

## European Rule of Law Mechanism: input from the Netherlands 2022 Rule of Law Report

### I. Justice System

#### A. Independence

##### 1. *Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)*

In last year's input, it was mentioned that the Commission of State on the reform of the Parliamentary system ('Commission Remkes') and the Council of State (Advisory Division) advised on the manner of selection and appointment of the members of the Supreme Court. The new coalition committed itself in its government coalition agreement of December 2021 to furthering the proposals done by the Commission Remkes that have been presented to Parliament<sup>1</sup> and the Council of State.<sup>2</sup> The new government will therefore decide upon possible changes necessary to the manner of appointment.

Currently, the Council for the judiciary is exploring the alteration of the composition of the Council. At the moment the Dutch Council has four members of which two are judges (the president is always a judge and has the deciding vote). In order to meet European standards the Council is exploring the possibility to go for an odd number of members in which judges are in majority.

Concerning judicial review, within the legal system of the Netherlands, it is not possible to appeal against the appointment or non-appointment to the position of judge.

##### 2. *Irremovability of judges; including transfers (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)*

No substantial changes have occurred since the publication of the Rule of Law Report 2021.

Judges are in principle only removable upon their own wish, appeal (judicial review) is therefore not deemed necessary. The retirement age for judges is fixed by law, exceptions are only possible by law.

##### 3. *Promotion of judges and prosecutors (incl. judicial review)*

No substantial changes have occurred since the publication of the Rule of Law Report 2021. For promotion to other positions in the judiciary, an application procedure has to be organized. Appeal (judicial review) to appointment or non-appointment to a certain position is not possible.

##### 4. *Allocation of cases in courts*

No substantial changes have occurred since the publication of the Rule of Law Report 2021. As mentioned in last year's input, the new code has entered into force on April 1, 2021.

##### 5. *Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)*

Other than specified below, no substantial changes have occurred since the publication of the Rule of Law Report 2021.

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<sup>1</sup> References made to the Parliament refer to 'Tweede Kamer', references made to both Houses of Representatives refer to both 'Tweede Kamer' and 'Eerste Kamer'.

<sup>2</sup> <https://www.rijksoverheid.nl/regering/documenten/publicaties/2022/01/10/coalitieakkoord-omzien-naar-elkaar-voortkijken-naar-de-toekomst>.

On the basis of article 86 Law on the Judicial Organization, members of the Council for the judiciary can in certain cases be dismissed. The members that are appointed as judge can only be dismissed upon their own request or when they accepted a position that is deemed incompatible with the position as member of the Council for the judiciary as mentioned in article 84 Law on the Judicial Organization. The other members of the Council for the judiciary can be dismissed by royal decree upon the request of the Minister for Legal Protection.

*6. Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)*

Other than specified below, no substantial changes have occurred since the publication of the Rule of Law Report 2021.

According to article 42 part 1 Law on judicial personnel, only the state is liable for civil damages caused by judges during the course of their work as judge. For criminal actions outside the course of work of a judge, normal criminal procedures can be launched. In very exceptional cases such as corruption, article 346 of the Criminal law allows the prosecution of a judge for misdemeanors during the course of their work as a judge.

*7. Remuneration/bonuses/rewards for judges and prosecutors, including changes (significant increase or decrease over the past year), transparency on the system and access to the information*

In 2022, new negotiations on the collective labor agreements will take place but currently no substantial changes have occurred since the publication of the Rule of Law Report 2021. The collective labor agreement will be made publicly available after the agreement is reached. Exemptions from the system are not possible.

*8. Independence/autonomy of the prosecution service*

No substantial changes have occurred since the publication of the Rule of Law Report 2021.

*9. Independence of the Bar (chamber/association of lawyers) and of lawyers*

No substantial changes have occurred since the publication of the Rule of Law Report 2021.

*10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary*

No substantial changes have occurred since the publication of the Rule of Law Report 2021. The perception of the independence of the judiciary in the Netherlands is high both among the general public as among companies.

**B. Quality of justice**

*11. Accessibility of courts (e.g. court/legal fees, legal aid, language)*

Court fees

As mentioned last year, the Minister for Legal Protection has successfully proposed a law for a more differentiated system of court fees in cases with a lower value, which has entered into force on 1 January 2022.<sup>3</sup> The government coalition agreement of December 2021 aims to increase the access to justice for citizens and small and medium enterprises by reducing court fees by 25%. The expected costs of this plan will be 55 million euros yearly from 2024 onwards.

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<sup>3</sup> [Staatsblad 2021, 508 | Overheid.nl > Officiële bekendmakingen \(officielebekendmakingen.nl\)](https://www.staatsblad.nl/Overheid/nl/Officiële_bekendmakingen/officielebekendmakingen.nl)

## Legal aid

The government coalition agreement of December 2021 also aims to strengthen the subsidized legal aid system in line with the recommendations of the Committee for the Evaluation of the Award of Credits for Funded Legal Aid (Van der Meer Committee)<sup>4</sup>. The reform of the legal aid system will be continued. The latest report on the progress of the pilots has been published in December 2021.<sup>5</sup> The Parliament was also informed on the improvements of the fees for legal aid providers in the subsidized legal aid system<sup>6</sup>. For 2022, 154 million euros have been made available for this reform. With the renewal of the legal aid system, the focus is on faster and more accessible help for people in precarious situations. The use of legal aid is therefore expected to decrease somewhat in the future. In addition, the government is aiming for a greater (financial) contribution from commercial law firms. This plan to ask for a substantial contribution is also mentioned in the government coalition agreement of December 2021. These measures should lead to a structural amount of 64 million euros per year from 2025 onwards. This also partly explains the decrease in the budget from 2022 and further. The Parliament asked questions on the reform and funding of the legal aid system on 28 September 2021.<sup>7</sup>

In July 2021, the government scheme RATZ (Regeling adviestoevoeging zelfredzaamheid) started for citizens that previously were excluded from legal aid because of their presumed self-reliance, underestimation of (legal) complexity and/or the lack of help in the current system<sup>8</sup>. This is a temporary arrangement instituted by the Minister for Legal Protection in response to signals from the Association of Social Lawyers in the Netherlands (VSAN) and on the advice of the Netherlands Bar Association (NOvA), the Legal aid desk and the Council for legal aid. After short-term assistance, the lawyers can be reimbursed for more extensive legal assistance on the basis of the government scheme as well, if it turns out that more time is involved with the legal issue. The government scheme will run until March 31, 2022 at the latest.

For citizens that have fallen victim to the childcare allowance affaire a special legal aid arrangement is being set-up.

Next to this, no substantial changes have occurred since the publication of the Rule of Law Report 2021.

### *12. Resources of the judiciary (human/financial/material)*

The Council for the judiciary reaches an agreement every three years with the Minister for Legal Protection on the budget for the judiciary. In the upcoming year such a new agreement will be established. Next to that, no substantial changes have occurred since the publication of the Rule of Law Report 2021.

### *13. Training of justice professionals (including judges, prosecutors, lawyers, court staff)*

No substantial changes have occurred since the publication of the Rule of Law Report 2021.

### *14. Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)*

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<sup>4</sup> [Eindrapport Andere Tijden : Evaluatie puntentoekenning in het stelsel van gesubsidieerde rechtsbijstand \(202 p.\) - Eerste Kamer der Staten-Generaal](#)

<sup>5</sup> [Kamerbrief over 6e voortgangsrapportage stelselvernieuwing rechtsbijstand | Kamerstuk | Rijksoverheid.nl](#)

<sup>6</sup> [Kamerbrief over verbetering vergoedingen voor rechtsbijstandverleners gesubsidieerde rechtsbijstand | Kamerstuk | Rijksoverheid.nl](#)

<sup>7</sup> [Antwoord op vragen van het lid Van Nispen over de rechtsbijstand | Tweede Kamer der Staten-Generaal](#)

<sup>8</sup> <https://www.rvr.org/nieuws/@7711/rechtshulp-schrijvende-zaken-via/>

The implementation of digital technology in the justice system has been strongly supported by the Ministry of Justice and Security in 2021. The government coalition agreement of December 2021 also aims at strengthening the justice sector and increasing access to justice for citizens and businesses. Digitalization of the justice sector is an important part of ensuring access to the justice sector. Specifically for the judiciary the government coalition agreement also introduced a commitment to support a higher publication rate of jurisprudence by the judiciary. Concerning digital access, the Council for the judiciary reports that currently 33% of the requests of the courts in first and second instance are received digitally and 30% of the cases are digitally processed.<sup>9</sup> The degree of digitization varies between and within the legal areas as further illustrated below. On a more general level the government coalition agreement aims to enhance the possibility for citizens to have control over their data and to create a digital identity for citizens. An important overall objective is to improve cooperation on digital affairs within the EU.

The Dutch Bailiffs Organisation (KBvG) has explored the opportunities for digitalization concerning implementation of European legislation in the area. The Royal Dutch Notary Association (KNB) has been working on a digital platform for the digital notarial documents for the founding of private companies. This makes it possible to establish an enterprise online via an electronic notarial (model) deed, with electronic identification and signature. Appearance before the notary is organized via image connection instead of appearing physically. Additionally, the KNB started the mandatory use of digital scanners which can better register the identity / passport data of the customer. This became mandatory at the beginning of 2021 via a law that was proposed by the profession (KNB) itself, and which the Minister of Justice and Security approved. The aim of the law is to more effectively prevent fraud.

#### Publication of jurisprudence

In order to realize the ambition for more publication of jurisprudence, the judiciary has set up the program 'More and responsible publishing' (meer en verantwoord publiceren). The new program will gradually ensure that the publication of judgments on the website Rechtspraak.nl will increase. The aim is to take important steps in the coming years towards a situation in which, in principle, all judgments will be published. Currently the publication rate is around 4% of all judgments, with primarily jurisprudence which is considered 'legally relevant'. In recent years, however, public interest in court decisions has become much greater and broader. In addition to the current jurisprudence, especially in science, journalism and the world of 'legal tech' there is interest in 'all' other jurisprudence. An important task is that the relevant jurisprudence is easily accessible for legal practitioners and that the jurisprudence remains well readable by machines. Another big challenge is to find a balance between the openness of the judiciary on the one hand and the protection of the privacy of those involved on the other.

#### Use of digital technology in criminal cases at the judiciary and cooperation with Public Prosecution Office

With regard to the use of digital technology in criminal law cases at the judiciary, the Public Prosecution Service (OM) works closely with the judiciary. Currently 93% of the criminal law cases are received by the judiciary digitally and 92% are digitally processed. Digitization is however not yet complete at the judiciary. Last year a multimedia pilot started at the courts of Limburg and North- Netherlands. Multimedia files from the Public Prosecution Service can easily be added to a file viewer by means of a hyperlink. Project "Digital Working in Second Instance" (Digitaal Werken Hoger Beroep) has taken steps towards paperless working in the organization. All planned activities have been realized within the four courts of appeal. The main priority is to improve the case file system for criminal cases, which has become less stable in recent years. The Public Prosecution Service has the ambition to set up a new system, separate from the judiciary. Business cases for the new system are prepared. Another development is the entry into force of the new Code of Criminal Procedure in 2026. Several systems will have to be adapted to this new law, which requires substantial investments.

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<sup>9</sup> [Meerjarenplan van de Rechtspraak 2015-2025](#).

As reported last year, due to COVID-19, measures were taken to ensure the possibility to handle cases digitally. Currently, videoconferencing in criminal law is used under conditions if, for example, this is preferable because of safety risks.

#### Use of digital technology in civil and administrative cases at the judiciary

Concerning the plan for digital access of the judiciary as mentioned last year, the first pilots are seizure requests and national taxes. The pilot seizures request has been successfully completed and will move towards the new stage of implementation at more courts. Additionally, electronic files of civil and administrative cases at the court registry will become a priority to improve. Efforts with regard to the “renewal of process support” (Basisplan vernieuwing procesondersteuning) will be further developed. Implementation is foreseen in the coming 6 to 8 years.

#### Use of digital technology in cases of oversight of business and citizens (toezicht/Bewindvoering)

Digital access related to cases concerning trustees and administrators and cases concerning insolvency of companies and individuals with conservators is continually improved. Professional conservators and administrators can submit electronic files. Last year a pilot for digital communication with special conservators, those who act as private persons for example for relatives, was launched. The pilot will be available for all cases at the beginning of 2022. Already 55% of the cases are processed digitally.

#### *15. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)*

No substantial changes have occurred since the publication of the Rule of Law Report 2020 and 2021.

#### *16. Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialisation, in particular specific courts or chambers within courts to deal with fraud and corruption cases.*

There are specific courts in the Netherlands that deal with cases of the National Public Prosecutor’s Office for Serious Fraud, Environmental Crime and Asset Confiscation (Functioneel Parket, FP) and the National Office of the OM (Landelijk Parket) (article. 2 Wetboek van Strafvordering).<sup>10</sup>

Within these courts there are special chambers that deal with fraud cases (including corruption cases of the FP).<sup>11</sup>

### **C. Efficiency of the justice system**

#### *17. Length of proceedings*

Information about the length of proceedings is part of the European Justice Scoreboard. For the 2021 rapport, this is mentioned in figures 6 – 10. The information in the EJS is based on data from CEPEJ and the questionnaire members expert group EJS.

## **II. Anti-corruption framework**

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to

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<sup>10</sup> <https://wetten.overheid.nl/jci1.3:c:BWBR0001903&boek=Eerste&titeldeel=I&afdeling=Tweede&artikel=2&z=2022-01-01&g=2022-01-01>.

<sup>11</sup> <https://www.rechtspraak.nl/Organisatie-en-contact/Rechtsgebieden/Strafrecht/Paginas/Soorten-strafrechters.aspx>.

the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

**A. *The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)***

Recalling last year's input, the Netherlands has undergone several international evaluations in the context of the anti-corruption framework. As the past two years were mostly geared towards the international evaluations, no large policy changes were introduced.

The report of the phase four evaluation of the Netherlands in the OECD Working Group on Bribery (WGB) was adopted in October 2020.<sup>12</sup> In October 2021, the Netherlands submitted a written one year follow-up report to the WGB on the progress in the implementation of recommendations in relation to the whistleblower protection and the new framework on non-trial resolutions.<sup>13</sup> In October 2022, the Netherlands will submit a written report to the WGB on the implementation of all recommendations and its enforcement efforts. This follow-up report will also be made publically available.

The Netherlands first compliance report in the context of the Fifth Evaluation Round of GRECO, on preventing corruption and promoting integrity in governments (top executive functions and law enforcement agencies), was adopted in March 2021.<sup>14</sup> GRECO concluded that some progress has been made on eight recommendations dealing with law enforcement agencies (LEAs), and no tangible progress has been made on eight recommendations regarding persons with top executive functions. Since the adoption of the report, new measures have been proposed to the Parliament with a view of promoting integrity in line with GRECO's recommendations. The input for subject 27 contains a more detailed explanation.

The UNCAC evaluation is still ongoing; the virtual on-site visit took place in November 2020 and the report will become public in the course of 2022. This was planned for the year 2021, but due to delays, this has been postponed. The evaluation report will be made public on the website of the UNODC.<sup>15</sup>

Additionally, in 2021 the Ministry of Justice and Security commissioned research by the WODC<sup>16</sup> regarding corruption risks, specified at the mainports of the Port of Rotterdam and Schiphol Airport. The input for subject 25 contains further explanation.

*18. List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable).*

No substantial changes have been made since the publications of the Rule of Law Reports 2020 and 2021 within the institutional framework in the fight against corruption.

Recalling last year's input, the Netherlands launched an extensive program focusing on combating serious and organized crime with a subversive impact and created a Directorate General within the Ministry of Justice and Security to coordinate the program (*DG Ondermijning*). As mentioned this has

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<sup>12</sup> <http://www.oecd.org/daf/anti-bribery/netherlands-oecdanti-briberyconvention.htm>.

<sup>13</sup> [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/WGB\(2021\)55/FINAL&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/WGB(2021)55/FINAL&docLanguage=En).

<sup>14</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a2fcb0>.

<sup>15</sup> [Country Profile \(unodc.org\)](https://www.unodc.org/country-profile/netherlands)

<sup>16</sup> Research and Documentation Centre is the knowledge centre in the field of the Dutch Ministry of Justice and Security. The WODC carries out independent scientific research for policy and implementation purposes; by itself or the WODC commissions the research.

led, among other things, to additional funding in this field and the creation of the multidisciplinary intervention team (MIT). The MIT is a partnership between the Netherlands Police (NP), the Public Prosecution Service (PPS), Fiscal Intelligence and Investigation Service (FIOD), the Dutch Customs and the Royal Netherlands Marechaussee (KMar). This partnership has the objective to uncover and disrupt criminal structures, criminal business processes and their revenue models. Eventually the MIT has to contribute to a resilient and unattractive country for (organized) crime - with subversive impact. The development of the MIT is in full progress. The first operational processes are being tested and the legal basis is created. The MIT must be operational in 2023.

The National Internal Investigations Department (NIID) is an important partner of the MIT and, as mentioned in last year's input, has received a structural annual investment of 3.3 million euros to strengthen the NIID investigatory capacity. The build-up to the full reinforcement of the NIID will take place over a period of four years, with the full complement of reinforcement being recruited in 2023. Recruitment is going according to plan: at the end of 2021 15 FTE have been recruited, in 2022 another 8 FTE will be recruited. Next to the strengthening of the NIID, the PPS has also been structurally reinforced with 3 FTE.

In the previous input the pilot of two NPIID investigators stationed in the Special Caribbean municipalities of the Netherlands as of September 2020 was mentioned. This pilot was intended for 3 years. Due to the positive response, a funding request has been made to extend the pilot for another 3 years. An evaluation will take place in 2022 and it will be examined whether a structural deployment is desirable and possible.

In relation to cooperation with OLAF, the Netherlands have designated the Anti-Fraud Coordination Service (AFCOS) of Customs and the FIOD as the competent authorities. OLAF shall thus have access to: (a) information available in the centralised automated mechanisms referred to in Article 32a(3) of Directive (EU) (2015/849) of the European Parliament and of the Council; (b) where strictly necessary for the purposes of the investigation, the record of transactions, provided that the OLAF request include a justification of the appropriateness and proportionality of the measure with regard to the nature and gravity of the matters under investigation. Any information received by the Netherlands from OLAF is assessed by the FIOD and the PPS to decide whether it is sufficient to start a criminal investigation. The general procedure for receiving and processing information from OLAF is addressing it to the Information and Operational Coordination Team (TIOC) of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation (*Functioneel Parket*, FP). TIOC is responsible for receiving, obtaining processing and reviewing intelligence on criminal offences such as foreign corruption-related offences. Within the TIOC, the Public Prosecutor is responsible for intelligence and is tasked with assessing this intelligence in cooperation with the FIOD. For corruption cases this is done by a Public Prosecutor and policy officers specially designated for anti-corruption, together with the Anti-Corruption Centre (ACC) of the FIOD. Moreover, since 2020 the Netherlands has seconded a Public Prosecutor to OLAF.

As to cooperation with the EPPO, the EPPO implementing act entered into force on May 7, 2021. The two Dutch European delegated prosecutors have been operational since March 1, 2021. The cooperation agreement with EPPO has been implemented and executed as agreed.

Last year's report mentioned a draft law that aimed to strengthen effectiveness of the fight against serious and organized crime with a subversive impact, including corruption. This bill came into effect in November 2021<sup>17</sup> and is part of a broader subversive crime agenda that further strengthens the criminal law approach to serious and organized crime with subversive impact. Among four other measures, the maximum penalty for threatening is increased from 2 to 3 years and if the threat is committed against

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<sup>17</sup> [Staatsblad 2021, 544 | Overheid.nl > Officiële bekendmakingen \(officielebekendmakingen.nl\)](#)

public officials<sup>18</sup>, judges, public prosecutors, lawyers, (special investigative) police officers and journalists or publicists in the context of news gatherings, the prison sentence can be increased by one third, to a maximum of four years.

*19. Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption.*

Public Prosecution Service (PPS)

The functional independence of the PPS has been a topic raised more often, for example in the 2020 report, which pointed out the power of the Minister of Justice and Security to issue specific instructions to the PPS. The Netherlands would like to reiterate that this power is accompanied by safeguards to protect judicial independence and has never been used in practice.

Two examples related to the functional independence of the PPS are:

In 2019, following a ruling by the Court of Justice of the EU, the Law on Surrender (*Overleveringswet*) was amended. As a result of this ruling, public prosecutors were no longer allowed to issue European Arrest Warrants in relation to the existing possibility to issue instructions or receive directions from the executive power. Research has been conducted in 2021 on the role and position of the PPS as the competent judicial authority on the basis of EU instruments in the field of cross-border criminal law cooperation (and other relevant international instruments). The conclusions of the research are currently being discussed by the Ministry of Justice and Security and the PPS.

In the previous input a reference was made to a new Directive on Large Settlements. The new Directive on Large Transactions which came into effect on September 4, 2020 introduced a (temporary) independent review commission. This new procedure ended the approval role of the Minister of Justice in proposed non-trial resolutions. Although the government has not formally published the members of the commission upon introduction of the new system, their names are a matter of public knowledge. They can be found in the written reports on the proposed settlements and also in media reports. Since September 2020, the new regime has been followed in several cases. As was shared, this would be a temporary regime, before the introduction of a new system of judicial oversight ("*verlofprocedure*") for which legislative proceedings are being made. The draft law shall introduce a judicial review by the court of appeal (*Gerechtshof*) of a specific category of settlements (the so called "*hoge transacties in de sfeer van de rechtspersonen*"), and would only allow for these settlements after judicial review of the intended settlement. The law aims to increase the legitimacy of such settlements, increase legal protection for all parties involved and increase the transparency of the settlement procedures. It also aims to increase public acceptance of these types of settlements. No specific timeframe can be given on the adoption of the draft law at time of writing.

Fiscal Intelligence and Investigation Service (FIOD)

The FIOD is the special criminal investigation service of the Netherlands Tax and Customs Administration (NTCA), and is part of the Ministry of Finance, though the FIOD operates independently. The FIOD derives tasks and activities from the Special Investigative Services Act.<sup>19</sup> The assessment whether or not to conduct a criminal investigation is a decision taken by the authority of a Public Prosecutor. The FIOD works in accordance with the legal frameworks of the Criminal Code, the Code of Criminal Procedure and the Police Data Act and acts independently under the authority of the PPS. There is no political or administrative interference by officials in the conduct of criminal investigations.

The National Internal Investigations Department (*Rijksrecherche*, NIID)

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<sup>18</sup> Public officials as in persons in his or her capacity as Minister, State Secretary, King's Commissioner, deputy, mayor, member of a general representative body.

<sup>19</sup> [Wetten.nl - Regeling - Wet op de bijzondere opsporingsdiensten - BWBR0019919 \(overheid.nl\)](#).



Investigators of the NIID are police officers, but the NIID is part of the PPS by law, and are subject to the authority of the Board of Procurators General. The legal basis of their activities falls within the Police Act.<sup>20</sup> The ‘Policy rule deployment and tasks NIID’<sup>21</sup> lays down in which cases the NIID is or may be deployed. By virtue of a decree of the Board of Procurators General of January 16, 2001, the deployment of the Rijksrecherche is decided upon by the so-called Coordination Committee Rijksrecherche (CCR), which consists of the following members: NIID-Procurator-general, Head of the Prosecution Office of the *Landelijk Parket*, General Director NIID and National coordinating prosecutor.

20. *Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators.*

We are currently examining the options with regard to the WGB and GRECO recommendations and the possibilities to implement these recommendations within our national regulations. The recommendations of the international evaluations and independent research are expected, among other things, to guide our anti-corruption framework and strategy for the coming years. After publication of the UNCAC evaluation, the Netherlands expect to publish a policy response on behalf of all government agencies involved on how the Netherlands will deal with the recommendations.

## **B. Prevention**

21. *Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application.*

The government has taken several steps to supplement the integrity policy for ministers and state secretaries. A ‘self-assessment integrity risk analysis’ was introduced, which is a tool for candidate ministers and state secretaries that focus on awareness and helps define possible integrity risks.<sup>22</sup> The self-assessment can help the candidate during the government formation by answering the following question; are there any facts that the formateur should know of, because they can be a negative influence on the candidate’s functioning as a member of government, or could put the cabinet in a difficult situation? The self-assessment lays the foundation for further implementation of a more coordinated risk-oriented integrity strategy in accordance with the recommendation by GRECO.

In June 2021, GRECO published the compliance report of the Netherlands in the 5<sup>th</sup> evaluation report. The report is also discussed under subject 27 regarding ‘other relevant measures to prevent corruption in the public sector’. The compliance report concluded that although they were informed that work is being carried out on the elaboration of proposals for further promotion of integrity in government, no tangible progress has been achieved on any of the recommendations contained in the Evaluation Report regarding persons with top executive functions.<sup>23</sup> Since then, several steps have been taken. In November 2021, the Minister of the Interior and Kingdom Relations proposed new measures in line with the relevant GRECO recommendation.<sup>24</sup> These relate to further enhanced integrity policies for former ministers and state secretaries and are to be seen in conjunction with each other.

1. The already existing lobbying ban with regard to former ministers and state secretaries will be extended to include adjacent policy areas in which the former minister or state secretary was actively involved during his office.

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<sup>20</sup> [Wetten.nl - Regeling - Politiewet 2012 - BWBR0031788 \(overheid.nl\)](#) , Article 49 Police Act 2012.

<sup>21</sup> [Wetten.nl - Regeling - Aanwijzing taken en inzet rijksrecherche - BWBR0029141 \(overheid.nl\)](#).

<sup>22</sup> Kamerstukken II 2021/22, 28844, nr. 227.

<sup>23</sup> The self-assessment integrity risk analysis was made public shortly before the GRECO compliance report was published and could therefore not be included in the GRECO compliance report.

<sup>24</sup> Kamerstukken II 2021/22, 28844, nr. 231.

2. New rules for the “revolving doors phenomenon” are introduced. This means that former ministers and state secretaries are not allowed to join their former ministry for two years after their term of office has expired. They are also not allowed to accept paid, commercial assignments by their former ministry. The Secretary-General can grant an exemption to the revolving doors phenomenon in appropriate cases.
3. Before accepting a new position for a period of two years, former ministers and state secretaries must seek advice about admissibility thereof from an independent committee. This advisory committee has three options: no objection, no objection under certain conditions defined by the committee, or the follow-up position is not possible due to (great a risk of) a conflict of interest.

The second and third measures are to be specified in legislation, which is in progress.

The government has also recently informed the Parliament<sup>25</sup> about further implementation of all recommendations by GRECO in the 5<sup>th</sup> evaluation round. In the parliamentary letter, the government announced that it intends to develop a Code of Conduct for Ministers. The Code of Conduct will include rules for contact with third parties such as lobbyists.

The Netherlands will submit additional information to GRECO about the progress of implementation of all recommendations by September 2022.

#### *Integrity rules for civil servants*

Central government employees are obliged to submit a certificate of conduct (*‘VOG’ or ‘Verklaring omtrent gedrag’*) within the first three months of their employment. To limit integrity risks, certain positions now require from employees that they renew their certificate of conduct on a regular basis. Positions for which this is the case are listed in the personnel regulations of the central government organisations. The possibility to ask for a renewed certificate is regulated in paragraph 13.1 of the central government labour agreement 2022.<sup>26</sup>

Every year, in December, the central government of the Netherlands organises the Integrity Week. In 2021 the Secretary Generals of the Ministry of Finance, the Ministry of Social affairs and Employment and the Ministry of Interior and Kingdom Relations opened the Integrity Week. The main goal of this week was to discuss integrity dilemmas in an open and safe environment. More than 2500 employees and managers from the central government, municipalities and NGOs, as well as some international participants, took part in over 25 sessions. During different presentations, panel discussions and workshops, the participants discussed distinct integrity matters. The central government employees can re-watch some items of the integrity week. Reports of the different workshops are available on the central government web portal.

One part of the Central Government Integrity Week 2021 was the launch of the Central Government Code of Conduct App. With this app, central government employees can find information regarding integrity issues in an easy and accessible way. The app makes a distinction between different integrity categories, e.g., conflicts of interest, how to handle information and what to keep in mind when contacting third parties. The language used in the app has been adjusted to language level B1, which means that the app is easy to use and understandable for all central governments employees. The app actively motivates employees to think about integrity matters, as integrity dilemmas pop-up while using the app. The app can be downloaded from the regular app-stores, which makes the app available for a greater public.

22. *General transparency of public decision-making (e.g. public access to information, including possible obstacles related to the classification of information, transparency authorities where they exist, and*

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<sup>25</sup> Kamerstukken II 2021/22, 35925-VII, nr. 15.

<sup>26</sup> See [www.caorijk.nl](http://www.caorijk.nl).

*framework rules on lobbying including the transparency of lobbying, asset disclosure rules, gifts and transparency of political party financing)*

Since the publication of the Rule of Law Report 2021 the government has taken steps to improve the transparency of public decision making, as a response to the child care allowance affair. As of July 2021, when ministers send documents to both Houses of Parliament about legislation or new policy initiatives, they also publish the underlying internal documents of the ministry on which the ministers have based their decision. The aim of this new policy is to provide both Houses of Parliament and society with more insight into the way in which policy choices are made by the government. A decision on further expansion of this type of publishing will be made in 2022. For information about general public access to information, please see the input for subject 40.

No substantial changes have occurred since the publication of the Rule of Law report 2021 with regard to the rules on political finance. The proposed amendment to the Political Finance Act (*Wet financiering politieke partijen, Wfpp*) in which financing of, or financial support for, political parties by institutions or organizations (public or private) from outside the European Union or the European Economic Area is prohibited is still under consideration by the Parliament. The aim is to protect the functioning and organization of political parties against foreign interference. The obligation to publish gifts or donations from EUR 4 500 per year from abroad will be changed. The threshold amount will be abolished, so that in the future all foreign gifts or donations will be made public and transparent. Dutch citizens living abroad will be excluded from these measures. The proposed amendment to the Political Finance Act also contains a proposal to increase the transparency on gifts of legal entities. Political parties will be obliged to report the names of the natural persons who are the 'ultimate beneficial owners' of the legal entity. Moreover, the amendment contains a proposal for a duty to report gifts from € 50.000 from a donor within 14 days after reception and a proposal to increase the transparency of the donations political parties have received in the period just before the elections of the members of the Parliament.

Regarding rules on lobbying, please see the input given for subject 21.

*23. Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)*

Last year an obligation was introduced for ministers and state secretaries in office to find an acceptable solution if they, due to circumstances, acquire business and financial interests that could lead to the appearance of bias, and to report this to the Parliament.<sup>27</sup> New is also that ministers and state secretaries who come into possession of a holiday home abroad during their term of office must immediately report this to the Parliament. The Parliament can hold the minister or state secretary accountable for their actions and attach consequences to unacceptable behaviour, such as a motion of no confidence.

In December 2021, GRECO published the Second Addendum to the Second Compliance Report for the Netherlands in the 4<sup>th</sup> evaluation round (Corruption prevention in respect of members of both Houses of Parliament, judges and prosecutors). The adoption of the Second Addendum to the Second Compliance Report terminates the Fourth Round compliance procedure in respect of the Netherlands. In the compliance report, GRECO concluded that five of the seven recommendations contained in the Fourth Round Evaluation Report have now been implemented satisfactorily, one recommendation remains partly implemented and one recommendation remains not implemented. The proposal for the prohibition of the simultaneous holding of the office of judge and membership of Parliament (recommendation v) has recently been published for public consultation. The reactions to the consultation will be reviewed and taken into account.

*24. Measures in place to ensure whistleblower protection and encourage reporting of corruption.*

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<sup>27</sup> Kamerstukken II 2021/2022, 35925-III, nr. 12.

In September 2021, we reported to the OECD Working Group on Bribery on the status of this Recommendation.<sup>28</sup>

On 4 October 2021, the Permanent Committee for the Interior of the Parliament adopted a critical report on the legislative proposal to implement the EU Whistleblower Protection Directive.<sup>29</sup> On 14 December 2021, the government responded to the report of the Permanent Committee for the Interior of the Parliament. The memorandum in response to the report<sup>30</sup> was sent to the Parliament, together with a memorandum of amendment.<sup>31</sup> The government agrees with the Parliament on many points, but also advocates rapid implementation of the directive (deadline for implementation was 17 December 2021). Late implementation has a number of undesirable consequences: delay in improving the legal position of whistleblowers, legal uncertainty and a possible fine or penalty for the Netherlands. The bill significantly strengthens the position of the whistleblower. Also, partly at the request of the Parliament, the Netherlands goes further in protection than is strictly required by the directive.

Some recommendations from the evaluation of the Whistleblowers Authority Act, which was carried out in 2020, are already being implemented with the legislative proposal to implement the directive, such as shifting the burden of proof to the employer. Other recommendations resulting from the evaluation are still under investigation. These will be included in a separate bill that the government will submit in response to the aforementioned evaluation.

A new government was installed on 10 January 2022. On 13 January 2022 the Permanent Committee for the Interior of the Parliament decided not to discuss the bill implementing the directive yet. Although the former Minister of the Interior and Kingdom Relations had emphasized the urgency, the Permanent Committee has requested the Minister of the Interior and Kingdom Relations to send a letter to answer the question whether she is prepared to integrate both the bill transposing the EU Directive and the announced bill that result from the evaluation of the Whistleblower Authority Act, into one comprehensive bill.

The website [www.wetbeschermingklokkenluiders.nl](http://www.wetbeschermingklokkenluiders.nl), set up by the Ministry of the Interior and Kingdom Relations in 2021, informs employers, among others, about the upcoming legislative changes, as does the website of the Whistleblowers Authority.

In collaboration with other parties, including the Whistleblowers Authority and social partners, the Ministry of the Interior and Kingdom Relations wants to support employers in the coming period in promoting a safe working and reporting climate.

Following the exploration into legal and psychosocial support measures for whistleblowers, which was completed in 2020, the Minister of the Interior and Kingdom Relations informed the Parliament by letter dated 9 August 2021 about the consultations with the social partners that are united in the “Stichting van de Arbeid” on the support of whistleblowers.<sup>32</sup> A pilot is being conducted to investigate how to organize structural legal and psychosocial support for whistleblowers. Agreements have been made with the trade unions in the Government Sector Consultation about a pilot mediation and legal support for the government sector for the period from 1 January 2022 to 1 January 2024. Following consultations with the Ministry of Health, Welfare and Sport and the Whistleblowers Authority, an in-depth exploration was conducted into the generally available psychosocial support in the Netherlands

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<sup>28</sup> *Regarding detection of foreign bribery by whistleblowers, the Working Group recommends that the Netherlands amends the Whistleblower Authority Act to transpose the EU Whistleblower Protection Directive, as a priority and implement, as appropriate, the recommendations of the various evaluations of the Whistleblower Authority, to ensure that public and private sector employees that report suspected acts of foreign bribery are protected from discriminatory and disciplinary action.*

See <https://www.oecd.org/corruption/anti-bribery/The-Netherlands-phase-4-one-year-follow-up-report-en.pdf>, specifically the text relating to the implementation of recommendation 2(a) on pages 4 and 5.

<sup>29</sup> Kamerstukken II 2021/22, 35851, nr. 5.

<sup>30</sup> Kamerstukken II 2021/22, 35851, nr. 6.

<sup>31</sup> Kamerstukken II 2021/22, 35851 nr. 7.

<sup>32</sup> Kamerstukken II 2020/21, 33258, nr. 52.

for whistleblowers. The practical experience of the Whistleblowers Authority has shown that there is a need for low-threshold psychosocial support for the whistleblower throughout the reporting process. The Ministry of the Interior and Kingdom Relations is currently investigating whether this support can be provided as a pilot by a separate organization specialized in psychosocial support.

All agencies involved in (criminal) investigations on corruption provide information on their websites regarding systems for reporting. Through awareness raising activities, the agencies and organizations encourage reporting of corruption. A good example of a public-private partnership where special attention is paid to reporting corruption is 'The Strong Airport Project' (*Project Sterke Luchthaven*).<sup>33</sup> This project focusses specifically on Schiphol and concerns, among other things, the identification and reporting of possible abuses and activities with subversive impact and corruption, taking into account the possible reporting points and reporting routes. Another example is that the NIID has drawn up a signal card for public administration that will be implemented in 2022, which contains various indications for the possible emergence of official corruption. For a more detailed explanation and other initiatives, see the input for subject 27.

*25. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other).*

No substantial changes have been made since the publication of the Rule of Law Report 2021.

In last year's input, it was mentioned that mainports can be seen as a risk regarding integrity violations and corruption, as organized crime groups require (use of or access to) this infrastructure to support their activities. The new *DG Ondernijning* has initiated discussions with stakeholders to strengthen the fight against drug smuggling on mainports. This year a plan on this matter will be presented, in which anti-corruption is an important topic. For the approach of mainports, 24 million euros have been made available. Some investments will be linked to corruption and are part of this, but the exact amounts are still being divided. Additionally, the Ministry of Justice and Security commissioned a research by the WODC regarding corruption risks, specified at the mainports of the Port of Rotterdam and Schiphol Airport. Currently the research is accepted by an external specialized research organization, a commission of experts has been formed, and the research proposition is finished. The research organization is now conducting a context analysis, followed by the identification of risks, a risk analysis, an inquiry of the policy set of instruments and a desk research into other mainports. The report is planned to become available in December 2022. During the process of the research, the Ministry of Justice and Security will inform the involved organizations at the mainports about the process and conclusions of the research. Moreover, the conclusions about the corruption risks at mainports will be incorporated into the plan mentioned above.

The important partners related to mainports, for example Customs and the Royal Netherlands Marechaussee (KMar), also acknowledge these risks and have come up with mitigation initiatives. The project mentioned above 'Sterke Luchthaven' is also a good example in this context. For a further elaboration of these initiatives, see the input for subject 27.

*26. Measures taken to assess and address corruption risks in the context of the COVID-19 pandemic.*

#### Measures addressing corruption risks in economic support programmes

In last year's input, the Reimbursement Fixes Costs economic support program (TVL) were mentioned. The Netherlands Enterprise Agency (RVO) is responsible for the whole application process and continuously adjusts the risk models and procedures based on advancing insight in order to prevent

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<sup>33</sup> [English2 \(sterkeluchthaven.nl\)](https://www.english2.sterkeluchthaven.nl).

attempts at abuse. To be more precise, for the current processes, this means that all TVL applications are 100% checked, including with (revenue) data from the tax authorities. Immediately after the application, the first assessment starts based on a number of basic criteria, such as a revenue loss threshold. Applications that do not meet the basic criteria will be rejected. The other requests will be assessed by the risk model. All received applications are weighted based on the risk indicators for complexity and the risk of abuse & improper use (M&O). The model assigns a request at high, medium or low risk profile. The RVO employees manually check all high-risk applications and some medium-risk applications before they are granted. The RVO processes applications with a low risk profile for the most part automatically. The same process is followed when determining the subsidy.

If there is a suspicion of abuse, the Fraud Section of the RVO is involved. In addition to reports from RVO employees (because an application has given a high risk of abuse and inappropriate use), the abuse and inappropriate use reports are received from external parties such as banks. The RVO has so far received 390.000 TVL requests<sup>34</sup> among which 6011 internal and external reports of possible use. Subsequently, it will be investigated whether actual abuse has taken place and advice is given on administrative law and possibly criminal proceedings. When abuse is detected after the payment of an advance, the process of administrative enforcement will start in any case. If repayment is not forthcoming after summons and after the period for payment has expired, the RVO instructs the bailiff to levy an executorial attachment on the bank balances and assets through the Court. The RVO also files a report to the LEAs, when misuse is detected. A report to the LEAs is not only filed if an advance has been paid, but also if it concerns an attempted abuse. The number of reports has so far reached 3589. In total, in all TVL applications, 7.2 billion was paid out in subsidies, of which 125.6 million in money was wrongly paid out due to detected abuse (1.74%).

Related to this, banks can also report unusual transactions to the FIU-NL. In case the unusual transaction is declared suspicious by the FIU-NL, they are forwarded to the LEA's. The FIU-NL works together with different stakeholders and obliged entities, sometimes on a specific topic. An example of this thematic approach and cooperation with obliged entities is related to COVID-19. FIU-NL made agreements with the FIOD, the Netherlands Police and the Inspectorate Social Affairs and Employment, in coordination with the PPS to be able to respond immediately in those cases where there was a need to do so and issued for example a newsletter giving the obliged entities fraud specific characteristics to help them detect it. Internally, FIU-NL puts together a team that would analyze the newly reported unusual transactions on a daily basis. This maintains a priority for FIU-NL. If there was reason to do so, the head of FIU-NL declared the transactions suspicious and made them available to the investigative services. The transactions were mainly focused on fraud and not on corruption. This also led to international cooperation with other FIUs. Several cross-border transactions were examined. In some cases, this led to the immediate freezing of funds in accounts and arrests by the investigative services. The media contributes to having a preventive effect on potential fraudsters and money launderers.

In 2021, the FIOD again investigated various fraud cases related to the COVID-19 pandemic, which did not concern corruption.

## *27. Any other relevant measures to prevent corruption in public and private sector*

The Netherlands strives to fight corruption effectively and thus undertakes several types of activities and has introduced measures to prevent corruption. This can also be sector driven, therefore the following list is non-exhaustive. A few examples:

There is currently a project running within the NIID to make the Public Administration more resilient. Through its criminal investigations into official corruption, the NIID has a great deal of knowledge about the patterns, structures and weaknesses within the public administration that criminals make use of. By

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<sup>34</sup> Approximately, as of January 2021.

making this knowledge available and disseminating it to public administration, awareness of official corruption within public administration can be increased and public administration can work on drawing up prevention strategies to prevent it. The first phase of the project was aimed at determining the information needs of the public administration. In the second phase, the contribution of the NIID to the preventive task was shaped. For example, the NIID has drawn up a signal card for public administration, which contains the various indications for the possible emergence of official corruption. This signal card will be implemented in 2022. The NIID has made a request for additional funding in 2022 for the implementation and safeguarding of the preventive task within the NIID. Furthermore, the NIID is consciously promoting visibility and profile. The NIID is actively engaged in the processes of drafting the Customs Improvement Agenda and provided input within the process of setting up the position of an Integrity 'quartermaster' at the Netherlands police, as described in more detail below.

Furthermore, the FIOD/ACC organizes meetings with members of the supervisory board of large companies in the Netherlands. These meetings intent to raise awareness of corruption risks and to discuss dilemmas that companies experience in relation to corruption. However, due to COVID-19 these meetings have been postponed. The public-private partnership with banking institutions and, among others, the FIOD/ACC was already mentioned last year. In practice it is important to continue to pay attention to this collaboration and the network. With the accountancy profession and their representative body, the FIOC/ACC is working on a knowledge document comparable to that of the banking institutions and a possibility to discuss dilemmas anonymously; the FIU-NL is also involved.

In last year's input it was mentioned that the Netherlands Police (NP) was completing a Financial Interests Policy Rule. The Financial compliance officer has now been appointed. The policy rule on financial interests and an advisory report on the existing policy rule on ancillary activities will be rolled out in 2022. In addition, the legislation on screening of policy personnel on integrity was mentioned. Contrary to what was described earlier, the implementation of the new legislation on screening of police personnel is expected on July 1, 2022. In addition to what was mentioned in last year's input about the system of integrity investigations by the NP department conducting the investigations (VIK): as a result of the review internal investigations, the NP can report that a master plan with several sub-tasks has been developed to put into effect the recommendations that emerged from this review. This started in 2021 and will continue in 2022. In addition to this review, the integrity system within the NP is being expanded. A 'specific manager' (*Kwartiermaker*) has been appointed to lead a new organizational unit. This organizational unit will focus on 1) the promotion of integrity, 2) the recommendations from the review of internal investigations and 3) tackling corruption within the NP. For tackling corruption, cooperation will be sought with the NIID and the PPS. In quarter one of 2022, the setup of the new organizational unit will start.

As indicated in last year's input, there are multiple awareness-raising activities for the private sector that do business abroad. For instance, businesses are informed about the prevention of corruption on the website of the Netherlands Enterprise Agency (RVO).<sup>35</sup> The RVO is also reviewing their training on corruption, so that relevant personnel in contact with businesses transmit up-to-date information, can give adequate advice and/or is able to perform due diligence. Many awareness raising activities to ensure that public servants are aware of the duty to report all suspicions of foreign bribery have been organized for embassies in recent years. Recently, in December 2021 the Dutch embassy in Albania also facilitated two anti-corruption trainings, given by an external consultant in cooperation with the local chapter of the International Chamber of Commerce. The Ministry of Foreign Affairs is currently considering to provide follow-up to these trainings. In addition, the booklet 'Doing Business Honestly Without Corruption', will be updated in 2022 by the Ministry of Foreign Affairs in cooperation with, among others, the International Chamber of Commerce (ICC Netherlands). Furthermore, in the winter of 2020-2021, ICC Netherlands took the initiative to organize four anti-corruption workshops for a total of 35 bilateral chambers of commerce and industry associations. The objective of these meetings was to

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<sup>35</sup> [Tips om corruptie te vermijden | RVO.nl | Rijksdienst.](#)

raise the awareness of the participants on the risks of corruption when doing business abroad and to exchange thoughts on how SMEs could be made more aware of these risks.

In 2021, the Netherlands was evaluated on compliance with the fifth evaluation round of GRECO regarding the prevention of corruption on promotion of integrity in central governments (top executive functions) and LEAs, as also described under subject 21. GRECO concluded that the Netherlands had implemented a part of the fifth evaluation report's recommendations as some progress was made regarding LEAs. As communicated with the Parliament in July 2021<sup>36</sup>, steps have been taken on:

- Elaboration of the Theme Sheets of the Netherlands Police and the KMar: the professional code theme sheets of the police are supplemented with case law examples and cover issues such as gifts and invitations, financial interests, doing business with suppliers, ancillary activities and contacts in private life. The KMar has adopted Rules of Conduct, which complement the existing Code of Conduct. They provide more practical information and examples on conflicts of interest linked to ancillary activities, contact with third parties and the handling of information.
- Additional staff training on ethics and integrity of the Netherlands Police and KMar: as mentioned above, the police is revising its education curriculum to promote integrity issues, is developing an e-learning program and is creating an introduction training for new recruits that incorporates integrity issues. The KMar also develops e-learning courses and put a new application in service in which integrity issues are being tackled.
- Measures for screening of Netherlands Police.
- The introduction of a gift registration system: the laws and regulations regarding the receipt of gifts and invitations have been included in de KMar's Defence Rules of Conduct.
- Enhancing control measures in respect of access to and use of confidential information: both the Netherlands Police and KMar are taking initiatives to reinforce authorization protocols to access confidential information. Measures will come into practice, in particular, in relation to the use of and access to confidential information via mobile information devices.
- Improvement of the declaration regime on financial interests of the Netherlands Police and KMar top management: a financial interest policy rule has been set up for the Netherlands Police, specifying which officials have a duty to report financial interests, what is meant by financial interests and how these interests are to be reported. For the KMar a memorandum has been approved that provides for further elaboration of the registration of financial interests.
- Introduction of an obligation to report corruption-related misconduct and to adapt whistleblower protection. Steps have been taken to transpose the EU Directive on Whistleblowers, which is expected to be finalized before summer 2022. The KMar has taken a number of measures to encourage and simplify reporting signals of a breach of integrity.

As mentioned, mainports can be seen as a risk regarding integrity violations and corruption, as organized crime groups require (use of or access to) this infrastructure to support their activities. The important partners related to mainports, for example Customs and the Royal Netherlands Marechaussee (KMar), also acknowledge these risks and have come up with initiatives to mitigate that risk. Various measures of the KMar have already been mentioned in the section above regarding GRECO. Some other examples:

#### Project Sterke Luchthaven – Schiphol Airport

Several public and private organizations at Schiphol work together (within the *Programma Aanpak Ondernijning Schiphol*) to tackle serious and organized crime with subversive impact. This cooperation was fueled by the research 'Subversive crime at and around Schiphol'. In this report, different locations, processes and professions are classified as being vulnerable for criminal activities with subversive impact. The Program focuses on making the airport and its employees more resilient against serious and organized crime with subversive impact.

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<sup>36</sup> [Kamerbrief bij nalevingsverslag GRECO vijfde evaluatieronde | Kamerstuk | Rijksoverheid.nl](#).



A recent initiative concerning the topics of integrity and awareness, is the launch of the cross-media communication campaign 'Don't give criminals a chance' in November 2021.<sup>37</sup> The campaign is aimed at the 65.000 employees with an access pass to the airport. The goal is to make employees more aware of their possible vulnerable position, teach them how to be more resilient against criminal influences and to give them tools to recognize and report possible criminal activities and abuses. Together with the campaign, an interactive e-learning is launched on the website of the Program, accessible for everyone. On the website, in the campaign and in the e-learning, there is also attention paid on how and where people can report. For example: within your own organization (colleague, manager, confidential counsellor) or outside your organization (police, the KMar, or an anonymous reporting point).

Furthermore, the Program invests in training and educating airport employees by providing awareness courses on serious and organized crime with subversive impact. Also Point of Contacts Subversive Crime (POCO's) are appointed and educated within the different public and private partners. These POCO's give the approach against serious and organized crime with subversive impact a place within their organization and ensure coherence and cooperation.

#### Customs - Improvement Agenda

On July 1, 2021, the KPMG research report 'Control of corruption risks by Customs in the Port of Rotterdam', was sent to the Parliament. In the enclosed letter, the State Secretary of the Ministry of Finance informed the Parliament about the results of the research and the way in which Customs would shape the process for a concrete improvement approach in the field of integrity and corruption. The investigation report, which was drawn up at the request of Customs due to external developments and at the request of the Parliament, has shown that the approach to corruption and safeguarding integrity is too fragmented, too limited and too focused on incidents. In response to the recommendations, Customs has drawn up an Improvement Agenda. This Improvement Agenda was shared with the Parliament in December 2021. In the process of developing the Improvement Agenda, Customs obtained information from Customs employees, its own Ministry of Finance, as well as other stakeholders and representatives of other organizations, such as the Netherlands Police and the KMar. The objective of the Improvement Agenda is that Customs and everyone who works for the organization is optimally equipped to act with integrity and to be as resilient as possible to integrity risks and undesired influence from outside. The Agenda is based on six themes that together lead to a proactive system in which employees and the organization are protected and in which there is continuous attention for integrity and possible corruption risks. Each of these themes includes activities and projects that aims to produce concrete products such as new policies or rules, codes of conduct, training and other measures. A theme not only encompasses the creation of those products, but also a good implementation in practice. In order to proactively shape the integrity policy, work is being done on building up robust knowledge and expertise for the integrity approach (theme 1). Work is also being done on the structural side: policy, measures and procedures (theme 2 and 3) and on the organizational culture and people's behavior (theme 4 and 5). Finally, it concerns the establishment of a Security and Integrity Office to implement the compliance function and ensure the safeguarding of what has been developed in the program (theme 6). The Improvement Agenda will be implemented over a period of 5 years. The stakeholders will also remain involved in the implementation process.

#### Customs - Declaration of conduct for Police Data

A Declaration of Conduct for Police Data (VOG-P), a declaration of conduct in which police data forms an independent ground to refuse a VOG, will also be introduced for all Customs employees who have a position where there is a risk of serious and organized crimes with subversive impact, or could be. An important element here is access to certain systems in which information can be generated that is relevant to criminal organizations. It is expected that from April 1, 2022, when recruiting new employees in that relevant group, it will be possible to work with the VOG Police Data.

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<sup>37</sup> [English2 \(sterkeluchthaven.nl\)](https://www.sterkeluchthaven.nl/).

### C. Repressive measures

28. Criminalisation, including the level of sanctions available by law, of corruption and related offences including foreign bribery.

No changes have been made since the publication of the Rule of Law Report 2021 in terms of criminalization of corruption offences.

29. Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds.

The overview below concerns the data for 2021, but also an update of previous years. This is because there is always post-processing of the data.

Corruption on the grounds of Article 117 Sr, 178 Sr, 363 Sr and 364 Sr											
		2017		2018		2019		2020		2021	
<b>Influx OM</b>											
Influx of suspects at OM		62		77		54		129		94	
<b>Settlements OM</b>											
- Unconditional dismissal		12	18%	14	20%	17	27%	21	25%	42	24%
<i>Technical</i>		9		8		10		9		31	
<i>Policy</i>		1		3		5		9		6	
<i>Administrative</i>		2		3		2		3		5	
- Conditional dismissal		2	3%	-	0%	-	0%	-	0%	1	1%
- Settlement (OM-transaction or penal order)		10	15%	5	7%	14	22%	15	18%	21	12%
- Decisions to summon ( <i>beoordeling dagvaarden</i> )		42	64%	51	73%	32	51%	49	58%	108	63%
<b>Total OM outflow</b>		<b>66</b>		<b>70</b>		<b>63</b>		<b>85</b>		<b>172</b>	

\* date: 19-01-2022

30. Potential obstacles to investigation and prosecution as well as to the effectiveness of sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, pardoning)

As mentioned in last year's input and in the phase 4 evaluation of the WGB, protected processes for assessing legal privilege claims over large datasets obtained in the context of investigations, the lack of a comprehensive legal framework for self-reporting and a whistle-blower protection regime that has faced criticism, pose obstacles for detecting and sanctioning foreign bribery.

The measures in place to ensure whistleblower protection are mentioned in the input for subject 24.

No major progress has been made since last year with regard to the legal privilege claims. The issue of the protected processes for assessing legal privilege claims over large datasets obtained in the context of investigations is being addressed in the broader context of a major reform to modernize the Code of Criminal Procedure, which is conducted in close consultation with the relevant parties. Currently, the possibilities are being examined to introduce chain-wide thematic sessions, to which professionals from the entire chain can contribute. This working group will focus on making agreements about a new work process or working method to be set up and describing that process or method regarding legal privilege. The aim of the working group is to involve all relevant parties, such as the PPS, the judiciary, but also the legal and notarial profession. The government coalition agreement of December 2021 states that additional financing would be available over the next few years for the modernization of the Code of Criminal Procedure.<sup>38</sup>

The Netherlands sees the use of self-reporting as a source of detection of foreign bribery, but according to the WGB there is no substantial legal framework or prosecutorial guidance on self-reporting. In last year's input the WODC was requested to conduct research on the possible framework for the use of self-investigations and self-reporting. This research has started. The first part of this research focusses on an in-depth analysis of the advantages and disadvantages of self-examination. The second part examines the question of how to deal with self-reports by companies regarding financial and economic crime. The research also focuses on the conditions that (the design of) any regulation of self-examination should meet.<sup>39</sup> The Minister of Justice and Security has indicated that he expects the research to be completed in March 2022, after which it will be presented to the Parliament.<sup>40</sup> The Ministry has no influence on the time frame of this requested independent investigation. In the near future, this research could possibly provide a basis for the guidance framework to be set up in more detail on procedures for self-reporting.

*31. Information on effectiveness of administrative measures and sanctions, in particular recovery measures and administrative sanctions on both public and private offenders. Other – please specify*

Administrative bodies have been given more and more opportunities to act under administrative law at local level. Although the range of instruments is fundamentally related to the regulation of legitimate economic and social activities on the one hand and to maintaining public order and combating nuisance in public space on the other hand, the instruments can and are increasingly used specifically to target serious and organized crime with subversive impact as well. The administrative options are intended to supplement the existing private law and criminal law options. The administrative approach to serious and organized crime with subversive impact is still relatively new and the possibilities and impossibilities have not yet fully worked out. The possibilities for administrative measures and sanctions are being examined to tackle serious and organized crimes with subversive impact, including corruption. Please see a few possibilities below:

One of the options is the Promoting Integrity Assessments by Public Administration Act (Bibob Act).<sup>41</sup> Under the Bibob Act, among other things, governments are authorized to refuse or withdraw government contracts, real estate transactions, permits and subsidies if it appears that there is a serious risk that criminal offenses will be committed or benefits obtained from criminal offenses will be used. The law makes an important contribution to protecting governments' own integrity against unintentionally facilitating criminal activities.

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<sup>38</sup> [Budgettaire bijlage coalitieakkoord 2021-2025 | Publicatie | Kabinetsformatie \(kabinetsformatie2021.nl\)](#).

<sup>39</sup> [Onderzoek naar voor- en nadelen van zelfonderzoek en zelfmelden door bedrijven | Welk onderzoek doen we? | WODC - Wetenschappelijk Onderzoek- en Documentatiecentrum.](#)

<sup>40</sup> [Integrale aanpak online fraude | Tweede Kamer der Staten-Generaal.](#)

<sup>41</sup> [Wetten.nl - Regeling - Wet bevordering integriteitsbeoordelingen door het openbaar bestuur - BWBR0013798 \(overheid.nl\).](#)

Since a renewal of the law in August 2020<sup>42</sup>, in addition to judicial data from the applicant, governments can also request judicial data from the applicant's business environment to determine whether there is a serious risk that an application will be misused for criminal activities. For example, from persons who have actual control behind the scenes over the person who has applied for a permit. In this way, it can be prevented that criminals can abuse the services provided by the government, by using front men for applications in order to stay out of the picture themselves. This expansion means at least a stronger information position. A further amendment to the Bibob Act is currently being prepared, which will broaden the possibilities for the exchange of information between the National Bureau Bibob and administrative bodies and between the administrative bodies themselves.

In addition, there are administrative possibilities to intervene or exert influence, for example with (specific) possibilities based on the Municipalities Act, destination plans, the municipal General Local Regulations (APV) and various permit systems (often part of the APV). The APV is an important legal instrument for the administrative approach of serious and organized crimes with subversive impact. Municipalities can set rules in the APV in the form of injunctions or prohibitions. These can be linked to administrative instruments: such as a permit, exemption or notification obligation (possibly in combination with a separate designation board) and a sanction if there is a violation. An administrative sanction can be: withdrawal of the permit, order under administrative coercion (such as closure), order subject to a penalty or an administrative fine. In addition, violation of the APV can also be criminally sanctioned. APV provisions can therefore be a good way to build up administrative barriers against abuses and illegal practices.

There are ten Regional Information and Expertise Centres (RIECs) and a National Information and Expertise Centre (LIEC) in the Netherlands. The RIECs include: the police, the PPS, municipalities, the tax authorities and the Social Affairs and Employment Inspectorate together prevent and combat serious and organized crime and its subversive effects. Integral cooperation is central to this. This includes administrative law, tax law and criminal law measures in coordination between the RIEC/LIEC partners. The RIECs and the LIEC are the platform for integrated information, analysis and approach. As a result, the partners can effectively map and roll up criminal networks identify risky situations and developments in society and tackle them on the basis of integrated enforcement advance and (phenomenon) analysis drawn up in the context of the RIEC. For example, in each case, based on the available information, it is examined which measures and efforts by which partners have the most effect. The RIECs and the LIEC are experts in the integrated and administrative approach and contribute to the sharing of knowledge and expertise in the field of the administrative and integrated approach to serious and organized crime with subversive impact and to increasing – in collaboration with the government and private parties - awareness and administrative and social resilience against undermining. They also form the connecting link, from local to EU and regional level. The network of RIECs, LIEC and EURIEC ensures that partners can switch quickly at different levels and that the right partners are always connected.

#### ***Other – please specify***

In last year's input the Encrochats investigations were mentioned, which led to useful information for the identification, investigation and prosecution of criminal networks. The investigation also revealed signals of corruption within law enforcement. The seizure of the encrypted chat service SKY resulted in additional signals of corruption. These signals led to several criminal investigations. Some of these investigations resulted in the prosecution and conviction of law enforcement officials for corruption offences. Several investigations are ongoing.

### **III. Media Freedom and pluralism**

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<sup>42</sup> [Wijziging Wet Bibob per 1 augustus 2020 | Justis.](#)

#### **A. Media authorities and bodies<sup>10</sup>**

##### *32. Measures taken to ensure the independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies*

No substantial changes have occurred since the publication of the Rule of Law Report 2021.

##### *33. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies*

No substantial changes have occurred since the publication of the Rule of Law Report 2021.

##### *34. Existence and functions of media councils or other self-regulatory bodies*

No substantial changes have occurred since the publication of the Rule of Law Report 2021.

#### **B. Transparency of media ownership and safeguards against government or political interference**

##### *35. Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)*

In order to reach a specific (difficult to reach) audience, the government might opt for collaboration with a content producer. These contributions are often of a financial or material nature. For example, deploying influencers, using branded content or the lending of materials. Collaboration with traditional content producers has been forbidden for a long time for reasons of editorial independence. With the arrival of new media, in order to keep a level playing field, the government foresees new (self)regulation concerning all types of media. This will start with a pilot of two years.

The government is cautious about making financial or material contributions to a content collaboration and makes a conscious assessment of each case. In this assessment, account is taken of guaranteeing the editorial independence of partners and of the information obligation of the government to inform all target groups. Content collaboration requires the approval of the Communications Director of the Ministry of Education, Culture and Science and, in the case of large productions (> €250,000), also of the Secretariat General and/or Minister of Education, Culture and Science.

Important conditions are visibility and transparency, guaranteeing editorial independence and a limited role for ministers (with regard to profiling). A working group is now starting to set up the pilot and regulations. The pilot is meant to provide more knowledge about the reach and impact of content collaborations. The pilot is expected to start in spring.

##### *36. Safeguards against state / political interference, in particular:*

- *safeguards to ensure editorial independence of media (private and public)*
- *specific safeguards for the independence of governing bodies of public service media governance (e.g. related to appointment, dismissal) and safeguards for their operational independence (e.g. related to reporting obligations),*
- *procedures for the concession/renewal/termination of operating licenses*
- *information on specific legal provisions for companies in the media sector (other than licensing), including as regards company operation, capital entry requirements and corporate governance*
  - o *safeguards to ensure editorial independence of media (private and public)*

The Dutch Media Act requires that public and commercial audio-visual broadcasters have in place editorial statutes which stipulate rights and duties of personnel responsible for editorial work. Public broadcasters are required to include provisions securing editorial independence from advertisers, sponsors and other contributors. Private broadcasters

can only accept sponsoring of their content or use product placement when editorial independence is guaranteed in their statutes. Editorial independence of written media is governed through self-regulation. In 2021 the Dutch Media Regulator published a report on the use of editorial statutes by media-organizations as mandated by the Media Act.

- *specific safeguards for the independence of governing bodies of public service media governance (e.g. related to appointment, dismissal) and safeguards for their operational independence (e.g. related to reporting obligations),*

With regard to specific safeguards for the independence of governing bodies of public service media, the Dutch Media Act constitutes the following:

#### 1. NPO

The supervisory board of the Dutch Foundation for Public Broadcasting (NPO), which is the umbrella organization of the national public broadcasting service, consists of a chairman and a maximum of six other members who are appointed, suspended and dismissed by Royal Decree on the recommendation of the Minister of Education, Culture and Science. The selection procedure however is the responsibility of the supervisory board itself. For this procedure the supervisory board is bound to install an appointment advisory committee. The appointment advisory committee advises the supervisory board. The supervisory board also engages a recruitment consultancy to assist in drawing up the profiles for the vacancies by the supervisory board and the selection of candidates by the appointment advisory committee. The Minister of Education, Culture and Science has no other choice than to adopt the advice, unless it conflicts with the Media Act, requirements of due care, or other compelling interests. If the Minister of Education, Culture and Science does not adopt the advice, he shall ask the supervisory board, stating a written motivation, to ensure a new advice is drawn up and he shall inform the Parliament that an advice has not been adopted and why. The Media Act describes a number of incompatibilities to ensure that members have no conflicting interests or are actively involved in politics or governmental bodies. Besides on own request, suspension and dismissal are only possible on the following limited grounds mentioned in the Media Act: unsuitability, unsatisfactory performance and incompatibility.

The executive board of NPO consists of a chairman and a maximum of two other members who are appointed, suspended and dismissed by the supervisory board. The Minister of Education, Culture and Science has no role at all in these procedures. The same incompatibilities apply to the executive board as for the supervisory board to ensure that members have no conflicting interests or are actively involved in politics or governmental bodies.

#### 2. Netherlands Broadcasting Corporation (NOS).

The NOS is a so called task organization. Its duty is to arrange media content for the national public media service in the fields of news, sports and events. The NOS has an supervisory board. The NOS supervisory board consists of five or seven members who are appointed by the Minister of Education, Culture and Science upon nomination by the supervisory board and who can be suspended and dismissed by the Minister of Education, Culture and Science. In the event of a vacancy, the supervisory board is responsible for the procedure leading up to the nomination. In any event, the preparation and publication of profiles for the vacancy and for the board as a whole are part of that procedure. The nomination of members of the supervisory board to the Minister of Education, Culture and Science must be motivated, for which the suitability, profile, position of the candidate in the retirement schedule and the procedure that led to the nomination are discussed. The Minister of Education, Culture and Science has no

other choice than to adopt the nomination, unless it conflicts with the Media Act, requirements of due care or other compelling interests. Here also the Media Act describes a number of incompatibilities to ensure that members have no conflicting interests or are actively involved in politics or governmental bodies. Suspension and dismissal are possible on the same limited grounds as provided for the supervisory board of the NPO.

The executive board of NOS consists of a maximum of three members who are appointed, suspended and dismissed by the supervisory board. The Minister of Education, Culture and Science has no role at all in these procedures. The same incompatibilities as for the supervisory board apply to the executive board to ensure that members have no conflicting interests or are actively involved in politics or governmental bodies.

### 3. NTR Foundation.

The duty of the NTR Foundation is to provide media content for the national public media service that provide for the satisfaction of social, cultural, religious or spiritual needs in society, in such a way that this media content, together with the media content of the other national public media institutions provides a balanced picture of the social, cultural, religious and spiritual diversity of the Netherlands.

Appointment, suspension and dismissal of the supervisory board and executive board of NTR follow similar procedures as for the NOS.

### 4. Broadcasting organizations

Once every five years, the Minister of Education, Culture and Science may grant recognized status to a maximum of six broadcasting organizations and provisional recognized status for new broadcasting organizations. These are private organizations - association or foundation – tasked with the provision of media content for the national public media service. Before the Minister of Education, Culture and Science decides on granting recognized status or provisional recognized status, he shall request the Council for Culture, the Media Authority and the NPO to advise on an application.

Broadcasting organizations are free in setting up their internal organization, as long as they comply with some basic standards such as a clear distinction between the daily managing committee and the supervisory body and proper, independent and expert supervision, set out by the Media Act, the Code of Conduct of the NPO and guidelines concerning good governance set out by the Media Authority.

There is no involvement whatsoever of the Minister of Education, Culture and Science with procedures concerning appointment, suspension and dismissal of members of the internal bodies of the broadcasting organizations.

### 5. RPO

The Dutch Foundation for Regional Broadcasting (RPO) is the umbrella organization for cooperation and coordination with a view to the implementation of the public media contract at regional level. The legal provisions concerning appointment, suspension and dismissal of members, etc. are similar to those concerning the NPO.

### 6. Media Authority

The Media Authority consists of a chairman and two or four other members who are appointed by the Minister of Education, Culture and Science. Appointments are made on the consequential nomination of the Media Authority. In the event of a vacancy, the Media Authority is responsible for the procedure leading to the nomination. The Media Authority prepares profiles for the vacancy and for the Media Authority as a whole. The profiles require the approval of the Minister of Education, Culture and Science. The Media Authority shall publish the profiles after approval. For the selection of candidates, the Media Authority appoints an independent appointment advisory committee which is composed of an equal number of independent members, members on behalf of the Media Authority and members on behalf of the Minister of Education, Culture and Science. The committee acts fully independent. The advice of the appointment advisory committee is based on a unanimous decision-making process. The appointment advisory committee issues a binding advice to the Media Authority. The nomination of the Media Authority to the Minister of Education, Culture and Science must be motivated, in which case the suitability, profile, position of the candidate in the retirement schedule and the procedure that led to the nomination are discussed. The Minister of Education, Culture and Science has to adopt the nomination, unless it conflicts with the Media Act, requirements of due care, or other compelling interests. Certain incompatibilities described in the Media Act apply to ensure that members have no conflicting interests or are active involved in politics or governmental bodies. Suspension and dismissal are possible on limited grounds mentioned in the Non-Departmental Public Bodies Framework Act, i.e. unsuitability, unsatisfactory performance or other compelling interests concerning the person.

With regard to safeguards for the operational independence (e.g. related to reporting obligations), the Media Act constitutes the following:

- The public broadcasting service on all levels is independent of commercial influences and of government influences.
- The public broadcasting service and the organizations which take part in the public broadcasting service on all levels operate independently. There is no involvement of government in the daily operational procedures.
- On request, the NPO and RPO shall provide the Minister of Education, Culture and Science with all information relating to the activities of the NPO/RPO. The Minister of Education, Culture and Science may demand access to business data and documents of the NPO/RPO insofar as this is necessary for the fulfilment of his duties. If in the opinion of the Minister of Education, Culture and Science, the NPO/RPO seriously neglects its duties, the Minister of Education, Culture and Science may, after consultation with the NPO/RPO, take the necessary measures. This only as ultimum remedium in severe situations which so far never occurred. The Minister shall immediately inform Parliament of the measures taken by him.
- The NPO and RPO draw up a management report for the past calendar year before 1 June each year. The management report pays attention to the activities of the NPO/RPO, the policy pursued in general and the efficiency and effectiveness of the working method in particular. The NPO/RPO send the report to the Minister of Education, Culture and Science and publishes it. Amendments to the articles of association of the NPO/RPO require the approval of the Minister of Education, Culture and Science. The supervisory board and the executive board cannot resolve to dissolve the NPO/RPO.
- Every 5 years the NPO and RPO submit a concession policy plan for the coming five years to the Minister of Education, Culture and Science and publishes it. The Minister of Education, Culture and Science asks the Media Authority and the Council for Culture for advice about the concession policy plan. The concession policy plan requires the approval



of the Minister of Education, Culture and Science insofar as it concerns new or significantly changed content channel. On the basis of the concession policy plan, the Minister of Education, Culture and Science and the NPO/RPO shall conclude a performance agreement for the term of the concession policy plan. The performance agreement contains agreements about qualitative and quantitative objectives for the media content, audience involvement and audience reach of the national public media service, measures in the event of non-compliance, insofar as possible within the provisions of or pursuant to this Act; and interim changes in connection with changing insights or circumstances. The performance agreement does not relate to the specifics of the media content of the national public media service.

- Each year, the NPO sends the Media Authority and the Minister of Education, Culture and Science a report on the past calendar year, including at least a description of the way in which the NPO and the national public media institutions have implemented the public media contract on the various content channels, the composition of the media content of the public media service on the programme channels and on the other content channels, including the hours spent on media content in different areas/genres, a report on the achievement of the objectives of the performance agreement and a justification for the efficiency and effectiveness of that achievement, and observance to some other legal obligations and the code of conduct.
  - The Media Authority is charged with checking the legitimacy of the expenditure of the NPO, RPO and the public media institutions on national and regional level on the basis of the annual financial statements
  - The compliance with the performance agreements and all legal obligations is monitored by the Media Authority. In the event of non-compliance with the performance agreement, the Minister of Education, Culture and Science can impose financial sanctions agreed upon in the agreement and on the basis of advice of the Media Authority. In the event of a violation of the provisions laid down by or pursuant to the Media Act the Media Authority may impose sanctions.- The NPO regularly – at least once every five years - evaluates the way in which the public media contract is performed and how the broadcasting organizations have contributed to the performance of the public media contract. The NPO sets up an ad hoc committee whose duty is to carry out the evaluation. The committee consists of at least five independent experts and is as representative as possible of the viewing and listening audience. The members are appointed by the supervisory board on the nomination of the executive board, heard the Minister of Education, Culture and Science. The evaluation committee submits a report to the supervisory board of the NPO, which shall send it to the Minister of Education, Culture and Science and publish it. The evaluation committee can make recommendations about the way in which the public media contract shall be performed in the coming years.
- *procedures for the concession/renewal/termination of operating licenses*
- The Media Act constitutes that a concession is granted to the NPO by Royal Decree for the realization of the public media contract at national level. The concession is valid for ten years. The concession period consists of two periods of five years. The same procedure applies to granting a concession to the RPO for the realization of the public media contract at regional level.
  - Once every five years, the Minister of Education, Culture and Science may grant recognized status to a maximum of six broadcasting organizations and provisional recognized status for new broadcasting organizations to take part in the national public broadcasting service. These are private organizations - association or foundation – whose task is the provision of media content for the national public media service.

Before the Minister of Education, Culture and Science decides on granting recognized status or provisional recognized status, he shall request the Council for Culture, the Media Authority and the NPO to advise on an application. To obtain recognized status or provisional recognized status applicants have to meet a long list of criteria, for instance a minimum number of members and provisions regarding their objectives, good governance and internal operational and financial organization.

- Broadcasting organizations have to apply every five years for recognized status.
- The Media Act describes the grounds on which recognized status of national broadcasting organizations will or can be rejected or withdrawn.
- On regional level every five years the Media Authority may appoint regional institutions as public media institutions. Applicants have to meet certain criteria concerning their legal status, statutory aims and the appointment of a body that determines the policy for the media content and that is representative of the main social, cultural, religious and spiritual movements arising in the province. One regional public media institution can be appointed per province, whereby the Media Authority takes into account all factors that may be important for the functioning of the institution. An exception is made for the province of South Holland where two regional public media institutions may be appointed. Appointment takes place after the provincial council or the municipal council has advised on whether the institution meets the requirements. The Media Act describes the grounds on which recognized status of national broadcasting organizations will or can be rejected or withdrawn. Regional media institutions have to apply every five years for appointment.

*- information on specific legal provisions for companies in the media sector (other than licensing), including as regards company operation, capital entry requirements and corporate governance*

The Media Act constitutes the following:

- The NPO draws up a code of conduct to promote good governance and integrity at the NPO and the national public media institutions. The code is aligned with the Guideline Governance and internal control of the Media Authority. The code does, in any case, include:
  - a. recommendations for the administrative organization, including administrative supervision;
  - b. a remuneration framework;
  - c. rules of conduct for ethical conduct of directors and employees;
  - d. rules of conduct for public and transparent accountability and reporting; and
  - e. procedures for handling reports and suspicions about possible wrongdoing.
- All broadcasting organizations on national level must observe the NPO-code of conduct.
- The NPO, RPO and public media institutions on national and regional level set up their administrative organization in such a way that in accordance with their articles of association and regulations:
  - a. its set-up is sober, effective and balanced;
  - b. there is a clear distinction between the daily managing committee and the supervisory body;
  - c. proper, independent and expert supervision is exercised; and
  - d. the members of the supervisory body are appointed on the basis of predefined public

profiles.

In doing so, the NPO and the national public media institutions follow recommendations from the code of conduct.

Furthermore, the media institutions on national and regional level structure their organizations in such a way that a sound design, management and control of the business processes is guaranteed. They have to keep proper records from which the Minister of Education, Culture and Science, the executive board of the NPO and RPO and the Media Authority can each unambiguously obtain the information they need for the fulfilment of their duties. To this end the Media Authority has drawn up the Guideline Governance and internal control.

- The NPO, RPO and the public media institutions ensure that members of their bodies, employees and other persons or legal entities with whom an agreement has been concluded for the performance of the public media contract, for themselves or for others, do not demand or accept appreciable advantage from third parties that is directly or indirectly related to the activities of the person concerned for the institution, unless the competent body of the institution has given permission for this. Permission is only given if the person concerned makes it plausible that the advantage is not intended as consideration for favouring third parties in the performance of his activities for the institution.

*37. Transparency of media ownership and public availability of media ownership information, including on media concentration (including any rules regulating the matter)*

No substantial changes have occurred since the publication of the Rule of Law Report 2021.

**C. Framework for journalists' protection**

*38. Rules and practices guaranteeing journalist's independence and safety*

The first half of 2021 was focused once again on supporting local media in times of crisis. The *Tijdelijk Steunfonds voor Lokale Informatievoorziening* (Temporary Support Fund for locally provided information) was extended with a fourth round and was financed from the EUR 35 million made available by the government in 2020.

To protect journalists and especially freelance journalists against aggression and violence, the government has stated that it will continue to provide support for the project *PersVeilig*. The aim of the project is to be financed by the journalistic sector in the long term. After all, it is primarily a responsibility of employers and clients to ensure the safety, health and well-being of the journalists working for them. Until this financing is arranged, and in any case up to and including 2024, the government will contribute annually to the activities of *PersVeilig*. For the period after 2024, the government will follow the conversations between *PersVeilig* and the sector about financing and it will continue to assess what may be needed in terms of possible financing.

In the spring of 2021, the *Flexibel Beschermingspakket Freelancers* (Flexible Protection Package Freelancers) was launched. The government has made available a sum of EUR 200,000 for a three-year-period for this package, which is aimed at freelance journalists (as well as others working in the field of media) who have insufficient back-up from their clients regarding their safety. Those journalists are eligible to receive protection materials (such as a safety vest or an emergency button) from the package.

*39. Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists*

Law enforcement policy to counter aggression and violence against journalists is rooted in preventive and repressive policy. Preventive policies have been described above, most visible in the PersVeilig program. Repressive policy for police and public prosecution is, among others, translated as follows. Cases of aggression or violence against journalists are specifically marked in police and public prosecution administrations. Cases of aggression and violence against journalists receive high priority status from both police and public prosecution. Also, protocols have been adopted in which an increased demand in punishment by the public prosecutor is recorded if a case concerns a journalist, compared to the same criminal act as done to a regular civilian.

As in 2020, 2021 has seen a series of incidents in which journalists have been under pressure. For example, instances of aggression against journalist near churches, a Molotov cocktail thrown into a house of a journalist, an incident at which a journalist has been driven into a ditch by a shovel and multiple instances of harassment of journalists at demonstrations for various causes. Most visibly, the brutal attack on Peter de Vries on 6 July 2021 was shocking and beyond belief. The European Parliament has been informed on our approach in this case in the letter to a Dutch member of the European Parliament.<sup>43</sup> The Dutch Safety Board is carrying out research on the security of Peter R. de Vries. In addition to the PersVeilig protocol, measures have been taken to prevent aggression and violence against journalists as much as possible, such as establishing a contact point for journalists at the Dutch Association of Journalists (NVJ). Various incidents have led to questions from the public and political parties to the Minister of Justice and Security and the Minister for Primary and Secondary Education and Media. They in turn have indicated that the police, the Public Prosecution Service, the Dutch Society of Editors-in-Chief and the Dutch Association of Journalists are working in close collaboration in the project PersVeilig.<sup>44</sup> A review of PersVeilig has been sent to Parliament in March 2021. In short summary, the law enforcement capacity is in place, all parties are working closely together and PersVeilig is still a good example of an effective collaboration between relevant stakeholders. At the same time there is also room for some improvement, which was to be expected given that PersVeilig was only created in the course of 2019. These improvements have been identified and will be taken up in due course. One issue that arose in 2020 was the protection of freelance journalists who face harassment and do not have an employer to back them up. An inventory was made of the safety measures these freelance journalists need and the way in which they can be supported in realizing those measures, taking into account the lack of an employer who is responsible for providing a safe working environment. Following this inventory, the government has decided to financially contribute to facilities for freelance journalists in the event of a threat or risk so that they can safely practice their profession. The conditions for this contribution are currently discussed in consultation with PersVeilig. The financial contribution to promote the protection of freelance journalists has been in place in 2021 and will be continued in 2022.

Also, the Minister for Justice and Security and the Minister for Primary and Secondary Education and Media have promised to structurally continue the support for PersVeilig. This has furthermore been reflected in the government coalition agreement of December 2021. Media organizations can apply for subsidies to improve the protection and safety of their journalists using this fund.

*40. Access to information and public documents (incl. procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities)*

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<sup>43</sup> AVT/JU-210823-001

<sup>44</sup> <https://www.persveilig.nl>

On October 5, 2021, the Senate approved the Open Government Act (*Wet open overheid, Woo*).<sup>45</sup> This new law will come largely into effect on 1 May 2022 and will replace the current Freedom of Information Act (*Wet openbaarheid van bestuur, Wob*). This law is intended to increase the transparency of the government. The Open Government Act therefore contains a number of important changes compared to the current Freedom of Information Act. Firstly, it has a broader scope. Not only administrative bodies, but also other constitutional bodies like the Advisory Division of the Council of State and both Houses of Parliament fall under the scope of the law. The Open Government Act will enhance the focus on the proactive disclosure of public information in order to serve the rule of law, democracy, citizens and public governance better. As such, maintaining the provisions for access to information on request from the Wob, the Woo adds provisions with a list of documents to be proactively disclosed (expected to come into effect in 2023). These documents will be published on a central platform in due course (*Platform Open Overheidsinformatie*<sup>46</sup>). In addition, a permanent independent Advisory committee public access and information management (*Adviescollege openbaarheid en informatiehuishouding*) will be established to provide solicited and unsolicited advice on the implementation of the rules on the disclosure of public information and to mediate in the event of complaints from applicants for information with a professional interest (like journalists) about the handling of requests for information under this Act. As a final important addition, the new law also prescribes that every administrative body must appoint a contact person where citizens and journalists can ask questions about the availability of public information.

The national government and other governments are currently working on the implementation of the Woo. In addition, other initiatives have also been launched to increase transparency from the government and the accessibility of public information. In May 2021, for example, the instruction drawn up for the handling of requests for information by the central government was amended, effectively resulting in broader access to information about deliberations within and between public authorities<sup>47</sup>. With the application of this amended instruction already partly anticipates the changes in the new law, for example with regard to the wider disclosure of personal policy views. Many and extensive requests for information are currently being submitted to the government about the COVID-19 virus. In the context of the COVID-19 virus, a lot of information is (actively) made public, for example the documents that are discussed during the informal meetings at the Catshuis (*Catshuisstukken*).<sup>48</sup> At the same time, it must be noted that – partly due to the large numbers and wide scope of requests for information - the legally prescribed deadlines are not always met. That is why, finally, measures are also being taken to improve the current situation with regard to the processing of requests for information.

#### 41. *Lawsuits (incl. SLAPPs - strategic litigation against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against abusive lawsuits*

In 2019, the *Balie Persvrijheid* (Desk Press Freedom) was launched, a legal desk where journalists can ask for legal assistance. The service not only includes help with possible SLAPP cases, but also pre-emptive help with for example copyright. The *Balie* has stated that it did not receive calls for assistance in SLAPP related cases in 2021.

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<sup>45</sup> Beschikking van de Minister van Justitie en Veiligheid van 7 januari 2022 tot plaatsing in het Staatsblad van de tekst van de Wet open overheid, zoals gewijzigd bij de Wijzigingswet Woo, de Wet Huis voor klokkenluiders, de Wet beveiliging netwerk- en informatiesystemen en de Wet elektronische publicaties (Stb. 2022, 44).

<sup>46</sup> <https://open.overheid.nl>

<sup>47</sup> <https://www.informatiehuishouding.nl/actueel/nieuws/2021/06/29/ruimere-informatieverstrekking-bij-wob-verzoeken>

<sup>48</sup> <https://www.rijksoverheid.nl/onderwerpen/coronavirus-tijdlijn/uitgelicht-catshuisstukken/openbaarmaking-catshuisstukken>.

The public prosecutor informs that no registration of the profession of suspects is available in their systems. It is therefore not possible to analyse from public prosecution administrations whether journalists have been prosecuted and/or convicted.

At a luncheon side-event of the Justice and Home Affairs Council, the Minister for Legal Protection has expressed concern about the phenomenon of SLAPPs. He indicated that the Netherlands will actively participate in working groups against SLAPPs, notwithstanding that according to data of the police, the public prosecutor, and PersVeilig, there is currently no indication that SLAPPs occur in the Netherlands.

#### **IV. Other institutional issues related to checks and balances**

##### **A. The process for preparing and enacting laws**

###### *42. Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process*

There is one new development that has occurred since the publication of the Rule of Law report 2020 concerning internet consultation. The aim of internet consultation is to provide as many citizens as possible with an opportunity to express their thoughts on proposed legislation through [www.internetconsultatie.nl](http://www.internetconsultatie.nl). To achieve this, the government has made improvements to the website ("Innovatie in internetconsultatie") aimed towards making the website and the proposals more accessible and easier to read (B1 level). This is an ongoing effort, also intended to enable civil servants to write better texts.

The seven questions of the Dutch comprehensive impact assessment system IAK (see [www.naarhetaik.nl](http://www.naarhetaik.nl)) serve as principles and demands for officials when drafting a legislative proposal for a Minister or State Secretary. The answers to the seven questions are checked by several supervising authorities before the proposal is sent to the Council of Ministers.

The IAK is being revised to ensure that the IAK is applied more thoroughly in the formulation of policy and legislation. This includes looking at the development of a digital system that can support the formulation of policy and regulations. The IAK will also figure more prominently in the training for civil servants.

In the government coalition agreement it was announced that the position of the Parliament will be improved by various measures. The structural funding within the Parliament will be strengthened, such as the Clerk's Office (*Griffie*), the Analysis and Research Department (*Dienst Analyse en Onderzoek*) and the Legislation Bureau (*Bureau Wetgeving*). There will also be more room for factual exchange of information between civil servants and MPs.

In response to the childcare allowances affair, the Temporary Committee on Implementing Organizations (TCU) was established and made recommendations to the government to improve the implementation of new policies. In line with the report, there will be more attention to the implementation test by the authorities themselves, better insight into the possibilities of systems and ICT, testing proposals from the Parliament on feasibility, a 'ability to do' test, and possibly a 'generation test'.<sup>49</sup> Great legislative proposals will be preceded by an outline letter explaining the outline of the proposal. The effects of legislation on the implementation will be evaluated after one year by an implementation test.

In order to improve the implementation of legislation, legislation is increasingly being translated into decision models. For democratic legitimacy, it is important that this is done in a transparent and verifiable way. The government is therefore developing a useful set of instruments for drafting

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<sup>49</sup> Kamerstukken II 2020/21, 35387, nr. 3.

legislation and for their 'translation' into decision rules (implementable by computer). For example, the government finances the 'Calculus-FLINT' project. In pilots like this one, the government tests which changes this translation requires in the legislative process, the support for this process and the legislative product.'

43. *Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)*

On 1 December 2020 a temporary act on COVID-19 measures entered into force (*Tijdelijke wet maatregelen COVID-19*). The temporary act has to be extended every three months and the Council of State is asked to advise on the COVID-19 measures that are in force at that moment. The act has been extended four times. In all of these cases the Council of State was asked for an urgent advice. The legislative process in the Netherlands knows no specific fast-track procedure. The aforementioned act was, however, established after a fast-track procedure to obtain the necessary advice of the Council of State. Since its entry into force (up until 14 January 2022) the 2020 Act was amended seven times, and in all of these cases the Council of State was asked for an urgent advice.

The 2020 Act provides the legal basis mainly for temporary ministerial regulations to combat this pandemic crisis. After a temporary ministerial regulation has been established, and at least a week before its entry into force, it must be sent to both Houses of Parliament. If so required for urgent public health reasons, a temporary ministerial regulation can, however, enter into force immediately. Should the Parliament decide not to agree with a temporary ministerial regulation, it expires *ipso iure*. Since the entry into force of the 2020 Act (up until 14 January 2022) 63 ministerial regulations were adopted, and in 26 of these cases the fast-track procedure was used. In none of these cases the Parliament decided not to agree.

The 2020 Act also provides the legal basis for temporary governmental decrees. In the Netherlands, there is no specific fast-track procedure for governmental decrees. Again the use of the fast-track procedure to obtain the necessary advice of the Council of State is used as a reference point for this report. Since its entry into force (up until 14 January 2022) three governmental decrees on social distancing were adopted (*i.e.* one to specify the safe distance (1.5 meters), one to set the safe distance at nil, and one to re-instate the safe distance). The 2020 Act also provides the legal basis for a temporary governmental decree to appoint the controller for the use digital COVID-19 applications. In all of these cases the Council of State was asked for an urgent advice.

Finally, in 2021 existing emergency law was used to establish a curfew. It should be emphasized that no state of emergency was declared, Dutch law provides for so-called separate use of emergency provisions outside a state of emergency situation. The Minister of Justice and Security established a temporary curfew on 22 January 2021, and prolonged this measure on 9 February 2021 until 22 February 2021. From 22 February 2021 the curfew was no longer based on emergency law, but on the temporary act. It was abolished on 28 April 2021.

44. *Regime for constitutional review of laws*

As explained in the Dutch input for the Rule of Law Report 2020, article 120 of the Dutch Constitution prescribes that the courts cannot review the constitutionality of Acts of Parliament and treaties. However, in 2021 the Dutch caretaker government started technical preparations for the revision of article 120, following a motion adopted by the Parliament in 2021.<sup>50</sup> On 16 December 2021, the Minister

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<sup>50</sup> Kamerstukken II 2020/21, 28362, nr. 47 (motion Kuik); Kamerstukken II 2021/22, 35 925-VII, nr. 43 (motion Simons).

of the Interior and Kingdom Relations and the Minister for Legal Protection, on behalf of the Minister of Justice and Security, sent an overview to the Parliament, which outlined material, institutional and procedural aspects of various forms of constitutional review.<sup>51</sup> The government coalition agreement of December 2021 states that it will further examine the question of constitutional review in the Netherlands, and will assess which form would best suit the Dutch legal system. The aforementioned overview will serve to facilitate this process.

45. *COVID-19: provide update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic*
- *judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic*
  - *oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic*

#### Judicial and constitutional review

Emergency regimes and measures in the context of COVID-19 pandemic bring different challenges for the protection of fundamental rights. To ensure the protection of fundamental rights the government has established a temporary act on COVID-19 measures that has entered into force on December 1, 2020 (Tijdelijke wet maatregelen COVID-19).<sup>52</sup> This temporary act provides a specific legal basis to restrict fundamental rights, which is necessary according to the European Convention on Human Rights and the Dutch constitutional provisions on human rights. The measures based on the temporary act are reviewed regularly. Every three months the Council of State reviews applicable measures, prior to a decision on the prolongation of the temporary law. This has led to four prolongations for periods of three months, starting on March 1, 2021.

In the light of treaty law and constitutional requirements, the temporary act always requires careful assessment on how far limitations of fundamental rights may extend. A crucial element in this are the requirements of necessity, proportionality and subsidiarity. For this reason, requirements mentioned in the temporary act have been made explicit in a separate provision as general requirements that have to be taken into account when taking measures. In the light of these principles, the act also provides for the possibility of differentiation, so that measures can be put in place for specific areas or activities, for example, when absolutely necessary to combat the epidemic. It also provides for the possibility to make exceptions or to grant exemptions, to enable customization of the measures when justified. In practice, this means that a relaxation or activation of measures is always determined on the basis of the current situation and a weighing up of the various interests, whereby the importance of the protection of fundamental rights weighs heavily. In addition, it is continuously examined whether measures are (still) necessary.

During the period in which measures were taken, courts have ruled several times on the justification of certain measures. These disputes were mainly about whether the legal basis on which a measure is based is also a solid legal basis for the intended purpose. See, for example, the judgment of the preliminary relief judge of the District Court of The Hague of 8 January 2021 ([ECLI:NL:RBDHA:2021:63](https://ecli.nl/NL:RBDHA:2021:63), [Rechtbank Den Haag, C/09/605233 / KG ZA 21-2 \(rechtspraak.nl\)](https://rechtspraak.nl)), which ruled that the mandatory PCR test for travelers from abroad could be upheld, and the The Hague Appeals Court judgment of 14 December 2021 ([ECLI:NL:GHDHA:2021:2452](https://ecli.nl/NL:GHDHA:2021:2452), [Gerechtshof Den Haag, 200.293.171/01 \(rechtspraak.nl\)](https://rechtspraak.nl)) on mandatory face masks.

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<sup>51</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2021/12/16/kamerbrief-over-constitutionele-toetsing>.

<sup>52</sup> <https://wetten.overheid.nl/jci1.3:c:BWBR0043413&z=2020-12-17&g=2020-12-17>.



Emergency legislation was used on one occasion. Before a basis was added to the abovementioned temporary act, a temporary curfew was imposed in January 2021, based upon the Civil Authorities (Special Powers) Act. The Appeals Court of The Hague quashed a District Court judgment which found that no special powers could be used. The case is pending before the Supreme Court, the advocate general advising to uphold the appeals court's decision ([ECLI:NL:PHR:2021:1136, Parket bij de Hoge Raad, 21/01820 \(rechtspraak.nl\)](#)). A Supreme Court judgment is expected on May 22, 2022.

#### Oversight by Parliament of emergency regimes and measures in the context of COVID-19 pandemic

On December 1, 2020, the temporary act on COVID-19 measures has entered into force. From this moment on, all COVID-19 measures are based on this temporary act instead of regional emergency ordinances. Regional emergency ordinances are proclaimed without involvement of the Parliament, although in the event of COVID-19 they were proclaimed by order of the Minister of Health, who is accountable to the Parliament for his orders. Given the duration of the pandemic, the regional emergency ordinances had to be replaced by an instrument that guarantees solid parliamentary involvement. The temporary act on COVID-19 measures offers this alternative instrument. The temporary act was amended several times to provide for a legal basis for new instruments, for example the use of digital COVID-19 certificates. The COVID-19 measures are now detailed in a temporal ministerial decree which is based on the temporary law on COVID-19. If necessary, this ministerial decree is adapted to the circumstances at that time. The ministerial decree and every adaptation is submitted to the Parliament after being signed by the relevant ministers. The Parliament then has the opportunity to reject the ministerial decree within one week. Social distancing is based upon a government decree, which is submitted to the Parliament before being advised upon by the Council of States and being signed. Until 17 July 2021 a royal decree prolonging the temporary act was submitted to the Parliament before being signed. Since the amendment of the temporary act, which entered into force on that day, a royal decree to prolong the temporary act has to be followed without delay by a ratification bill. Thus both Houses of Parliament have a veto right on the prolongation of the temporary act.

#### Measures taken to ensure the continued activity of Parliament

In the temporary act on COVID-19 measures exceptions have been made to ensure the continued activity of the Parliament. No ministerial COVID-19 decrees can be proclaimed on the size of parliamentary gatherings, and the Parliament cannot be closed down by ministerial decree. In addition to this legal measure, hygiene measures have been taken by the Parliament to make sure the members of Parliament can debate in a safe way. Examples of these hygiene measures are: the requirement to keep a safe distance, the advice to wear a facemask when moving through the room and building and the practice to clean the platform after each speaker.

To ensure that also the democratic processes in decentralized authorities could continue, the acts on these authorities have been complemented with a temporary act on digital deliberation and decision-making<sup>53</sup> to give these authorities the opportunity to publicly deliberate and decide through digital applications.

#### **B. Independent authorities**

*46. Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions*

The government coalition agreement of December 2021 states that supervisors such as the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*), the National Ombudsman, the Netherlands Court of Audit (*Algemene Rekenkamer*) and the Advisory Board on Regulatory Pressure (*Adviescollege toetsing regeldruk*) and the inspectorates are given extra resources to be able to perform their duties

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<sup>53</sup> Tijdelijke wet digitale beraadslaging en besluitvorming provincies, gemeenten, waterschappen en openbare lichamen Bonaire, Sint Eustatius en Saba.

more properly.

The government appointed a National Coordinator against Discrimination and Racism (*Nationaal Coördinator tegen Discriminatie en Racisme*), who will work on a multi-year national program against racism and discrimination, including input from society. In addition to appointing a National Coordinator against Discrimination and Racism, the government will set up a State Commission against discrimination. This State Commission will be set up for a period of four years and will be tasked with providing continuous insight into discrimination in government and making concrete proposals for improvement. The State Commission will carry out a parliamentary motion, requesting the government to make a broad screening of discrimination and ethnic profiling of the working methods and organizational culture of all (semi) government agencies and implementing agencies.<sup>54</sup> This motion was filed as a result of the childcare allowance affair.

In October 2022, the Netherlands Institute of Human Rights (*College voor de Rechten van de Mens*) will be celebrating its 10<sup>th</sup> anniversary. As a result, a start will be made on the second evaluation of the Institute in the second half of 2022. On the one hand, the functioning of the Human Rights Institute Act (*Wet College voor de Rechten van de Mens*) will be examined (does the law offer sufficient possibilities for the Institute to perform its tasks, etc.). In addition, a 'standard evaluation' for independent administrative bodies will be carried out, which is required by law (*Kaderwet zelfstandige bestuursorganen*). The standard evaluation will audit the efficiency and effectiveness of the College's operations, while respecting its independent position.

*47. Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years.*

As a result of the childcare allowance affair, the Netherlands Institute of Human Rights has been given the task of investigating whether and how discrimination plays a role in decision-making processes of administrative services and (if so) also to tackle the issue. The Netherlands Institute of Human Rights has also received extra resources to handle complaints about discrimination by the Tax and Customs Administration and other enforcement services.

On 25 October 2021, the National Ombudsman published the report '*Gescheurd Vertrouwen*' (Torn Trust), which is an analysis of the follow-up to recommendations made by the Ombudsman in 2017 in the report '*Een fundament met scheuren*' (A foundation with cracks). Both reports were written as a reaction to problems caused by the recovery operation due to earthquakes in the natural gas area in Groningen and Drenthe. The ombudsman rightly concludes that the confidence of the victims of Groningen and Drenthe in the government has been severely damaged. Not only the homes in the earthquake zone therefore need to be repaired and strengthened, this also applies to confidence in the government. The government endorses the problems addressed by the ombudsman and announced a few measures. For example, residents who are faced with damage or reinforcements will be able to make free use of architectural, financial and legal assistance. The communication to the residents will also be improved and there will be more opportunities for involvement for residents.

**C. Accessibility and judicial review of administrative decisions**

*48. Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)*

As announced in last year's report, the Digital Publications Act has gone into effect on 1 July 2021. The Digital Publications Act aims to increase accessibility of (proposed) administrative decisions not addressed to one or more persons concerned, by dictating that those decisions are to be published in the digital official journals of the administrative bodies.

A development since last year's report is that the Open Government Act (*Wet open overheid*) has

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<sup>54</sup> Kamerstuk 2020/21, 35510, nr. 33.

passed both Houses of Parliament and will go into effect on 1 May 2022. The Open Government Act aims to increase transparency by pro-active publication of government information. The chapter on pro-active publication will, however, go into effect later than 1 May 2022 because government bodies need time to implement this chapter. The Act differentiates between different categories of government information. Article 3.3 contains an obligation to pro-actively publish administrative decisions addressed to one or more persons concerned (*beschikkingen*). There are exceptions to this obligation, including an exception for most administrative sanctions. This exception does not include restorative sanctions (*herstelsancties*) concerning environmental law or environmental emissions. For more information about the Open Government Act, see sub-topic 40.

There are some specific laws which contain additional rules on the publication of administrative sanctions. For example, the Authority for Financial Markets (*Autoriteit Financiële Markten*) aims to publish all financial sanctions eventually on the basis of the Financial Supervision Act (*Wet Financieel Toezicht*). The concerned party can appeal against the decision to publish the sanction. Another example is the Sham Employment Arrangements Act (*Wet aanpak schijnconstructies*), on the basis of which the Inspectorate SZW (*Inspectie SZW*) publishes what companies were fined and for which offence. The Establishment Act of the Authority for Consumers and Markets (*Instellingswet Autoriteit Consument en Markt*) also contains provisions on the publication of sanctions.

*49. Judicial review of administrative decisions:-short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review).*

In the Dutch General Administrative Law Act (Algemene wet bestuursrecht or Awb), it is laid down how all administrative bodies in the Netherlands should take decisions. It sets out the decision-making process as well as the requirements that need to be met during that process. The Awb also holds the legal framework for objections-procedures for administrative decisions. The notice of objection needs to be submitted at the decision-making entity, within the 6 week time limit, starting from the date of the decision. In the notice of appeal, the reason for appeal has to be clarified. The decision to which one is objecting needs to be clearly noted and enclosed. Moreover, the interested party needs to express why he or she is an interested party. A decision making entity can install an (independent) objection commission. This commission will review the decision of the entity and will give the entity an advice on the decision. The decision making entity is not obliged to follow the advice. After this review phase one can appeal at the district court. Asking for a review or going in appeal does not have suspensive effect. It is however possible to ask the district court for a temporary decision.

Besides these courts, the Netherlands has a number of other judicial bodies for administrative law. The Central Appeals Tribunal is a court of appeal which is mainly active in legal areas pertaining to social security and the civil service. In these areas it is the highest judicial authority. The Tribunal is based in Utrecht. The Trade and Industry Appeals Tribunal, also known as Administrative High Court for Trade and Industry, is a specialized administrative court which rules on disputes in the area of social-economic administrative law. In addition, this appeals tribunal also rules on appeals for specific laws, such as the Competition Act and the Telecommunications Act. The Tribunal is based in The Hague. The Supreme Court is in tax matters the highest judicial authority.

The Administrative Jurisdiction Division of the Council of State in The Hague is the highest administrative court with general jurisdiction in the Netherlands. It hears appeals lodged by members of the public, associations or commercial companies against decisions by municipal, provincial or central governmental bodies. Disputes may also arise between two public authorities. The decisions on which the Division gives judgment include decisions in individual cases (e.g. refusal to grant a building permission) as well as decisions of a general nature (e.g. an urban zoning plan).

50. *Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non- implementation*

No substantial changes have occurred since the publication of the Rule of Law Report 2020 and 2021.

**D. The enabling framework for civil society**

51. *Measures regarding the framework for civil society organisations (e.g. access to funding, legal framework incl. registration rules, measures related to dialogue between authorities and civil society, participation of civil society in policy development, measures capable of affecting the public perception of civil society organisations, etc.)*

There is a strong and vibrant culture of civil society organisations who actively campaign on issues concerning the rule of law in the Netherlands. As far as measures capable of affecting the public perception of these civil society organisations go, the government has no specific policy in place. Civil society organisations can apply for a wide range of subsidies at the national, regional and local level of government. The terms and conditions for those subsidies can vary, but there is a general legal framework laid down in the General Administrative Law Act. This framework contains rules on the rights and obligations that rest on both the administrative body providing the subsidy and the organization receiving it.

The government actively promotes funding programmes for civil society organisations. For example, a national contact point for subsidies under the EU Citizens, Equality, Rights and Values-programme was established in 2021 in order to inform and support civil society organisations for funding under this programme.

Civil society organisations can influence policy development through various ways. Like any other, civil society organisations can contact members of the Parliament or policy officers from governmental organizations. All new legislative proposals are published for public consultation, during which anyone can publish their opinion, both public as non-public.<sup>55</sup> There is also an obligation to - insofar as possible – state in the explanatory memorandum which external parties contributed to the establishment of the proposal, how this was done, what the purpose of the contribution was and in what way the contribution changed the proposal.<sup>56</sup>

In the information provided for last year's report we mentioned the legislative proposal that in order to provide more transparency a proposal had been drafted for associations, foundations and churches to publicly disclose substantive donations they receive from outside the EU/EEA and in addition, for foundations to disclose their annual accounts (*Wetsvoorstel transparantie maatschappelijke organisaties*). This proposal is currently pending before the Parliament. The government coalition agreement of December 2021 states that the government wants to continue to work towards the adoption of that proposal. Also, the government wants to take measures to prevent undesirable influence as much as possible, for example by continuing the work of the Taskforce on problematic behavior and undesirable foreign financing.<sup>57</sup>

52. *Rules and practices guaranteeing the effective operation of civil society organisations and rights defenders*

Rights defenders often have to contend serious threats and violence. The government supports rights defenders so they can do their work effectively and safely.

The Netherlands helps human rights defenders in a number of ways. The Netherlands follows the European Union's guidelines on human rights defenders. The guidelines aim to improve the support

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<sup>55</sup> Kamerstukken II 2016/17, 29515, nr. 397, p. 5.

<sup>56</sup> Instructions for legislation (*Aanwijzingen voor de regelgeving*), instruction 4.43.

<sup>57</sup> Kamerstukken II 2020/21, 35228, no. 39.

and protection given to human rights defenders in non-EU countries. The Dutch embassies work with the embassies of other EU member states and of the EU itself to help human rights defenders..

Through the Human Rights Fund the Netherlands provides financial support for human rights defenders and non-governmental organisations (NGOs) that promote human rights worldwide. They can use the money for training, for instance to learn how to protect data on their computers and smartphones, or to participate successfully in United Nations Human Rights Council meetings.

The Netherlands supports Shelter City. Human rights defenders who are under threat in their own country can stay in the Netherlands for 3 months. This allows them to continue their work in a safe and restful setting. It also gives them an opportunity to expand their network of civil society organisations and political contacts, and take training courses to improve their skills. For example, they can take English lessons or learn how to persuade more people that human rights are important.

Each year, the government awards the Human Rights Tulip to a person or organisation that promotes human rights worldwide in innovative ways. The winner receives €75,000 to fund a new project and €25,000 to spend on training. This money allows them to continue their work and help more people. The prize money comes from the Human Rights Fund.

#### ***E. Initiatives to foster a rule of law culture***

53. *Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, etc.)*

In 2022, the second reading of the constitutional proposal for the inclusion of a general provision in the Constitution will take place in both Houses of Parliament. The general provision states: ‘The Constitution guarantees fundamental rights and the democratic constitutional state’.

The government is in the process of establishing a State Committee, which will analyse the functioning of the rule of law in the Netherlands, and which will bring forward proposals to strengthen it. This follows from the motion Omtzigt/Van Dam, which was adopted by the Parliament on 26 January 2021.<sup>58</sup> On 3 December 2021, a proposal for the assignment of the State Committee was sent to the Parliament.<sup>59</sup> The draft assignment was drawn up by the government in consultation with contributors from the judiciary, and has a strong focus on strengthening the position of the citizen in Dutch democracy.

The government encourages the upcoming State Committee to include the Opinion on the Legal Protection of Citizens in the Netherlands, which was adopted by the Venice Commission on 15-16 October 2021,<sup>60</sup> in its work. The Venice Commission drafted its Opinion at the request of the Parliament. The report underlines that “in general, the Venice Commission is of the opinion that the Netherlands is a well-functioning state with strong democratic institutions and safeguards for the rule of law.”<sup>61</sup> Nevertheless, it puts forward 13 proposals for possible reforms in the legislative, the executive and the judicial branches, “which are far-reaching and are meant as food for thought in the reflection to be carried out by the Dutch authorities”.<sup>62</sup>

Next to that, as of 1 July 2021, decision-making memo’s regarding documents that will be sent to (both houses of) Parliament are also being sent to (both houses of) Parliament. By doing this, the government intends to provide both houses of Parliament with information about considerations and interests involved in the decision-making process. Moreover, see the input for subject 40.

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<sup>58</sup> Kamerstukken II 2020/21, 35510, nr. 12.

<sup>59</sup> Kamerstukken II 2021/22, 29279, nr. 691.

<sup>60</sup> [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)031-e)

<sup>61</sup> Id., par. 32.

<sup>62</sup> Id. par. 137.

In the advisory report '*A stronger constitutional state. Connecting and protecting in a pluriform society*', the Council for Public Administration (*Raad voor het Openbaar Bestuur*) advised the government to draw up an agenda for the rule of law, in order to make it function properly. The Public Administration Council concludes that the principles of the Dutch democratic constitutional state do not interfere with an adequate and effective approach to a crisis. The rule of law in the Netherlands is also not acutely threatened. However, clumsiness, ignorance and indifference do lead to so-called constitutional deficits in certain areas. The Council therefore advises the government to periodically draw up a so-called Rule of Law Agenda, following the example of the European Union. In a response, the government shares the Council's analysis of a possible constitutional deficit and underlines the importance of the standards of the rule of law, as has been made more concrete in numerous ways, like legislation, policies, speeches and (other) activities. In addition, the government acknowledges that this is not enough and more has to be done in order to further strengthen the rule of law and a likewise culture. The government subscribes the relevance of the recommended agenda for the rule of law and will pass on the Council's recommendation to annually formulate such an agenda to the State Committee on the rule of law, which will be set up shortly as mentioned above.

In 2021 two debates about the rule of law were held in Parliament (on January 27 and on November 24).

### ***Other – please specify***

#### Childcare allowance affair

The information provided for last year's report includes a short description of the parliamentary report 'Unprecedented Injustice' after a parliamentary inquiry into problems concerning child care benefits. The report concludes that the basic principles of the rule of law were violated by the law-making bodies, the judiciary and the executive, by putting too much emphasis on fighting fraud. The government strongly regrets the harm that was made to the persons affected. In response, the government resigned on January 15, 2021. In the information provided for last year's report, a few measures have been announced to strengthen the rule of law in the Netherlands. The government announced even more measures after the input for last year's report was sent to the Commission. The Parliament was informed with an overview of announced measures, as well as the progress made regarding these measures.<sup>63</sup>

A few of the announced measures are also mentioned above. For instance, when ministers send documents to both Houses of Parliament, underlying internal documents of the ministry on which the ministers have based their decision laws will be published. Other examples mentioned above are the establishment of the State commission on the rule of law, the implementation test by implementing new policies and the investigation by the Netherlands Institute of Human Rights whether discrimination plays a role in the decision-making.

Furthermore, a motion was passed in the Parliament requesting the government to conduct a comprehensive inventory of areas in which legislation is harsh on people and to make proposals to include flexibility clauses in those laws.<sup>64</sup> To implement the motion, each ministry conducts an inquiry into laws and regulations that may have a harsh impact on citizens. To this end, the ministries are asking for input from government officials, a wide range of organizations and from citizens themselves. The objective is to enhance the human dimension in laws and regulations and in their application. The Government is of the opinion that recognizing, acknowledging and following up on signals of harshness is not a one-time exercise, but a continuous process that must be structurally embedded in policy processes. The inventory is thus an instrument in a much broader palette of measures and actions that

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<sup>63</sup> Kamerstukken II 2020/21, 35510, nr. 60.

<sup>64</sup> A clause in legislation which makes it possible for people who due to exceptional circumstances cannot comply to a rule to ask for an exemption. The flexibility clause enables government institutions and judges to derogate (of deviate) from the law in question. See: Kamerstukken II 2020/21, 35 510, nr. 24.

the Government is working on for the purpose of avoiding harsh effects of legislation. Other examples are that, the childcare allowance affair showed that the algorithms used, resulted in people with double nationalities being more strictly controlled on fraud than others. Such indicators were withdrawn. An algorithm register will be developed in order to be transparent about the use of algorithms by the government.

The government coalition agreement of December 2021 also pays attention to the problems addressed by the parliamentary report 'Unprecedented Injustice'. The government wants, among other things, to abolish the allowance system, so that people no longer get lost in complicated regulations or have to deal with high recoveries. The childcare allowance system will be fundamentally reviewed and simplified, as well as the housing allowance system.