purchase price for the acquisition of the licence would be used to pay bribes to politicians and middlemen.⁴ In 2016, Shell's headquarters in The Hague were reportedly raided by a joint investigative team of Italian and Dutch financial police.⁵ Recently there have been reports in the Dutch press that the Netherlands'

ambassador in Nigeria shared confidential information with Shell about an investigation on location in Nigeria by Dutch financial police.⁶ The whistleblower who exposed the information, a local staff member of the Netherlands embassy, was subsequently dismissed.⁷

Following the **VimpelCom** case, covered in the *Exporting Corruption* Report 2018, there were three related cases in the Netherlands, two involving banks and one involving an accounting and consulting firm (VimpelCom is now called **VEON**). In September 2018, the NPPS settled its investigation into **ING Bank NV**, with ING agreeing to pay €675 million (US\$771 million) as a penalty and €100 million (US\$114 million) as disgorgement to the NPPS.⁸ The FIOD had been investigating ING since 2016 for suspected facilitation of international corruption and culpable money laundering.⁹ The bank admitted "serious shortcomings" in executing policies to prevent financial crime. In July 2020, a group of victims won a court case requiring former ING CEO Ralph Hamers to testify about the bank's role in relation to fraud by a third party, an issue covered by the 2018 settlement. The victims seek to force a prosecution of the bank or bank officials. If they succeed, then according to the terms of the settlement, the Netherlands will have to repay the penalty and disgorgement to ING.¹⁰

In 2017, Dutch authorities raided **the Amsterdam Trade Bank (ATB)**, the Dutch subsidiary of the Russian **Alfa Bank**.¹¹ According to the US Department of Justice, accounts at ATB, among others, were used to pay the bribes by

¹ <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/02/06/tk-reactie-op-het-bericht-nederland-is-corrupter-dan-we-denken>

² <https://www.shell.com/media/news-and-media-releases/2019/opl245-rds-plc-informed-of-dpp-preparing-to-prosecute.html>

³ <https://www.bbc.com/news/business-39544761>

⁴ <https://www.reuters.com/article/eni-shell-nigeria/update-1-italy-prosecutors-seek-jail-for-eni-shell-executives-in-nigeria-case-idUSL5N2E568X>

⁵ <https://shellandenitrial.org/timeline/>

⁶ https://www.nrc.nl/nieuws/2020/06/03/de-ambassadeur-verklapte-dat-de-fiod-naar-abuja-kwam-a4001715?utm_source=SIM&utm_medium=email&utm_campaign=nrcvandaag&utm_content=&utm_term=20200710

⁷ <https://www.nrc.nl/nieuws/2020/07/08/ontslagen-door-ministerie-na-klokkenuidersmelding-a4005389>

⁸ <https://www.om.nl/actueel/nieuws/2018/09/04/ing-betaalt-775-miljoen-vanwege-ernstige-nalatigheden-bij-voorkomen-witwassen>. The journalists conducted their investigation in the context of the so-called Luanda papers.

⁹ <https://www.moneylaundering.com/news/dutch-prosecutors-assess-record-money-laundering-penalty-against-ing/>

¹⁰ <https://www.nrc.nl/nieuws/2020/07/08/voormalig-ing-topman-hamers-voor-hof-in-witwaszaak-a4005317#/handelsblad/2020/07/09/#102>

¹¹ <https://www.gtreview.com/news/europe/amsterdam-trade-bank-under-new-money-laundering-investigation/>

VimpelCom.¹² A 2019 report on the Troika Laundromat by the Organized Crime and Corruption Reporting Project alleges that ATB was one of the banks used to channel almost €1 billion of the billions transferred out of Russia into the Netherlands.¹³

Also in 2017, the NPPS offered a settlement to accounting firm **EY** for failure to report unusual transactions of VimpelCom. EY rejected this offer and was summoned to appear in criminal pretrial proceedings before the District Court of Amsterdam in 2018.¹⁴ There is no public information about the disposition of the EY case.

Dutch financial prosecutors reportedly raided locations in the Netherlands in February 2019 as part of an investigation into the alleged use of shell companies to distribute bribes on behalf of Brazilian conglomerate **Odebrecht SA**.¹⁵ According to Reuters, the prosecutors said at least US\$100 million was channelled through financial structures set up by trusts and tax advisors, that are believed to have used fake contracts and invoices to conceal the payments.

In other jurisdictions, in 2018, the Ukrainian anti-corruption agency NABU investigated and filed charges alleging bribery and money laundering in relation to a public tender award to Czech company **Skoda JS a.s.**. The company is a subsidiary of the Netherlands-registered **OMZ B.V.**, which is part of the Russian Uralmash-Izhora Group or OMZ Group, in turn owned or controlled by Russia's state-owned Gazprombank.¹⁶ In Estonia in 2018, **E.R.S. Ltd**, the Estonian subsidiary of joint venture Vopak-EOS, co-owned by Dutch terminal operator **Vopak** at the

time, was named in a bribery case against a board member of state-owned Estonian Railways.¹⁷

Recent developments

An Anti-Corruption Centre (ACC) was established within the FIOD in September 2016,¹⁸ and a dedicated anti-corruption team targeting foreign and commercial bribery was created within the NPPS in 2017.

On 21 April 2020, the Netherlands Senate adopted the Act implementing the 5th EU Anti-Money Laundering Directive, which entered into force on 21 May 2020. The Act implements the directive primarily by amending the Act on the Prevention of Money Laundering and Financing of Terrorism.¹⁹ Also in April 2020, the Dutch Finance Minister wrote in a letter to Parliament that the government proposes to impose a total ban on "funnel companies" at trust offices, noting that the trust sector is still too lax in complying with integrity rules.²⁰ An important requirement of the EU directive, the establishment of a central register of beneficial owners of legal entities, was included in a separate legislative proposal adopted in June 2020.²¹ In July 2020, five Dutch banks (ABN AMRO, ING, Rabobank, Triodos Bank and Volksbank) created Transaction Monitoring Netherlands, which will focus on the identification of unusual financial transaction patterns that cannot be observed at the level of an individual bank.²²

Research published by the National Statistics Office in 2018 reportedly found that a vast proportion of foreign investment in the Netherlands leaves the

¹² <https://uk.reuters.com/article/uk-netherlands-russia-bank/dutch-subsiary-of-russias-alfa-bank-raided-in-money-laundering-inquiry-idUKKBN1E7105?il=0>

¹³ <https://www.dutchnews.nl/news/2019/03/russian-money-laundering-machine-shifted-millions-through-the-netherlands/>

¹⁴ <https://globalinvestigationsreview.com/article/1167634/ey-to-be-prosecuted-in-the-netherlands-over-vimpelcom-transactions;> <https://nos.nl/artikel/2225653-accountantskantoor-ey-vervolgd-vanwege-vimpelcom-fraude.html>

¹⁵ <https://www.reuters.com/article/us-netherlands-brazil-corruption/dutch-shell-firms-used-to-pay-millions-in-brazilian-bribes-prosecutors-idUSKCN1QF24R>

¹⁶ <https://nabu.gov.ua/en/novyny/energoatoms-case-investigation-two-more-participants-corruption-scheme-was-completed;> <https://russiabusinesstoday.com/energy/russian-owned-company-wins-2-5mn-ukraine-power-plant-project/>

¹⁷ [https://news.err.ee/649406/railway-company-ceo-suspected-of-bribing-fedorenko-in-custody;](https://news.err.ee/649406/railway-company-ceo-suspected-of-bribing-fedorenko-in-custody) <https://www.vopak.com/newsroom/news/vopak-divested-its-ownership-vopak-eos-estonia>

¹⁸ The FIOD is part of the Tax and Customs Administration of the Netherlands Ministry of Finance.

¹⁹ <https://www.regulationtomorrow.com/the-netherlands/act-implementing-5mld-adopted-in-dutch-senate/>

²⁰ <https://www.bloomberg.com/news/articles/2020-01-23/dutch-aim-to-rein-in-shell-company-culture-that-aided-dos-santos>

²¹ <https://wetten.overheid.nl/BWBR0043796/2020-07-08>

²² <https://www.nrc.nl/nieuws/2020/07/09/banken-delen-transactiedata-ter-bestrijding-van-witwassen-a4005393#/handelsblad/2020/07/09/#302>

country again through shell firms, it found that four in five of the 14,000 shell firms located in the Netherlands carry out no economic activities and are used mainly to avoid tax.²³ As a result of a government crackdown, from 2019 companies applying for an advance tax ruling will have to have “substantial economic activities” in the Netherlands.

Transparency of enforcement information

General enforcement data is published annually by the NPPS.²⁴ Enforcement data on foreign bribery cases is given to the OECD WGB, but not published as part of Dutch statistics.

Not all investigations are made public, though some are announced by the NPPS and data in aggregate is provided to Parliament. In some cases, investigations are first made public by companies, via their annual reports. Statistics on mutual legal assistance are not published.

Court decisions are published in full, although anonymised.²⁵ The system of settlements lacks transparency. Settlement agreements are not published in full, but where they amount to €50,000 (US\$57,000) or more, the NPPS has a policy of issuing a press release and, since 2016, a public statement of facts.²⁶

Beneficial ownership transparency

There is currently no central register of beneficial ownership of companies in the Netherlands, despite the deadlines for implementing the 4th and 5th EU Anti-Money Laundering Directives. A legislative

proposal by the government to introduce such a register was approved after much debate by the Second Chamber (the Lower House of Parliament) on 10 December 2019. The First Chamber (the Senate) discussed and adopted the Bill in June 2020. The beneficial ownership register was expected to be operational in September 2020.²⁷ A pending draft law also covers trusts.²⁸ When implemented, only basic data, such as name, month and year of birth, state of residence and nationality, and the interest that the beneficial owner has (expressed in bandwidths), will be visible to everyone against payment for each information request.²⁹ Users must register before they can request the data from the Chamber of Commerce, which will host the register. This is to verify the identity of the requestor. Users cannot randomly search for the name of the beneficial owner: the data will only be retrievable per company. This makes searching for people and recognising patterns through data analysis impossible. The proposed central beneficial ownership register will therefore be useless for a journalist or an organisation investigating criminal networks, shell companies or tax avoidance.³⁰

Concerns remain that corrupt individuals are using the Dutch trust industry to funnel illicitly gained funds. According to the Executive Director of Supervision at the Dutch Central Bank, “the country’s trust offices, which help establish and manage Netherlands-based businesses for mostly foreign companies, still aren’t vetting their clients properly despite increased government scrutiny”.³¹

Inadequacies in legal framework

Except for one case,³² the NPPS has yet to prosecute individuals for their responsibility in foreign bribery.

²³ <https://www.dutchnews.nl/news/2018/12/80-of-foreign-investment-in-nl-is-moved-through-shell-firms/>

²⁴ <http://www.om.nl>

²⁵ Judgements of all courts can be found at <https://uitspraken.rechtspraak.nl/>

²⁶ See the Dutch Public Prosecutor, 27 February 2018, <https://www.om.nl/onderwerpen/hoge-transacties/hoofdofficier/>. Increasing amounts of information are published, e.g. the full settlement with ING Bank, <https://www.om.nl/documenten/publicaties/fp-hoge-transacties/feitenrelaas/map/transactieovereenkomst-ing>

²⁷ Information provided by the OECD WGB Netherlands delegation.

²⁸ <https://www.afm.nl/nl-nl/professionals/veelgestelde-vragen/wwft-algemeen/ubo>

²⁹ https://www.transparency.nl/nieuws/2020/04/openbaar-ubo-register-evenwicht-transparantie-privacy/?utm_source=rss&utm_medium=rss&utm_campaign=openbaar-ubo-register-evenwicht-transparantie-privacy

³⁰ <https://www.transparency.nl/nieuws/2020/05/nederland-loopt-ver-achter-op-buurlanden-met-implementatie-ubo-register/>

³¹ <https://www.bloomberg.com/news/articles/2020-01-23/dutch-aim-to-rein-in-shell-company-culture-that-aided-dos-santos>

³² <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Midden-Nederland/Nieuws/Paginas/Celstraf-voormalig-bestuurder-Ballast-Nedam.aspx>

The key reason given is jurisdictional limitations concerning the prosecution of foreign individuals employed by Dutch companies who committed their crimes outside the Netherlands.

The system for settlements is undermined by lack of transparency, the absence of any oversight role for an independent court and the fact that Dutch settlements cannot currently include important aspects, such as a monitor or obligatory future reporting to the NPPS. There is a large difference in settlement amounts in cases of foreign corruption compared to national corruption (either as a settlement or imposed by local courts), with much higher settlements in foreign corruption cases. Clear guidelines are lacking for companies on what to expect when they report or enter into settlement negotiations. In addition, there are no clear rules to ensure that forfeited amounts of proceeds of crime are returned to the countries where the profits were originally earned.

There is a proposal before Parliament to provide for judicial oversight of non-trial resolution of criminal proceedings. However, this has yet to be considered. In the meantime, there is a proposal to adopt an interim approach by establishing an independent Assessment Committee to oversee settlements, instead of the Minister of Justice and Security. This was anticipated to enter into force from 1 September 2020.³³

As noted in the *Exporting Corruption* Report 2018, the Act on Whistleblowing does not establish adequate standards for arrangements to protect whistleblowers from retaliation. The Act also requires whistleblowers to prove that the retaliation they experience is related to their report. This burden of proof should be reversed, in line with the EU Whistleblower Protection Directive. Other concerns include the potential for conflicts of interest to arise, as, under the Act, the Whistleblowing Authority is responsible for both advising whistleblowers and conducting investigations. An independent review of the authority in November 2019 recommended separating its advisory and investigative responsibilities, and outsourcing the advisory

responsibility. This may occur only in part, as the Whistleblower Authority expressed different views in its recent “Vision for the Future”.³⁴ An evaluation of the Act on Whistleblowing was conducted in spring 2020, but still needs to be concluded and discussed in Parliament. At the same time, the Ministry of Internal Affairs is working on a Bill to implement the EU Whistleblower Protection Directive. Unfortunately, the Minister of Internal Affairs has decided to deal with the evaluation of the Act separately from the implementation of the EU Directive.

Inadequacies in enforcement system

The Whistleblowing Authority was established more than four years ago, but by the end of 2019 had concluded only three investigations relating to retaliation, and no other investigations.

Even though resources for enforcement have increased markedly, it remains to be seen whether the justice system is capable of effectively conducting full trials against larger Dutch companies and their management. Up to 2017, the only foreign bribery case ever brought to court, against Takilant Ltd, was a trial in absentia.

There is a lack of focus on awareness-raising of corruption as a separate issue. Corruption is generally addressed in the context of corporate social responsibility, and mainly through a sectoral approach. There is lack of a broad, overarching understanding of the risks and implications of corruption and its negative impact on human rights and the environment.³⁵

Recommendations

- Fully implement the 4th and 5th EU Anti-Money Laundering Directives, including establishing a public register of ultimate beneficial owners
- Evaluate and improve protection for whistleblowers
- Expand the jurisdiction over foreigners employed by Dutch companies for foreign bribery under certain conditions
- Consider the introduction of an “adequate procedures” clause in Dutch legislation,

³³ Information provided by the OECD WGB Netherlands delegation. The Directive on Large and Special Transactions will be amended to establish the Independent Assessment Committee.

³⁴ <https://www.huisvoorklokkenluiders.nl/actueel/nieuws/2020/02/24/huis-voor-klokkenluiders-presenteert-nieuwe-toekomstvisie-van-een-huis-voor-klokkenluiders-naar-een-autoriteit-voor-integriteit-en-klokkenluiden>

³⁵ See letter from the Minister of the Interior concerning the prevention and enforcement of corruption, 10 March 2015, <https://www.tweedekamer.nl/downloads/document?id=d90ef694-8684-4e4b-98d8-fb4c152efb71&title=Preventie%20en%20bestrijding%20van%20corruptie.pdf>, pp. 5-6.

such as section 7 of the UK Bribery Act, to target indirect corruption or corruption by a business partner

- Increase the number of cases concerning foreign bribery prosecuted in court and conduct a full trial against one or more persons or companies responsible for active foreign bribery
- Develop a better policy on settlements, including consideration of the role of victims and asset recovery, and a sentencing guideline
- Raise awareness among small and medium-sized enterprises of their possible role in foreign bribery and the consequences.