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**2020 Rule of Law Report  
Country Chapter on the rule of law situation in Netherlands**

*Accompanying the document*

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**2020 Rule of Law Report  
The rule of law situation in the European Union**

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## ABSTRACT

The Dutch justice system is characterised by a high level of perceived judicial independence, and a particular attention for fostering the quality of justice. Several initiatives to further strengthen judicial independence are underway or are being discussed, *inter alia* concerning the method of allocation for court cases and the appointment procedures of members of the Council for the Judiciary and of the Supreme Court. As regards the quality of the justice system, numerous small-scale projects aimed at fostering access to justice are ongoing and are being rolled out on a larger scale. A reform of the legal aid system is also envisaged, giving rise to discussions among legal professionals. Furthermore, the justice system is characterised by a consistently high level of efficiency.

According to surveys, the Netherlands is perceived as one of the least corrupt countries in the EU and the world. There is a strong integrity culture in the public administration. The legal and institutional framework to fight corruption is in place and there are several initiatives underway to further strengthen the framework to detect, investigate and prosecute corruption, in particular in relation to the financial sector. The Whistleblowers' Act is currently undergoing evaluation, which may result in a revision of the Whistleblowers' authority's mandate. Certain gaps in the integrity framework exist, particularly as regards persons entrusted with top executive functions and law enforcement authorities, and some concerns have been raised as regards lobbying, 'revolving doors' and the transparency of political party funding, though some steps are being taken to address these gaps.

The Netherlands has a strong tradition, as well as a strong legal and institutional framework regarding media pluralism. The independent audiovisual media regulator plays an important role for ensuring transparency of media ownership. The authorities contribute to fostering independent journalism, notably via the allocation of grants to the Journalism Promotion Fund. Overall, the framework for journalists' protection is robust. The Council for Journalism, a self-regulatory mechanism, is entitled to issue opinions on complaints concerning journalistic practices. Media workers, including journalists, photographers and cartoonists, are occasionally confronted with threats, online and offline. The protection of journalists has come to the forefront in recent years and has resulted in increased cooperation between journalists associations, the police and the prosecution service. The recent "*PersVeilig*" initiative that helps journalists report and handle threats is a good example.

The system of checks and balances is well established and the process for enacting laws is inclusive. An impact assessment framework and the involvement of stakeholders contribute to the quality and transparency of the legislative process, which includes a constitutionality check. Several independent authorities, including the College for Human Rights and the National Ombudsman, contribute to safeguarding fundamental rights. The government has a policy of pursuing a dialogue with civil society and making information accessible to citizens. Regular discussions in Parliament as well as initiatives and reflections by different authorities on rule of law topics contribute to fostering a dynamic rule of law culture.

## **I. JUSTICE SYSTEM**

The justice system is characterised by a court system composed of eleven district courts, four general courts of appeal, two specialised courts<sup>1</sup>, the Council of State<sup>2</sup> and a Supreme Court. An independent Council for the Judiciary plays a key role in safeguarding the independence of the judiciary and is tasked with fostering the quality of the justice system, including allocating financial resources to courts.<sup>3</sup> Candidate judges are selected by the National Selection Committee for Judges<sup>4</sup> and subsequently appointed for life by the executive<sup>5</sup> on the proposal of the Minister of Justice.<sup>6</sup> The prosecution service is separate from the Ministry of Justice but falls under the political responsibility of the Minister. The Bar Association is established by law. It is independent from the Government and financed exclusively through lawyers' annual contributions.<sup>7</sup>

### **Independence**

**The perceived level of independence of the judiciary is very high, and efforts to further strengthen judicial independence continue.** The level of perceived judicial independence has been consistently very high among the general population (77% consider it to be fairly or very good) and among companies (81% fairly or very good) over the last years.<sup>8</sup> Even with these high levels of perceived judicial independence, new initiatives to further foster the traditionally strong judicial independence have been put forward. These reflect the particular role of independent advisory bodies and of the dialogue with the judiciary.

**A new code for case allocation was adopted in early 2020.** The new case allocation code has been adopted by the Council for the Judiciary, in consultation with the judiciary, the prosecution service and the bar association, and aims to foster transparency in allocation of cases within courts. While the division of jurisdictional competence between courts is set out in law, the allocation of cases is not. The code provides that cases will in principle be allocated randomly between judges, and any exception to this rule will be made public in the

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<sup>1</sup> The Central Appeal Tribunal and the Trade and Industry Appeals Tribunal.

<sup>2</sup> The judicial branch of the Council of State acts as the highest administrative court for certain cases. The Council also has an advisory branch, which renders opinions on draft legislation.

<sup>3</sup> Law on Judicial Organisation.

<sup>4</sup> The National Selection Committee for Judges is composed of six judges and six non-judge members, among which at least one public prosecutor and one attorney.

<sup>5</sup> The appointment decision is adopted by Royal Decree, which is signed by the King and countersigned by the Minister of Justice and Security. The Minister solely verifies if the applicant fulfils the legal requirements to be appointed, and the Minister has in all cases followed the recommendation by the Council for the Judiciary.

<sup>6</sup> Law on the Legal Status of the Judiciary; The Council has delegated this to the National Selection Committee for Judges, which is composed of judges, public prosecutors, lawyers, public administrators and researchers. The Minister of Justice and Security has in all cases followed the recommendation by the Council for the Judiciary.

<sup>7</sup> Law on Lawyers.

<sup>8</sup> EU Justice Scoreboard 2013 to 2020; World Economic Forum Global Competitiveness Reports; Eurobarometer surveys. While 27% of the general population and 37% of companies indicate that they perceive the level of judicial independence to be 'very good' and 50% of the general population and 44% of companies perceive it as 'fairly good', only 10% of the general population and 7% of companies indicate that they perceive the level of judicial independence to be 'fairly or very bad'. Figures 44 & 46, 2020 EU Justice Scoreboard; Eurobarometer survey. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

administrative regulations drafted by the court administrations.<sup>9</sup> The code also states that any transfer of the case to another judge is notified to the parties together with the reasons for the transfer. The court administrations will elaborate more detailed rules per jurisdiction, based on the new case allocation code.

**The Government has announced plans to amend the appointment procedure for Supreme Court judges.** Following recommendations of an independent State Commission<sup>10</sup> in 2018, the Government has announced the preparation of a Constitutional revision to change the appointment procedure for Supreme Court judges. Currently, a Committee of Supreme Court judges draws up a list of six candidates and submits it to the House of Representatives, which selects and ranks three candidates and invites the first-ranked person for an interview. The selected candidate is then nominated by the Minister of Justice for appointment by the executive.<sup>11</sup> The State Commission recommended establishing a committee, composed of a member of Parliament assigned by the House of Representatives, a member of the Supreme Court assigned by its President, and an expert appointed jointly by the House of Representatives and the Supreme Court.<sup>12</sup> This committee would be in charge of nominating new Supreme Court judges, which is currently the prerogative of the House of Representatives. The nomination would be submitted for appointment by the executive, which would be bound by the nomination. The Government has drafted a concept proposal for a revision of the Constitution to implement this recommendation. The proposal was published for an online stakeholder consultation from December 2019 to March 2020. The objective pursued by this envisaged reform is to further limit the role of the executive and legislative branch in the appointment of Supreme Court judges, which is consistent with Council of Europe recommendations.<sup>13</sup>

**A reflection is ongoing on the procedures for the appointment of members of the Council for the Judiciary and of court management boards.** The Council for the Judiciary plays a key role for safeguarding judicial independence. Discussions are ongoing on whether judges should have greater influence on the appointment process of the members of court management boards<sup>14</sup> and members of the Council for the Judiciary.<sup>15</sup> A working group including the Council and the association of judges was set up to discuss nominations to court management boards and the involvement of judges in the process. As for the Council, the

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<sup>9</sup> According to Council of Europe standards, the allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. See in particular paragraph 24 of Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe; CCJE Opinion N19 (2016) – The Role of Court Presidents; ENCJ Minimum Judicial Standards IV – Allocation of Cases: ENCJ Report 2013-2014.

<sup>10</sup> The State Commission on the Parliamentary System in the Netherlands.

<sup>11</sup> The appointment decision is adopted by Royal Decree. See above.

<sup>12</sup> State Commission on the Parliamentary System in the Netherlands (2018), *Democracy and the rule of law in equilibrium – final report of the State Commission on the Parliamentary System in the Netherlands*, p. 216.

<sup>13</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 47. See also, as regards the process of judicial appointment from the perspective of judges' independence and impartiality, judgment of the Court of Justice of 19 November 2019 in Joint Cases C-585/18, C-624/18 and C-625/18, paras 124-125 and 133-134; judgment of the Court of Justice of 9 July 2020, *Land Hessen*, C-272/19, paras 54-60.

<sup>14</sup> Court boards exist of three members, two judges and a non-judge member, who are tasked with the management of the court. Court board members are appointed by the executive on the nomination of the Minister of Justice, following the recommendation of the Council of the Judiciary, who hears the court board of the court in question.

<sup>15</sup> Letter from the Minister for Legal Protection to the House of Representatives of 17 September 2019: 'Ways in which to create a strong justice system'.

Minister for Legal Protection has announced legislation to amend the appointment procedure for members of the Council.<sup>16</sup> Currently, the Minister and the Council for the Judiciary establish jointly a list of maximum six persons to fill a vacancy.<sup>17</sup> This list is submitted to a Recommendation Committee,<sup>18</sup> which draws up a list of maximum three persons and submits it to the Minister, who then nominates the new member of the Council to be appointed for six years by the executive<sup>19</sup>. The announced legislation would limit the role of the Minister in the appointment procedure, who would no longer appoint a member of the Committee, nor participate in establishing the list of six persons.<sup>20</sup> A parliamentary motion<sup>21</sup> also called on the Government to request a Council of State opinion on potential weaknesses in the legal framework regarding the appointment of members of the Council for the Judiciary and of members of court boards, and to report on this to the Chamber. In February 2020, the Minister asked the Council of State for advice in this regard. The objective of this reflection is to further limit the influence of the executive or legislative powers on the appointment of the members of the Council for the Judiciary, which is consistent with Council of Europe recommendations<sup>22</sup>.

**The power of the Minister of Justice to issue specific instructions to the prosecution service is accompanied by safeguards and not used in practice.** The prosecution service falls under the political responsibility of the Minister of Justice, although it is not itself part of the Ministry.<sup>23</sup> The Minister is periodically informed by the prosecution service of important cases, and disposes of the power to give instructions to prosecute a specific case or to refrain from doing so. Specific legal safeguards are in place to limit the possibility of arbitrary intervention: the Minister has the obligation to inform the Board of Prosecutors-General and the written instruction, together with the views of the Board, would be added to the case file. An instruction to refrain from prosecution would also have to be notified to the House of Representatives and the Senate together with the views of the Board, in so far as this would not be against the interests of the State. In practice, there have been no cases of specific instructions for decades, as reported by the Dutch authorities. These safeguards, combined with the fact that the Minister of Justice does not make use of the prerogative to instruct prosecutors in individual cases, appear to mitigate any potential risk for the autonomy of the

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<sup>16</sup> Letter from the Minister for Legal Protection to the House of Representatives of 17 September 2019: ‘Ways in which to create a strong justice system’, p. 10.

<sup>17</sup> Law on Judicial Organization.

<sup>18</sup> The Recommendation Committee is composed of one court president, a representative of the Dutch Association for the Judiciary, a member of the College of Representatives of the courts, a non-judge member of a court administration and a person appointed by the Minister.

<sup>19</sup> The appointment decision is adopted by Royal Decree.

<sup>20</sup> Letter from the Minister for Legal Protection to the House of Representatives of 17 September 2019: ‘Ways in which to create a strong justice system’, p. 10.

<sup>21</sup> Motion from the Members of the House of Representatives Maarten Groothuizen and Michiel van Nispen about potential vulnerabilities in the law on judicial organization.

<sup>22</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras 27, 46 and 47. The European Court of Justice has, in the context of judicial appointments made by the executive branch upon a request from the council for the judiciary, indicated that for such a council to contribute to making the process more objective, it should be sufficiently independent of the legislative and executive and of the authority to which it is required to deliver a judicial appointment proposal (judgment of the Court of Justice of 19 November 2019 in Joined Cases C-585/18, C-624/18 and C-625/18, paras 137-138).

<sup>23</sup> It is to be noted that a pending preliminary reference before the Court of Justice raises the question of whether the Dutch Public Prosecutor is covered by the concept of a judicial authority, as referred to in Article 6(2) of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, see: Court of Justice, Case C-510/19, *Openbaar Ministerie (Faux en écritures)*.

prosecution.<sup>24</sup> Following the recent case law of the Court of Justice of the European Union on the European Arrest Warrant<sup>25</sup>, the existence of this right to instruction has led the Netherlands to change in 2019 its procedure for issuing such arrest warrants.<sup>26</sup>

## Quality

**A reform of the legal aid system is foreseen to be completed by 2024.** The legal aid system is multi-tiered. Besides online information available to citizens, there are Legal Advice Centres that offer advice free of charge ('first line') and may refer to private lawyers and mediators ('second line'), who are paid a fixed fee by the Legal Aid Board according to the type of case. Citizens may also apply directly for a subsidised lawyer or mediator. Legal aid is financed mainly through public funds, and around 38% of citizens would qualify for legal aid.<sup>27</sup> An envisaged reform of the legal aid system foresees further improvement in providing information to citizens, as well as an expansion of the number of Legal Advice Centres. The reform also foresees an increased focus on out-of-court solutions, and new service providers, other than lawyers or mediators, would be allowed into the 'second line'. While the reform aims to tailor legal aid to citizens' needs, the introduction of an advisory body that can review which cases qualify for subsidised legal aid may have a negative impact on access to justice.<sup>28</sup> Stakeholders including the Bar Association and the Association for the Judiciary have voiced their criticism against the envisaged reform, emphasising that the right of access to justice must be safeguarded.<sup>29</sup> Furthermore, some concerns have been expressed about the funding available for the legal aid system.<sup>30</sup>

**There remains room to improve the digitalisation of the justice system.** While the provision of online information about the judicial system for the general public is comprehensive, the availability of electronic means to submit cases, to transmit summons and to monitor the stages of proceedings remains partial.<sup>31</sup> While judgments of courts at all instances can be accessed online, the publication rate remains rather low,<sup>32</sup> although the

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<sup>24</sup> Committee of Ministers Recommendation Rec(2000)19, para 13(d): "where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law". As regards the safeguards, see para 13 (points d to e).

<sup>25</sup> Judgment of the Court of Justice of 27 May 2019 in joined cases *OG*, C-508/18 and *PI*, C-82/19 PPU.

<sup>26</sup> As of 13 July 2019, the competent authority to issue a European Arrest Warrant is the investigative judge on the request of the prosecutor, see Surrender of Persons Act, Arts. 17-18. See also the Report by the European Commission on the implementation of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, p. 5-6.

<sup>27</sup> See 2020 EU Justice Scoreboard for more information.

<sup>28</sup> United Nations CCPR (2019) – the Netherlands was recommended to review the ongoing reform measures in the legal aid system, with a view to ensuring that people, including the most vulnerable in all constituent countries, can benefit from the new system on an equal footing and to enhancing access to justice for all, including in the constituent countries.

<sup>29</sup> 'Stand up for the rule of law!', joint declaration by the Dutch Bar Association, the Dutch Association for the Judiciary, Social Work Netherlands, and the RIBW Alliance.

<sup>30</sup> United Nations CCPR (2019) – the Netherlands was recommended to review the ongoing reform measures in the legal aid system, with a view to ensuring that people, including the most vulnerable in all constituent countries, can benefit from the new system on an equal footing and to enhancing access to justice for all, including in the constituent countries.

<sup>31</sup> Figures 22 & 28, 2020 EU Justice Scoreboard.

<sup>32</sup> The current publication rate is around 2-3%.

authorities envisage an increase over the next three years.<sup>33</sup> A programme was set up by the judiciary in 2018 to improve digital access to justice.<sup>34</sup>

**Numerous small-scale projects aimed at fostering access to justice are ongoing and are being rolled out on a larger scale.** The ‘Societally Effective Justice’ programme<sup>35</sup> consists of numerous projects that aim to tailor the justice system to citizens’ needs. By launching numerous local pilot projects and subsequently evaluating them, Societally Effective Justice aims to expand projects that improve access to justice to courts around the Netherlands. Examples of such projects include ‘the neighbourhood judge’, who helps resolve disputes at an early stage and a ‘debt judge’, who treats all cases of a certain debtor simultaneously within one debt restructuring exercise. By providing a framework for numerous small-scale projects to be tested, evaluated and potentially expanded, the authorities aim to create a beneficial environment to continuously improve the quality of and access to justice.

**The COVID-19 pandemic has had an impact on the functioning of the justice system.** Stakeholders have raised some concerns about the effective safeguarding of the right to a fair trial and the quality of justice during the COVID-19 pandemic,<sup>36</sup> and the number of criminal cases awaiting a hearing has increased significantly due to the crisis. In that regard, the prosecution service has announced plans, in consultation with the judiciary, to make increased use of its power to decide itself on certain criminal cases.<sup>37</sup> This could have an impact on the right to a fair trial, in particular if citizens are not adequately informed.<sup>38</sup> On the other hand, the COVID-19 pandemic resulted in an increased use of digital tools in proceedings, including live streams and online court sessions.

## Efficiency

**The justice system is characterised by a consistently high level of efficiency.** The efficiency of the justice system has been consistently high over the past years.<sup>39</sup> There is a low disposition time in particular for first instance civil and commercial cases,<sup>40</sup> and a consistent clearance rate of around 100% shows that the justice system is able to deal effectively overall with the number of incoming cases.<sup>41</sup> This is corroborated by the absence

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<sup>33</sup> Answer by the Minister for Legal Protection to a Parliamentary question on 27 March 2020: an increase to 5% is envisaged over the next three years.

<sup>34</sup> Letter from the President of the Council for the Judiciary to the Minister for Legal Protection of 10 April 2018: ‘Rest digitalisation of justice’.

<sup>35</sup> *Maatschappelijk Effectieve Rechtspraak*.

<sup>36</sup> Information received in the context of the virtual country visit. See also for instance: The Netherlands Committee of Jurists for Human Rights (2020), Letter on concerns about corona measures in criminal justice.

<sup>37</sup> Such decisions by the prosecution service cannot impose a prison sentence and can be contested in court. See the Letter from the Minister for Justice and Security and the Minister for Legal Protection to the House of Representatives of 25 June 2020: ‘Contours of the Approach to Address Backlogs in Criminal Justice’. See also the announcements of 25 June 2020 by the judiciary and by the prosecution service: <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Nieuws/Paginas/Rechtspraak-en-OM-werken-corona-achterstanden-weg.aspx>; <https://www.om.nl/onderwerpen/coronavirus/nieuws/2020/06/25/wegwerken-corona-achterstanden-strafrechtken-voor-eind-2021>.

<sup>38</sup> See in that regard: National Ombudsman, Proper Provision of Information is the Basis of Access to Justice – Bottlenecks in the Provision of Information about Penalties and Dismissal Decisions.

<sup>39</sup> 2013-2020 EU Justice Scoreboard.

<sup>40</sup> Figures 5 & 6, 2020 EU Justice Scoreboard 2020.

<sup>41</sup> Figure 10, 2020 EU Justice Scoreboard 2020.

of any serious backlog overall in civil, commercial and administrative cases.<sup>42</sup> The efficiency of justice is fostered further by projects such as ‘Disposition times in movement’,<sup>43</sup> which identified possible avenues for increasing the efficiency of justice. The level of efficiency as regards competition law cases is high, while the length of judicial review in electronic communications, consumer protection and money-laundering cases is average. Nevertheless, the Council for Public Administration highlights that some concerns exist as regards the work pressure to which the judiciary is subject.<sup>44</sup>

## **II. ANTI-CORRUPTION FRAMEWORK**

The competence to investigate and prosecute corruption is shared between several authorities. The National Police Internal Investigation Department investigates wrongdoing within the Government. The Fiscal Intelligence and Investigation Department is responsible for the investigation of financial crimes, including foreign and commercial bribery. The National Public Prosecutor’s Office focuses on domestic bribery of public officials, and the National Public Prosecutor’s Office for Serious Fraud, Environmental Crime and Asset Confiscation is responsible for the investigation of commercial and foreign bribery. The Whistleblowers’ Authority provides support and advice for people who wish to report a work-related situation of abuse in the public and in the private sector. New initiatives aim at strengthening the integrity frameworks applicable to members of Parliament and the Act on Political Party Financing is at present undergoing a revision.

**In the latest Corruption Perceptions Index of Transparency International, the Netherlands scored 82/100 and was ranked 4<sup>th</sup> in the European Union and 8<sup>th</sup> globally.**<sup>45</sup> While 47% of Dutch respondents to the Eurobarometer survey think that corruption is widespread in their country (EU average 71%), merely 4% of Dutch respondents are of the view that corruption affects their daily lives (EU average 26%).<sup>46</sup> Similarly, only 12% of businesses consider corruption to be a problem when doing business in the Netherlands (EU average 37%). Furthermore, 53% of people find that there are enough successful prosecutions to deter people from corrupt practices (EU average 36%) while 38% of companies consider that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%).<sup>47</sup>

**The legal framework for fighting corruption is largely in place.** Bribery offences are criminalised by the Criminal Code.<sup>48</sup> All recommendations by GRECO concerning incriminations had been implemented by 2010.<sup>49</sup> The possibility for criminal prosecution of members of Parliament, ministers and state secretaries for office-related offences has been embedded in law.<sup>50</sup> A special procedure pursuant to Article 119 of the Constitution applies with regard to violations of the law committed by ministers, members of Parliament and state secretaries while in office. Several crimes are covered, including passive bribery and abuse of

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<sup>42</sup> Figure 13, 2020 EU Justice Scoreboard 2020.

<sup>43</sup> Steering Group Disposition Times (2019), Disposition times in movement! – final report of the disposition times in movement project.

<sup>44</sup> Advice of the Council for Public Administration: ‘A stronger rule of law – connecting and protecting in a pluralistic society’.

<sup>45</sup> Transparency International (2020), 2019 Corruption Perceptions Index.

<sup>46</sup> Special Eurobarometer 502 (2020).

<sup>47</sup> Flash Eurobarometer 482 (2019).

<sup>48</sup> *Wetboek van Strafrecht*.

<sup>49</sup> GRECO Third Evaluation Round – Evaluation Report and Compliance Report.

<sup>50</sup> Act on the responsibility of members of the House of Representatives, ministers and state secretaries.



office. In such situations, ministers, members of Parliament and state secretaries can be tried only following a decision either by the Government or by Parliament and such cases are tried by the Supreme Court. In 2018, GRECO recommended ensuring that this procedure does not hamper the criminal justice process as regards corruption-related offences.<sup>51</sup> The procedure is at present undergoing a review by a dedicated committee.

**A number of authorities are responsible for the investigation and prosecution of corruption offences.** The National Police Internal Investigations Department investigates criminal conduct within the Government, including when a public servant or police officer is suspected of a criminal offence such as fraud or bribery. It acts under the authority of the Board of Prosecutors-General. The Fiscal Intelligence and Investigation Department is the specialised investigation service of the Tax and Customs Administration and is responsible for the investigation of financial crimes, including foreign and commercial bribery. The Public Prosecution Service is led by the Board of Prosecutors-General and is responsible for the investigation and prosecution of criminal cases. The National Public Prosecutor's Office focuses on international forms of organised crime and on domestic bribery of public officials. The National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation is responsible for the investigation of fraud and environmental crime, including commercial and foreign bribery.

**The Whistleblowers' Authority acts as a centralised office, for both the public and the private sector and provides support and advice for people who wish to report a work-related situation of abuse.** This authority, created in 2016, can also carry out investigations into wrongdoing. Its service is confidential and free of charge. However, the authority faced some challenges in the first years of its functioning, including lengthy or inefficient procedures. Reportedly, these were mainly due to old and complicated cases inherited at the start of the functioning of the Authority. In 2019, the Whistleblowers' Authority started working on 331 requests for advice, of which 27 were assessed as actual whistleblower cases with a reasonable suspicion of abuse.<sup>52</sup> 57% of Dutch respondents to the Eurobarometer survey indicate that they would not know where to report a case of corruption should they experience or witness it and 49% highlighted that they may decide not to report a case of corruption due to lack of adequate protection.<sup>53</sup> The Whistleblowers' Act<sup>54</sup> is currently undergoing an evaluation. Whilst the final report has already been delivered, an additional research report is due to be published in September. This could lead to a revision of the mandate of the Whistleblowers' Authority.

**Several recent initiatives aim to improve the institutional capacity to fight corruption.** The 2019 annual report of the Public Prosecution Service shows that the National Police Internal Investigations Department has carried out 61 investigations into corruption-related offences by public administration officials. Some of the investigations concerned the leakage of sensitive information and contacts with organised crime groups.<sup>55</sup> In recent years, the institutional capacity to fight corruption has been strengthened. Among other things, the Government has increased funding since 2016, leading to an additional annual EUR 20 million since 2018 for the prosecution service and the Fiscal Intelligence and Investigation Department on corruption and money-laundering. As a result, a specialised Anti-Corruption

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<sup>51</sup> GRECO Fifth Evaluation Round– Evaluation Report.

<sup>52</sup> House for Whistleblowers (2019), annual report 2019.

<sup>53</sup> Special Eurobarometer 502 (2020).

<sup>54</sup> *Wet Huis voor Klokkeluiders*.

<sup>55</sup> *Openbaar Ministerie, Jaarbericht 2019*, pp. 22-23.

Centre was established within the Fiscal Intelligence and Investigation Department in September 2016. Furthermore, a ‘corruption team’ was established in the National Public Prosecutor’s Office for Serious Fraud, Environmental Crime and Asset Confiscation in 2017, focussing on the investigation of foreign bribery and commercial corruption. A legislative act, adopted in November 2019, enables the collection in a central register of ‘soft data’ on bribery of public officials. The aim of the new register is to be able to store police data and use it for a longer period of time. This will allow the National Police Internal Investigations Department (NPIID) to use this data at a later time in an investigation or to start new investigations based on numerous signals.

**Innovative tools have been deployed in order to fight corruption more effectively, including a best-practice project on suspicious transaction reports.** The Anti-Corruption Centre of the Fiscal Intelligence and Investigation Department has adopted a project-based approach consisting of cross-matching tax, bank and accounting data and flows for detecting common clues and recurrent operative modes. A good practice example is the joint analysis of files by the Anti-Corruption Centre and the Financial Intelligence Unit, ensuring a sharing of know-how and a more efficient and broader analysis of unusual transactions related to corruption. The major added value of the ‘suspicious transaction reports’ project is to raise awareness about the various forms, indicators and features of corruption in order to increase the number of reports and enhance their quality, thereby improving the efficiency and effectiveness of the entire reporting chain.

**A public-private partnership has been established in order to strengthen the integrity of the financial sector.** While the overall level of perceived corruption is low, the financial sector is considered to be a high-risk sector.<sup>56</sup> A partnership between authorities with supervisory, control, prosecution or investigation tasks in the financial sector aims at taking preventive action in order to identify and combat threats to the sector’s integrity. The Financial Expertise Centre also plays a key role in the dissemination of information. Its annual plan for 2020 lists corruption as a priority topic and highlights the establishment of a specific project, aiming to strengthen the prevention and detection of corruption by banks.<sup>57</sup>

**Integrity is a key component of the framework governing the public administration.** The Civil Service Act<sup>58</sup> prescribes a code of conduct for the public administration and lays down asset disclosure rules. The rules on integrity for civil servants are contained in the National Government Integrity Code of Conduct. Additionally, a new bill promoting the integrity of (candidate) members of decentralised, regional or local governments is at present pending adoption. The Interdepartmental Platform on Integrity Management focuses on cross-government integrity policy, the monitoring and registration of violations and the development of new instruments in public administration. Since 2015, an Advisory Team Integrity Investigation gives independent advice to politically responsible officials. Nevertheless, 50% of respondents to the Eurobarometer are of the opinion that bribery and the abuse of power for personal gain are widespread among officials awarding public tenders and 55% are of the opinion that this is the case for officials issuing building permits, respectively. Innovative tools to promote integrity have been set up at the local level. For example, the Integrity Office<sup>59</sup> (part of the administration of the city of Amsterdam) promotes

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<sup>56</sup> Tax Justice Network, 2020 Financial Secrecy Index of the world’s most secretive jurisdictions in terms of financial services.

<sup>57</sup> *Financieel Expertise Centrum*, Annual plan 2020.

<sup>58</sup> *Ambtenarenwet*.

<sup>59</sup> *Bureau Integriteit*.

integrity with the local political and administrative level, but also with service providers and businesses. This is a good practice, particularly given that stakeholders indicate that the process of decentralisation should be carefully assessed in light of possible risks of corruption.

**While new initiatives aim at strengthening the integrity frameworks applicable to members of Parliament, concerns remain as regards persons entrusted with top executive functions.** New integrity measures have been introduced as regards both chambers of Parliament. In 2019, the Senate adopted a code of conduct for its members that provides guidelines on contacts with third parties, including lobbyists. The House of Representatives is in the process of adopting a code of conduct and introducing a supervisory system as regards declaration requirements.<sup>60</sup> Certain integrity gaps have been identified with regard to persons entrusted with top executive functions. This issue has also been highlighted by GRECO, which recommends the provision of appropriate guidance on conflicts of interest and integrity-related matters and that persons entrusted with top executive functions declare on an ad hoc basis any conflicts between private interests and official functions, as well as making their financial interests public on a regular basis.<sup>61</sup>

**Law enforcement authorities enjoy a good level of trust with regard to the fight against corruption.** 60% of the Eurobarometer respondents have most trust in the police to deal with a corruption case.<sup>62</sup> However, 34% of respondents think that bribery and abuse of power for personal gain are widespread among police and customs authorities.<sup>63</sup> In this respect, a 2017 study shows that more could be done to fight corruption and other integrity violations within law enforcement authorities.<sup>64</sup> GRECO recommended for example that the vetting and screening of law enforcement staff take place at regular intervals during the entire service and that the control measures in respect of access to and use of confidential information be enhanced in order to prevent the unauthorised access to and leaking of information.<sup>65</sup> A draft law extending the screening of police officers and external consultants before appointment and during employment is pending adoption.

**Rules to prevent ‘revolving doors’ include a ban on lobbying for former high-level officials.** Former ministers and state secretaries are not allowed to engage in any way with the employees of their former ministry as lobbyists on behalf of a company, semi-public organisation or lobby organisation for two years after their end of mandate. They also cannot act as intermediaries or agents in commercial contacts with the ministry. However, stakeholders point out that there are no general rules on dealing with lobbyists or with post-employment restrictions when employment in the private sector is sought by persons entrusted with top executive functions. This has also been highlighted by GRECO.<sup>66</sup>

**There are few restrictions on political party financing and these are not applicable to local parties or local departments of national parties.** This raises questions about the need to register donations and their control. There is an ongoing debate regarding the financing of

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<sup>60</sup> These reforms follow up on GRECO recommendations: GRECO Fourth Evaluation Round preventing corruption in respect of members of Parliament, judges and prosecutors – Evaluation Report and Compliance Reports.

<sup>61</sup> GRECO Fifth Evaluation Round – Evaluation Report.

<sup>62</sup> Special Eurobarometer 502 (2020).

<sup>63</sup> Special Eurobarometer 502 (2020).

<sup>64</sup> Organized Crime and Integrity Violations within Law Enforcement Organisations (2017).

<sup>65</sup> GRECO Fifth Evaluation Round– Evaluation Report.

<sup>66</sup> GRECO Fifth Evaluation Round– Evaluation Report.

political parties, and the Act on Political Party Financing is currently being revised.<sup>67</sup> For example, the amendments aim at strengthening the transparency of gifts for parties and prohibit gifts from outside the European Economic Area. It is foreseen that gifts from within the European Economic Area will be disclosed without a threshold. The threshold for Dutch donations that have to be disclosed would remain at EUR 4 500. The revision of the Act does not include rules on the financing of local and regional units of political parties. Some of these issues were also identified in GRECO reports on the transparency of party funding.<sup>68</sup> A new Political Parties Act is being drafted in that regard. The draft law is expected to include transparency rules on the financing of local parties or local departments of national parties. 50% of Dutch respondents to the Eurobarometer survey are of the opinion that there is insufficient transparency and supervision of the financing of political parties and 43% think that bribery and abuse of power for personal gain are widespread among political parties.<sup>69</sup>

### **III. MEDIA PLURALISM**

The legal framework concerning media pluralism is based on a set of constitutional and legislative safeguards. The right to information is enshrined in the Constitution and the Openness of Government Act<sup>70</sup> regulates the public's right to access of administrative documents held by public authorities. The independent audio-visual media regulatory authority ensures transparency of media ownership. The authorities are working to strengthen the protection of journalists against violence and aggression, notably via a dedicated Steering Group.<sup>71</sup>

**The regulator for audiovisual media services, the *Commissariaat voor de Media (CvDM)* is an independent administrative authority established by statute under the Media Act 2008 as a public entity with legal personality.** The Authority has a statutory obligation to publish its decisions and is considered to be transparent.<sup>72</sup> Its independence was assessed at very low risk by the Media Pluralism Monitor (MPM) covering 2018 and 2019.<sup>73</sup> Under the Framework Act for Independent Administrative Authorities,<sup>74</sup> the Minister of Education, Culture and Science appoints the head and members of the collegiate body of the Media Authority. Draft legislation currently pending in Parliament proposes revisions to the appointment procedure: the Minister would appoint the head and members of the collegiate body on the basis of unanimous advice from an independent appointment committee set up by the Media Authority. The Minister could only deviate from this advice if the rules of procedure were not respected or if an appointment would be contrary to the law. Suspension and dismissal can only take place due to unsuitability for the position fulfilled, incompetence, or other compelling reasons related to the person concerned. Such strengthening of guarantees of independence further contributes to the reduction of the risk to media

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<sup>67</sup> *Wet financiering politieke partijen.*

<sup>68</sup> GRECO Third Evaluation Round– Evaluation Report and Compliance Report. For example, GRECO recommends to lower the disclosure threshold of €4,500 and to extend the applicability of the provisions on donations to local and regional units of political parties.

<sup>69</sup> Special Eurobarometer 502 (2020).

<sup>70</sup> *Wet Openbaarheid van Bestuur.*

<sup>71</sup> In 2020, the Netherlands are at the 5<sup>th</sup> position worldwide in the Reporters Without Borders World Press Freedom Index. See: <https://rsf.org/en/ranking>.

<sup>72</sup> Its published decisions can be accessed via: <https://www.cvdm.nl/>.

<sup>73</sup> 2020 Media Pluralism Monitor.

<sup>74</sup> *Kaderwet zelfstandige bestuursorganen.*

pluralism.<sup>75</sup> Furthermore, the Council for Journalism, a self-regulatory mechanism, is entitled to issue opinions on complaints concerning journalistic practices. The Council is comprised equally of journalists and of other members, mainly legal experts, and operates autonomously.

**In the absence of media-specific legal provisions ensuring the disclosure of ownership details to the public, information on media ownership is provided to the public via the Media Monitor published by the CvdM.** The Media Pluralism Monitor has assessed transparency of media ownership in the Netherlands at medium risk, due to the absence of media-specific provisions requiring disclosure of ownership details to the public. In practice, information on media ownership is provided to the public via the annual Media Monitor published by the CvdM.<sup>76</sup> In addition, upon payment of a small fee, the public can consult the records of the chamber of commerce to retrieve relevant information.<sup>77</sup> As indicated by stakeholders,<sup>78</sup> this transparency is all the more important since media ownership is highly concentrated, mainly in the press sector. The Media Authority monitors the impact of financial-economic market developments and consolidation of ownership on media pluralism and independence of the supply of information in the Netherlands. The Government contributes to fostering independent journalism. Support is provided via the Journalism Fund, managed by the Ministry of Education, Culture and Science, which is responsible for media policy, and via the Fund for In-depth Journalism as well as the Journalism Promotion Fund<sup>79</sup>.

**The right to access to information is laid down in law.** The public's right to access administrative documents held by public authorities is specified in the Openness of Government Act. The absolute grounds for denial of access to documents listed in the law raise some doubts as to their conformity with the principles of proportionality and necessity.<sup>80</sup> Certain stakeholders report that requests for access to information to public authorities are complied with rapidly and that there are no particular issues. However, representatives of journalists are critical about the time it takes for public authorities to respond to requests for information. Some public authorities apply an active transparency policy, proactively making information on their activity publicly available.

**There is an extensive framework for the protection of journalists.** According to the Media Pluralism Monitor, existing penal<sup>81</sup> and civil restrictions, such as for example liability for defamation, are not abused in practice and do not impede a very lively public expression of ideas. Since 2014 and 2019 respectively, blasphemy and lèse-majesté no longer constitute criminal offences. Stakeholders report that media workers, including journalists, photographers and cartoonists, are occasionally confronted with threats, online and offline. An agreement on strengthening the position of journalists against violence and aggressions

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<sup>75</sup> The revised Audiovisual Media Services Directive (AVMSD) sets out a range of specific guarantees for the independence and effectiveness of national media regulators.

<sup>76</sup> Media Authority, Media monitor: Media concentration. In that respect, it should be recalled that transparency requirements are listed in Recommendation CM/Rec(2018)1 of the Council of Europe Committee of Ministers to member States on media pluralism and transparency of media ownership.

<sup>77</sup> The revised AVMSD encourages Member States to adopt legislation obliging media service providers make accessible information concerning their ownership structure, including beneficial owners.

<sup>78</sup> Information received in the context of the virtual country visit. See also for instance: The Netherlands Committee of Jurists for Human Rights (2020), Letter on concerns about corona measures in criminal justice.

<sup>79</sup> Dutch Government, Safeguarding press freedom.

<sup>80</sup> 2020 Media Pluralism Monitor.

<sup>81</sup> Imprisonment is among the envisaged sanctions for defamation.

was concluded in July 2018 by the Steering Group on Aggression and Violence against Journalists, consisting of the public prosecution service, the police, the Society of Editors-in-Chief and the Association of Journalists.<sup>82</sup> This resulted in the ‘*PersVeilig*’ protocol aimed at reducing threats, violence and aggression against journalists. Although not a direct follow-up to the Council of Europe Recommendation on the protection of journalism and safety of journalists and other media actors, the *PersVeilig* protocol is aligned with its guidelines and is considered as a good practice by media experts. Stakeholders report good experiences with the new tool and welcomed a new law on the protection of sources, which is in place since two years. Some concerns exist as regards the amended national security services Act (W.I.V) of July 2017, dubbed “dragnet Act”. The law allows national security services to collect internet and telephone data from citizens in bulk for investigation needs.<sup>83</sup> The Association of Journalists has expressed concern that this could undermine the protection of journalistic sources.<sup>84</sup> In 2019, the Council of Europe Platform to promote the protection of journalism and safety of journalists published two alerts for the Netherlands,<sup>85</sup> concerning a TV reporter who was briefly arrested for refusing to disclose a source at a murder trial, and a new law under which citizens travelling to an area “controlled by terrorist groups” must request permission from the Justice Ministry.<sup>86</sup> Similar alerts were posted on the Mapping Media Freedom platform.<sup>87</sup>

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

The Netherlands has a bicameral parliamentary system of Government which provides for an ex ante constitutional review of draft legislation. The Parliament is composed of the Senate<sup>88</sup> and the House of Representatives<sup>89</sup>. Legislative proposals can originate from the Government and from members of the House of Representatives. The Council of State gives advisory opinions on draft legislation. Independent authorities and civil society play an important role in the checks and balances system.

**Conducting impact assessments and consulting stakeholders are well-established practices for enacting legislation.** A legislative proposal can originate from the Government or from members of the House of Representatives, after which it is submitted to the Council of State advisory division for its opinion.<sup>90</sup> The proposal is then adopted by the House of Representatives and subsequently by the Senate<sup>91</sup>, after which it is signed into law by the King and the responsible Minister. Legislative proposals are analysed through an impact

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<sup>82</sup> Professor Tarlach McGonagle (2018), Agreement of the Steering Group on Aggression and Violence against Journalists. <https://www.ivir.nl/publicaties/download/Agreement-of-the-Steering-Group-on-Aggression-and-violence-against-journalists-EN-translation.pdf>.

<sup>83</sup> *Wet op de inlichtingen- en veiligheidsdiensten*. The Act has been adopted and implemented even though it had been rejected in a March 2018 consultative referendum.

<sup>84</sup> In that respect, it should be recalled that, in line with Council of Europe standards, a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear is recommended. See CM/REC(2016)4 of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors.

<sup>85</sup> Similar alerts were posted on the Mapping Media Freedom Platform, see European Centre for Press & Media Freedom, Mapping media freedom: The Netherlands.

<sup>86</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists.

<sup>87</sup> European Centre for Press & Media Freedom, Mapping media freedom: The Netherlands.

<sup>88</sup> *Eerste Kamer der Staten-Generaal*.

<sup>89</sup> *Tweede Kamer der Staten-Generaal*.

<sup>90</sup> The opinion is authoritative but non-binding.

<sup>91</sup> The Senate may only approve or reject the proposal; it has no right of amendment nor right of initiative.

assessment framework before they are submitted to Parliament.<sup>92</sup> In preparing legislation, it is Government policy to submit draft proposals for an open internet consultation of four weeks minimum.<sup>93</sup> A short summary of the comments received and how they have been taken into account is published online.<sup>94</sup> It is to be noted that the Council for the Judiciary is consulted on new laws in relation to the administration of justice. The opinions of the Council are adopted after consulting with the courts. Additionally, permanent advisory councils like the Council for Public Administration play a role in the checks and balances system by providing independent opinions on their own initiative or on a request from the Government or from Parliament.

**A draft bill seeks to provide a specific legal basis for measures to combat the COVID-19 pandemic.** The Government submitted a proposal for a temporary law on COVID-19 measures to Parliament in July 2020. The law aims to provide a solid legal basis for measures aimed at combatting the COVID-19 pandemic, which until now were often adopted through emergency ordinances<sup>95</sup>. The law also grants the Parliament and representative bodies at the local level<sup>96</sup> increased powers to scrutinise such measures. The Council of State indicated in an advisory opinion of May 2020 that the longer the crisis situation lasts, the stronger the need for a solid legal basis for such measures becomes.<sup>97</sup> The law is expected to enter into force in autumn 2020.

**Respect for fundamental and constitutional rights is ensured in several manners.** An explanatory note attached to legislative proposals discusses constitutionality, and manuals exist for civil servants in this regard. The Council of State also scrutinises the constitutionality of draft legislation in its opinions. The constitutionality of draft laws then becomes the subject of debates in Parliament, on which the Senate in particular debates at length. Ordinary courts can carry out a decentralised form of ‘constitutional’ review in the absence of a centralised constitutional court. While acts of parliament may not be reviewed against the constitution, review is possible against directly effective treaties.<sup>98</sup> In practice, this means that all laws can be reviewed in light of, *inter alia*, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

**Independent authorities play a role in safeguarding fundamental rights.** Independent authorities in the Netherlands include the *College voor de Rechten van de Mens*, which aims to protect human rights and foster awareness of and compliance with human rights standards, and the National Ombudsman. The *College* is also the independent gender equality body competent to monitor and promote equal treatment. It is accredited with A status by the Global Alliance of National Human Rights Institutions (GANHRI) as regards its compliance with the UN Paris Principles. Among other recommendations, the *College* was encouraged by GANHRI to advocate for the formalisation of a clear, transparent and participatory selection and appointment process. The National Ombudsman is an independent and constitutionally enshrined office competent to issue non-binding judgments on concrete actions by government authorities. The Ombudsman may also investigate complaints of citizens and report on their findings, possibly issuing recommendations.

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<sup>92</sup> <https://www.kcwj.nl/kennisbank/integraal-afwegingskader-voor-beleid-en-regelgeving>.

<sup>93</sup> In exceptional cases, this period can be shortened or online consultation can be omitted.

<sup>94</sup> Except for comments received anonymously.

<sup>95</sup> Based on the pre-existing Law on Public Health.

<sup>96</sup> ‘*Gemeenteraden*’ (Municipal councils).

<sup>97</sup> Advisory Opinion W04.20.0139/I/Vo of the Council of State of 25 May 2020.

<sup>98</sup> All other legal instruments may be reviewed against the constitution and against other higher norms.

**The Government has a policy of pursuing a dialogue with civil society and making information accessible to citizens.** The Netherlands is considered as having an open civil society landscape.<sup>99</sup> In 2019, the Government introduced a policy regarding the framework for civil society organizations in which it introduces partnerships (e.g. Power of Voices and Women, Peace and Security) in the context of the Sustainable Development Goals (SDGs). Draft legislation has been submitted to Parliament aiming at increasing the accessibility of administrative decisions taken by various authorities through a unique portal entry point. The portal can also provide tailor-made notifications of legislation or administrative decisions that concern a citizen's specific environment.

**There is a strong attention for rule of law topics in politics and in society.** The Senate organises regular policy debates on the State of the Rule of Law,<sup>100</sup> which provide an opportunity for senators to debate with ministers and to introduce motions on rule-of-law-related topics.<sup>101</sup> For example, in March 2020, senators introduced eight new motions, related inter alia to the autonomous management of resources for the judiciary. This practice in the Senate has been followed in the House of Representatives. In January 2020, the House Committee for Justice and Security organised a conference where the judiciary, lawyers and politicians debated the 'Rule of Law in the 21<sup>st</sup> Century'. These initiatives provide a forum to debate matters related to the rule of law and to foster awareness of such topics. Additionally, the assassination of a lawyer in a high-profile criminal case in September 2019 was perceived as an attack on the rule of law moving the Government to take additional measures to tackle organised crime and provide extra funding for the protection of local politicians, judges, prosecutors, police officers, lawyers and journalists.<sup>102</sup> At the same time, a number of high-profile court rulings<sup>103</sup> sparked a political debate on the role of the judiciary in relation to the other state powers.<sup>104</sup> These developments have fed reflections and initiatives to further promote the rule of law culture. Recent reports by the Council for Public Administration<sup>105</sup> and by the Council of State<sup>106</sup> highlight that the rule of law has become a topic of discussion in recent years. The Council for Public Administration recommends the Government to develop a 'Rule of Law Policy Agenda' to promote a culture of rule of law.<sup>107</sup> The Council of State has announced its intention to organise 'Rule of Law Conversations' to facilitate an exchange of views between representatives of different state institutions that play a role for the rule of law.

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<sup>99</sup> See the rating given by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>100</sup> *Staat van de Rechtsstaat*.

<sup>101</sup> This policy debate was organised in 2014, 2018, 2019 and 2020.

<sup>102</sup> Dutch Government, Measures against undermining criminality.

<sup>103</sup> Including the judgment of the Supreme Court of the Netherlands of 13 September 2019, *Urgenda*, ECLI:NL:HR:2019:2007 and Judgment of the Council of State of 29 May 2019, Nitrogen Action Programme, ECLI:NL:RVS:2019:1604.

<sup>104</sup> Advice of the Council for Public Administration, A stronger rule of law – connecting and protecting in a pluralistic society.

<sup>105</sup> See previous footnote.

<sup>106</sup> Council of State Annual Report 2019.

<sup>107</sup> Advice of the Council for Public Administration, A stronger rule of law – connecting and protecting in a pluralistic society.



## **Annex I: List of sources in alphabetical order.\***

\* *The list of contributions received in the context of the consultation for the 2020 Rule of Law Report can be found at (COM website).*

Centre for Media Pluralism and Media Freedom (2020), 2020 Media pluralism monitor. <https://cmpf.eui.eu/media-pluralism-monitor/mpm-2020>.

CIVICUS, Monitor tracking civic space: the Netherlands. <https://monitor.civicus.org/country/netherlands/>.

Consultative Council of European Judges (2016), CCJE Opinion No.19: The role of court presidents.

Council for Public Administration (2020), A stronger rule of law – connecting and protecting in a pluralistic society.

Council of Europe, Platform to promote the protection of journalism and safety of journalists – the Netherlands. [https://www.coe.int/en/web/media-freedom/all-alerts?p\\_p\\_id=sojdashboard\\_WAR\\_coesoportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-4&p\\_p\\_col\\_count=1&sojdashboard\\_WAR\\_coesoportlet\\_keywords=&sojdashboard\\_WAR\\_coesoportlet\\_selectedStringFilters=year.2019&sojdashboard\\_WAR\\_coesoportlet\\_selectedCategories=11709554](https://www.coe.int/en/web/media-freedom/all-alerts?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-4&p_p_col_count=1&sojdashboard_WAR_coesoportlet_keywords=&sojdashboard_WAR_coesoportlet_selectedStringFilters=year.2019&sojdashboard_WAR_coesoportlet_selectedCategories=11709554).

Council of Europe: Committee of Ministers (2000), Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the role of public prosecution in the criminal justice system.

Council of Europe: Committee of Ministers (2010), Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities.

Council of Europe: Committee of Ministers (2016), Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors.

Council of Europe: Committee of Ministers (2018), Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership.

Council of State (2019), Annual Report 2019.

Council of State, Advisory Opinion W04.20.0139/I/Vo of 25 May 2020.

Council of State, judgment of 29 May 2019, Nitrogen Action Programme, ECLI:NL:RVS:2019:1604.

Council of the European Union (2002), Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

Court of Justice of the European Union, judgment of 19 November 2019, C-585/18, C-624/18 and C-625/18.

Court of Justice of the European Union, judgment of 27 May 2019 in joined cases *OG*, C-508/18 and *PI*, C-82/19 PPU.

Court of Justice of the European Union, judgment of 9 July 2020, *Land Hessen*, C-272/19.

Court of Justice of the European Union, pending case C-510/19, *Openbaar Ministerie (Faux en écritures)*.

Directorate-General for Communication (2016-2020), Eurobarometer: perceived independence of the national justice system in the EU among the general public.

Directorate-General for Communication (2019), Flash Eurobarometer 482: businesses' attitudes towards corruption in the EU.

Directorate-General for Communication (2020), Special Eurobarometer 502: corruption.

Dutch Bar Association, Dutch Association for the Judiciary, Social Work Netherlands, Federation on Shelter, RIBW Alliance (2019), Stand up for the rule of law! <https://www.advocatenorde.nl/nieuws/gezamenlijke-verklaring-nova-nvvr-en-swn-sta-op-voor-de-rechtsstaat>.

Dutch Government (2020), Input from the Netherlands to the 2020 Rule of Law Report.

Dutch Government, Funds for the media. <https://www.government.nl/topics/the-media-and-broadcasting/funds-for-the-media>.

Dutch Government, Measures against undermining criminality. <https://www.rijksoverheid.nl/onderwerpen/ondermijning/maatregelen-tegen-ondermijnende-criminaliteit>.

Dutch Government, Safeguarding press freedom. <https://www.government.nl/topics/the-media-and-broadcasting/safeguarding-press-freedom>.

Dutch Media Authority, Media monitor: Media concentration. <https://www.mediamonitor.nl/mediabedrijven/>.

European Audiovisual Observatory (2019), IRIS Special 2019-1: The independence of media regulatory authorities in Europe. <https://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504>.

European Centre for Press & Media Freedom, Mapping media freedom: The Netherlands. <https://mappingmediafreedom.org/country-profiles/netherlands/>.

European Commission (2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020), The EU Justice Scoreboard.

European Commission (2020), Report on the implementation of Council Framework Decision of 13 June 2002 on the European arrest warrant and surrender procedures between Member States.

European Commission, Report from the Commission to the European Parliament and the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, COM(2019)355 final.

European Network of Councils for the Judiciary (2013-2014), Development of minimum judicial standards IV: allocation of cases.

Financial Expertise Centre (2019), FEC annual plan 2020.

GRECO (2008), Third Evaluation Round – evaluation report on the Netherlands on Incriminations (ETS 173 and 191, GPC 2).

GRECO (2008), Third evaluation round – evaluation report on the Netherlands on transparency of party funding.

GRECO (2010), Third evaluation round – compliance report on the Netherlands: Incriminations (ETS 173 and 191, GPC 2), Transparency of Party Funding.

GRECO (2012), Fourth evaluation round – evaluation report on the Netherlands on corruption prevention in respect of members of parliament, judges and prosecutors.

GRECO (2012), Third evaluation round – second compliance report on the Netherlands transparency of party funding.

GRECO (2015), Fourth evaluation round – compliance report on the Netherlands on corruption prevention in respect of members of parliament, judges and prosecutors.

GRECO (2018), Fifth evaluation round – evaluation report on the Netherlands on preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies.

House for Whistleblowers (2019), Annual Report 2019 House for Whistleblowers.

Members of the House of Representatives Maarten Groothuizen and Michiel van Nispen (2019), Motion about potential vulnerabilities in the law on judicial organization.

Minister for Justice and Security Ferdinand Grapperhaus (2020), Answer to the question of the Member of the House of Representatives Groothuizen about the report that the Ministry of Justice is failing businesses in corruption cases.

Minister for Justice and Security Ferdinand Grapperhaus and Minister for Legal Protection Stander Dekker (2020), Answer to questions of the Members of the House of Representatives Buitenweg and Van den Berge on criminal justice during times of COVID-19.

Minister for Justice and Security Ferdinand Grapperhaus and Minister for Legal Protection Stander Dekker (2020), Letter to the House of Representatives on Contours of the Approach to Address Backlogs in Criminal Justice.

Minister for Legal Protection Sander Dekker (17 September 2019), Letter to the House of Representatives about ways in which to create a strong justice system.

Minister for Legal Protection Sander Dekker (2020), Answer to questions of the Member of the House of Representatives Groothuizen about algorithmic analysis of judgments.

Ministry of Justice and Security, Integral assessment framework for policy and regulation. <https://www.kcwj.nl/kennisbank/integraal-afwegingskader-voor-beleid-en-regelgeving>.

National Ombudsman (2020), Proper Provision of Information is the Basis of Access to Justice – Bottlenecks in the Provision of Information about Penalties and Dismissal Decisions.

Netherlands Committee of Jurists for Human Rights (2020), Letter on concerns about corona measures in criminal justice. <https://njcm.nl/wp-content/uploads/2020/05/NJCM-brief-aan-minister-Grapperhaus-gewijzigde-aanhef.pdf>.

OECD (2015), The Netherlands: follow-up to the phase 3 report & recommendations.

Official Gazette of the Kingdom of the Netherlands (2019), Decree of 28 November 2019, amending the decree on police data concerning theme-processing to combat official bribery and amending the decree on police data for special investigative forces concerning theme-processing to combat human trafficking.

President of the Council for the Judiciary (2018), Letter to the Minister for Legal Protection on a rest of the digitalisation of justice.

Press Freedom Associations (2019), Dutch Senate: make a clear exemption for journalists. <https://www.freepressunlimited.org/en/news/dutch-senate-make-a-clear-exemption-for-journalists>.

Professor Tarlach McGonagle (2018), Agreement of the steering group on aggression and violence against journalists. <https://www.ivir.nl/publicaties/download/Agreement-of-the-Steering-Group-on-Aggression-and-violence-against-journalists-EN-translation.pdf>.

State Commission on the Parliamentary System in the Netherlands (2018), Democracy and the rule of law in equilibrium – final report of the State Commission on the Parliamentary System in the Netherlands.

Steering Group Disposition Times (2019), Disposition times in movement! – final report of the disposition times in movement project.

Supreme Court of the Netherlands, judgment of 13 September 2019, *Urgenda*, ECLI:NL:HR:2019:2007.

Tax Justice Network (2020), 2020 Financial Secrecy Index.

UN Human Rights Committee (2019), International covenant on civil and political rights: concluding observations on the fifth periodic report of the Netherlands.

Virtual country visit to the Netherlands in the context of the 2020 Rule of Law Report.  
World Economic Forum (2013-2015), The global competitiveness report.

## **Annex II: Country visit to the Netherlands**

The Commission services held virtual meetings in May and June 2020 with:

- Academic Expert
- Council for Public Administration
- Council for the Judiciary
- Dutch Association for the Judiciary
- Dutch Bar Association
- Dutch Media Authority
- House for Whistleblowers
- Institute for Financial Crime
- Ministry of Foreign Affairs
- Ministry of Justice and Security
- Ministry of the Interior and Kingdom Relations
- The Netherlands Association of Journalists

\* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU