

Country Reports

Autumn 2017

Updates from The Netherlands, France, Russia, Czech Republic



WILLEM VAN NIELEN
Attorney at law/Partner
at Recoup, The Netherlands

The Netherlands: Multidisciplinary approach to combat bankruptcy fraud; Fraud Consulting hours and the International Expert Centre for Bankruptcy Fraud

**Previously in Eurofenix
(Edition 57, Autumn 2014)
I reported that the Minister
of Security and Justice of the
Netherlands announced in
2012 a recalibration of the
Dutch Insolvency Law, among
which a multidisciplinary
approach to combat
bankruptcy fraud.**

The Dutch Minister's announcement of a multidisciplinary approach to combat bankruptcy fraud has led to a legislative programme that went into force last year, wherein the duty of the trustee is extended to combat bankruptcy fraud.

In that respect the trustee has to investigate and report irregularities (e.g. fraud) to the bankruptcy judge. The Trustee is obliged to report bankruptcy fraud to the public prosecutor when he or the supervisory bankruptcy judge find such action necessary. Additionally, when confronted with irregularities that lead to the conclusion of mismanagement (e.g. fraud) by the director, the trustee is given the authority to request the director's disqualification in civil proceedings. As soon as this

request is approved by the court, the director's disqualification (for a maximum period of five years) will be published in a public register. Furthermore, the means to obtain information by the trustee have been reinforced, e.g. the group of persons who are obliged to provide the trustee with all relevant information regarding the bankrupt company is extended (based on case law).

The Dutch Minister's announcement of a multidisciplinary approach to combat bankruptcy fraud has also led to several initiatives in practice, for example consulting hours about insolvency fraud, during which trustees can address questions (in order to obtain information) to several chain partners (the public prosecutor, the representative of the tax authority, a supervisory bankruptcy judge and an experienced anti-fraud trustee) re combat the fraud (in order to retrieve assets and to report possible fraud).

In the meantime, all Dutch courts have successfully initiated such consulting hours, and thus this has become a permanent institute in the Netherlands. These consulting hours – among other consultations offered by the Dutch Courts – are proposed by the Platform 'Bankruptcy Fraud' that we have set up in the Netherlands. This Platform has now founded the 'International Expert Centre for Bankruptcy Fraud' (www.bankruptcyfraude.eu).

This international platform

aims to create an international community of professionals who in their profession deal with bankruptcy fraud, such as bankruptcy trustees, forensic accountants, criminal defence lawyers, law enforcement officers, (supervisory) judges, lawyers from the Ministry of Justice, representatives of the tax authority and the police departments.

One of the subjects that will be food for discussion in this Platform will be the *nemo tenetur* principle. In Eurofenix *Edition 57, Autumn 2014* I wrote that the Supreme Court of the Netherlands has rendered two judgements that limit the possibilities to coerce the information duties towards the trustee, based on the *nemo tenetur* principle. These judgements have also an impact on the multidisciplinary approach to combat bankruptcy fraud in general and are relevant for all European Member States.

For questions about the International Expert Centre for Bankruptcy Fraud, you can contact me via wvannielen@recoup.nl ■



**THE TRUSTEE
IS OBLIGED
TO REPORT
BANKRUPTCY
FRAUD TO
THE PUBLIC
PROSECUTOR**

