Manual for preventive measures and best practices against fraud, corruption and bribery committed through legal entities for the purpose of financial and economic gain
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Preface

After a long period of diplomatically sustained and guided development towards an ever closer European union, the EU currently finds itself the object of much public discussion and debate. The core of European cooperation remains focused on the premise that the EU is a union of European (nation) states and citizens. European institutions and the entire apparatus of treaties and legislation reflect this duality. However, a much debated issue is the very notion, so basic to the EU, of continuous integration between the peoples of the Member States.

Notwithstanding this debate at the macro level, we, at the grass roots level, experience directly how the European Commission’s financial programmes provide support and real opportunities for cross border cooperation. Programmes such as “Prevention of and fight against crime” (ISEC) which constitutes the basis for this report. In fact, this Manual of Best Practices countering fraud, corruption and bribery committed through legal entities for the purpose of financial and economic gain represents the concluding element of a project, which spanned 15 months in total.

As researchers and initiators of this project, we were stimulated to identify and engage with experts in different sectors, operating throughout the entire Union and three Candidate States. Developing international cooperation and partnerships were essential to our working method and success. The sheer size and depth of the implicated network needed to accomplish the objectives of this project went far beyond the mere establishing of some superficial contacts between some interested people. Rather, a network of some 30 independent experts, stemming from academia and law firms across all 27 Member States plus the three Candidate States, was established. It is through information gleaned from their national reports on legislation and policies directed against fraud, corruption and organised crime that we acquired the necessary particulars indispensable for constructing an EU wide overview of this specific area.

Cooperation was also sought and effected with a range of international organisations and their representatives such as the OECD, UNODC, Council of Europe (GRECO network) and UNICRI. Furthermore, contacts were established with networks such as the European Anti-corruption network (EACN) and the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL). Government Officials of law enforcements ministries from the various countries provided valuable contributions. In particular, our sincere gratitude and appreciation is extended to the Dutch Ministry of Security and Justice. As co-sponsor and non-beneficiary partner of this project the Ministry not only provided for highly appreciated co-funding but its representatives have also brought much added value to the entire project through the delivery of conference speeches and contribution to this Manual. We would like to extend our particular gratitude to Mr. Don O’Floinn, Senior Policy Officer, and Ms. Mariska de Blok, Policy Officer at the Dutch Ministry of Security and Justice, in this regard.

Furthermore, we are strongly indebted to the academic community. In addition to the academic members of the network of national rapporteurs, many other university researchers from across Europe contributed through presentations and participatory input delivered at the different meetings. Special acknowledgement is extended to a particular group of academics who were willing to scrutinise and add their wisdom to the many texts drafted for this Manual. The members of this so called ‘Review Group’ were: Dr. Marc Engelhart (Max Planck Institut, Freiburg); Ms Tricia Howse (CBE Barrister, UK); Dr. Marco Mansdörfer (Universität Saarland); and Ms Aleksandra Stepniewska (Wardyński & Partners, Warsaw).

Crucial to the success of a project like this was the cooperation effected with private companies such as Siemens AG (München), Royal Dutch Shell N.V. (The Hague) and Kroll Advisory
Solutions (London). Their ideas and suggestions on methods and instruments to help prevent fraud and corruption in the corporate world are reflected in this Manual.

Of course, the members of the T.M.C. Asser Instituut’s project team are also deserving of salutation for their tenacity and drive in making this project a success: dr. Wybe Douma, drs. Leendert Erkelens, Claudio Matera LL.M., Bram Meijer (March 2012 – August 2012), Marta Pawlik LL.M. (September 2012 – March 2013) and Steffen van der Velde LL.M., supported by a team of technical officers from the Institute, worked tirelessly for the past 15 months and more to ensure that their project design was meticulously implemented and brought to a satisfactory conclusion within the allotted time frame.

Finally, we recognise our very important partner in realising this project, the Polish Institute of International Affairs (PISM), Warsaw, Poland. PISM, as a beneficiary partner, was primarily responsible for the organisation of the successful conference held in Warsaw on 13 July 2012. We are most grateful to have been given the opportunity to establish cooperation with this fine team of professionals.

To sum up, the contents of this Manual offer an example of what can be brought to bear at grass roots level between people and organisations within the EU, as triggered by the support and direction of the Union. We sincerely hope that the results of our collective undertakings will prove to be worthwhile and help in the struggle to combat and prevent fraud and corruption, especially in the private sector.

Ann O’Brien,  
Executive Director  
T.M.C. Asser Instituut

The Hague  
The Netherlands  
23 February 2013
List of Abbreviations

AT Republic of Austria
BAK Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung
BE Kingdom of Belgium
BG Republic of Bulgaria
CAFS Commission’s Anti-Fraud Strategy
CoE Council of Europe
CRA Compliance Risk Assessment
CSR Corporate Social Responsibility
CY Republic of Cyprus
CZ Czech Republic
CZK Czech koruna
DE Federal Republic of Germany
DG CONNECT European Commission Directorate General for Communications Networks, Content and Technology
DG EMPL European Commission Directorate General for Employment, Social Affairs and Inclusion
DG REGIO Directorate General for Regional and Urban Policy
DG RTD Directorate General for Research and Innovation
DI Confederation of Danish Industry
DIA Direzione Investigativa Antimafia
DK Kingdom of Denmark
EACN European contact-point network against corruption
EAP 7 7th Environment Action Programme
ECPN European Crime Prevention Network
ECtHR European Court of Human Rights
EDM Environment Electronic Data Management in the Environmental Field
EE Republic of Estonia
EL Hellenic Republic
EPAC European Partners Against Corruption
ES Kingdom of Spain
ETS Emissions Trading Scheme
EU European Union
EUCPN European Crime Prevention Network
FATF Financial Action Task Force
FI Republic of Finland
FIOD/ECD Fiscal Intelligence and Investigation Service/Economic Investigation Service
FR French Republic
FYROM the former Yugoslav Republic of Macedonia
GALA General Administrative Law Act (NL)
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>Greco</td>
<td>Group of States against Corruption</td>
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<tr>
<td>HR</td>
<td>Republic of Croatia</td>
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<td>HU</td>
<td>Hungary</td>
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<tr>
<td>ICC</td>
<td>International Chamber of Commerce</td>
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<td>ICOM</td>
<td>International Council of Museums</td>
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<td>IE</td>
<td>Ireland</td>
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<tr>
<td>IMPEL</td>
<td>European Union Network for the Implementation and Enforcement of Environmental Law</td>
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<tr>
<td>IT</td>
<td>Italian Republic</td>
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<tr>
<td>LT</td>
<td>Republic of Lithuania</td>
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<tr>
<td>LU</td>
<td>Grand Duchy of Luxembourg</td>
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<tr>
<td>LV</td>
<td>Republic of Latvia</td>
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<tr>
<td>MNC</td>
<td>Multinational Company</td>
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<td>MT</td>
<td>Republic of Malta</td>
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<tr>
<td>NEa</td>
<td>Dutch Emission Authority</td>
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<tr>
<td>NL</td>
<td>Kingdom of the Netherlands</td>
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<tr>
<td>OCTA</td>
<td>Organised Crime Threat Assessment</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>OLAF</td>
<td>European Anti-Fraud Office</td>
</tr>
<tr>
<td>OPC</td>
<td>Observatory for the Prevention of Crime</td>
</tr>
<tr>
<td>PIDA</td>
<td>Public Interest Disclosure Act (UK)</td>
</tr>
<tr>
<td>PNA</td>
<td>Procuratore Nazionale Antimafia</td>
</tr>
<tr>
<td>SCPC</td>
<td>Service Central de Prévention de la Corruption</td>
</tr>
<tr>
<td>SEC</td>
<td>Securities and Exchange Committee</td>
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<tr>
<td>SIOD</td>
<td>Social Security Information and Investigation Service</td>
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<tr>
<td>SME</td>
<td>Small and Medium Enterprises</td>
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<tr>
<td>TEU</td>
<td>Treaty on European Union</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<tr>
<td>TI</td>
<td>Transparency International</td>
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<td>UNCAC</td>
<td>United Nations Convention against Corruption</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<tr>
<td>WSR</td>
<td>Waste Shipment Regulation 1013/2006</td>
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1. Introduction

1.1. Background, scope and purpose of the manual

This “Manual for preventive measures and best practices against fraud, corruption and bribery committed through legal entities for the purpose of financial and economic gain” constitutes the final product of the research project called “Prevention of fraud, corruption and bribery committed through legal entities for the purpose of financial and economic gain”1 funded by the European Commission under the ISEC Programme and the Dutch Ministry of Security and Justice as co-sponsoring, non-beneficiary partner. The project aims at implementing one of the priorities individuated by the Commission: “prevention and fight against corruption, development of anti-corruption policies”.2

More specifically, this Manual aims at providing stakeholders from both the public and the private sector with an insight into preventive measures developed by public and private entities with a view to stimulate the adoption of successful strategies throughout the EU and its candidate countries. Moreover, this study wishes to raise awareness concerning the best practices in the field of prevention in order to contribute to new policy developments.

While the first main deliverable of this research project - the Comparative Overview3 - gave particular attention to the implementation of international and European Union (EU) provisions in relation to the criminalisation of acts of corruption, bribery fraud and organised crime in relation to legal entities, this Manual opens up to practices and measures which go beyond criminal and company law. Therefore, the manuscript has also taken into consideration general policies of civil and administrative nature.

Moreover, to finalise this document also takes into consideration the use and role that soft-law measures4 play in the prevention of the felonies that constitute the object of this project. Therefore, on the basis of the research activities conducted this study wishes not only to promote certain policies and practices stemming from the Member States and the private sector, but also to contribute to the development of a wider, EU-centred, strategy on prevention by sharing the knowledge acquired throughout the project. Ultimately, the manual was conceived not only as a knowledge-transfer tool, but also as a source of inspiration for possible policy developments that could take place at the national level as well as at the EU one.

4 Recommendations, opinions regulations, policy strategies; non legislative acts adopted by public entities as well as regulatory authorities and NGOs.
As the last deliverable of the project, this study builds on the research activities carried out in the 15 months of the project. Firstly, the Manual builds upon the national reports submitted by the national experts contacted by the T.M.C. Asser Instituut; secondly, it builds on the conference organised by the Polish Institute of International Affairs (PISM) and the T.M.C. Asser Institute in Warsaw in July 2012 and, thirdly it builds upon the presentations and discussions held at the TMC Asser Instituut on the occasion of the Experts meeting that took place on the 2nd of November 2012. The meeting gathered experts from the academic world, NGOs, public officials and experts working for the private sector. While the immediate goal of that meeting was to discuss best practices to prevent corruption and frauds being committed by legal entities, it also served to bring together different approaches to preventive policies and actions. Thus, while some of the discussions and presentations focused on the role of private legal entities to prevent corruption and frauds being committed internally, other experts presented and analysed best practices stemming from the public sector but aimed at the private sector.

This publication follows the structure of the experts meeting and distinguishes practices stemming from the private sector from practices stemming from the public one. Throughout the research activities it has clearly emerged that the prevention and fight against corruption, fraud and organised crime in relation to activities carried out by legal entities must be endorsed by both public and private initiatives simultaneously and, preferably, in a complementary manner. However, it has also emerged that the most effective initiatives stem from a strong commitment of public authorities together with the development of, on the side of private parties, comprehensive policies and strategies.

In this introductory chapter, two central issues will be addressed. Firstly, because of their importance for the purposes of this project this section should address the concepts of ‘best practice’ and ‘horizontal tools and methods’. However, while the concept of best practice finds a specific acceptation in the context of crime prevention thanks to the guidelines of the European Crime Prevention Network (ECPN), the concept of ‘horizontal tools and methods’ remains without an official definition. Therefore, while the project will rely on the criteria for good and best practices stemming from the documentation available from the website of the ECPN, the next section of this chapter will provide an understanding of the concept ‘horizontal tools and methods’. Secondly, but always to contribute to the attainment of the objectives of this project and the objectives of Council Decision 2007/125/JHA of 12 February 2007, this section will also provide suggestions on how, by making use of a specific legal basis, the EU could become an even more prominent actor in the promotion of preventive measures throughout its territory.

### 1.2. The concept of horizontal tool

At the time of adoption of the “Specific Programme ‘Prevention of and Fight against Crime’ " the Council individuated as a specific objective the promotion and development of “horizontal

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9 Ibid.
methods and tools necessary for strategically preventing and fighting crime and guaranteeing security and public order such as the work carried out in the European Union Crime Prevention Network, public-private partnerships, best practices in crime prevention, comparable statistics, applied criminology and an enhanced approach towards young offenders”.

Pivotal to the objectives of the Experts meeting and this Manual was the idea of sharing knowledge on, and contributing to the development of horizontal tools and methods to prevent and fight corruption, bribery, fraud and organised crime committed by and through legal entities throughout the Union. In this respect, the concept of ‘horizontal tool’ serves a specificity of the European Union, i.e. its internal market and the area of freedom, security and justice without internal frontiers in which rules and regulations should be capable of being applied without significant distinctions between Member States in order to foster economic activities in a secure environment by means of a level playing field. Furthermore, the concept of ‘horizontal tool’ is also broad enough to include legislative and non-legislative measures; in this respect the research conducted not only considered legislative instruments adopted in the Member States and candidate countries, but also looked at soft-law regulations stemming from public authorities in charge of the prevention and fight against corruption, bribery, fraud and organised crime committed by legal entities. Moreover, the inclusion of non-legislative instruments in the notion of ‘horizontal tools’ also allowed the research to look at self-regulating measures such as codes of conduct and other internal measures adopted by legal entities, business associations and other NGOs. Lastly, ‘horizontal tools’ served the purpose of individuating and promoting best practices on prevention for different economic and commercial fields that could be applied not only throughout the Union, but also that could be used as in a plurality of economic and commercial sectors.

In this respect the table below provides a selection of best practices and instruments emerging from this research project that qualify as ‘horizontal tools and methods’.

Fig.1.1 Measures falling under the scope of the concept “Horizontal tools and methods” (Measures in italics are stemming from the private sector; in bold from the public sector, in brackets the name of the country where the measure is in place).

<table>
<thead>
<tr>
<th>LEGISLATIVE INSTRUMENTS</th>
<th>SOFT LAW MEASURES</th>
</tr>
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<tbody>
<tr>
<td><strong>GENERAL APPLICABILITY</strong></td>
<td></td>
</tr>
<tr>
<td>• Bibob and TRACK systems (NL);</td>
<td>• National strategies and comprehensive policies on countering corruption, bribery and frauds;</td>
</tr>
<tr>
<td>• Provisions providing special protection for whistle-blowers (FR)</td>
<td>• Internal ‘Code of Conduct’ established within a company;</td>
</tr>
<tr>
<td></td>
<td>• Promote adoption of rewarding measures in order to encourage whistle-blowing</td>
</tr>
<tr>
<td><strong>SECTOR SPECIFIC</strong></td>
<td></td>
</tr>
<tr>
<td>• Procurement: a system of monitoring notifications conducted by the authorities to detect</td>
<td>• Code of conduct developed by Foundation for Evaluation of Integrity in Construction (Stichting Beoordeling Integriteit Bouwnijverheid) (NL)</td>
</tr>
</tbody>
</table>

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10 Ibid., emphasis added.
irregular transactions in public procurement (GR)

- Registration requirements at Emission Trading Registry (AT, Emission trade)
- VAT reverse charge mechanism in the context of ETS (NL & IT)

- Cadastre of contractors – a form of database for procurement authorities, registration on voluntary basis (AT, Public Procurement)

The table above shows that national legislators as well as professional associations have developed preventive measures and tools that can be applied for either an indeterminate number of sectors of the economy and commercial activities (for instance the Bibob\(^\text{11}\) and internal codes of conducts established and enforced within companies\(^\text{12}\)), or that can be applied only in certain fields and specific circumstances (e.g.: a specialised Code of Conduct for enterprises in the construction sector\(^\text{13}\) or the VAT reverse charge mechanism to combat VAT frauds in the context of emissions trade\(^\text{14}\)). While the table above only contains a limited number of examples, this Manual takes into consideration a plurality of instruments that, according to the experts consulted, can be considered as best practice because of the effectiveness these have had in the different countries considered in the survey.

While the issue concerning the identification of good and best practices as well as the notion of ‘horizontal tools and methods’ pertained to the methodology used in this survey, the issue concerning the projection of the best horizontal tools and methods throughout the EU by means of legislative initiatives pertains to a legal analysis concerning the competences attributed to the EU regarding prevention.

1.3. The role of the European Union in promoting and adopting preventive measures

The European Union, as a polity comprising an internal market and an area of freedom, security and justice, has a growing interest in fostering crime prevention. This is not only in relation to the protection of its own financial and budgetary interests\(^\text{15}\), but also in relation to the whole economic and commercial area of its internal market. In this respect, the necessity to combine prevention with repression in the fight against corruption, bribery frauds and organised crime is testified, from a formal and legal perspective, in a number of instruments.\(^\text{16}\) Yet, as the Comparative Overview conducted in the first part of this research project has emphasised, while the praxis of inserting clauses and provisions on prevention is developing, there is still room for

\(^{11}\) Chapter 3.1.4.

\(^{12}\) Chapters 2.3.3. and 2.3.4.

\(^{13}\) Chapter 4.2.3.

\(^{14}\) Chapter 4.3.

\(^{15}\) Chapter 3.3.

\(^{16}\) For an analysis of the international and EU instruments touching upon the fight against corruption, bribery fraud and organised crime we refer to the Comparative Overview written in the framework of this project – Chapter 2. Available at: [http://www.asser.nl/Default.aspx?site_id=1&level1=13690&level2=15360](http://www.asser.nl/Default.aspx?site_id=1&level1=13690&level2=15360). (retrieved 25 February 2013).
improving the consistency and coherence of these types of clauses. Moreover, one must observe that the policy impetus on preventive measures and tools has not yet been translated into the adoption of concrete recommendations or other binding measures.

Indeed, from a general perspective already before the entry into force of the Amsterdam Treaty the EU had adopted crime prevention measures such as the Resolution of 1998.\(^1\) The first structured innovation was the adoption of Council Decision 2001/427/JHA setting up the European Crime Prevention Network.\(^2\) The collection and exchange of data on crime prevention as well as the promotion of best practices have always been at the centre of the mandate of the Network and a new impetus to the activities of this body was given with the adoption of Council Decision 2009/902/JHA, repealing the previous founding instrument.\(^3\)

However, since the entry into force of the Lisbon Treaty and the invitation made by the Council in the Stockholm programme to, inter alia, “consider measures to facilitate identification of beneficial owners behind assets and increase the transparency of legal entities with a view to prevent financial crime and increase coordination between Member States in the framework of UNCAC, Greco and OECD”\(^4\), has not yet been implemented. At the time of writing this Manual, the report on the implementation of the Stockholm Programme in relation to corruption and organised crime counts only a few initiatives: first, the evaluation of the European Crime Prevention Network and legislative proposal on the establishment of an Observatory for the Prevention of Crime (OPC); secondly, the promotion of the concept of “preventing and fighting organised crime through administrative approach” and, finally, the development of a custom risk management framework to prevent organised crime activities linked to goods.\(^5\) In addition to this the Commission has also published a Communication titled “Fighting corruption in the EU”\(^6\) in 2011 and is expected to publish an EU Anti-corruption report in 2013.

Parallel to this, it must be emphasised for the purposes of this Manual, that the entry into force of the Lisbon treaty offers a new, express, legal basis to promote crime prevention. Indeed article 84 TFEU holds that, in accordance with the ordinary legislative procedure, the European Parliament (EP) and the Council may establish measures “to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States”.\(^7\) Although this provision could be understood as complementary to the other competences attributed to the EU by virtue of Title V Chapter 4 TFEU, it seems preferable to understand this provision as a self-standing novelty. Indeed while it has been suggested\(^8\) that this provisions should be narrowly construed as a corollary provision to article 83 TFEU, nothing in the wording of either articles 83 TFEU or 84 TFEU supports such interpretation. Therefore, while the express exclusion of harmonisation clearly defines the scope of article 84 TFEU, this


\(^{20}\) Stockholm Programme - an open and secure Europe serving and protecting citizens OJ C 115/1, 4.5.2010.


\(^{23}\) Art. 84 TFEU: The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States.

functional limitation does not amount to a material limitation impeding this provision to legitimise the insertion of crime prevention measures in other substantive contexts such as company law or public procurement as long as the concrete measures do not aim at the harmonisation of national legislations.

Indeed an interesting suggestion of the scope of article 84 TFEU was recently offered by Peers in relation to EU legislation against bias violence and hatred.\(^{25}\) In the latter context Peers suggests that a combined reading of articles 19 TFEU\(^{26}\) and article 84 TFEU “could be used, if necessary in conjunction with Article 19(2) TFEU, to adopt legislation establishing an EU programme concerning the exchange of best practice, etc. as regards prevention of hate crimes”.\(^{27}\) Following the systematic approach used by Peers in relation to articles 19 and 84 TFEU, one could argue that article 84 TFEU could be used as a legal basis in connection with a number of other competences.

For the purposes of this study it could be argued that article 84 TFEU could be used in combination with other legal bases belonging to Title V TFEU:

- In relation to the development of common legal frameworks to fight corruption, organised crime and money laundering on the basis of article 83 TFEU and the establishment of minimum rules concerning the definition of criminal offences, article 84 TFEU could be used to streamline preventive strategies and promote best practices in a systematic manner.
- In relation to police cooperation article 84 TFEU could serve together with article 87 TFEU to promote specific trainings, investigative techniques and the exchange of relevant information. Moreover, in combination with article 88 TFEU, article 84 TFEU could be used to foster Europol’s mandate in this respect.

Furthermore, article 84 TFEU could also be used in combination with other specific legal basis in order to promote preventive practices in different sectors of the economy or in different commercial ambits such as company law, public procurement, emissions trading and waste management.\(^{28}\)

- In relation to company law, article 84 TFEU could be used in conjunction with article 50 TFEU, which is sometimes referred to as the legal basis for adopting Union measures aimed at achieving an internal market in company law. The joint articles can subsequently be used to ‘promote and support the action of Member States in the field of crime prevention’ through the promotion of the establishment of preventive policies in


\(^{26}\) *Article 19 TFEU*: 1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. 2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.

\(^{27}\) See supra, note 25, p. 16.
companies or the promotion of best practises as established through academic research or NGOs;


Therefore, in light of the new opportunities offered by article 84 TFEU, the conclusive part of this Manual will build upon the tools and methods stemming from the Member States and formulate recommendations so as to project best practices throughout the EU.

The Manual is structured in the following manner. Chapter 2 will look into measures and best practices stemming from the private sector and analyse the extent to which there is the possibility of promoting some of the practices collected through the whole EU. Chapter 3 in its turn will look at the practices stemming from the public sector with a view to evaluate the extent to which the EU can endorse those practices and promote them throughout the Union by the means of legislative and non-legislative measures. Lastly, chapter 4 will report on the best practices stemming from the 27 Member States and 3 candidate countries in relation to either some specific sector of the economy or to specific commercial practices. In this respect, the research tried to identify and report on cross cutting instruments developed by private and public bodies to prevent corruption, bribery and frauds that are applicable in an indefinite number of sectors of the economy. Finally, Chapter 5 will formulate recommendations for EU-based initiatives concerning the projection of best practices throughout the Union.
2. Prevention systems and best practices from the private sector

2.1. Introduction

In order to contribute to the project objective to ‘stimulate, promote and develop horizontal methods and tools necessary for strategically preventing and fighting crime and guaranteeing security and public order’, this chapter provides an overview of best practices of prevention and compliance systems – collected during the different stages of the project – which have been developed by the private sector. By way of a preliminary observation, it has to be stated that in line with the results presented in the Comparative Overview the public sector appears to be rather reluctant to commit itself to developing more widely applicable codes of conduct in order to regulate private sector behaviour. Mostly, such initiatives are left to the private sector itself. On the other hand, the private sector, so far, has not displayed the level of dedication necessary in order to change attitudes and behaviour towards corruptive practises. In some cases, a hybrid scenario could be detected, in which public authorities attempt to stimulate the adoption of preventive measures by the private sector through the creation of legal frameworks providing for the possibility of criminal liability for companies in case of non-implementation of certain preventive measures, and subsequent avoidance of such liability in case such measures were implemented. Another means of stimulating private sector initiatives is making codes of conduct binding. Nevertheless, the project activities have displayed several (elements of) anti-corruption frameworks which were deemed particularly effective. Especially larger Multinational Companies have a tendency to develop extensive and elaborate preventive frameworks. For example, this section will discuss the Austrian Corporate Governance Code; the internal mechanisms developed by two large MNCs; and furthermore deal with external due diligence investigations. However, more engagement between stakeholders, both at government and civil society level, is needed to enact effective anti-corruption measures and stronger codes of conduct in the private sector.

As mentioned earlier, one way of improving policies in the EU is for governments to look at what is happening on the ground in other EU countries; establish what is working particularly well; assemble these well-established practises and assess their use for – whenever indicated - further development and action on an EU-level. This part of the Manual will provide an overview of such private sector ‘bottom-up’ experiences, which are deemed especially effective in order to prevent corruption, bribery and organised crime. Also, the stimulation of the adoption of such preventive measures through legal measures will be included.

The structure of this chapter is as follows. Firstly, a brief overview will be provided of the work of some non-governmental organisations active in the area of combatting corruption and bribery that developed relevant tools and guidelines for the private sector. Secondly, best practises of anti-corruption and compliance frameworks emerging from the project activities will be discussed. Finally, private sector cooperation platforms and their potential to contribute to combatting corruption will be discussed. A similar structure is maintained for the subsequent section on whistle-blowing, thus first focussing on tools developed by civil society organisations,

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29 These are: The national reports; the Comparative Overview; the conference in Warsaw; and the Expert Meeting in The Hague.
and then on ‘best practises’ emerging from the project activities. By way of conclusion this section will end up with some recommendations for potential Union-level measures and action.

2.2. Anti-corruption frameworks stemming from the work of NGOs

This section provides an overview of key elements of anti-corruption frameworks as promoted by civil society organisations in their respective conceptual/prescriptive frameworks. Parties or organisations linked to a certain part of society or business sector can develop frameworks aimed at evaluating a specific state of affairs and subsequently attempt to prevent or improve such affairs. As such, some organisations developed frameworks reflecting best practices at a more overall level, overarching a specific sector or type of organisation with a view to influence conduct within those sectors or organisations. Depending on the competences of the concerned parties or organisations they can make use of (existing) legal instruments and/or of instruments of a more practical nature. The framework presented below is deduced from the combined work of Transparency International (TI)\(^{30}\) and the International Chamber of Commerce (ICC),\(^{31}\) which both deal extensively with the prevention of corruption, fraud and bribery.

Fig. 2.1 Key elements of preventive frameworks as designed by TI and International Chamber of Commerce

<table>
<thead>
<tr>
<th>Function</th>
<th>Key element</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishment of framework</td>
<td>Visibility</td>
<td>Establish clear and visible anti-corruption and anti-bribery policies, as part of an overall culture of integrity in all operations of an enterprise.</td>
</tr>
<tr>
<td></td>
<td>Accountability</td>
<td>It is the responsibility of all employees to ensure compliance with the enterprise’s anti-corruption policies.</td>
</tr>
<tr>
<td></td>
<td>Clarity of prohibited behaviour</td>
<td>Clearly describe the prohibited behaviour, as in line with relevant national laws or other jurisdictions in which the enterprise operates.</td>
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<tr>
<td></td>
<td>Designate responsible persons</td>
<td>The Board of Directors or equivalent body designates individuals of high reputation responsible for the implementation of this policy.</td>
</tr>
<tr>
<td></td>
<td>Apply sanctions</td>
<td>Applying sanctions in case of non-compliance by employees should be a possibility.</td>
</tr>
<tr>
<td></td>
<td>Identify risk</td>
<td>Enterprises should carry out continuing risk-assessments to identify shifts in risk areas and act hereupon accordingly.</td>
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<tr>
<td></td>
<td>Exercise external due diligence</td>
<td>Business partners and other relations with which the enterprise engages should be assessed for conformity with its own policies.</td>
</tr>
<tr>
<td></td>
<td>Identify vulnerable areas</td>
<td>Known high-risk areas for bribes should be continuously assessed.</td>
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<tr>
<th>Control of activities</th>
<th>Develop control mechanisms</th>
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<tr>
<td></td>
<td>Based on the risk assessment, appropriate control mechanisms are developed, implemented and</td>
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<td></td>
<td>maintained by an independent board or commission.</td>
</tr>
<tr>
<td>Align all internal activities</td>
<td>All activities within the enterprise are conducted in accordance with the enterprise’s anti-corruption policies.</td>
</tr>
<tr>
<td>Align all external activities</td>
<td>All transactions and business relationships entered into should be aligned with the enterprise’s policies.</td>
</tr>
<tr>
<td>Training</td>
<td>All employees should receive tailored training in order to be able to detect bribery or other fraudulent conduct in an early stage.</td>
</tr>
<tr>
<td>Whistle-blowing</td>
<td>Confidential channels should be established to provide opportunities for employees to raise concerns, obtain advice or report incidents.</td>
</tr>
<tr>
<td>Collect data</td>
<td>Information systems identify and process relevant information and records are maintained.</td>
</tr>
<tr>
<td>Communicate policy</td>
<td>Both internal and external communication on the enterprise’s anti-corruption policy should take place on a regular basis.</td>
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<tr>
<td>Continuous assessment</td>
<td>Continuous evaluations of the enterprise’s anti-corruption policies should be performed and where necessary adapted.</td>
</tr>
<tr>
<td>External review</td>
<td>In order to ensure the highest level of adequacy and verification of policies in place, external auditing and review of the enterprise’s anti-corruption policies should take place on a regular basis.</td>
</tr>
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</table>

2.3. Anti-corruption frameworks stemming from self-regulation and business practises

2.3.1. The Austrian Code of Corporate Governance

The introduction of the Austrian Code of Corporate Governance, although launched as a voluntary self-regulation measure of joint-stock companies, has become an indispensable part of the Austrian corporate governance system and is viewed by investors as well as by issuers as an effective instrument for building confidence.\(^32\) It is a benchmark for good corporate governance and corporate control on the Austrian capital market. The ‘Corporate Governance Report’, which was made mandatory by the Austrian Business Code Amendment Act 2008 (Unternehmensrechtsänderungsgesetz) for all listed companies,\(^33\) provides for the inclusion of a declaration on any deviations from the recognised Corporate Governance Code thus heightening the significance of the Austrian Code of Corporate Governance. The Code is reviewed annually in the light of national and international developments, and if necessary, amended. The Code emphasises the goal to meet the most modern international and European standards and to


\(^{33}\) The Code is addressed primarily to Austrian stock exchange-listed companies; including exchange-listed European companies (Societas Europaea) registered in Austria. It is also recommended that companies not listed on stock exchanges follow this Code to the extent that the rules are applicable. It can be noted that also in Belgium a code of conduct developed by the private sector was made binding for all stock exchange listed companies. See: Belgian national report, p. 58.
promptly incorporate any changes in national law into the Code. In doing so, it is ensured that broad and transparent discussion with the involvement of all stakeholders takes place. This constant improvement of the corporate governance at Austrian listed companies is to be achieved primarily by the flexible voluntary self-regulation pursuant to the ‘comply or explain’ principle, of which some aspects are currently being discussed at the European level. In this context, for the practical application of the Code it needs to be stressed that companies are in compliance with the Code even though they do not comply with all of the rules but explain for whatever reason they are deviating from those rules. Since 2010, new remuneration rules are included with the intent to ensure that managers follow the principles of sustainability and long-term orientation, and to avoid false incentives in the remuneration structure such as unreasonable short-term performance targets or excessive risk tolerance. Furthermore, the Code contains detailed rules regarding transparency and auditing and is therefore an important regulation against corruption in the private sector. Through voluntary questionnaires distributed amongst listed companies the ‘Austrian workgroup for Corporate Governance’ evaluates strengths and weaknesses of the Code and processes these in the annual review.

2.3.2. Third party screening

Kroll Advisory Solutions is one of the market leaders in helping individuals and companies mitigate and respond to risks, such as fraud and financial irregularities, free from audit-related conflicts of interest. Their analysis serves as an interesting example of third party screening practise. Upon entering into new business relations, financial irregularities or a suspicion of fraudulent practices might be discovered within the new business partner. Practise shows that a company is often unprepared to respond and react appropriately to such a discovery. This can result in major financial damage, as well as serious reputational and regulatory risks to the business. Consequently, many organisations fail to take adequate steps to prevent, identify, respond to and recover from such incidents. A third party screening might provide a solution to these threats, and the concerned company provides these. Their clients are provided with expert advice and support at every stage of the process, leading from investigation to recovery, training and prevention. Investigators are trained in interviewing, evidence gathering and surveillance, taking into account admissibility of evidence and standards of proof required for civil and criminal actions. As soon as a problem or suspected incident is identified, experts develop an investigative strategy that addresses the issues and the client’s needs. This could include emergency steps to prevent any further damage and the identification of stakeholders and regulatory bodies that need to be informed of the matter. While investigative accountants work to quantify the losses, an experienced team of former prosecutors, law enforcement personnel, financial analysts, computer forensics specialists and trained investigators identify the individuals or organisations responsible for the losses.

Third party preventive screening is based on three sets of different levels of preventive screening, which correspond to the level of risk involved. The first level of preventive screening, called ‘Screening and Red Flag solutions’, deals with existing business relationships as well as new potential investments. This solution allows clients to understand the risk profiles of prospective and current business partners, and to identify areas for further investigation. A second, more

35 Original: Österreichischer Arbeitskreis für Corporate Governance.
36 This section is largely based on the activities of Kroll Advisory Solutions, as established through desk research and the presentation provided by Mr M. Glapion (Managing Director Kroll Advisory Solutions, London), at the Expert Meeting which took place at the T.M.C. Asser Institute in The Hague, The Netherlands, at 2 November 2012. These are the observations of the T.M.C. Asser Institute.
thorough screening called ‘Enhanced Due Diligence’ deals with high-risk jurisdictions or industries and uncovers risk-related information that allows clients to make confident, well-informed business decisions. Analysts review a wide range of media sources, federal, state and local regulatory and court databases to confirm professional registrations and ownership, and to assess regulatory exposure and involvement in legal proceedings. A third level of preventive screening, ‘Investigative Due Diligence’ focuses on mergers and acquisitions, as well as public offerings, joint ventures, private equity, venture capital, and other investments. It is focussed on creating the most comprehensive set of databases, deepest analysis of public records, and access to networks of domestic and international sources in order to uncover potential vulnerabilities. The end result is a detailed profile of any issue of concern enabling the client to manage the identified risk by restructuring or re-pricing the deal, or even exiting from the proposed transaction.\textsuperscript{37}

Some essential elements of companies to break the downward spiral of continued corporate-wide frauds are: \textsuperscript{38}

- \textit{Tone from the top}: for any organisation to develop a strong anti-fraud culture, the expectations regarding ethical behaviour must be communicated, understood, and driven from the top of the organisation downward. It is essential, therefore, for every organisation to have a written code of conduct that clearly and concisely articulates the company’s ethics and values. The board and senior management must commit to, adopt, and live by these standards through their daily actions and communications throughout the organisation.

- \textit{Education of employees}: In order to ensure that the anti-fraud culture is adopted throughout the organisation, employees must be educated. They need to know what is considered acceptable and unacceptable behaviour in the workplace. Employees also need to know and be given the tools to identify and prevent fraud, and more importantly, they need to be encouraged to participate in bringing illegal and unethical behaviour to the attention of the appropriate company representative.

- \textit{Establishment of reporting channels}: Tips (by whistle-blowers) and anonymous complaints were the leading contributors for detecting corporate fraud. To continue to build upon an ethical, transparent, and anti-fraud corporate culture, it is critical to provide a channel for fraudulent behaviour to be reported. One possibility is to establish a hotline operated by a third-party professional.

\section*{2.3.3. Internal compliance measures of MNCs: the case of Royal Dutch Shell \textsuperscript{39}}

As one of the world’s largest (energy) companies, Royal Dutch Shell is in particular need of well-developed systems designed to mitigate the risks of corruption, bribery and fraud. Its ethics and compliance programme is based on the Shell General Business Principles which were introduced in 1976. The Principles, which set forth clear commitments with regard to business integrity, fair competition and legal compliance, are supported by a written ‘Code of Conduct’. The latest

\textsuperscript{37} Based on information published on: http://www.krolladvisory.com/investigations/ (retrieved 25 February 2013).


\textsuperscript{39} This section is largely based on the presentation by Mr. Pieter Paul van Lelyveld (Head of Business Integrity, Shell International B.V., The Hague) given at the Expert Meeting which took place at the T.M.C. Asser Institute in The Hague, The Netherlands, at 2 November 2012. These are the observations of the T.M.C. Asser Institute.
version of the Code of Conduct has been in place since 2010 and provides guidance and structure for all employees in assessing whether certain behaviour is allowed in a business context or not. The Code emphasises the individual responsibility of the employee. The main principles pertaining to the prevention of Bribery and Corruption are:

- Never offer, pay, make, seek or accept a personal payment, gift or favour in return for favourable treatment, to influence a business outcome or to gain any business advantage;
- Ensure people you work with understand bribery and corruption is unacceptable;
- Tell the company if you suspect or know of corruption within the company or in any party (company or individual) it does business with.\(^{40}\)

The Code furthermore describes behavioural standards for all employees including with regard to the offering and receiving of gifts and hospitality, conflicts of interest, insider dealing and money laundering. The company provides extensive education and training to its employees on the subjects covered by the Code of Conduct, using both online and face-to-face courses, including testing of knowledge where appropriate. The Code obligates employees to report concerns regarding any corruptive practises. The company maintains a Global Helpline run by an independent third party provider (comprising both telephone numbers and a web page).\(^{41}\) It serves as a tool to raise concerns or dilemmas, or to seek advice on a matter related to compliance with the law, the Business Principles or Code of Conduct, in full confidence and without fear of retaliation. Employees may communicate anonymously or by identifying themselves. Reports are passed on to a Regional Coordinator who will assess the report and subsequently allocates it to a Case Manager to decide the appropriate action.

If the report has the nature of an allegation which requires careful investigation, an investigator or investigation team will be assigned. This will usually involve a suitably-trained investigator from the Investigative Unit, consisting of approximately 30 employees typically with law enforcement, forensic accounting and/or forensic IT background. In a broader sense the Investigative Unit is part of the overall ethics and compliance programme, be it that the Unit is more focused on investigative functions, thus reactive, rather than setting rules pre-emptively. The Investigative Unit is highly independent within the structures of the company. The investigation itself will focus on an objective, factual analysis. Case details, and especially the identity of the person who made the report and any persons mentioned in the report, are kept confidential and only shared on a strict ‘need-to-know’ basis. In the event that an allegation is found to be true, the local operating company will decide on the action or actions to be taken with advice from human resources, legal, ethics and compliance representatives.

To conclude, integrity and due diligence processes specifically developed by the company to verify third party integrity have been put in place. Initially, screening focusses on databases and risk analysis. Then, if necessary after the initial screening, a follow-up check may be conducted by the Investigative Unit.


\(^{41}\) [http://www.shell.com/home/content/aboutshell/who_we_are/our_values/compliance_helpline/#](http://www.shell.com/home/content/aboutshell/who_we_are/our_values/compliance_helpline/#)
2.3.4. Internal compliance measures of MNCs: the case of Siemens A.G.\(^{42}\)

In 2008, German industrial conglomerate Siemens A.G. pleaded guilty to corruption charges in the United States and paid $1.6 billion in fines to settle corruption investigations in the U.S. and Germany.\(^{43}\) Prosecutors in several countries alleged that Siemens had engaged in a systemic and far-flung bribery scheme.\(^{44}\) Ever since the scheme was brought to daylight, the company has pursued a path which rigorously breaks with its tainted past and adopted innovative and elaborate compliance systems. The company’s compliance department substantially increased in size and as of July 2012 totals around 600 employees worldwide. The ‘Siemens Compliance System’ consists of three pillars: ‘Prevent’, ‘Detect’ and ‘Respond’.\(^{45}\)

In 2009, the company reissued an updated version of its ‘Business Conduct Guidelines’,\(^{46}\) with the aim to emphasize the ethical and legal framework within which the company wants to operate. It is designed to prevent, detect and respond to fraudulent practises within the company at the earliest stage possible. The Guidelines are continuously reassessed and updated. Firstly, in order to prevent corruption and fraud in the earliest stage possible, the basic behavioural requirements for employees emphasise the fact that the manager is the person responsible for integrating a ‘culture of integrity and compliance’ amongst employees under his supervision, while at the same time granting them as much individual responsibility as possible. According to the company, compliance and a sense of individual responsibility are inextricably linked, and every employee should thus ask him/herself on every business decision: “Do I want to be held accountable for this decision in the end?” This chain of responsibility ultimately ends with the company’s CEO. In order to create such a desired level of awareness, employees and managers around the world receive regular training on the subject of compliance, as does the company’s top management.

Secondly, the new Compliance Risk Assessment (CRA), used since 2012, not only reduces compliance risks through internal rules, tools, and controls, it also helps identify potential compliance risks, thus linking compliance even more closely to business practices. The company has introduced an internal tracking procedure, ‘Finavigate’, designed to help detect and deter suspicious forms of payments or other transactions that could involve corrupt practises and/or money-laundering. The company promotes collective action in promoting compliance, for if substantial progress is to be made, all market participants, or at least as many as possible and other stakeholders must act in concert. Therefore, suppliers and other business partners are expected to adhere to the same principles and standards used by the company itself, and in turn promote compliance among their suppliers in line with the company’s ‘Code of Conduct for Suppliers’. Every new business relation entered into that according to pre-defined criteria constitutes a material risk, has to undergo a check, in order to verify such compliance. All employees and external stakeholders can use a protected reporting channel, the ‘Tell Us Helpdesk’, by which they can report possible compliance violations.\(^{47}\) All complaints are reviewed and where needed, investigated and eventually disciplinary or other corrective measures will be

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\(^{42}\) This section is largely based on desk research and on the presentation by Mr. Jürgen Krais (Senior Legal Counsel, Corporate Legal and Compliance, Siemens AG), given at the Conference which took place in Warsaw, Poland, on 13 July 2012.


implemented if necessary. Furthermore, employees can address the company’s ‘ombudsman’, an impartial department to which the company’s employees and third parties can report their observations of improper business practices in the company in a confidential manner.

Lastly, actual ‘Follow-up’ to complaints is considered by the company as key to any successful compliance policy. The company’s employees who report possible compliance violations are protected by a special guideline that forbids sanctions of any kind for reports made in good faith. Thus, any person who reports possible violations in good faith may not be disadvantaged in any way. To conclude, compliance with the law and observation of the Guidelines is monitored worldwide on a regular basis throughout the company’s structures. Reports on possible compliance violations are pooled and managed in a ‘case tracking tool’ by the Compliance Legal department or by the respective local Compliance Officer.

2.3.5. Private Sector cooperation platforms

An effective measure to enhance cooperation within the private sector and to create a level playing field with regard to compliance and Corporate Social Responsibility (CSR) measures is the establishment of private sector cooperation platforms. Several national experts pointed out the benefits of having such a platform in place, be it initiated by government agencies or ministries, or the private sector itself. A good example can be found in Denmark. The Confederation of Danish Industry (DI) is a private organisation funded, owned and managed entirely by approximately 10,000 companies within manufacturing, trade and service industry. DI aims to provide the best possible corporate conditions for Danish industry. The platform’s CSR policy is grounded on the assumption that such measures should be driven by the business sector since these activities focus on how corporations can take responsibility for contributing to, amongst others, combatting corruption, bribery and organised crime. The general guideline is that in doing so, companies should have freedom of methodology as well as a choice among a vast array of activities that can meet some of the most pertinent social needs. CSR strategies are more efficient when they build on the competences of the particular company, and they add more value, if they are developed in accordance with international frameworks and other business activities. The priority for future policy development of CSR should be on how a certain framework can help to improve business performance through initiatives such as best practice sharing and capacity building. As a result of a statutory requirement adopted in 2009, large businesses in Denmark are required to account for their work on corporate social responsibility according to the principle of ‘comply-or-explain’. DI does not support mandatory reporting requirements. The Danish requirement offers however a flexible framework with clear international references which allow companies to adapt the reporting to their specific needs and business environment.

Another example is Maatschappelijk Verantwoord Ondernemen Nederland (MVO Nederland; CSR Netherlands), which is the Dutch national knowledge centre and network organisation for corporate social responsibility (CSR). It was established by the then Dutch Ministry of Economic Affairs in 2004. Amongst its objectives are the stimulation of the development of codes of conduct and the enhancement of transparency in the business sector. CSR Netherlands also provides a platform for entrepreneurs to pose with questions regarding corrupt behaviour of employees; the situation ‘on the ground’ in other countries; questions on product chain-
responsibility and it provides them with a toolkit for entrepreneurs to self-assess their CSR-performance.50

2.4. Legislation stimulating the adoption of private sector preventive measures: the UK Bribery Act 201051

As became clear during the execution of the project and as emerged from the subsequent knowledge created through the different project activities, the private sector is in general prone to develop preventive measures, but mostly confined to the realm of its own responsibilities unless compelled by judicial force (e.g. the Siemens case) to take further steps. Stronger engagement is needed in order to achieve a fundamental change in attitude towards bribery and corruptive practices. The work of NGOs, as discussed earlier in this chapter, is widely regarded as solid guidance in the development of preventive measures. Obviously, these frameworks cannot be imposed upon companies through, for example, the use of criminal law. However, variations upon such a scenario are perceivable and the system adopted in the United Kingdom provides an interesting example. There, the private sector is encouraged to adopt preventive measures themselves through legal incentives, which provide for a legal defence for companies that adopt such measures in case of employees or anyone associated with the company engaging in bribery. Even though, strictly speaking, such measures are of public sector origin and not ‘bottom-up’ as dealt with in this chapter, it is the private sector that is incited to take measures in order to limit or even prevent public interference through criminal law.

The UK Bribery Act 201052 criminalises both active and passive corruption and extends the jurisdiction of the courts of England and Wales, Northern Ireland and Scotland to cover bribes made or received abroad. It covers financial and other advantages and the mere offer or promise is sufficient to trigger liability under the Act. The Act applies to all functions of a public nature and activities connected with trade, businesses or professions including any activities carried out on behalf of a body of persons or an unincorporated association53. In other words, this UK Act covers public and private forms of corruption alike and in an integrated manner. Bribes offered or given via third parties are also caught by the Act.54 Besides, the Act establishes an almost universal jurisdiction, providing a legal base for prosecuting individuals and companies connected to the UK for acts of corruption committed elsewhere in the world, not (in) directly related to the UK. The only requirement is that the company is incorporated or formed in the UK, or that the company carries out (a part of) its business activities in the UK (wherever the company was created). All in all, the UK system is widely regarded as being one of the strongest and farthest-reaching anti-bribery laws in the world.

For the purposes of this manual, one aspect of the UK’s strict anti-bribery legislation should not be excluded. The amended UK Bribery Act 2010 incites commercial organisations to put in place “adequate procedures designed to prevent persons associated with [the commercial organisation]

50 Comparative Overview, p. 67.
52 Bribery Act 2010, 20110 Chapter 23, An act to make provision about offences relating to bribery; and for connected purposes [8th April 2010], commencement 1 July 2011.
53 Ibid., section 3.
54 UK national report, p. 7.
from undertaking such conduct.” The objective of this provision is not to impose the full reach of criminal law upon well run companies that experience an isolated incident of bribery. Rather, Section 7 provides a legal defence for the involved company having such “adequate procedures” in place, and as such a balance is created between enforcement through criminal law and preventive self-regulation. It can be perceived as an addition to liability which might arise under the sections covering active bribery and bribery of a foreign public official. Where the prosecution cannot prove beyond reasonable doubt that one of these forms of bribery has not been committed, Section 7 will not be triggered.

The Act provides guidance for companies for putting in place adequate procedures to prevent persons associated with the company, but also contractors and suppliers, from bribing in order to avoid liability for companies under Section 7. Companies that wish to prevent bribery from being committed on their behalf should make sure that their preventive policies are guided by six principles. These principles are flexible and can be interpreted in different forms, in order to allow for the huge variety of circumstances that companies might find themselves in.

- **Principle 1: Proportionate procedures**: a company’s procedure to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of its activities. They should be clear, practical, accessible, effectively implemented and enforced.
- **Principle 2: Top-level commitment**: the top-level management of a company are committed to preventing bribery by persons associated with it. They promote a culture within the company in which bribery is never acceptable.
- **Principle 3: Risk assessment**: the company assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented. Internal risk, country risk, transactional risk, third-party risk should be taken into account.
- **Principle 4: Due diligence**: The company applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of it, in order to mitigate identified bribery risks.
- **Principle 5: Communication (including training)**: the company seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the company through internal and external communication, including training, that is proportionate to the risks it faces.
- **Principle 6: Monitoring and review**: the company monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

As can be deducted from principle 1, the greater a company’s exposure to risks related to bribery, the more attention it should pay to preventive strategies and the stricter the UK’s prosecution authorities will take into account whether the company abided by the six principles mentioned here. Important in this regard is that the companies are allowed substantial room for manoeuvring in adopting the measures they deem most fit for their particular business practise. In deciding whether or not to initiate criminal proceedings the UK prosecution authorities will consider

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55 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions 2009 (Anti-Bribery Recommendation), section 7 (2). ‘Such conduct’ refers to: offences of bribing another person (cf. Section 1) or bribery of foreign public officials (cf. Section 6).

56 Companies engaged in third party preventive screening, such as the one consulted for the purposes of this project, also advise their clients to adhere to the principles of the Act in order to avoid liability under Section 7.
furthermore take into account a company’s willingness to cooperate with investigations. To conclude, the Act provides a good example of a combination of criminal legislation and subsequently desired action by private legal entities in order to prevent its application. By creating incentives for companies to adopt preventive strategies, taking the shape of a legal defence against employees engaging in bribery, companies are stimulated to create their own preventive anti-bribery strategies.

2.5. Whistle-blowing frameworks stemming from the work of NGOs

Today, it is generally acknowledged that effective protection of whistle-blowers against retaliation will facilitate disclosure of fraudulent practices within organisations.\(^{57}\) Subsequently, the private sector is increasingly taking voluntary measures to create internal channels for safe and confidential reporting of misconduct. An effective whistle-blowing regime deters wrongdoing; facilitates the reporting of misconduct without fear of retaliation; helps identify misconduct early on and thereby prevent potentially grave disasters; and reduces the risk of potentially damaging external reports, including to regulators or media. Whistle-blower protective measures are also an important element of an internal compliance programs, which could demonstrate to shareholders and law enforcement that a company has made efforts to prevent, detect and address corrupt behaviour. This could be especially relevant to companies subject to the jurisdiction of anti-bribery and anti-corruption laws that include a defence against liability for certain offences by having adequate procedures in place to prevent bribery,\(^{58}\) or where sentencing guidelines provide more lenient sentences on companies with such programmes in place.

There is no common legal definition of what actually constitutes whistle-blowing. In the context of international anti-corruption standards, the Organisation for Economic Cooperation and Development (OECD) refers to ‘protection from discriminatory or disciplinary action against public and private sector employees who report in good faith and on reasonable grounds to the competent authorities’.\(^{59}\) The United Nations Convention Against Corruption (UNCAC) defines it as ‘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’ and to provide protection against any unjustified treatment of such persons.\(^{60}\) According to Transparency International a quarter of the occurrences of fraud discovered in private enterprises came to light as a direct result of whistle-blowing.\(^{61}\) This renders whistle-blowing an important factor in combatting internal fraudulent affairs which, if not revealed through such a channel, might


\(^{58}\) Section 7 of the UK Bribery Act (2010) establishes the offence of ‘Failure of Commercial Organisations to Prevent Bribery where strict liability is imposed for active bribery. The only defence is that a company had in place’ adequate procedures designed to prevent persons associated with the company from engaging in bribery.


\(^{60}\) Article 33 UNCAC.

otherwise never have surfaced. For the purposes of this Manual, a whistle-blower constitutes a person who reports a misconduct or illegal activity occurring within an organisation (s)he is associated with, regardless of whether this occurs in the public or in private sector.

Whistle-blowing can be both beneficial and detrimental to the company. The advantages may stem out of an action, that has been undertaken by a whistle-blower internally and it allows for the company a removal of a malfunctioning element before a greater financial loss is done. The disadvantage, however, may occur when the whistle-blower decides to take action outside the structures of the company, which might result in bad publicity to the company or, if the wrongdoing is of a certain extent, liability of the company for eventual damages. Another issue which needs to be addressed is potential retaliation from the management towards a whistle-blower. The possible consequences that a whistle-blower might have to face are multiple, and every whistle-blower protection framework should address this matter.

The following table reflects a combination of the voluntary tools developed by Transparency International and the International Chamber of Commerce. It is focussed on possible internal measures to be taken by enterprises, and thus excludes any ‘external’ legal protection for whistle-blowers. In general, the ICC warns against over-regulation of private sector whistle-blowing regimes, emphasising that self-regulation and voluntary integrity programmes provide for the most effective protection of corporate interests and highest level of adaptability to different workplace environments.

Fig. 2.2 Whistle-blowing frameworks as designed by TI and the International Chamber of Commerce.

<table>
<thead>
<tr>
<th>Function</th>
<th>Key element</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishment of framework</td>
<td>Establish whistle-blowing system</td>
<td>Enterprises are encouraged to establish, within their organisation and as an integral part of their integrity programme, a whistle-blowing system.</td>
</tr>
<tr>
<td></td>
<td>Communication</td>
<td>The enterprise should promote internal reporting possibilities and ensure exposure of these possibilities.</td>
</tr>
<tr>
<td></td>
<td>Designate responsible persons</td>
<td>Enterprises should appoint high level personnel of undisputable repute and extensive work experience to be in charge of the management of their whistle-blowing units.</td>
</tr>
<tr>
<td></td>
<td>Autonomy within the enterprise</td>
<td>This personnel should be given a large autonomy within the enterprise and report to the highest echelon possible within the group.</td>
</tr>
<tr>
<td>Handling reports</td>
<td>Receiving a report</td>
<td>Enterprises should receive and handle, at the earliest stage possible and in full confidentiality, all reasonable requests for advice and guidance on business conduct matters and ethical concerns raised by the employees of the enterprise and of its subsidiaries or affiliates.</td>
</tr>
<tr>
<td></td>
<td>Obligation to investigate</td>
<td>All bona fide reports should be investigated by the enterprise’s whistle-blowing unit and forwarded, under strict confidentiality rules, to the appropriate person(s) or department(s) in the enterprise.</td>
</tr>
<tr>
<td></td>
<td>Possibility of external review</td>
<td>An enterprise may designate an independent firm, external to the group, specialized in receiving and handling whistle-blowing reports.</td>
</tr>
</tbody>
</table>
2.6. Whistle-blowing frameworks stemming from self-regulation and business practises

2.6.1. Introduction

According to Kroll Advisory Solutions, whistle-blowing is on the rise since the financial downturn. Tip-offs to the FSA about potential wrongdoing at banks have increased almost fourfold since then. Nearly one in five of the investigations handled by Kroll for its corporate clients around the world was sparked by a complaint by an insider to someone other than a direct manager, of which roughly 60% resulted in Kroll finding evidence to back up the original complaint. However, there will always be a need to be mindful of whistle-blower allegations that are malicious. It is Kroll’s experience that nearly 20% of whistle-blower disclosures investigated were malicious allegations from individuals seeking revenge on an individual or company. Furthermore, disclosures of ‘trivial violations’ should not constitute protected disclosures, and therefore some countries set minimum thresholds on the extent of the wrongdoing before whistle-blower protection may be triggered. Protected disclosures under U.S. law, for example, include inter alia ‘gross mismanagement’ and ‘gross waste of funds’. To qualify as ‘gross’, a government agency’s ability to accomplish its mission must be compromised.

2.6.2. The UK’s Public Interest Disclosure Act

Some States have enacted a system of whistle-blower protection that expressly covers private sector employees. In some cases, such protections are even provided for under specifically

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62 This section is largely based on the presentation by Mr. M. Glapion (Managing Director Kroll Advisory Solutions, London), given at the Expert Meeting which took place at the T.M.C. Asser Institute in The Hague, The Netherlands, 2 November 2012.

adopted legislation, such as the United Kingdom’s Public Interest Disclosure Act (PIDA). Utilizing a broad definition of ‘protected disclosures’, with its emphasis on the prevention of the malpractice, and with the guarantee of full compensation, the Act is an important benchmark for every employer in the UK. As is the case with the UK Bribery Act 2010, though strictly speaking a measure of public origin, the Act urges the private sector to take action to provide certain basic protective measures for employees desiring to make a disclosure. Therefore, even though it is a public measure and not a ‘bottom-up’ initiative, providing the actual protection for whistle-blowers takes private sector action eventually. Therefore, this section is placed in this chapter.

Key issue for UK employers will be to reduce any risk of creating grounds for protected public disclosures. Such steps will include (a) introducing, reviewing, and refreshing a whistle-blowing policy; (b) promoting the policy effectively; (c) ensuring that all employees understand that victimisation for whistle-blowing is not tolerated; and (d) making it clear that reporting malpractice to a prescribed regulator is a perfectly acceptable practise. Instrumental in settling the scope and detail of PIDA was the charity organisation ‘Public Concern At Work’, which operates a website and a telephone line, provides training and education to businesses and informs individuals on how to blow the whistle. In terms of declaratory effect, PIDA is proving an important addition to the framework of law in the UK and its success made it an example for similar legislation in South Africa and Japan. It is considered a worldwide example of realistic and balanced public interest whistle-blowing protection.

2.6.3. Rewarding measures to encourage whistle-blowing

To further encourage whistle-blowing, some States have adopted rewards systems, including monetary rewards. For example, The US Dodd-Frank Act authorises the Securities and Exchange Committee (SEC) to pay rewards to individuals who provide original information that leads to successful SEC enforcement actions. Rewards may range from 10 to 30% of the funds recovered. In this regard, the SEC has recently established a ‘Whistle-blower Office’ to work with whistle-blowers, handle tips and complaints, and help the SEC determine eventual awards. Similarly, private sector initiatives focussed on encouragement of disclosure of fraudulent practises have been established. For example, in the Czech Republic, ‘Nadační fond proti korupci’ (Foundation against corruption) was established by a few well-respected Czech business-personalities. This foundation encourages people to disclose corruption, bribery or organi-
2.7. Conclusions and recommendations for EU initiatives

The final part of this chapter is dedicated to establishing which (part) of the best practises as reflected here could better be regulated at EU level. Taking into account the principles of subsidiarity and proportionality, regulation of the private sector at Union-level is limited to the competences conferred upon the EU in the framework of internal market company law. Any harmonisation should furthermore respect the national corporate governance systems of the Member States and should strive to increase flexibility and freedom of choice in respect of a company’s choice of preventive and compliance system. EU Company Law is a combination of ‘hard law’, such as the ‘Accounting directives’ and the ‘Transparency directive’, and ‘soft law’, such as corporate governance codes applied within the Member States on a ‘comply or explain’ basis. With regard to regulating the level of transparency required by EU companies, a balance has to be struck between increasing transparency in order to combat corruption, fraud and organised crime, and the need not to overburden companies with excessive regulatory requirements. The 4th Company Law Directive was amended in 2003 to require companies to include, to the extent necessary for an understanding of the development, performance or position, information on financial, and where appropriate, non-financial key performance indicators relating to environmental and employee matters in their annual report to the extent necessary for an understanding of the company’s development. It could be argued that such ‘non-financial reporting requirements’ should, apart from the indicators mentioned, also aim at reflecting a company’s ethical performance, i.e. its efforts to ban fraudulent practises from its operations. The Member States, however, may exempt small and medium-sized companies from such a disclosure obligation, which can be regarded as a measure intended not to cause the previously mentioned risk of overburdening such companies.

Recommendation:

i) The EU, in the area of Company Law, should stimulate companies to meet the most recent international and European standards with regard to anti-corruption frameworks and to incorporate any changes to national law quickly into any code of conduct they adhere to. A consistent improvement of corporate governance is to be achieved primarily by flexible voluntary self-regulation pursuant to the ‘comply or explain’ principle.

ii) SMEs should, possibly guided by the experience of larger MNCs with elaborate anti-corruption frameworks, as much as possible be included in such a creation of a culture of integrity at an EU-level, and be stimulated to adopt reporting procedures reflecting the SME’s ethical performance.

When companies are provided with a sense of responsibility for combatting corruption, bribery and organised crime, and when they realise that doing thus is in their own (financial) interest, chances of the development of effective strategies could increase. In applying such a business-driven approach, companies should have freedom of methodology as well as a choice among the vast array of activities that can meet some of the most pertinent needs of the private sector with regard to combatting corruption, bribery and organised crime. Such policies are more efficient when they build on the competences of the particular company, and they add more value, if they are developed in accordance with international frameworks and other business activities. The

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72 Article 5(1) TEU.
priority for future policy development of CSR should be on how it can help to improve business performance through initiatives such as best practice sharing and capacity building. In order to create such synergies, businesses should meet on a regular and framed basis focused on facilitating adherence to international standards and best practices.

Recommendation:

iii) Stimulate the creation of EU-wide private sector platforms in order to enhance the dialogue on the development of anti-corruption measures and non-financial reporting requirements, amongst others through the framework of Corporate Social Responsibility. Such platforms should include businesses, NGOs, other stakeholders, Member States, and EU representatives.

Lüderssen attempted to create a general clause that could be established in private companies such as auditing companies:76 ‘Depending on the causes of an offence [...] a company’s reactions on certain programmes; and its specific risks [...] specific directives should preventively help to optimise the organisational procedures in the undertaking company’. These differences should be taken into account as much as possible in any EU-level regulation. Such a general clause could, for example, be inspired by the UK Bribery Act 2010, which provides for six general principles relevant in the establishment of any preventive measures in any type of commercial business. Similarly as in the UK, the extent to which companies have enacted preventive measures should be taken into account in eventual legal proceedings. A company should be able to free itself from liability for corruptive behaviour of employees or other persons associated with it by establishing such measures.

Recommendations:

iv) The EU should promote, at Member-State level, either by the legislator or the prosecuting authorities, the development of general principles to be used by a company as guidelines in implementing preventive measures. Adherence to these principles should create a possibility for a full legal defence and avoid liability of the company for harmful conduct of employees, subsidiaries, agents, suppliers or any of its other business relations. Such a defence should only be allowed if a company did everything within its powers and appropriate to its size and exposure to risk, to implement the aforementioned general principles.

v) A failure to implement any of the preventive measures, as established by the legislator or the prosecuting authorities, should, in case of misconduct by persons associated with a company, establish the possibility for prosecuting authorities to initiate legal proceedings against the company itself.

vi) The EU should enhance the rules regarding the possibility of imposing the sanction of supervision, e.g. judicial supervision, on legal entities, in particular with a view to implement and improve internal monitoring systems to help prevent fraud and corruption.

A comparison between companies like Siemens A.G. and companies “governed” or dominated by organised crime makes it clear that the first type of companies are able to reinvent themselves in case of serious (internal) crime problems but the second category of companies obviously is not. This second category can only be cleaned up by exercising stern external control, e.g. through judicial inspection forcing them to stick to the rules.77

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77 Remarks by Prof. dr. dr. h.c. Cyrille Fijnaut, concluding the Warsaw conference, 13 July 2012. See: Comparative Overview, pp. 115-116.
**Recommendation:**

vii) EU regulatory action should be aimed at establishing correlation between the ‘level’ of corruption (monetary, level of management, involved interests, level of penetration in the company, etc.) and the regulatory and enforcement powers which public authorities are able to apply. In other words: the more severe the corruption, the lower the level of flexibility in terms of voluntarily applying internal compliance standards and the higher the level of involvement of external authorities should be;

viii) The larger (either in terms of turnover or societal influence) a company, the more it should be bound by (non-)financial reporting requirements, transparency regulations and CSR frameworks. In doing so the risk of administrative overburdening of EU SMEs will be mitigated as much as possible.
3. Prevention systems and best practices from the public sector

This chapter of the manual provides an overview of policy and legal developments concerning the prevention of corruption, bribery, fraud and organised crime committed by legal entities with a view to highlight best practices and make recommendations to further new developments in this field. This chapter is concerned with best practices stemming from the public sector and is primarily based on data collected by the national experts on request of the research team of the T.M.C. Asser Instituut, combined with further research by this team and information provided from various sides.78

A first issue relates to the nature of the public sector actors responsible for applying measures to prevent and fight corruption, bribery and fraud: with the exception of Germany, such measures are usually coordinated and executed from central offices like ministries and other, ad hoc organs; not from regional or local authorities. Thus, also in federal states such as Austria, the issue of prevention and the fight against corruption, bribery and fraud has been the object of extensive legislative measures creating central organs and offices with a view to specifically work on the criminal activities considered in this study. The comprehensive institutional apparatus created in Austria, therefore, appears as a convincing and systematic approach to prevent and fight these criminal phenomena and can surely be seen as a best practice stemming from a Member State. Parallel to this, experiences from other Member States such as Italy show that centralised, ad hoc instances such as the Direzione Investigativa Antimafia (DIA)79 and its Procuratore Nazionale Antimafia (PNA)80 are designed in a way to have a plurality of local offices in order to cover the whole national territory.81

Because the criminal phenomena considered in this study may occur in different sectors of the economy of a state (or of the EU), it must also be emphasised that the prevention and fight against corruption, bribery and fraud committed by legal entities cannot be attributed to a single apparatus of the State, but that national legislators should seek to promote synergies between different levels of the public administration and create tools that regulate the cooperation among administrations. In this respect the research conducted considers that the different systems developed by the Dutch ministry of Security and Justice called Bibob and TRACK82 constitute a valid example of cooperation mechanisms among different administrations, to prevent legal entities from committing acts of corruption, bribery and fraud.

Because the Dutch experience on the prevention of the criminal phenomena investigated in this study inspired this research project, Section 3.1 of this Chapter will provide an overview of the best practices stemming from the Netherlands. Section 3.2 provides an overview of the most interesting measures adopted by Member States and the candidate countries. Lastly, Section 3.3 looks at the strategies and practices stemming from the EU in the context of preventing and fighting corruption, bribery and fraud as well as organised crime to protect the financial interests of the EU.

78 A first commentary on measures and best practices stemming from the public sector was published in the Comparative Overview, available here: http://www.asser.nl/Default.aspx?site_id=1&level1=13693&level2=13690&level3=15360 (retrieved 25 February 2013)
79 Investigative Directorate Against Mafia.
80 National Prosecutor Against Mafija.
81 See: this link to the structure of the DIA: http://www.interno.gov.it/dip_ps/dia/pagine/struttura_periferica.htm (retrieved 25 February 2013)
82 Infra.
3.1. Best practices emerging from screening instruments in the Netherlands

3.1.1. Introduction

In The Netherlands several instruments have been developed aimed at the strengthening of the overview of and insight into possible crime-inducing factors and conditions of business sectors. At the conference in Warsaw and the experts meeting in The Hague certain examples were given of experiences gained with these instruments. In this section the (preventive) functioning of three of these instruments is elaborated upon: preventive screening of business sectors (3.1.2), automatic screening of legal entities (3.1.3) and probity screening (3.1.4). The main features of these three instruments are condensed in schematic overviews, intended to help facilitate the horizontal applicability of such instruments.83

3.1.2. Preventive Screening of business sectors

The first example concerns the preventive screening of business sectors. Since the 1990s the Dutch government has actively searched for effective means to prevent organised and financial-economic crime, this in addition to the more conventional repressive approaches. Over time it became clear that organised and financial economic crime cannot survive without the existence of a country’s legal business sectors. Various examples of criminal investigations show that legal sectors have been misused for criminal purposes. In the same way as regular businesses, criminal organisations need resources such as legal services, financial knowledge, logistic services and opportunities to launder money. These services are delivered by professional firms and companies though most often on illegal terms. Corruption and fraud are main mechanisms for acquiring such services by criminal organisations and individuals. Secondly, also legally incorporated companies themselves can turn to profitable illicit markets of goods and services.

To get insight into such developments and to proceed preventively against possible crime-inducing circumstances and factors of different business sectors more information was needed to support policy makers and law enforcers. Hence, the ministry developed a new instrument called preventive screening of business sectors, which was made part of an overall programme aimed at enhancing the existing strategy against organised crime.84 On that basis, the Dutch Ministry of Security and Justice examined various business sectors to ascertain their vulnerability to being misused. Below is reflected an overview of the main preventive screenings conducted in the Netherlands by means of the Preventive Screening Methodology and the one by the FATF.

- The cannabis sector (coffee shops) 85
- The professional soccer sector 86

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84 Programmatie’s versterking aanpak georganiseerde misdaad en financieel-economische Criminaliteit, letter Minister of Justice to parliament of 13 December 2007. Nr. 5521597/07.
• The veterinary food and pharmaceuticals sector
• The health care services sector
• Non-profit fund raising charities
• The taxi branch
• Dutch art and antiques trade

However, The Netherlands is not the only country using this instrument. Some other countries also carried out such studies as part of a similar preventive strategy. For instance, in Belgium the diamond and music sectors were examined and in Italy the fashion industry in Milan. Furthermore, the FATF conducted a similar screening on the vulnerability of the football sector for money laundering. This FATF research was partially inspired by the Dutch study on professional soccer. In order to facilitate the applicability of preventive screening as a horizontal tool the key elements of its methodology are laid out in Figure 3.1. Five elements were distinguished.

Fig. 3.1 Main methodological elements of preventive screening investigation

<table>
<thead>
<tr>
<th>Methodological elements</th>
<th>Instrument: Preventive screening of business sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Formal basis</strong></td>
<td>Ministerial policy plans: the Organised Crime Prevention Programme, approved by the Ministry of Justice’s executive board in 1998, several times renewed and prolonged</td>
</tr>
<tr>
<td><strong>Aim</strong></td>
<td>Identify vulnerable areas and risks that could facilitate the infiltration of the sector by organised crime; and to analyse current enforcement practises, i.e. the legal, strategic and tactical measures used to combat illicit practises in the sector</td>
</tr>
<tr>
<td><strong>Involved institutions</strong></td>
<td>The Ministry of Security &amp; Justice, depending on the subject matter, cooperating with one or more other ministries. Plus a research institute, contracted to conduct the preventive screening investigation</td>
</tr>
<tr>
<td><strong>Methods used</strong></td>
<td>Literature review; interviews with representatives of the sector, experts, and representatives of monitoring and enforcement institutions; fieldwork; survey and analysis of internet and newspapers; analysis of general data from public sources; analysis of data from public registers</td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
<td>Public reports, forwarded to the Parliament and all partners involved. Sometimes published as booklet and /or available upon request or through the internet. Policy conclusions drawn up by the concerned Minister(s), and implemented after (mostly) being discussed with Parliament.</td>
</tr>
</tbody>
</table>

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86 KPMG, “Preventieve doorlichting bedrijfstak betaald voetbal, fair play op en rond het voetbalveld”, KPMG Integrity&Investigation Services 2004, KPMG The Netherlands.
90 In October 2010 the name of the Ministry of Justice was converted into: ‘Ministry of Security and Justice’
3.1.3. TRACK: Automatic screening of legal entities 91

On 9 June 2010 the upper house of the Dutch parliament approved the "Bill amending, among other things, Book 2 of the Dutch Civil Code and the Companies (Documentation) Act"92. Besides abolishing the present system of preventive supervision and the related requirement of a declaration of no objection, the amendments provide for the introduction of a new system of permanent supervision of legal entities. The amendments also extend the scope of the supervision: the new system covers not only (private) limited liability companies and Societas Europaea (SEs) but also other legal entities, as well as the Dutch branches of foreign legal entities. Due to the technical complexity of the implementation of the new control system, the law first entered into force on 1 July 2011.

The new system of supervision is a form of scrutiny that applies throughout the life of a legal entity, the aim being to prevent and combat the misuse of such entities and their businesses. To this end, the authorities will draw up a number of risk profiles. If a legal entity fits one of these profiles, this means that there is a heightened risk of misuse for illicit purposes and is called a risk alert. The risk profiles are based on data that make it possible to identify misuse of, for example, a financial nature.

The data to be compared with the risk profiles is obtained by the authorities from closed and from public sources in the Netherlands. The main sources are the systems of national registers such as the trade register and the municipal personal records database. In addition, the Ministry of Security and Justice will obtain data from the tax authorities, the Judicial Information Service, the Central Insolvency Register and the National Police Services Agency. The scrutiny of a legal entity will start immediately after it is registered in the trade register. In the case of a Dutch branch of a foreign legal entity, the scrutiny starts immediately after the branch is registered in the Dutch trade register.

The permanent scrutiny is carried out by the Scrutiny, Integrity and Screening Agency of the Ministry of Security and Justice. A risk analysis computer program is used to compare key data of legal entities with the risk profiles prepared by the Agency. The key data includes the names and addresses of the director(s) of the entity and data from the Central Insolvency Register. The statutory basis for the registration and use of this data has been laid down in the Legal Entities (Scrutiny) Act.

Whenever a legal entity undergoes a change in the course of its life – for example, a transfer of shares or a change of management – this is recorded and the modified data are compared with the risk profiles in order to determine whether there is a heightened risk of misuse of (or by) the entity. If there is no such risk, the data obtained is automatically removed from the system.

Information on changes such as share transfers and management changes is obtained by the authorities directly or indirectly from data which the legal entities and their directors are already obliged to supply to the trade registry or the tax authorities. Therefore, no extra administrative burden is placed on legal entities as a result of the new system.

If the computer system reveals a heightened risk, the Scrutiny, Integrity and Screening Agency carries out a more in-depth analysis of whether this risk does indeed exist. If the analysis confirms that there is a heightened risk, a risk alert is sent to a set of law enforcement authorities. These include the Public Prosecution Service, the tax authorities, the Dutch Central Bank (DNB), the Netherlands Authority for the Financial Markets and the police, as well as special agencies such as the Fiscal Intelligence and Investigation Service/Economic Investigation Service (FIOD/ECD) and the Social Security Information and Investigation Service (SIOD). A risk alert may also be issued at the request of any of these authorities. Whether follow-up action is necessary is decided by the authorities themselves after having received the risk alert. Two tracks of intervention might be taken by them.

The first track provides for the possibility of an action under the criminal law. One possibility is to ban particular individuals from acting as company directors. Such a measure can be used, for example, to prevent someone with a history of fraud from setting up a company in the future or becoming a board member of another company. Currently, draft legislation is also being prepared to include the possibility of a civil disqualification for directors. The second way of intervening is of a preventive nature. If the risk alert shows that there is a possibility of misuse of or by a legal entity, the authorities can take preventive action, for example by intensifying the level of scrutiny and thereby identifying possible infringements at an earlier stage.

The information obtained from a risk alert may be used by the law enforcement authorities only to prevent and combat misuse of (or by) legal entities. Under the Legal Entities (Scrutiny) Act, a risk alert may be used for prosecution purposes for a maximum of two years, which is also the period for which the data may be kept. The Scrutiny, Integrity and Screening Agency is responsible for the data and may supply them to law enforcement authorities only on condition of strict confidentiality. The Agency is not obliged to disclose whether it is processing a risk alert concerning a legal entity or an individual connected with that entity. Under the Personal Data Protection Act the concerned legal entity may apply for this information, but the application will almost always be refused in the interest of any on-going investigation (criminal or otherwise).

When a legal entity is registered at the trade register, the entity's directors (or other office holders) are informed that their data will be screened. Under the Personal Data Protection Act, the Scrutiny, Integrity and Screening Agency – as the body responsible for the management and use of the data – is obliged to notify the relevant individuals that their private data are being used.

Fig. 3.2 Main methodological elements of TRACK

<table>
<thead>
<tr>
<th>Methodological elements</th>
<th>Instrument: TRACK</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal basis</strong></td>
<td>Legal entities scrutiny act 93</td>
</tr>
<tr>
<td><strong>Aim</strong></td>
<td>Continuous screening of legal entities</td>
</tr>
<tr>
<td><strong>Involved institutions</strong></td>
<td>Ministries, agencies, tax authority, chamber of commerce, registers, police, prosecution.</td>
</tr>
<tr>
<td><strong>Methods used</strong></td>
<td>Analytical ICT-program named RADAR, analysis and automatic and manual alerts based on pre-defined risk-profiles</td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
<td>Risk alerts signalling suspected or possible misuse of legal entities are sent/requested by supervision agencies/law enforcement agencies</td>
</tr>
</tbody>
</table>

93 See: footnote 92.
3.1.4. Bibob or the Probity Screening Public Administration Act

The objective of the Public Administration (Probity Screening) Act is to prevent the government from unintentionally facilitating criminal activities. In order to realise this objective, the National Public Administration Probity Screening Agency, part of Justis, the Ministry of Justice Agency for Scrutiny, Integrity and Screening, investigates – at the request of an administrative body – whether there is a chance that a permit, subsidy or government instruction is being abused for criminal activities.

Under the current Bibob legislation, public bodies (especially local authorities) may examine a company’s or a person’s record before a permit or a subsidy is granted or a public contract is awarded. In the event of a criminal record or obscure financial structures the permit, the subsidy or contract may be refused. This way, the unintentional support of criminal activities by authorities and the underworld infiltration of legitimate business is prevented. When examining the record of a company or private person local authorities may call on the services of the Bibob Bureau, which gives a non-binding opinion. This Opinion cannot be appealed because it does not form a decision against which such redress is made possible under the Dutch General Administrative Law Act (GALA, in Dutch Awb). However, the final decision of the public body responsible based on a Bibob-Opinion, can be appealed. In case of a strong likelihood of a negative decision based on a Bibob-Opinion, the public body responsible for the eventual decision is obliged to enable the holder of or applicant for a licence to submit a response in which he or she can state his or her views. These persons, but also other individuals mentioned in the reasoning of the Opinion, are to be granted access to the entire Bibob-Opinion.

The Bibob legislation only applies to certain sectors and activities. Among others, it encompasses permits for catering, building, waste disposal, transport companies, housing corporations, cannabis coffee shops, brothels, martial arts events, operating gaming events, importing fireworks and grow-shops. For public tenders the Bibob legislation applies to the building, environmental protection and ICT sectors.

Fig 3.3 Main methodological elements of Bibob

<table>
<thead>
<tr>
<th>Methodological elements</th>
<th>Instrument: Bibob</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal basis</strong></td>
<td>Public Administration (Probity Screening) Act</td>
</tr>
<tr>
<td><strong>Aim</strong></td>
<td>Provide other public bodies besides the police or prosecution authorities with a possibility to act upon illegal activities of a person or a company by verifying their background</td>
</tr>
<tr>
<td><strong>Involved institutions</strong></td>
<td>Municipalities, Provinces, national Government, water management boards, other public bodies</td>
</tr>
<tr>
<td><strong>Methods used</strong></td>
<td>Background screening of companies and subsequent issuing of advice to the responsible public body</td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
<td>In case of (serious risk of) abuse of a permit, a public body can refuse the issuing of the permit or withdraw an already issued permit. In doing so,</td>
</tr>
</tbody>
</table>

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94 Information available at: http://www.justis.nl/Producten/BibobIntegriteitsbeoordelingdoorhetopenbaarbestuur/index.aspx
95 Wet Bevordering Integriteits Beoordelingen door het Openbaar Bestuur (Wet Bibob), Stb 2012, 316, 12 July 2012.
companies engaging in illegal activities can be excluded from public procurement procedures and companies about to engage in such behaviour will be deterred from doing this. Annual evaluation reports on the functioning of the Bibob system including conclusions for further improvements.

A shortcoming in the system of probity screening, emerging from the annual reports of the Agency, is the high dependency-rate on external sources for the information necessary in order to write an Opinion. The Agency requires information from, inter alia, the police, tax authorities and the office of the public prosecutor. As long as it concerns national authorities, this usually does not constitute a problem. However, a bottleneck arises where the Agency has to rely on information from outside The Netherlands; many other states lack the legal basis for using criminal information for administrative procedures. As a consequence, the Agency is regularly barred from information needed to write an adequate Opinion on applications for permits submitted by non-nationals or Dutch nationals engaged in activities outside The Netherlands. The Dutch Ministry of Security and Justice successfully raised this issue during subsequent European Councils, resulting in an informal network on the ‘administrative approach’.97 With a view to a possible wider application of a Bibob-like screening system, The Netherlands could be invited by the EU to submit a full report – if needed with support of the EU - on their experiences over the last six years with this system including its successes and its strong and weak points.

### 3.2. Best practices stemming from the Member States and candidate countries

Although more and more Member States are developing national strategies to prevent corruption, bribery, fraud and organised crime activities in the private sector, including offences committed through legal persons, the picture emerging from the research carried out for this project is rather fragmented. Indeed, while the issue of corruption, bribery, fraud and organised crime in the public sector is fairly developed, only 16 States among the 30 scrutinised have developed strategies that include preventive measures. Moreover, the national reports compiled by the national experts clearly demonstrated that most countries still rely on criminal law and company regulations only.

In order to highlight best practices stemming from the public sector in relation to the prevention of corruption, bribery, fraud and organised crime activities committed by legal entities in the private sector the research team individuated six general criteria:

1. Development of a national strategy against corruption that includes prevention in the context of a comprehensive legal framework;
2. Existence of a specialised prosecution office;
3. Existence of a Central Authority or mechanism to monitor or coordinate other public offices in relation to the prevention and fight against corruption;
4. Existence of a public-private partnership platform;
5. Development of specialised training;

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The table below brings together the criteria individuated by the research team with the national reports written by the experts contacted.

Fig. 3.4 Summary of main policies and measures established in Member States and countries stemming from survey of 2012

<table>
<thead>
<tr>
<th>Measures adopted</th>
<th>Countries in which this is present</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development of a national strategy against corruption and/or organised crime that includes prevention in the context of a comprehensive legal framework</td>
<td>AT, CZ, EE, HU, LV, FYROM, PL, PT, SK, UK, FR, DE, LT, RO, SK, SE</td>
</tr>
<tr>
<td>Existence of a specialised prosecution office</td>
<td>AT, EE, BG, FI, FR, LT, PT, ES, UK</td>
</tr>
<tr>
<td>Existence of a Central Authority to monitor or coordinate other public offices in relation to the prevention and fight against corruption and/or organised crime</td>
<td>AT, FI, FR, EL, IE, FYROM, NL, PL, PT, RO, ES, SE, UK</td>
</tr>
<tr>
<td>Existence of a public-private partnership platform</td>
<td>FI, LV, SK, UK</td>
</tr>
<tr>
<td>Development of specialised training</td>
<td>AT, PT</td>
</tr>
<tr>
<td>Business community involved in preventive strategies</td>
<td>NL, UK</td>
</tr>
</tbody>
</table>

While the first three criteria are especially linked to instruments and initiatives carried out by public authorities with a view to prevent and fight corruption, bribery, fraud and organised crime, the last three criteria appear particularly relevant for the purpose of this Manual: the prevention of corruption in the private sector, committed by misusing legal persons.

The first criterion is related to the development of national strategies in the context of a comprehensive legal framework. This criterion aims at highlighting systems in which crime prevention and crime repression are standing together within a single, integrated policy.

➢ An example of this is given by the Estonian 2008-2012 Strategy.98 This instrument includes measures related to prevention as well as measures related to investigation and prosecution, and indicates strategic objectives that had to be achieved by the end of the timeframe as prescribed by the Strategy.

However, the establishment of national strategies is often not sufficient, especially if the different offices of public administration are not coordinated in their activities. To obviate the risks connected with uncoordinated activities, three main solutions have been identified as best practices. The first solution involves the creation of a specialised prosecution office with administrative and policy tasks. Such type of prosecution office has been created in Austria.

In Austria the Federal Bureau of Anti-Corruption (“BAK”, Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung) has been created. Other than the functions properly conducted by prosecution offices, the BAK is also responsible for data analysis in relation to corruption, special trainings for civil servants and private parties (Anti-Corruption Seminars), and the development of specialised investigative techniques.

The second solution to obviate an excessive dispersion of resources in the prevention of corruption, bribery, fraud and organised crime committed through legal entities is to create central authorities with the special task to monitor or coordinate other public offices in relation to the prevention and fight against corruption.

Another such example is the French “Service Central de Prévention de la Corruption” (SCPC) created in 1993. According to the instituting law, the SCPC centralises and exploits information related to the detection and prevention of corruption, works as coordinator of administrative and judicial activities, delivers training on the prevention of corruption and is responsible for international cooperation in this domain.

An example of such a body is to be found in Latvia, where the Specialized Corruption Prevention and Combating Bureau (Korupcijas novēršanas un apkarosanas birojs), KNAB has been created.

The third way to obviate uncoordinated action in the prevention of the occurrence of inefficiencies between the different offices is to create operational mechanisms that endorse an integrated approach, i.e. making use of different public bodies and procedures to reach an effective outcome. This is the case of the Bibob and the TRACK systems. All in all, it emerges from this overview that states have a margin of discretion to develop preventive mechanisms to fight the criminal phenomena investigated in this manual. However, it must also be emphasised that the mechanisms that have been highlighted in this section of the manual do not necessarily aim at the prevention (and fight) of corruption, bribery, fraud and organised crime in the private sector. Rather, but with the exception of the Bibob and TRACK system, these are mechanisms that aim to address the criminal phenomena in question both in the public and private spheres.

Thus, because the scope of this study was to address the specific issue of corruption, bribery and fraud committed through the misuse of legal entities, the next criteria to individuate best practices focus on cooperation mechanisms between public authorities and private entities. In this respect it must be firstly observed that in many countries, the issue of adopting measures to prevent corruption, bribery and fraud in the private sector is considered to be a matter that falls outside the scope of public interest (for instance UK, NL, SE) while in others the issue is completely ignored from either national strategies or national legislation. Yet some Member States have developed legislative instruments and/or non-legislative initiatives that have the specific purpose of promoting good behaviours to prevent the criminal phenomena in question. Interestingly enough, some of the countries according to which the promotion of preventive measures and strategies within the private sector should be led by the private sector itself, have developed the consolidated practices.

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100 Section 3.1, Chapter 3.
A first criterion to promote the preventive behaviour in the private sector against corruption, bribery and fraud is the creation of public-private dialogue and partnerships. This behavioural element takes form in many ways.

- In Slovakia the National Strategy Against Corruption was written by public authorities with the cooperation of NGOs and private bodies and associations.

The most common form of engagement between public authorities and private actors in the field of prevention is to be found in the development of education and training seminars pertaining to the prevention of corruption, bribery and fraud. While training seminars are present in a number of countries (see Table 1.1 of this section), the most effective systems appear to be the following:

- In France the SCPC not only contributes with training and seminars in Universities and professional schools such as the Ecole Nationale d’Administration (ENA), but is also engaged in delivering training sessions to private companies with a view to exchange information and best practices, support the development of internal codes of conduct, and technical education on anti-corruption legislation.

- In Austria, the BAK is responsible also for the training of public officials and private entities by means of seminars and trainings.

- In Estonia, the Anti-corruption Strategy is used in developing and delivering training. Moreover, the Estonian programme not only is addressed to public officials, private companies and practitioners, but it also specifically targets journalists so as to train them to understand and discuss this particular criminal phenomenon.

In other Member States, without special training in place, public authorities have nonetheless developed other measures.

- CSR Netherlands established by the Ministry of Economic Affairs stimulates the development of codes of conduct with a view, inter alia, to prevent corruption and bribery.101

In the UK, the Serious Fraud Office is the lead agency for investigating and prosecuting serious fraud and corruption. It operates a confidential hotline for fraud and bribery allegations and encourages self-reporting. Recently, the SFO’s policy on corporate self-reporting was restated (October 2012).102

All in all, it emerges from the foregoing that the direct engagement of public bodies in the prevention and fight against corruption, bribery and fraud requires a multifaceted approach. Though comprehensive strategies and measures to prevent the criminal phenomena in question are not widespread within the EU and its candidate countries, a number of best practices do emerge. Prior to making some recommendations based on the national experiences discussed in this section, the next section of this chapter will provide a short overview of the preventive strategies and techniques that the EU has developed to protect its financial interests.

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101 See also: Section 2.3.5.
3.3. Best practices and current developments in the fight against fraud committed against the EU

The events of 2012 concerning former Commissioner Mr. John Dalli, testifies to the importance of the EU as a polity to develop instruments to prevent and fight corruption, bribery and other frauds in order to protect itself and its interests. Moreover, the protection of the EU’s finances often raises issues concerning the use of EU-funds by private entities and/or access to EU-funds by private entities; All in all, as stated by the Commission in its proposal for a Directive on the fight against fraud to the EU’s financial interests by means of criminal law, “fraud and related illegal activities affecting the EU’s interests pose a serious problem to the detriment of the EU budget”. The European Anti-fraud Office (OLAF) plays a pivotal role in the fight against frauds, including corruption and bribery at EU level. OLAF was established in 1999 by Commission Decision 1999/352/EC with the task of conducting “external administrative investigations for the purpose of strengthening the fight against fraud, corruption and any other illegal activity adversely affecting the Community’s financial interests”. On the basis of the expertise of the agency, we have asked OLAF to contribute to the manual by sharing the experience gained in the field. This section is based on the analysis and discussion that the members of this project have had with officials of OLAF and on the basis of the documentation available.

According to the Commission’s annual report for 2011 on the ‘Protection of EU financial interests - fight against fraud’, published in July 2012, the estimated financial impact of irregularities reported as fraudulent represents an average of 0.21% of allocations of total expenditure, and decreased in comparison with 2010. According to the same report, cohesion policy funds are more prone to fraud than other sectors: the estimated financial impact of irregularities reported by the Member States as fraudulent in 2011 in cohesion policy was €204 million, compared to €77 million in agriculture and €1.5 million in direct expenditure.

The Commission uses different prevention tools and measures in different policy areas in order to protect the EU financial interests. In order to formulate a comprehensive policy and provide a framework for fraud prevention, the Commission adopted in June 2011 the so called Commission’s Anti-Fraud Strategy (CAFS). One of the key objectives of the strategy is to improve the capacity of Commission services to prevent and detect fraud. In this respect two main action points are currently developing: the first concerns the use of IT tools, the second concerns the development of tailor-made seminars and training programmes.

107 This section must be considered as authored by the research fellows of the T.M.C Asser Institute alone, and does not reflect the opinion of the agents of OLAF contacted during the research.
109 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the Court of Auditors on the Commission Anti-Fraud Strategy of 24 June 2011 (COM(2011)376).
The increasing use of specialised IT-tools to support the availability and proper analysis of relevant data for risk assessment. DG CONNECT and DG RTD use an IT-tool (‘Pluto’) for detecting risky operators and projects. DG EMPL and DG REGIO are currently developing ARACHNE, a risk scoring tool that will allow the DGs to better focus their internal control and audit activities (risk-based audits generate a pre-selection of operators and projects, with a higher success rate when performing the audit).

In addition to the comprehensive training programme organised by the Commission (DG Human Resources), as regards anti-fraud training, OLAF organises structured investigative training, including both general investigative techniques as well as training focusing on the implementation of specific sectorial legislation.

OLAF plays a pivotal role in the implementation of the CAFS by helping the Commission services to develop sectorial anti-fraud strategies. The contribution of OLAF for the implementation of the CAFS derives from the experience that the agency has gained over time in trainings, investigative and operational support to national and EU officials.

An example of best practice stemming from OLAF’s experience is the so called-PLUTO Project in which OLAF helps the Commission to improve its audit and control functions by developing analytical tools in relation to tenders and access to funds.110 This system is very similar to the Dutch mechanisms of preventive screening whereby a plurality of data stemming from different public sources are analysed through cross-referencing in order to individuate fraudulent applications.

The Pericles Programme in which the Agency provided specialised training in relation to euro-counterfeiting111 for public officials as well as private entities such as banks.

The Hercules Programme in which the Agency supports training activities which contribute in a preventive and/or operational way to combating fraud detrimental to the financial interests of the European Union. In order to avoid ineligible applications (e.g. applications dealing with insurance fraud), the applications have to target funding for actions to combat fraud affecting the EU’s financial interests.112

To supplement the CAFS and its objectives on ethics, transparency and prevention the Commission has also adopted a Decision Establishing an “EU Anti-Corruption reporting mechanism for assessment”113 in order to maximise efforts in the fight against corruption (‘EU Anti-Corruption Report’), which could help create the necessary momentum for firmer political commitment by all decision-makers in the EU.

In order to make this mechanism more tangible, the Commission has individuated 5 objectives that the Report mechanism has to attain:

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i) a periodical assessment of the situation in the Union regarding the fight against corruption;

ii) the identification of trends and best practices;

iii) make general recommendations for adjusting the policy on preventing and fighting corruption in the EU;

iv) make tailor made recommendations for specific areas/Member States;

v) help civil society and stakeholders to identify shortcomings, raise awareness and provide training on anti-corruption issues.

All in all, the reporting mechanism should streamline information from a wide variety of sources, such as existing evaluation mechanisms, independent experts and researchers, civil society, specialised networks, EU institutions, services and agencies, Commission studies, surveys (e.g. the ‘Eurobarometer on corruption’), other stakeholders. In addition to these initiatives, the Commission as well as OLAF are focussing on criminal law and are both engaged in the preparatory work and dialogue concerning the establishment of a European Prosecutor for the protection of the EU’s financial interests.\(^{114}\)

In light of this short overview of preventive tools used by OLAF in the framework of its activities, some conclusions can be drawn. Firstly, one issue that clearly emerges is the constant investment on training by OLAF and the Commission. The second issue that emerges is the importance of creating cooperation mechanisms among public bodies so as to gather data concerning access to public funds and private entities in order to prevent malicious organisations from having access to public funds. Thus, in this respect there seems to be a correlation between the policies stemming from some Member States and the EU in relation to preventive best practises against corruption, bribery and fraud. On top of this, while it is too soon to consider the “reporting mechanism” created in 2011 as a best practice stemming from the EU experience, it appears as a valid tool to streamline data stemming from anti-fraud activities and generate new preventive tools.

### 3.4. Conclusions and recommendations for EU initiatives

The fragmented scenario emerging from this chapter in relation to preventive measures stemming from the public sector calls for legislative and other developments that effectively and efficiently contribute to the fight against corruption, bribery and fraud committed by and through legal entities. However, notwithstanding the existing differences and the scarcity of policies and tools actually in place to prevent corruption, bribery and fraud it was possible to individuate best practices that are worth recommending for future EU led initiatives. Therefore, in light of the issues touched on in this chapter, six recommendations can be made:

i) Promotion of national strategies: national strategies should contain legislative and soft-law measures concerning prevention and should also create evaluation mechanisms as well as being reviewed periodically.

ii) Effective prevention of corruption, bribery and fraud requires the coordination of different public bodies and offices, for this purpose the establishment of a centralised office against corruption is necessary. Such body should also be in charge of developing trainings, reporting and exchange data at the national level. While a strict

cooperation mechanism with the public prosecutor’s office is necessary, the creation of a single body for the coordination and the prosecution does not appear necessary from a policy perspective.

iii) It is necessary to develop, with the adoption of legislative measures, mechanisms of cooperation for public authorities in order to set in place systematic mechanism of preventive screenings in order to effectively prevent corruption, bribery and fraud. These mechanisms should be applied automatically by public authorities to all cases and not only in suspected ones.

iv) Promotion of the adoption of a legal basis for the use of ‘criminal data’ in administrative procedures and stimulate intra-Member State cooperation in the coordination of these procedures. In doing so, it is ensured that relevant public authorities can access the most adequate information in assessing applications for licences in high-risk sectors.

v) It is necessary to create platforms of cooperation between private associations and public bodies in order to enhance transparency and dialogue. In this respect an example is the delivery of trainings for private entities by national authorities in charge of anti-corruption.

vi) It is necessary for the public sector to support and promote anti-corruption behaviour in the private sector by the means of legislation and soft-law initiatives. From the legislative side, the duty of adopting internal codes of conduct should be imposed by law under Company legislation, and national as well as EU legislation should also promote protective mechanisms for whistle-blowers.
4. Sector-Specific Examples of preventive measures and best practices

4.1. Environment: the case of waste management

4.1.1. Description of the sector and justification of its presence for the purposes of this study. Link with EU competences.

Waste policy goals of the EU and its Member States include becoming self-sufficient where disposal is concerned, substantially reducing the amount of waste generated in the EU and bringing shipments of hazardous waste outside the EU down to a minimum. The EC Waste Framework Directive 2008/98 (WFD)\(^{115}\) and Waste Shipment Regulation 1013/2006 (WSR)\(^{116}\) codified these goals.\(^{117}\) In practice however, both the amounts of waste generated in the EU and the amounts exported from the EU to third countries have been significantly rising for quite some time. In 2010, the EU-27 produced some 94 million tonnes of hazardous waste – 17 million tonnes more than in the previous year.\(^{118}\) Notified export of hazardous waste out of the EU more than doubled in the period 2000-2009.\(^{119}\)

The Commission described illegal export of waste as “a continuous problem which is by essence difficult to quantify” in 2011.\(^{120}\) The EU Network for the Implementation and Enforcement of Environmental Law (IMPEL) estimated that some 20 % of the waste transports leaving Europe is illegal.\(^{121}\) However the proper disposal of especially hazardous waste is costly.

EU waste management rules demand that waste is disposed of without endangering human health and the environment.\(^{122}\) As a consequence of this, illegal dumping and/or export of hazardous waste is an extremely profitable business.\(^{123}\)

In spite of decades of EU waste policy and legislation aimed at curbing illegal waste transports and dumping,\(^{124}\) these activities are the fastest growing areas of organised crime, driven by an exceptional ‘low risk and high profit’ margin, according to Europol.\(^{125}\) This organisation explained that EU Member States are substantially affected by the ecological damage, public


\(^{117}\) Preamble nr 20 and Article 11 WSR (in line with Article 4(2)(d) Basel Convention).


\(^{119}\) Movements of waste across the EU’s internal and external borders, European Environment Agency Report No 7/2012, 6 November 2012.


\(^{121}\) IMPEL/TFS projects ‘Seaports’ and ‘Verification on waste destination’, available at www.impel.eu.

\(^{122}\) Art. 13 WFD.


health risk and the financial burden associated with the retrieval of illegal waste repositories. It can be added that – given the huge differences in costs of legal vs illegal disposal of waste - non-compliance with EU waste law provides for considerable market disturbances; only when Member States assure compliance will the companies have a level playing field in the European Union.

In its 2011 Organised Crime Threat Assessment (OCTA), Europol warns that illegal waste trafficking is often facilitated by cooperation with legitimate businesses (notably financial services, import/export and metal recycling sectors) and with documents forgery specialists for the acquisition of permits. Another way of getting permits is corrupting persons working for issuing bodies. The report blames “lack of harmonisation” concerning the distinction between waste and second hand goods as a reason for the emergence of e-waste (electrical and electronic equipment) and identifies the “ports of North West Europe” (notably the Netherlands and Belgium) as a “hub” playing an important role in the export of e-waste, toxic waste and deregistered cars to third countries, especially in West-Africa and Asia. The WFD defines waste in Article 3 sub 1 as "any substance or object which the holder discards or intends or is required to discard". Distinguishing between second hand goods and e-waste appears to be difficult. Further harmonising rules and/or guidelines like the one under development within the Basel Convention could help here. Europol noted that “criminal groups will increasingly be drawn to activities with high profits, low penalties, and lower levels of law enforcement attention.”

EU law currently demands Member States to ensure that establishments or undertakings which collect or transport waste on a professional basis deliver the waste to appropriate treatment installations without endangering human health or harming the environment (Article 13 WFD), and that they only operate with a permit (Article 23 WFD). Where hazardous waste is concerned, the WFD further demands traceability from production to final destination and control of hazardous waste in order to meet the requirements of Articles 35 and 36 WFD. Article 35 WFD demands that waste managers dealing with hazardous waste shall keep a chronological record of the quantity, nature and origin of the waste, and, where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste, and shall make that information available, on request, to the competent authorities. Where hazardous waste is concerned, the records need to be stored for at least three years.

Article 36 WFD prescribes prohibiting activities such as waste dumping or abandonment and demands that Member States lay down provisions on the penalties applicable to infringements of these provisions and take all measures necessary to ensure that they are implemented. These penalties shall be effective, proportionate and dissuasive.

Competent authorities in EU Member States are obliged to ensure that a register is kept of establishments that collect or transport waste on a professional basis as well as waste dealers and brokers (art. 26 WFD). Article 34(1) WFD obliges Member States to ensure that all companies managing hazardous waste shall be subject to "appropriate periodic inspections" by the

127 An example mentioned by Europol are 134 000 tons of waste illegally dumped at a gravel pit in North East Europe. The extraction and transport of this waste cost 160 euros per tonne, so over 21 million euros in total. 
129 OCTA 2011, p. 40 and p. 50.
131 OCTA 2011, p. 48.
competent authorities. Recommendation 2001/331 provides for minimum criteria for environmental inspections in the Member States. These recommendations did bring about some improvements in Member States’ enforcement practice, but there is definitely room for further improvements. The proposed 7th Environment Action Programme (EAP7) submits that instead of these non-binding guidelines, binding criteria for effective Member State inspections and surveillance to the wider body of EU environment law are to be adopted. In the Environment Council of 17 December 2012 some Member States expressed their concern about aspects of the proposal on environmental inspections, so it remains to be seen what will happen here.

Besides the “appropriate periodic inspections” prescribed by the WFD, Article 50 (5) WSR sets out the obligation for the EU Member States to cooperate, bilaterally or multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments. The WSR contains, inter alia, provisions regarding enforcement and obligatory cooperation between Member States and sets up a framework for such co-operation via national designations of focal points. Within the “IMPEL-TFS Enforcement Action II Project” joint inspections and exchange programs are executed under the WSR.

4.1.2. Description of the preventive tools stemming from the Member States

The project showed that in over one third of the participating countries, corruption, bribery or organised crime in the private sector constitutes an issue where waste management is concerned. Though some countries introduced specific measures to fight the involvement of organised crime in this sector, only in some cases specific preventive measures were used.

Only in six countries, preventive screening was indicated as a means to curb crimes. In some other countries, more general anti-corruption policies pay attention to the waste management sector. While most countries cooperate in the IMPEL network, a new network dealing specifically with Environmental Crime was initiated in 2011 via a resolution of the Justice and Home Affairs Council: EnvCrimeNet. This informal network of experts from European law enforcement and investigative competent authorities committed to fight cross-border serious environmental crime is supported by Europol. It aims at sharing non-operational information and at encouraging experts and users to learn from each other. Its long-term aim is to stimulate and improve international cooperation. Many country reports indicated that no national contact point for EnvCrimeNet had been set up. In some countries, such contact points were set up or were in the process of being installed.

Only in a handful of countries, methods aimed at identifying criminal networks suspected of involvement in illegal trafficking of waste were developed. A larger group devised methods aimed at improving the exchange of information and gathering of criminal intelligence in this field, particularly with regard to Europol and Eurojust.

Where other programs or particularly effective means aimed at preventing waste crimes are concerned, some countries pointed out that civil society organisations were involved (notably

132 For a discussion on the evaluation of the recommendation and the direction that improvements could take, see: http://ec.europa.eu/environment/legal/law/inspections.htm.
Greece and Italy), and in many cases the cooperation between different national authorities were mentioned. This is sometimes referred to as a multi-agency approach. The Netherlands plans to introduce a new trade register by 2014. It would enable matching more (national and where possible also international) databases, in order to support more effective enforcement.\footnote{Secretary of State for the Environment, Response by the Authorities to the draft report “Enforcement of European rules on waste transport”, 13 October 2012, available at: http://www.rekenkamer.nl/Publicaties/Onderzoeksrapporten/Introducties/2012/10/Handhaving_Europese_regels_voor_afvaltransport, (retrieved 25 February 2013)}

\subsection*{4.1.3. Individuation and description of the best practices}

\subsubsection*{Preventive screening}

The instrument of preventive screening is employed in some countries in the fight against waste related crimes. In Austria, a legal person managing hazardous waste must appoint a responsible person. Section 26(1) Waste Management Act demands that this person is reliable in the sense of section 25a of the same act. The latter provision entails detailed rules, notably on earlier convictions that stand in the way of reliability.\footnote{For more information, see: http://www.bundesabfallwirtschaftsplan.at.} As prescribed in the Austrian Federal Waste Management Plan, preventive checks against organised crime in waste management are coordinated and managed by the Federal Environment Agency in cooperation with ministries of interior affairs, finances, transport, and innovation and technology. In Italy, waste management companies are obliged to certify that they do not have links to the mafia. The parliamentary Commission of enquiry into the management of waste and the related illicit activities is involved here, as is the “anti-mafia” parliamentary commission. It has been claimed that the fact that the certificates to show this are based on self-reporting, makes it easy to falsify them.\footnote{Bodrero L., The mafia’s new front men, 25 September 2012, available at: http://100r.org/2012/09/the-mafias-new-front-men/} Thus, although there are preventive measures in place in Italy which potentially could ban or limit organised crime involvement, actual positive effects are hampered by their non-obligatory nature.

In Lithuania, while there is no special system of preventive screening for waste management sector, Article 6 of the Law on Prevention of Corruption prescribes monitoring and risk assessment of corruption-related offences in a number of sectors, including waste management. Specific measures for screening and investigating organized crime offences are set forth in the Law on Operational Activities.

\subsubsection*{Identification of criminal networks}

Only some reports indicated specific actions regarding the identification of criminal networks in the waste sector specifically. Some others indicated that the waste sector formed a part of more general programmes.

In Italy, art. 260 Environmental Code is \textit{inter alia} aimed at combatting mafia involvement in the illegal waste trade. Based on this provision, in 2011 over 300 persons were arrested, 33,817 crimes registered and 8,765 assets were seized in connection with eco-crimes. Prosecutor Donato Ceglie praised the law as highly effective, saying its seriousness is on a par with statutes against mafia association.\footnote{Ibid.} The article allows investigators to use appropriate investigative tools (such as wiretappings and electronic surveillance) against criminals and enables them to arrest those...
suspected of trafficking, and impose longer convictions than for other environmental (administrative) offences.

The Finnish environmental administration has established a waste supervision unit, whereas the Finnish Customs supervises the illegal imports and exports of waste across the Finnish border, as well as conducts preliminary investigations in this matter. The Finnish Customs has its own operational model for risk analysis. In Sweden, a project aiming to detect waste 'at the source' (Uppströmskampanjen) has been introduced by the Environmental Protection Agency together with the County Administrative Boards responsible for waste monitoring. Through inspections at scrap-dealers or industries producing or handling waste, the project seeks to discover signs of illegal waste trafficking. It provides guidelines to public officials involved in such monitoring.

Exchange of information, gathering of criminal intelligence and the EnviCrimeNet

Exchange of information and cooperation between relevant authorities inside one country forms a valuable practice that can help tackling waste related crime, especially when realising that an extensive amount of legal and practical specialised knowledge can be necessary to distinguish between legal and illegal waste operations. As already indicated in section 4.1.2, this is sometimes referred to as the multi-agency approach. Some experiences with such an approach are described here first. After that, attention will turn to the use of modern means of information sharing.

Belgium set up cooperation mechanisms among the Federal Environmental Inspectorate, the Customs Authority, and the Federal Maritime Police as well as cooperation with a regional environmental inspectorate on enforcement actions, recognizing that “[o]verall cooperation with colleagues of regional environmental inspectorates, with the scan- and selection team of customs and the support of maritime police is part of the solutions.” In the Netherlands, the Rijnmond region - the larger 'Port of Rotterdam'-area from where many waste transports leave the country - introduced a multi-agency approach to fight illegal waste transports. It encompasses cooperation in information gathering, sharing, analysing a common action plan by the police, the Human Environment and Transport Inspectorate of the Ministry of Infrastructure and Environment (ILT), the Inspectorate’s Intelligence and Detection division (ILT-IOD), the regional environmental agency of the local and regional authorities operating in Rijnmond (DCMR), customs, and the Public Prosecutor’s Office. At the occasion of one of the first actions this multi-agency cooperation undertook in January 2013, a police spokesperson explained that the new cooperation was useful and necessary because the police itself does not have enough know-how of complicated European environmental law. The case at hand concerns a company suspected of mixing recyclable waste with non-recyclable waste and exporting it as if it was recyclable to Asia. The authorities announced that next to demanding criminal punitive sanctions, using art. 36e Dutch Criminal Code, they will try to confiscate the illegally obtained profits, i.e. the costs saved compared to proper disposal of non-recyclable waste. A new Swedish project aims at enhancing the cooperation regarding detection of illegal trafficking or illegal management of waste between the police, the customs authorities, the Environmental Protection

140 Test-arrangement approach serious environmental crime/European Waste Transport Regulation (Proefopstelling aanpak zware milieucriminaliteit/EVOA).
141 It monitors and encourages compliance with both national and European legislation and regulations in favour of a safe and sustainable human environment and transport, and was formed in 2012 following a merger of the Inspectorate for Housing, Spatial Planning and the Environment and the Transport and Public Works Inspectorate.
Agency and the county administrative boards. The latter are responsible for monitoring environmental issues, such as waste management. The project consists of educational seminars and materials for increasing the knowledge and awareness of illegal trafficking of waste among public officials who are in a position to detect such crimes.

Cooperation between authorities can be improved by the use of modern means of information sharing. In Austria, law enforcement agencies of the federal provinces have access to the eSHIPMENT application of the Electronic Data-Management in the Environmental Field (EDM-Environment)143 system. This allows them to quickly determine whether transboundary waste shipments have been approved by the relevant authorities. In the Netherlands, the digital inspection dossier Inspectieview is in use but in the process of being enhanced. The system is to enable easy information sharing between inspection agencies.144

Other particularly effective practices

Another way of detecting illegal trafficking of waste is traffic inspections by the border police divisions.

Intelligence-led targeting, in which information about the highest risks in terms of actors, shipping routes, and types of waste is analysed to determine which containers to inspect, was the most commonly used method of targeting. Belgium primarily used a combination of intelligence-led and bilateral (regional-national) targeting, while Australia, Scotland, Singapore, the United Kingdom, and the United States conducted information-led or intelligence-led inspections. Hong Kong used intelligence-led as well as risk assessment profiling to determine which containers should be inspected.

4.1.4. Conclusions and recommendations for EU initiatives

Though the national rapporteurs indicated that in only a minority of the Member States corruption, fraud and organised crime constitutes an issue, reports from Europol and others show that the broad domain of EU waste management comprises many crime sensitive spots. These vulnerabilities are particularly related to methods of dealing with the disposal of waste within the EU and - secondly - with the transport and shipment of – especially – hazardous waste to third countries, i.e. outside the EU.

Waste transports and waste disposal within the EU often do not comply with the Waste Shipment Regulation (WSR). In this area prevention could be enhanced along lines of administrative measures and improved cooperation between national and international authorities. Harmonisation of rules could help overcome regulatory discrepancies between Member States and contribute to better enforcement of rules.

Administrative measures

The issuance of permits to establishments and undertakings (article 23 WFD) could be fortified, e.g. through:

143 The EDM-Environment system replaces conventional paper-based records and reports (including applications submitted to the authorities) through efficient electronic data management in the environmental field.
• Requiring a database (on an appropriate regional or national level) of all issued permits to establishments and undertakings carrying out waste treatment, and of dealers and brokers;
• Requiring minimum qualifications for leading persons of these establishments and undertakings and dealers and brokers (e.g. of a professional nature, adequate experience and no criminal record, at least not related to environmental and corruption offences);
• A registration of establishments and undertakings to whom a permit has been refused;
• Inserting (whenever indicated) a “reversal of proof of burden” clause in administrative procedures addressing appeals against refusals;
• Having such administrative measures in place will help the development and application of preventive screening methods and investigations. Organised crime is involved in illegal waste dumping and transport on a large scale. It would thus seem wise to have the EU promote a wider use of the instrument of preventive screening in the waste management sector. In order for preventive screening to be effective, permitting authorities would need to cooperate also with other agencies, notably where criminal records are concerned (see second recommendation here above).

Cooperation measures at the national and international level

Many Member States developed a multi-agency approach through setting up cooperation mechanisms between specialised environmental agencies / organisations (notably environmental inspectorates) and general governmental institutions like law enforcement, customs and inspectorates. In many instances officers of these (governmental) agencies were experts in environmental affairs. These mechanisms mostly focus on the detection of illicit trafficking of waste but sometimes on illegal treatment of waste as well. Such efforts could be stimulated through:

• Mutual exchange of information between Member States regarding their experiences in setting up these mechanisms, their way of operating and their results;
• Enhancing the EnviCrimeNet could form an important tool in exchanging such information, of standardised information and cross-border cooperation;
• Where only some EU Member States have introduced national electronic systems of information exchange and cooperation, the EnviCrimeNet could serve as a tool for standardising EU wide information exchange on waste transports;
• Mutual cooperation and information exchange between competent authorities of the member States could be strengthened with regard to the management and the results of the national “periodic inspections” of companies managing hazardous waste (Article 34, paragraph 1, WFD). Competent authorities form different Member States could e.g. invite each other as observant to such inspections.

Finally, adoption of binding criteria for effective Member State inspections and surveillance in the area of EU environmental law as proposed in the 7th Environment Action Programme (EAP7) would contribute to a more effective fight against organised crime in the area of waste management.
4.2. Public procurement

4.2.1. Description of the sector and justification of its presence for the purposes of this study. Link with EU competences.

Public procurement is the process of acquisition of goods or services by public bodies, with the aim of ensuring transparency and fair competition, on the national as well as EU level. One of the main reasons to regulate the public procurement on the European level is to bring its operational level close to the model functioning at private markets, through a system of open competition and by avoiding preferential purchasing practices that favour national entities. This helps to support the development of the common market, with its four fundamental freedoms and prevent unequal competition. In particular has to be ensured that companies and undertakings across the Single Market have the opportunity to compete for public contracts, by removing legal and administrative barriers in cross-border tenders, to provide transparency and abolish discriminatory purchasing. At the same time the market of public procurement is extremely vulnerable to corruption, fraud and organised crime, hence, next to measures broadening access, instruments are needed to ensure that entities or persons likely to commit such crimes are prevented from participating to public tender procedures.

The existing EU legislation provides a framework of public procurement which the Member States are obliged to implement into their legal systems. Nonetheless, in many European countries the rules are systematically circumvented and often with impunity. Directive 2004/18/EC provides for mandatory exclusion grounds, where a person convicted by a final judgement for participation in a criminal organisation, corruption, fraud or money laundering shall be excluded from the tender. These exclusion grounds consist of criteria for qualitative selection of candidates or tenderers. If applied correctly and in an effective manner these criteria may form the basis for a system of administrative screening as a method to fight misconduct in public procurement. However, the scope of this measure is not likely to be capable of preventing structured criminal organisations that could, by means of substituted persons, circumvent these rules. Article 45 (2) of the Directive complements the list of mandatory grounds for exclusion with a list of non-mandatory grounds; leaving to Member States the choice at the time of implementation and/or at the enforcement stage whether to exclude a participant from the adjudication procedure. Among the different grounds for exclusion mentioned in the Directive, the one concerning “grave professional misconduct” needs to be mentioned. Because this criterion does not have a uniform understanding among the EU Member States, this provision appears as a loophole through which criminal organisations may still find a way to participate in procurement bids. Moreover, the existing plurality of understandings existing in this regard should also be considered as a distortion to fair (and ethical) competition within the internal market. Therefore, it is advisable that the new legislative proposal on procurement contains: i) a restriction of the optional grounds of exclusion so as to include felonies related to accountancy

148 Art. 45.1. of Directive 2004/18/EC.
149 Article 45 (2) (d) of Directive 2004/18/EC.
150 See: Judgment of the European Court of Justice in joined cases La Cascina et al., C-226/04 and C-228/04 of 09.02.2006 ECR.2006, p.I-1347.
and fiscal frauds and, ii) provide an approximation of the demeanours that constitute a “grave professional misconduct” so as to avoid legislative loopholes and promote fair and ethical competition.

4.2.2. Description of the preventive tools stemming from the Member States

Against the background of a common international and European legislative framework, the analysis carried out by national experts for the purposes of this project has revealed a rather fragmented scenario where no single method of fighting corruption and bribery in the context of public procurement emerges. At the same time some common practices have developed, mostly due to the fact that the EU law imposes an obligation of some form of administrative screening with a common purpose: excluding from the public procurement process natural and/or legal persons previously convicted for corruption and related crimes committed in relation to public procurement.

Such an exclusion of for example applicants convicted of corruption and related crimes from participation in public procurement procedures is usually achieved through documentation requirements, data from cadastres of contractors or some sort of system of notification of irregular transactions. However, the laws on this procedure differ in particular countries, as some legislative systems impose an obligation on the bidders to submit appropriate certificates, while others provide the contracting authority with a right to control the data submitted by the applicant.

Additionally, there is a broad spectrum of specialised agencies and programmes created with the aim of fighting corruption, bribery and organised crime in the area of public procurement, and the endeavours in this regard are sometimes complemented by a system of notifications for the irregular transactions or a reporting tool for third persons to provide information to the authorities.

4.2.3. Individuation of the best practices

Administrative screening

As has been mentioned above, the existing rules at EU level impose an obligation on Member States to implement - indirectly - a system of administrative screening in the area of public procurement. Therefore, in accordance with article 45 (1) and (2) of the Directive 2004/18/EC candidates and tenderers convicted for corruption and related crimes are expressly excluded in most of the countries considered in this study. In this respect, the most common form of preventive screening resulting in exclusion of bidders convicted of certain offences is a requirement to present a non-conviction certificate from the competent national authority.

Several countries require the tender participants to present non-conviction certificates from the basic criminal court or other appropriate authority. Such an obligation is then followed by an obligation of the contracting authority to exclude those applicants whose certificates provide evidence of a previous conviction with a final judgement for bribery, corruption or organised crime. In case of a conviction for another type of crime in many countries there exists a possibility for the authority to exclude such bidder if the offence affects his professional integrity. In Sweden, however, an extract from the criminal record is required only when the procurement concerns certain classified services or a security classified authority; and in all other cases a mere

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152 See: Comparative Overview ‘Prevention of fraud, corruption and bribery committed through legal entities for the purpose of financial and economic gain’ pp. 103 – 108.
truth affirmation concerning past or pending criminal investigations and convictions is deemed sufficient. In Finland, the Public Contracts Act of 2007\(^{153}\) confers upon competent administrative authorities the power to annul and reverse any contract, whenever the public procurement unit concludes that the contract would have not been concluded had it been known that the contractor had been guilty of a bribery offence mentioned in the Act. Additionally, to ensure transparency, all bidders taking part in the tender have the right to obtain information on all bids made in the procedure after the final decision has been made and the general public has such right after the conclusion of a contract. Thus, while the Finish measures do not fall within the category of preventive measures strictly speaking, they appear as valid tools to complement them and increase the effectiveness of measures aiming at excluding the participation of criminal organisations and corrupted legal and natural persons from public procurement bids.

A special form of preventive screening is a cadastre of contractors, which serves as a database, to which the procurement authorities have access. This solution has been implemented in Austria under the name of ANKÖ (Auftragnehmerkataster Österreich)\(^{154}\) - Contractors Cadastre Austria. It provides information on the companies participating in tenders, including registration, business performance, past court procedures and convictions. Companies can register themselves voluntarily and subsequently have to provide this information, however it is not a public register.

Another type of practice is a system of monitoring notifications conducted by the authorities to detect any irregular transactions being made in the sector of public procurement. In Greece, under article 2 of the law No 4013/2011, every relevant procedure regarding public procurement including detection of organized crime falls under the jurisdiction of the Unified Authority for Public Procurement, which using the methods of risk assessment examines procurement procedures and execution of public contracts falling within the scope of European Law or co-financed by European programs. This body has the authority to carry out checks and monitor the on-going procurement procedures as well as the execution of contracts by screening data ex-officio and, therefore brings together prevention with controls during the implementation phase of a contract.

**Other particularly effective practices**

In addition to administrative measures and preventive screenings, other noteworthy practices have been developed to enhance transparency of conduct of private parties participating in public procurement bids.

In France, in order to facilitate detection of corruption in public procurement a special provision seeking to guarantee an efficient legal protection of whistle-blowers has been introduced. An employee shall be protected from any type of disciplinary sanction he might face if he or she, in good faith, reports a case of corruption he or she came across in relation to his/her professional activities. It is only if the employer is able to prove that the sanctions are not related to the alert, that the protection provisions do not apply.\(^{155}\)

In the Netherlands, Foundation for Evaluation of Integrity in Construction (Stichting Beoordeling Integriteit Bouwnijverheid)\(^{156}\) has been established with the purpose of, *inter alia*, stimulating, managing and guarding self-disciplinary rules regarding the integrity of construction and building companies in procurement bids. The Foundation has developed a code of conduct that can be used by registered companies and additionally gives them the possibility to file

\(^{154}\) [http://www.ankoe.at](http://www.ankoe.at)  
\(^{155}\) Art. 1161-1 of the FR Labour Code.  
\(^{156}\) [http://www.sbib.nl](http://www.sbib.nl)
complaints to the supervising commission with regard to an offence of the code, which can result in sanctions.157

Another interesting private sector initiative, which has already been mentioned in this Manual,158 has been launched in Czech Republic. Through cooperation of two NGO’s - Naši politici, o.s.. and Nadační fond proti korupci - a website has been established which serves as a platform that aims at detecting relations between Prague’s public procurements and politicians.159

Lastly, in Germany a system to ensure transparency by strengthening measures of corporate compliance and general information issued by the Association of German Chambers of Industry and Commerce has been created. Additionally, the German Association for Security in Industry and Commerce, a central organisation for security in economy represents over four million companies and self-employed persons in Germany.

Best practices in public procurement – conclusions

Administrative screening and the exclusion of previously convicted candidates is a well-established principle among the Member States by now. However, the system could be improved and unified in terms of legal definitions provided for the grounds of exclusion, and the spectrum of crimes that shall be precluding bidders from tender.

An interesting aspect that stems from the national reports is the use of internet and websites in order to facilitate creation of databases and cadastres, which the authorities and other stakeholders have access to. This allows for more transparency of the procurement procedure and ensures better flow of information between the participants.

4.2.4. Conclusions and recommendations for EU initiatives

With the aim to exclude corrupt bidders from public procurement procedures, the EU should promote, perhaps based on article 84 TFEU, the creation – by the Member States - of centralised public bodies, mandated to ensure the practical interpretation of article 45(1) of Directive 2004/18/EC as inspired by existing administrative screening procedures. In order to assess whether a tender participant has been or is part of a criminal organisation, or committed corruptive practises, fraudulent affairs or money laundering, the Member States should grant this ‘Agency’, in accordance with its national rules on privacy protection, permanent access to databases such as those of the public prosecution offices, tax authorities, and chambers of commerce. Furthermore, the EU should promote active cooperation between the Member States with regard to these Agencies.

New legislation on public procurement should expand the list of mandatory grounds for exclusion; preferably including the category of “grave professional misconduct”. In alternative, the non-mandatory category of “grave professional misconduct” should be defined by the EU legislator so as to provide an approximation of the national rules.

After a contract has been granted through a public procurement procedure, Member States should ensure the continuous monitoring of the implementation of the contract in order to exclude involvement in a later stage of criminal elements or engagement in fraudulent or corruptive practises. Such a task could be assigned to the aforementioned Agency.

157 http://www.sbih.nl/algemene-informatie/bedrijfscode/
158 See: Chapter 2.6.3.
159 http://www.nasipolitici.cz/cs/verejne-zakazky/praha
4.3. Emissions trade

4.3.1. Description of the sector and justification of its presence for the purposes of this study. Link with EU competences.

European Union Emissions Trading Scheme (ETS) is an EU policy to combat climate change. It works on the "cap and trade" principle, where companies receive emissions allowances from EU and national competent authorities which they can sell to or buy from one another as needed. At present, the vast majority of allowances are given out for free. The limit on the total number of allowances available ensures that they have a value. At the end of each year a company must surrender enough allowances to cover all its emissions, or face heavy fines. If a company reduces its emissions, it can keep the spare allowances to cover its future needs or else sell them to another company that is short of allowances.160

The Scheme was introduced in 2005 by implementation of the Directive 2003/87/EC161 of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC. Due to its rapid growth, the EU carbon market has also become particularly vulnerable in relation to VAT frauds and emission allowances theft. Because of the relative novelty that this market represents, the legislative frameworks in place to define and protect it from criminal activities are still developing and still have to face divergences among the Member States.

One of the main threats to the EU ETS is VAT fraud and in this particular case is being referred to as “carousel fraud”. The mechanism behind this kind of crime is based primarily on traders’ failure to remit due VAT tax to the appropriate authorities and, secondly, on the inclusion in the transaction chain of a “missing trader” who purchases goods from suppliers located abroad without the need to pay VAT and subsequently sells them to domestic suppliers. The key element in VAT fraud procedure is to conduct multiple sales of expensive, easily transportable and easily tradable goods in a short period of time; hence emissions make a perfect VAT fraud opportunity.162 A fraudulent trader can transfer large volumes of allowances and conduct multiple VAT cash outs before being traced by the authorities.163 As a result of this crime, countries in which the goods are delocalised suffer from losses of tax revenues, but there is yet another effect of this crime: the distortion of the price of carbon, as recent research has proved.164

Another type of threat to the market consists of thefts of emissions allowances. This type of crime takes place when a fraudster gains access to an account and initiates unauthorized transactions within EU ETS. Phishing and hacking attacks are conducted in order to retrieve access information and transfer emissions allowances on the account of a fraudster. Although allowances stolen this way do not constitute a significant number, they do pose a risk for potential buyers as well as for the stability and credibility of the whole market, especially in the context of different legal regulations in Member States of the “good faith” title over the purchased goods.165

160 http://ec.europa.eu/clima/policies/ets/index_en.htm
165 Supra note 165. p. 262.
4.3.2. Description of the preventive tools stemming from the Member States

Due to the fact that ETS is a relatively new programme, threats arising from within this specific market are not usually protected by specific measures in the countries that formed the object of this survey. Hence, while many of the countries indicated corruption, bribery and fraud as an issue in their system of emission trading, a large number stated that there are no preventive measures in place. In most of the cases crimes committed within the ETS market are treated just like any other crime of corruption, bribery or organised crime outside that scheme, therefore the same measures and regulations are being applied. While there is no doubt about certain benefits of such a horizontal solution, one has to bear in mind that the specificities of this market call for the adoption of new, *ad hoc*, rules complementing the general existing framework of measures.

With respect to those countries where steps have been taken aimed at fighting crime in emission trading, measures such as preventive screening, reporting obligations of account holders, practices aimed at enhancing transparency, trading registry control systems and reverse charge system could be distinguished. It must be noted, however, that none of the rapporteurs has indicated any of the measures particularly effective.

4.3.3. Individuation of the best practices

*Preventive screening*

Preventive screening measures in EU ETS concentrate on general methods of detecting corruption, bribery and organised crime. Methods designed particularly to detect and prevent crimes committed with relation to ETS have been introduced in Austria, Germany, Netherlands and Sweden. These countries established also agencies specialised in regulating and monitoring their emission markets. To that end many other countries arranged a specific unit within existing organisations.

Authorities of the Austrian Federal Environment Agency require certain information from persons wishing to register to the Emission Trading Registry, such as a recent excerpt of the criminal records, an excerpt of the firm register, the VAT number certification, bank confirmation of a valid account relationship and an evidence of the residential registration. Additionally, a range of data is made public in order to make the market as transparent as possible. These are reports with a list of the account and the new entrants. Also worth mentioning is the Austrian system aimed at preventing hacker attacks on account holders with the introduction of a secured authentication system by the means of a chip card in order to track and record every action and authorization attempt made by an each account. Moreover, a four-eye principle of approval for the transaction to be performed has been introduced, which means two persons have to give their approval before a transaction is performed.

In the Netherlands the preventive screening of operators within the ETS is being performed by the Dutch Emission Authority (NEa). Legal and natural persons wishing to operate in the ETS need to draw up a monitoring protocol that they then submit for approval to the NEa. The NEa has access to all Bibob-information in order to approve and grant to the company an emission permit. Governmental authorities have the ability to obtain information necessary to screen and audit persons applying for a governmental permit. This procedure is being used for the decision process, whether or not to grant the permit.

Additionally NEa has also developed three kinds of measures specifically pertaining to the prevention of corruption, bribery and organised crime in the area of emission trading. Firstly, the Agency adopted the European Registry Regulation to tackle ID Fraud in applications made for

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166 [http://www.emissieautoriteit.nl](http://www.emissieautoriteit.nl)
167 See: Chapter 3.1.4.
168 The Bibob-information is based on the Act on Promotion of Governmental Integrity (2002).
accounts in the Emission Trading Registry and, secondly, the NEa introduced a system to monitor account-holders. Thirdly, a plan of action was implemented to raise access security to the level of online banking and, finally, a specific measure to prevent VAT fraud with the declaration of implementation of the reverse charge mechanism was proposed. In Slovakia the Ministry of Environment carries out the main state supervision in matters of quotas in the ETS under a special regulation. Individual authorities operating in the area of supervision and management of the environment are authorized to punish the entity that violates statutory obligations by financial sanctions. In Sweden the monitoring mechanisms of the Emission Trading Registry consist of an in-depth investigation of every new applicant for a Personal Holding Account (PHA) where the applicants have to perform detailed documentation of identity and extracts from criminal records. Moreover, every account holder has to obtain an Electronic ID Certificate for which another screening of the applicant takes place. Additionally, reviews of the account holders are made where the account holders have to file the same documentation as when applying for the account.

**Reverse charge mechanism**

In order to fight VAT frauds on transboundary transactions in relation to the ETS, some countries have introduced a system where, under certain conditions, the duty to pay the VAT related to a transaction is shifted to the recipient, who is also in charge of calculating the amount of VAT to pay. Parallel to these duties, the recipient is also required to declare the transaction in his tax returns, but may be allowed to deduct that VAT under certain conditions. This complex mechanism, also known as ‘reverse charge’ mechanism, has been effectively introduced only by Austrian authorities, nevertheless a few others are considering adopting it (NL, IT).

**Other particularly effective practices**

In Czech Republic an online emissions trading registry provides the public with information on relevant legislation, glossary of terms, FAQ, templates of documents required at transactions and register reports. Similarly, Austrian authorities have established a database where a list of accounts in the registry is transcribed together with non-confidential information on account holders and a list of transactions.

As it has been mentioned before, apart from VAT fraud, the other issue affecting the EU ‘s ETS is the theft of emissions allowances. The theft of emissions allowances is usually committed by hacking or phishing attacks. In the past several national registries within Europe were affected by such crimes and, since then, some countries have adopted measures to prevent this type of criminal activities. A first type of measure adopted was to intensify the controls on access to emissions trading registries. For instance, in Austria to log into a personal account at the registry an authentication via a personalised Chip-Card is required. In Sweden, every account holder has to obtain an Electronic ID Certificate and, to ensure even further security, periodical reviews of the account holders are conducted. During these review processes account holders have to file the same documentation as when applying for the account. In the Netherlands account security level has been raised to the level of online banking.

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170 Act No. 572/2004, §17 section 1 point b.
171 Act No. 572/2004 Coll. on emission quotas trading, as amended.
172 See supra: 4.3.3. Individuation of best practices: Preventive screening.
4.3.4. Conclusions and recommendations for EU initiatives

In the sector of Emissions Trade, the gravest crime is VAT fraud. According to a speech given by Ricardo Pereira at the Experts Meeting in The Hague the most efficient way to combat this kind of crime is introduction of the reverse charge mechanism. The efficacy is achieved due to the fact that, rather than including the VAT in the purchase price and leaving the seller responsible for the payment, it is buyer’s responsibility to surrender VAT on domestically traded allowances, thus leaving no space for VAT fraud. Basing on these findings and the positive experiences stemming from the Member States a conclusion can be drawn that there is a place here for implementing EU wide legislation in that regard.

4.4. Antiquities

4.4.1. Description of the sector and justification of its presence for the purposes of this study. Link with EU competences

According the 1970 UNESCO Convention on Combat Illicit Trafficking in Cultural Property cultural property constitutes one of the basic elements of civilization and national culture, and therefore every State bears a duty to protect it against the dangers of theft, clandestine excavation, and illicit export. Despite a significant amount of time that has passed since the UN Convention has been drafted, illicit trade of cultural goods still constitutes an issue. The antiquities market is very much at risk of illegal trade of art objects, pillage of archaeological objects and subsequent sale to private collectors or even looting. Each of these occurrences has a naturally negative influence on the world heritage and the stability of the art trade market, hence the need for further developments of laws protecting cultural goods, especially in the context of increased use of Internet for the purpose of illicit trade of art.

Current EU legislation with regard to cultural objects unlawfully removed is rarely used and thus of limited effect. Hence, a recent (19 February 2013) statement by European Commission Vice-President Antonio Tajani putting forward a proposition of strengthening the possibility of restitution available to Member States provides for an expectation of a long awaited reform in the sector. The proposed legislation would, inter alia, extend the scope of the definition of cultural goods, and introduce the use of internal market information system to facilitate administrative cooperation and information exchanges between national authorities. This initiative confirms findings of the present study based on experiences of the Member States.

4.4.2. Description of the preventive tools in some Member States

The specifics of the market of art trade requires specific preventive measures for its protection, among them such basic elements as proper legislation, monitoring schemes, imposition of penal and administrative sanctions, educational campaigns and preventive screening can be mentioned. Antiquities market was not an initial aim of the questionnaire; therefore it is not enclosed in the national reports. However, due to the importance of the protection of cultural heritage, and the level of organised crime in that sphere, some of the preventive solutions will be presented in this Manual.

The preventive measures in the sector of illicit trade of antiquities can be undertaken by the public authorities, as well as by the private sector. Commonly a special department within a ministry would be established, with the aim of investigating illegal trade of cultural goods. As it has been mentioned before, a problem that has emerged in that area in the recent years is the use of Internet as a tool to vend antiquities, therefore the fighting methods should be well adjusted to take that dimension into account. A study requested by ICOM, UNESCO, and Interpol showed that there are relatively cheap and easily accessible cultural objects on the Internet. The most common practice designed to fight such crime, whether it be in the public or private sector, is creation of databases where cultural goods are catalogued and inventoried.

4.4.3. Individuation of the best practices

Preventive screening

In the light of the system of the preventive screening of business sectors as discussed in Chapter 3, The Netherlands established a framework agreement between the Ministry of Education, Culture and Science and the Ministry of Finance is in place. The agreement established a Cultural Heritage Inspectorate on the part of the Ministry of Education with a view to facilitate cooperation with the Customs Department and the Ministry of Finance. The latter body, as a monitoring body, is in charge of controlling exports of certain cultural goods on the basis of export licences issued by the Inspectorate and by using a risk analysis method set up in cooperation with that authority. The collaboration is also carried out through the contact people and specialists working within the Customs Department but trained by the Cultural Heritage Inspectorate. The Inspectorate also oversees the import of protected cultural goods from abroad. Another solution stemming from the Polish practice is the establishment of the National Institute of Museology and Collections Protection which functions within the structure of the Ministry of Culture and National Heritage. One of its statutory goals is to set out standards of protection of collections and this task is being carried out by two departments within the Institute. Firstly, the Department of “Protective Methods and Techniques” acts directly with the museums providing consultancy and advising services. Secondly, the Department of Criminal Analyses keeps the national register of stolen cultural goods and performs various tasks aimed at risk assessment, as well as detecting threats, and recommends preventive measures.

Art registries

A general measure that pursues, *inter alia*, also preventive goals is the constitution of registries in which operators of a certain market need to enrol. Parallel to these types of registries, and when the object of a market allows it is also possible to develop a registry for the objects of trade. In the Netherlands, a private foundation - The Foundation for Ecclesiastical Art and Artefacts the Netherlands (Stichting Kerkelijk Kunstbezit Nederland - SKKN) - manages such type of registry; a registry of art and cultural property of churches and other ecclesiastical objects, such as monasteries and convents in the Netherlands with a view of preserving and protecting the artefacts from illegal trade. The existing digital database contains more than 100,000 registered

176 http://www.nimoz.pl
177 http://www.religieuserfgoed.nl
objects. Similarly, in the United Kingdom a special registry was launched. “Art Loss Register” is a private database of lost and stolen art, antiques and collectables. Because the registry is open to artefacts originating from or stolen in any part of the world, this registry constitutes the largest database of such kind. Its scope of activities comprises of registration, as well as search and recovery services.

Another interesting initiative was recently launched by the abovementioned Polish National Institute of Museology and Collections Protection. The initiative called “Safe Collections” provides private collectors with a unified system of cataloguing antiquities in order to facilitate their identification in case of their theft. The inquiry form is available online, and in case of any difficulties with filling it out, professional assistance can be provided. This system is a good example creating a database of cultural goods in private collections, which can significantly improve their protection.

In Germany the Association of German Art Auctioneers (BDK) has been established with a view to fight the counterfeiting of artefacts. The Association in question has developed a database of works of art without clear provenance and thus presumed counterfeited. Up to now the database contains already more than 1000 (counterfeit) products. [178]

**Customs cooperation (e.g. Joint Customs Operation COLOSSEUM)**

Customs authorities of EU countries as well as some non-EU countries, jointly with OLAF, carry out regular joint customs operations with a view to tackle illicit trade of cultural goods and, more specifically, with an aim to combat smuggling of sensitive goods and fraud in certain high-risk areas or on pre-identified trade routes. In November 2011, a first joint operation called “Colosseum” took place with a view to specifically address the problem of illicit trade in cultural goods. As a result of that operation a number of valuable cultural goods have been seized in several countries, preventing them from being illegally sold abroad.

**4.4.4. Conclusions and recommendations for EU initiatives**

There is a need for further developments and continuous cooperation of customs authorities in EU Member States to ensure protection for cultural heritage. Additionally, all sorts of databases and cadastres of art collections prove to be practical solution, which could be extended to EU level. Although the EU’s competences in the field of protecting cultural heritage are relatively limited, once again, article 84 TFEU on the establishment of crime preventive measures might serve as a legal basis combined with article 167 (2) TFEU on the conservation and safeguarding of cultural heritage of European significance. Such a database could potentially be administered by Europol, although such a development will have to be preceded by an enhancement of their mandate.

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[180] For further information see: Kinzig, in: Hilgendorf/Rengier (ed.), Festscrift für Wolfgang Heinz zum 70. Geburtstag, 2012, 124 (139) in his article about a German case of counterfeited art, the so-called ‘art collection of Werner Jäger’.
5. Conclusions

As discussed earlier, this Manual is established both to promote certain policies and practices stemming from the EU Member States, and to contribute to the development of a wider, EU-centred, strategy on prevention by sharing the knowledge acquired throughout the project. In doing so, the Manual should serve as a source of inspiration for possible policy developments that could take place at the national level as well as at the EU-level. Throughout the research activities it furthermore has clearly emerged that such policy developments, aimed at the prevention and fight against corruption, fraud and organised crime in relation to activities carried out by legal entities must be endorsed by both public and private initiatives simultaneously and, possibly, in a complementary manner. However, it has also emerged that the most effective initiatives stem from a strong commitment of public authorities together with the development of comprehensive policies and strategies.

The conclusions as presented here try to individuate and report on cross cutting instruments developed by private and public bodies to prevent corruption, bribery and frauds that are generally applicable to the EU’s internal market. In doing so, the concept of ‘horizontal tool’ serves this specificity of the European Union, i.e. its internal market and area of freedom, security and justice without internal frontiers in which rules and regulations should be capable of being applied without significant distinctions in order to foster economic activities in a secure environment. The main findings of the Manual are presented here, adhering to its structure. Moreover, the necessity of a combination of repression and prevention in the fight against corruption, bribery frauds and organised crime emerged clearly from the different project activities, and also surfaces from a formal and legal perspective in a number of international and EU instruments. Similarly, the Treaty of Lisbon provides for a legal basis, article 84 TFEU, for the adoption of preventive measures, as long as these do not entail the harmonisation of national laws and regulations. As it has been argued throughout the Manual, this legal basis could be used in combination with substantive ones to, for example, streamline preventive strategies and promote best practices in a systematic manner.182

In the light of the research conducted, the following conclusive recommendations can be put forward to the attention of policy makers.

**In relation to the private sector:**

- The EU, in the area of Company Law, should stimulate companies to meet the most recent international and European standards with regard to anti-corruption frameworks and to incorporate any changes to national law quickly into any code of conduct they adhere to. A consistent improvement of corporate governance is to be achieved primarily by flexible voluntary self-regulation pursuant to the ‘comply or explain’ principle.
- SMEs should, possibly guided by the experience of larger MNCs with elaborate anti-corruption frameworks, as much as possible be included in such a creation of a culture of integrity at an EU-level, and be stimulated to adopt reporting procedures reflecting the SME’s ethical performance.
- Stimulate the creation of EU-wide private sector platforms in order to enhance the dialogue on the development of anti-corruption measures and non-financial reporting requirements, amongst others through the framework of Corporate Social Responsibility.

182 See: Chapter 1 and the different conclusive sections of chapters 2, 3 and 4
Such platforms should include businesses, NGOs and other stakeholders, and Member States and EU representations.

- The EU should promote, at Member-State level, either by the legislator or the prosecuting authorities, the development of general principles to be used by a company as guidelines in implementing preventive measures. Adherence to these principles should create a possibility to a full legal defence and avoid liability of the company for harmful conduct of employees, subsidiaries, agents, suppliers or any of its other business relations. Such a defence should only be allowed if a company did everything within its powers and appropriate to its size and exposure to risk, to implement the aforementioned general principles.

- A failure to implement any of the preventive measures, as established by the legislator or the prosecuting authorities, should, in case of misconduct by persons associated with a company, establish the possibility for prosecuting authorities to initiate legal proceedings against the company itself.

- EU regulatory action should be aimed at establishing correlation between the ‘level’ of corruption (monetary, level of management, involved interests, level of penetration in the company, etc.) and the regulatory and enforcement powers which public authorities are able to apply. In other words: the more severe the corruption, the lower the level of flexibility in terms of voluntarily applying internal compliance standards and the higher the level of involvement of external authorities should be.

- The larger (either in terms of turnover or societal influence) a company, the more it should be bound by (non-)financial reporting requirements, transparency regulations and CSR frameworks. In doing so the risk of administrative overburdening of EU SMEs will be mitigated as much as possible.

In relation to the public sector:

- Promotion of national strategies: national strategies should contain legislative and soft-law measures concerning prevention and should also create evaluation mechanisms as well as being reviewed periodically.

- Effective prevention of corruption, bribery and fraud requires the coordination of different public bodies and offices; for this purpose the establishment of a centralised office against corruption is necessary. Such body should also be in charge of developing trainings, reporting and exchange data at the national level. While a strict cooperation mechanism with the public prosecutor’s office is necessary, the creation of a single body for the coordination and the prosecution does not appear necessary from a policy perspective.

- It is necessary to develop, with the adoption of legislative measures, mechanisms of cooperation for public authorities in order to set in place systematic mechanism of preventive screenings in order to effectively prevent corruption, bribery and fraud. These mechanisms should be applied automatically by public authorities and not only in suspected cases.

- Promotion of the adoption of a legal basis for the use of ‘criminal data’ in administrative procedures and stimulate intra-Member State cooperation in the coordination if these procedures. In doing so, it is ensured that administrative measures aimed at preventing corruption, bribery, fraud and organised crime can resort to the most adequate information in assessing applications for licences in high-risk sectors.

- It is necessary to create platforms of cooperation between private associations and public bodies in order to enhance transparency and dialogue. In this respect an example is the
delivery of trainings for private entities by national authorities in charge of anti-corruption.

- It is necessary for the public sector to support and promote anti-corruption behaviour in the private sector by the means of legislation and soft-law initiatives. From the legislative side, the duty of adopting internal codes of conduct should be imposed by law under Company legislation, and national as well as EU legislation should also promote protective mechanisms for whistle-blowers.

**Sector-specific examples of preventive measures and best practices**

- **Waste management:** A considerable percentage of waste transports in the EU does not comply with the Waste Shipment Regulation (WSR). Organised crime is involved in illegal waste dumping and transport on a large scale. It would thus seem wise to have the EU promote a wider use of the instrument of preventive screening in the waste management sector. In order for preventive screening to be effective, permitting authorities would need to cooperate with other agencies, notably where criminal records are concerned. Furthermore, enhancing the EnviCrimeNet could form an important tool in exchanging standardised information and cross-border cooperation. Where only some EU Member States have introduced national electronic systems of information exchange and cooperation, the network could serve as a tool for standardising EU wide information exchange on waste transports. Finally, adoption of binding criteria for effective Member State inspections and surveillance in the area of EU environmental law as proposed in the 7th Environment Action Programme (EAP7) would contribute to a more effective fight against organised crime in the area of waste management.

- **Public Procurement:** Administrative screening and the exclusion of previously convicted candidates is a well-established principle among the Member States by now. However, as the study has shown, different approaches are being taken with regard to implementation of these provisions, mostly due to interpretation issues. Therefore the system could be improved and unified in terms of legal definitions provided for the grounds of exclusion, and the spectrum of crimes that shall be precluding bidders from tender. On a different note, an interesting aspect that stems from the national reports, is the use of internet and websites in order to facilitate creation of databases and cadastres, which the authorities and other stakeholders have access to. This allows for more transparency of the procurement procedure and ensures better flow of information between the participants. Creating an EU wide database of contractors would improve transparency.

- **Emissions trade:** In the sector of Emissions Trade, the gravest crime is VAT fraud. According to a speech given by Ricardo Pereira at the Experts Meeting the most efficient way to combat this kind of crime is introduction of the reverse charge mechanism. The efficacy is achieved due to the fact that, rather than including the VAT in the purchase price and leaving the seller responsible for the payment, it is buyer’s responsibility to surrender VAT on domestically traded allowances, thus leaving no space for VAT fraud. Based on these findings and the positive experiences stemming from the Member States a conclusion can be drawn that there is a place here for establishing EU wide legislation implementing reverse charge mechanism.

- **Antiquities:** There is a need for further developments and continuous cooperation of customs authorities in EU Member States to ensure protection for cultural heritage. Additionally, all sorts of databases and cadastres of art collections prove to be practical solution, which could be extended to EU level.