

European Rule of Law Mechanism: input from Member States
2023 Rule of Law Report

I. Justice System

1. *Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)*

Recommendation: Continue efforts to improve the level of digitalisation of the justice system, in particular as regards publication of judgments and digital solutions for court proceedings.

In 2022, the Ministry of Justice and Security has continued to support the implementation of digital technology in the justice system. Progress has been made on the Judiciary's program 'More and responsible publishing' (in Dutch: Meer en verantwoord publiceren).

With regard to digitalization and the justice sector in the Judiciary: the Judiciary (de Rechtspraak) is conducting an exploration on how the upcoming e-Justice regulation will impact the Judiciary. In this (draft) regulation, the Judiciary will have to enable digital cross-border communication/ litigation for a large number of procedures. In the past year the Judiciary has mainly worked to optimise the data and registry services of the Judiciary for a number of Judiciary registers.

Both the district courts of Overijssel and Midden-Nederland, started a pilot called *Digital Access in the case flow of joint requests for divorce*. The pilot enables lawyers to use the secure web portal 'Mijn Rechtspraak'¹ to litigate digitally in this case flow. In addition, the Tax Chamber of the Arnhem-Leeuwarden Court of Appeal is conducting a Digital Access pilot in the state taxes case flow. This pilot enables litigants to litigate digitally in national tax cases via the secure web portal 'Mijn Rechtspraak'. The pilots are part of the Digital Access project, which aims to provide litigants and their representatives with accessible digital access to the Judiciary.

A. Independence

2. *Appointment and selection of judges², prosecutors and court presidents (incl. judicial review)*

As mentioned in last year's input the Council for the Judiciary explored the alteration of the composition of the Council. In 2022 a fifth, judicial, member has been appointed as a member of the Council of the Judiciary.

With regard to the appointment of members of court boards: A temporary procedure (valid until 31 December 2023) has been established. The evaluation of the procedure will be completed in the course of next year. A similar temporary procedure has been drawn up for reappointments (also valid until 31 December 2023).

With regard to the public prosecutor: no substantial changes have occurred since the publication of the Rule of Law report 2022. This topic is still under development.

3. *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)*

With regard to the retirement of judges: The Dutch government is working on a temporary bill that will allow retired judges to work as deputy judges until the age of 73, mainly to compensate for the age-related outflow. This draft bill has entered consultation. The bill is expected to enter into force in mid or late 2023. At the same time, it will be investigated whether certain elements of this bill can be made

¹ [Digitale Diensten van de Rechtspraak](#)

² The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts.

structural. Otherwise, no substantial changes have occurred since the publication of the Rule of Law report 2022.

4. Promotion of judges and prosecutors (incl. judicial review)

With regard to the Judiciary, the following change has been implemented: A judge may object to a refusal to appoint to another rectory office under the General Administrative Law Act. The decision on the objection can then be appealed (directly) to the Administrative High Court (Centrale Raad van Beroep).

5. Allocation of cases in courts

In 2021, the Judiciary has adopted a model Code in which the criteria for allocating cases to judges are formulated. The courts have published court regulations, which contain rules for the allocation of cases, taking into account the criteria as formulated in the Code. This system, i.e. the Code and the translation of its criteria into the court regulations, will be evaluated in 2023.

6. 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)

On 8 November 2022, a bill was published which will prohibit simultaneous holding of offices, including holding of the office of European Parliament. The explanatory memorandum of the bill refers to the GRECO-recommendation on this point. Additionally, the bill introduces an obligation for designated judges who, due to their position, have access to financial information that may put them at higher risk for possible conflicts of interest, to inform their management of their financial interests. The explanatory memorandum to this proposal refers to a suggestion – not a recommendation – made by GRECO in the fourth evaluation round.

7. 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)

With regard to the judiciary: The Ministry of Justice is working on a bill containing a system for the notification and research of a suspicion of wrongdoing or irregularities within the Judiciary and with regard to judges (whistleblower act). The aim is to put the bill into consultation in the first quarter of 2023.

With regard to the public prosecutor: No substantial changes have occurred since the publication of the Rule of Law report 2022.

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

No substantial changes have occurred since the publication of the Rule of Law report 2022.

9. Independence/autonomy of the prosecution service

No substantial changes have occurred since the publication of the Rule of Law report 2022.

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

In 2022 the Minister for Legal Protection proposed that the supervision of lawyers will be strengthened by the establishment of a single national supervisor (Landelijke toezichthouder advocatuur, LTA) that

will be responsible for the supervision of all lawyers in the Netherlands. This means that local deans will no longer be responsible for supervision in their own district. The establishment of the LTA is still being discussed with the legal profession to ensure the independence of the supervisor.

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

No significant developments have occurred since the publication of the Rule of Law report 2022.

B. Quality of justice³

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

With regard to court fees: A public consultation was held on a draft bill aimed at the reduction of court fees by 25% in civil and administrative law procedures.

With regard to legal aid: The government scheme called the 'RATZ' (de tijdelijke Regeling adviestoevoeging zelfredzaamheid) has been extended until April 1, 2023.

For citizens who have fallen victim to the childcare allowance affaire and whose children have been placed into custody a special legal aid arrangement has been set-up in 2022. Furthermore from January 1, 2023 the government will start a pilot to provide free legal aid to all parents who are confronted with a custodial measure. The court will refer the parent in these cases to a specialized lawyer. This pilot will run until June 30, 2024.

13. Resources of the judiciary (human/financial/material⁴)

The Council for the Judiciary reaches an agreement every three years with the Minister for Legal Protection on the budget for the Judiciary. A new agreement was closed in September 2022. In the period 2023-2025 the budget for the Judiciary will be increased by €155 million per year.

14. Training of justice professionals (including judges, prosecutors, lawyers, court staff)

No substantial changes have occurred since the publication of the Rule of Law report 2022 (in all fields).

15. 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)⁵

With regard to e-communication within the Judiciary: From 1 February 2022, the switch has been made from faxing to Secure Mailing. This marks the definitive end of the fax era for the Judiciary and legal professionals. With Safe Mailing, anyone who wants to send the Judiciary occasional confidential information can start a Safe Mail contact via Rechtspraak.nl. This can be done free of charge, without a subscription.

With regard to videoconferencing: Currently, temporary measures are in force for the use of videoconferencing in civil and administrative law procedures. The need for a structural law for the use of videoconferencing is under consideration. For criminal procedures, a structural law ("Besluit videoconferentie") came into force on November 25, 2022. The law prescribes that videoconferencing

³ Under this topic, Member States are not required to give statistical information but should provide input on the type of information outlined under section 2.

⁴ Material resources refer e.g. to court buildings and other facilities.

⁵ Factual information presented in Commission Staff Working Document of 2 December 2020, SWD(2020) 540 final, accompanying the Communication on Digitalisation of justice in the European Union, COM(2020) 710 final and Figures 41 to 49 of the 2022 EU Justice Scoreboard, does not need to be repeated.

may be used without the consent of the accused or his counsel if the judge determines that videoconferencing is necessary, not only in the interest of security of the hearing or interrogation, but also in the interest of security of transportation to and from the hearing or interrogation.

16. 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)

The Council for the Judiciary has explored an assessment tool to use algorithms responsibly. This tool is the Human Rights Impact Assessment (IAMA).

17. 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.

No substantial changes have occurred since the publication of the Rule of Law report 2022.

C. Efficiency of the justice system⁶

18. Length of proceedings

The improvement of processing times is a top priority of the Judiciary. In 2019, the Judiciary developed quality standards for processing times. To meet these quality standards, the Judiciary decided in 2020 that all courts will give priority to timely handling of cases. Supported by the Timely Justice Program (2020-2023), the courts are working on shortening the procedures, eliminating backlogs, better scheduling and planning, and increasing the predictability of processing times through better communication with the litigants. The program was developed in 2020 and in 2022 activities were implemented.

Other – please specify

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 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.

19. Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the anti-corruption framework (if applicable)

The Netherlands received two recommendations from the European Commission regarding the anti-corruption framework, which echo the recommendations received by the Group of States against Corruption (GRECO) in the fifth evaluation round. The European Commission recommended 1) to complete the revision of rules on revolving doors involving former ministers and state secretaries, including a two-year cooling-off period and restrictions on paid activities, and 2) to adopt a Code of Conduct for ministers and state secretaries including rules on gifts, secondary activities and lobbying, as well as effective monitoring and sanctioning.

⁶ Under this topic, Member States are not required to give statistical information but should provide input on the type of information outlined under section 2.

Rules on revolving doors involving former ministers and state secretaries

Following the introduction of post-employment measures for members of government via a parliamentary letter⁷ in November 2021, a bill concerning the post-employment measures for former members of government was submitted for public consultation in December 2022⁸. The bill states that a former member of government is obliged to ask for advice on new employment if the new function is a management or lobby position in the private and semi-private sector, and the former member of government would be active in the field of the former ministry. For the definition of the semi-public sector, article 1.4 of the Executives' Pay (Standards) Act applies. The former member of government will submit a questionnaire about the new employment. This procedure corresponds with the Dutch integrity system based on the principle of responsibility. By answering the questionnaire, the former member of government reflects on himself and the new function. The Advisory committee will use the questionnaire as guiding principle.

The Advisory committee will assess whether the new function of the former member of government includes a possible conflict of interests, by including in its advice:

1. Whether the former member of government will perform activities for a legal entity, with which the former government has been in contact before its resignation intensively and more than occasionally;
2. Whether the former member of government will perform activities for a legal entity that received individual or social benefit during the former member of government's time in office;
3. Whether the former member of government was in a position that allowed him access to business secrets of competitors, gain knowledge of unannounced government policy and other sensitive knowledge that may lead to an unfair or improper advantage for the new employer.

If the former member of government goes against the advice of the Advisory committee, the advice of the Advisory committee will be made public. Taking into account the severe impact that publication of the advice might have on a former member of government, publication of the advice of the Advisory committee is seen as a penalty by the Dutch government. The bill also includes a legal basis for the lobby ban and revolving door regulations.

The input received on the public consultation will be used to revise the bill, after which the bill will be submitted to the Council of State for advice. This should happen in the course of 2023.

Code of Conduct for ministers and state secretaries

The Code of Conduct for Members of Government has been adopted during the meeting of the Council of Ministers of the 16th of December 2022. The Code is publicly available.⁹ The Code of Conduct includes the elements mentioned in the recommendation. Various experts have been consulted prior to, and during, the development of the code of conduct. The government considers the process of developing a code of conduct equally important as the end product and committed itself to a careful and supported process. This contributes to the sense of ownership for members of government and integrates the code in the integrity culture.

Advice on the establishment of a supervision and sanction mechanism has been requested from the Advisory Division of the Council of State. One of the questions that the Council has been asked to answer is how a monitoring and sanction mechanism relates to the ministerial responsibility. Another question

⁷ <https://www.rijksoverheid.nl/documenten/kamerstukken/2021/11/29/kamerbrief-over-integriteitsbeleid-voormalige-bewindspersonen>

⁸ <https://www.internetconsultatie.nl/integriteitgewezenbewindspersonen>

⁹ The Code of Conduct for members of government is made public and can be found here:

<https://www.rijksoverheid.nl/actueel/nieuws/2022/12/23/gedragcode-integriteitsregels-voor-bewindspersonen>.

that arises is whether it is desirable to lay down the code of conduct in legislation. When the code of conduct will be laid down in legislation, it will be a lengthy and less flexible process to adapt the code, while the Dutch governments believes that the code of conduct should be a 'living' document that can be adapted when changing norms and values require so.

The Council of State published its advice on its website on the 28th of November.¹⁰ The Council of State stated that "the questions from the government focused on monitoring, enforcement and sanctions. This may suggest that integrity is primarily a legal issue and can only be effectively addressed through sanctions. However, integrity is about the internally felt need to pursue certain moral values and stick to them. This also applies when these values are under external pressure or when there is a temptation to deviate from them. Effective reinforcement of integrity as a moral value therefore requires a much broader set of instruments than enforcement and sanctioning. Above all, regular agenda setting, discussion of specific dilemmas, leadership and exemplary behavior should be central. The integrity of public administration and those who work for the government is of great importance for public trust in the government and needs permanent attention. This applies pre-eminently to members of government".

The Council of State assessed how the ministerial responsibility relates to monitoring and sanction mechanisms. In the Dutch parliamentary system, the relationship between parliament and government is based on ministerial responsibility and trust principle. A member of government must resign if the majority of parliament no longer has confidence in the member of government. This may include integrity issues. Parliament can pass judgment on this and, in view of the rule of trust, sanction as a last resort. In its advice, the Council of State concluded that from a constitutional point of view, there is no objection to the establishment of a committee in charge of internal supervision and enforcement. The Council of States acknowledges that the internal characteristic of the committee places limitations to its powers and positioning. However, the Council of State argues that if the committee were to handle complaints from third parties as well, it cannot be considered as internal supervision exclusively and should be seen as external supervision.

The Council of States argues that the establishment of a committee or an authority charged with external supervision and enforcement of integrity rules for ministers would be a profound change to the constitutional system. Such an authority could significantly affect the position of ministers, the prime minister and parliament and their mutual relations. In any case, a permanent authority would require an amendment to the Constitution. An authority that could impose sanctions (such as a fine) on ministers would be according to the Council of State the most far-reaching variant and in conflict with the Constitution. It would interfere with parliament's autonomy to pass judgement on the functioning and responsibilities of ministers. The government of the Netherlands, in accordance with the advice by the Council, does not see any room to implement an external or internal monitoring and sanctioning mechanism. The government considers the implementation of an external or internal monitoring and sanctioning mechanism undesirable for the reasons mentioned by the Council of State. Other measures taken by the government, such as the appointment of a confidential adviser and the organization of yearly integrity trainings, will further strengthen a culture in which integrity issues can be openly discussed and where integrity breaches can be prevented. The Minister of the Interior and Kingdom Relations responded in a parliamentary letter to the advice of the Council of State.¹¹

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

¹⁰ <https://www.raadvanstate.nl/actueel/nieuws/november/samenvatting-voorlichting-gedragcode/>

¹¹ Kamerstukken II 2022/23, 28844, nr. 251.

Recalling previous input, the Netherlands has undergone several international evaluations in the context of the anti-corruption framework. As the past three years have mainly focused on following up recommendations made in the context of international evaluations, no major policy changes have been made. The relevant evaluations are briefly discussed below. Please also see GRECO reports¹², OECD reports¹³ and UNCAC information in the public domain.¹⁴

OECD Working Group on Bribery

As mentioned in previous reports, the Organisation for Economic Cooperation and Development's Working Group on Bribery in International Business Transactions (OECD WGB) reviewed the Dutch anti-corruption efforts in 2020. On 17 June 2022, the Minister of Justice and Security, also on behalf of the Minister for Foreign Trade and Development Cooperation and the Minister of the Interior and Kingdom Relations, informed the Parliament about the progress of the follow-up of the recommendations.¹⁵ In October 2022, the plenary session of the OECD WGB determined the extent to which the Netherlands has followed up the recommendations so far. In 2020 the OECD WGB made 25 recommendations and now concludes that the Netherlands has fully implemented 8 recommendations, 11 recommendations partially and 6 recommendations have not been implemented. These findings are set out in a new report published by the OECD WGB on its website.¹⁶ In November 2022, the Minister of Justice and Security, also on behalf of the Minister for Foreign Trade and Development Cooperation and the Minister of the Interior and Kingdom Relations, informed the Parliament of these findings and the governmental response to the report.¹⁷ In that letter the government also outlines what further efforts will be made. Please see the report and the governmental response for a comprehensive state of play. Some specific points from this report are also discussed in the sections below.

GRECO

As previously reported, the Netherlands' first compliance report in the context of the fifth evaluation round of the Group of States against Corruption of the Council of Europe (GRECO), on preventing corruption and promoting integrity in governments (top executive functions and law enforcement agencies), was adopted in March 2021. GRECO concluded that some progress had been made on eight recommendations dealing with law enforcement agencies (LEAs), and no tangible progress had been made on eight recommendations regarding persons with top executive functions in the central government. In December 2022, the Netherlands again reported in writing to GRECO on its progress. In June 2023, a second compliance report will be adopted.

UNCAC

At the time of writing, no progress has been made. The evaluation of the UN Convention on Anti-Corruption (UNCAC) for the Netherlands is still ongoing; the virtual on-site visit took place in November 2020 and the executive summary and report have not yet been adopted. This was planned for the year 2021, but due to delays, adoption has been postponed. In December 2022, the UNODC secretariat informed the Netherlands that the idea is to finalize and adopt both the executive summary and the report in the first quarter of 2023. The formal publication of the executive summary will be during the next Implementation Review Group session in June 2023. The evaluation report will be made public on the website of the UNODC.

¹² [Netherlands - Pays-Bas - Group of States against Corruption \(coe.int\)](https://www.coe.int/t/e/treaties/035/035_e.php)

¹³ [Netherlands - OECD Anti-Bribery Convention - OECD](https://www.oecd.org/anti-bribery/netherlands-phase-4-follow-up-report.pdf)

¹⁴ [Country Profiles \(unodc.org\)](https://www.unodc.org/country-profiles/)

¹⁵ Kamerstukken II, 2021/22, 29911, nr. 354.

¹⁶ <https://www.oecd.org/daf/anti-bribery/netherlands-phase-4-follow-up-report.pdf>

¹⁷ Kamerstukken II, 2022/23, 29911, nr. 382.

Directorate General within the Ministry of Justice and Security focusing on combatting serious and organized crime with a subversive impact

In 2020 the Netherlands launched a comprehensive program focusing on combatting serious and organized crime with a subversive impact, including corruption, and established a Directorate General within the Ministry of Justice and Security to coordinate the program (*DG Ondermijning*). As mentioned in previous reports, this program has led to significant measures to reduce organized crime and continues to develop.

The coalition agreement of the government installed in 2022 secured additional funds to further strengthen the fight against organized crime, amounting to a sum of EUR 40 million in 2023, which will increase to a structural investment of EUR 100 million from 2025 onwards.¹⁸ This is in addition to the EUR 434 million of structural funding released for this purpose by the previous government on Budget Day at the end of 2021.¹⁹ These additional resources further broaden and deepen the approach to serious organised crime with a subversive impact, and also result in increased financing for those institutions that focus on financial crime, including corruption. For instance, additional investments are being made in an integrated approach to 'facilitators' who knowingly and voluntarily support criminal networks, legally or otherwise, and thus play a crucial role for criminal networks. Furthermore, other – legislative - measures, based for instance on the Italian approach to prevention of and the Italian fight against mafia-type organized crime are being taken to better tackle organized crime in the Netherlands. In addition, international efforts to combat serious and organized crime and its subversive impact are reinforced, the security of Dutch logistics hubs and 'mainports' in the fight against drug trafficking is bolstered, and substantial measures are made in order to prevent serious criminals from forming networks and carrying out criminal activities during detention and while on trial.

Scientific research regarding corruption risks mainports

As mentioned in the last report, there is an ongoing research by the Research and Documentation Centre (WODC) regarding corruption risks at the mainports of the Port of Rotterdam and Schiphol Airport. This report, contrary to what was previously communicated, will be published in spring 2023.

20. 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 measures taken to effectively and timely cooperate with OLAF and EPPO.

The approach to tackle serious and organized crime with a subversive impact has broadened considerably in recent years: from a regional strengthening movement where projects were set up per region in combination with a legislative agenda, to a joint cohesive approach to ensure that serious and organised crime with a subversive impact is combatted from all sides. The government is trying to achieve this by, among other things, strengthening and investing heavily in the law enforcement authorities and the judiciary.

In the context of anti-corruption, the following investments/measures are relevant:

The Public Prosecution Office (PPO)

¹⁸ [Coalitieakkoord 'Omzien naar elkaar, vooruitkijken naar de toekomst' | Publicatie | Rijksoverheid.nl](#)

¹⁹ [Prinsjesdag 2021: investeren in stabiliteit van de rechtsstaat | Nieuwsbericht | Rijksoverheid.nl](#)

The PPO (and the Judiciary) will receive additional structural budget to make the organisation future-proof, including in terms of capacity, agility, quality of information provision, digitalisation and innovation to improve chain cooperation. In total, including the additional resources for serious and organized crime with a subversive impact, the PPO will structurally receive around EUR 100 million in additional resources in the period from 2020 to 2027. It is expected that these investments, among others, will eventually create more room to investigate and settle (foreign) bribery cases. Despite these additional (general) investments, the OECD WGB expressed their concern “*about the potential lack of resources in the Dutch PPO*” and stated that it would thus “*continue to follow-up on this issue in light of proposed increases in funding announced by the government*”, regarding (specifically) *the continued low level of foreign bribery enforcement in the Netherlands*”.²⁰ The Netherlands will report further on these recommendations to the WGB in 2023.

National Internal Investigations Department (NIID: Rijksrecherche)

As mentioned in previous reports, a structural investment that the NIID received, is being used to strengthen its investigative capacity (tactical and intelligence). 23 FTE (full time equivalent) have already been recruited. In the first quarter of 2023, the NIID will recruit 3 more FTE. This means that the reinforcement plan will be completed within the planned period of 4 years.

Special Caribbean municipalities

Regarding the Special Caribbean municipalities (the BES-islands),²¹ the pilot of two NIID investigators stationed in the Special Caribbean municipalities of the Netherlands as of September 2020 was previously mentioned. This pilot ends in 2023. However, the government has already decided to structurally allocate funds to ensure the permanent placement of two *Rijksrechercheurs* from the NIID on and for the BES-islands.²² In the meantime, the pilot is internally evaluated. The results of this evaluation will be included in the discussions on the focus of the NIID for the Special Caribbean municipalities in the coming years. Furthermore, two investigators with financial expertise from the Fiscal Intelligence and Investigation Service (FIOD) will be permanently stationed on the BES-islands. The aim is to strengthen cooperation in the financial and economic field and to expand expertise in tackling money laundering and serious and organized crime with a subversive impact. Subversive crime and corruption often go hand in hand, so this placement will contribute to the fight against corruption. Finally, the public prosecutor’s office for the BES-islands (OM BES) will also be strengthened with an additional two FTE. With the extra FTE, the OM BES will be able to (better) handle the inflow of cases.

Financial Intelligence Unit the Netherlands

Over the years, there has been an increase in the number of corruption files of the Financial Intelligence Unit the Netherlands’ (FIU-NL). Several factors have contributed to this, such as investments in FIU-NL's capacity and the effectiveness and efficiency of its working methods, for example by working with queries and indicators. FIU-NL also has a close cooperation with the FIOD’s Anti-Corruption Centre (FIOD/ACC). In the past period, there has been a renewed focus on capacity and technical developments at FIU-NL. These investments could potentially contribute to the visibility of corruption-related transactions. Please see the input for indicator 26 to see what role FIU-NL plays in raising awareness among legal professionals.

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

²⁰ Page 3 (paragraph 3) and page 55 (follow-up issue 14(e)) of <https://www.oecd.org/daf/anti-bribery/netherlands-phase-4-follow-up-report.pdf>

²¹ Islands in the Caribbean Sea that have the status of public bodies within the Kingdom of the Netherlands.

²² Kamerstukken II, 2022/23, 29279, nr. 736.

No substantial changes have occurred since the publication of the Rule of Law report 2022.

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

Coherent policy on public integrity

The Minister of the Interior and Kingdom Relations informed the House of Representatives during a parliamentary debate and by means of a parliamentary letter of the intention to further develop the coherent policy on integrity. The parliamentary letter on the coherent policy will include the policy to strengthen integrity on national and decentral level, within the civil service and for politically elected officials. This parliamentary letter outlines the development of the integrity policy over the past decades, it gives an analysis of the current integrity policy and lastly it highlights integrity policy intentions for the future. The aim of this parliamentary letter is to provide a coherent and integrated approach to the integrity policy of the public sector. The intention is to share the parliamentary letter with the House of Representatives in 2023.

Please see the OECD WGB Phase 4 follow-up report²³ and letters to Parliament mentioned under A above regarding the OECD WGB and the measures taken in the context of foreign bribery as well as the points that need follow-up. The Netherlands will report further on these recommendations to the WGB in 2023.

Apart from these specific issues, the Netherlands will also continue its ongoing efforts to improve national anti-corruption policies, taking into account the prevailing Dutch legal principles. Various forms of corruption, such as bribing public officials, damage democracy and the rule of law. For instance, through corruption, organised crime can seriously undermine society. This requires a broad and comprehensive approach involving close cooperation within the government, and where possible with the private sector and civil society. In autumn 2022, the Ministry of Justice and Security started exploratory conversations with relevant government bodies to this end. Conversations with civil society have been scheduled for spring 2023 as well. Partly on this basis, the Netherlands will see how policy can be further improved or strengthened. The aim is to make society and economy more resilient to corruption and to better protect the integrity of the government. As promised during the yearly budget discussion of the Ministry of Justice and Security on 17 November 2022, the Minister of Justice and Security will put the topic of corruption on the agenda for the Ministerial Commission for Action on Subversive Crime (*Ministeriële Commissie Aanpak Ondernijning*) and will inform the Parliament of this topic in the two annual letters on serious and organized crime with a subversive impact.

In determining future policy, the recommendations from international bodies such as the WGB and GRECO and, in the future, UNCAC are taken into consideration.

B. Prevention

23. 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.

In recent months, several measures have been adopted to further strengthen the integrity policy for members of government.

²³ <https://www.oecd.org/daf/anti-bribery/netherlands-phase-4-follow-up-report.pdf>

Code of conduct for members of government As mentioned above, the Dutch government adopted a Code of Conduct for members of government. It includes all current rules, as well as the applicable principles and standards of conduct. The code includes rules on conflict of interest, lobbying, post-employment, regular training and confidential advise. The Code of Conduct is publicly available on the website of the Central Government.²⁴

The Code of Conduct for Government Officials makes it clear to everyone what can be expected of members of government. Members of government must do their work without any semblance of a conflict of interest. Decision-making should be open, fair and transparent. The risks of conflicts of interest are eliminated as much as possible by the rule that ancillary positions prior to the appointment as minister are terminated and financial interests are renounced. The code of conduct emphasizes the need to have an open culture, in which integrity dilemmas or particular situations can openly be discussed with each other. The code of conduct is an effective tool to have that conversation and support a culture in which members of government can address each other.

Yearly integrity training for members of government

The Code of Conduct for members of government stipulates that the Council of Ministers will discuss the Code of Conduct yearly during the Council of Ministers (art. 5 of the Code of Conduct). Before the meeting of the Council of Ministers, an integrity training will take place. This training may focus on a particular topic of the Code of Conduct.

During these yearly discussions and trainings, members of government will share dilemmas and learn from each other. This is necessary to maintain awareness and keep the code of conduct 'alive'. The discussion during the meeting of the Council of Ministers allows the government to strengthen the code of conduct where necessary. The government is considering whether the confidential adviser may play a role in these periodic discussions and trainings.

Confidential adviser for members of government

In the parliamentary letter from the Minister of the Interior and Kingdom Relations of July 11, 2022, the government announced that it would appoint a confidential adviser on integrity for members of the government. The confidential adviser will confidentially advise individual members of government on integrity matters. In the first half of 2023, the government will determine the exact tasks of the confidential adviser and appoint the adviser. The advice of the confidential adviser shall not affect the responsibility and accountability of the individual member of government.

Political assistants

GRECO stated in the fifth evaluation round of the Netherlands that the recommendations for members of government also apply to political assistants in situations where they can influence decision-making by members of government. In its evaluation report of the Netherlands in the fifth round, GRECO mentioned the special position of political assistants within the Dutch civil service. Political assistants are appointed by the minister they work for, in principle for the duration of the minister's term of office. In the exercise of their function, they consult on political matters with Members of Parliament and their assistants, and have a direct advisory role towards the ministers. Political assistants are subject to the same rules (i.e. the Central government Code of Conduct, GIR) as any other civil servant. The GIR includes rules about financial interests, secondary activities and dealing with third parties such as lobbyists. The question is to what extent the integrity policy for civil servants is adequate for these situations. The government is seeking independent expert advice on this matter. The result of the study is expected before the summer of 2023.

²⁴ <https://www.rijksoverheid.nl/documenten/rapporten/2022/12/23/bijlage-1-gedragscode-bewindspersonen>

Integrity rules for civil servants

For central government civil servants, the current set of integrity rules can be divided in two categories: rules that discourage interpersonal misconduct and rules to prevent conflict of interest. Interpersonal misconduct has a negative impact on the safe work environment of central government, which is essential to create a culture in which integrity dilemmas can be discussed openly. In recent years, a lot of efforts have been made to strengthen the safety of the work environment. With regard to interpersonal behavior, the efforts to combat discrimination and racism in the workplace were strengthened by a variety of measures, such as organizing events to enhance general awareness of the occurrence of racism, developing various bystander training modules, racism training of confidant advisors and vocalizing zero-tolerance on racism by the board of directors at the ministries. Furthermore, this year the Integrity Week focused on the role of the bystander. The Integrity Week is a yearly initiative organized by the Ministry of the Interior and Kingdom Affairs. 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.

The confidential advisers play an important role in the organization of the central government. In order to achieve more professionalism and to strengthen their position, a guideline for recruitment and uniform basic requirements for confidential advisers were developed.

The central government also has a directing role in providing a safe work environment for civil servants in all government layers: national, provincial and municipal. With the safe work environment program, it is the ambition to enhance an aggression- and violence free work space within government organizations. The program is based on three pillars: preventing incidents, acting adequately when incidents do occur and provide appropriate care after the incident.

24. General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing)

Study on the implementation of a lobby register

Following further study, the government intends to implement a lobby register for members of government. The study included the question of what exactly is meant by the term 'lobbyists', how the administrative burden can be kept to a minimum, and how experiences from other countries can be involved. It is also important that a lobby register does not unintentionally restrict citizens from getting in contact with a member of government. The study has been published in December 2022.²⁵ The government of the Netherlands will use the study as a basis for further decision-making and implementation. The government will report about the study and the further steps towards parliament in the beginning of 2023.

More transparency on meetings with third parties

Furthermore, the Dutch government recently amended the rules regarding the public agendas of members of the government. In early January 2022, a memorandum on the public agenda of members of government was discussed and approved. The memorandum includes seven recommendations designed to make the public agenda more user-friendly. For instance, the government now include contact information with the agenda items and provide a short description of the subject of the

²⁵ Kamerstukken II 2022/23, 36101, nr. 15.

agenda item in question. The agenda items on Rijksoverheid.nl will also be categorized. This makes it possible to search by keyword, for example 'interview', 'reception', 'work visit' or 'event'. It is also possible to search for a member of the government or the entire cabinet.

The Code of Conduct for members of governments also includes rules on dealing with third parties, including lobbyists. Art. 3.6 of the Code of Conduct states:

1. A member of government shall pursue transparency in contact with third parties.
2. A member of government shall provide insight into his agenda arrangements by publishing the agenda on the website of the government (rijksoverheid.nl). The member of government shall weigh the interests in publishing the agenda against the public interest and, upon request, shall offer openness as to what contacts the member of government has had with third parties in relation to certain files.
3. A member of government shall be aware of his/her private contacts and where these contacts may pose an integrity risk.

Report of financial interests

In the fifth evaluation round of the Netherlands by the Group of States against Corruption (GRECO, Council of Europe), GRECO recommended that members of government be obliged to declare their financial interests publicly on a regular basis. The recommendation by GRECO rightly calls attention to the situation in which a member of government during the period of office accepts, for example, a general title, due to the acceptance of an inheritance or a gift, business and financial interests that could lead to an appearance of conflict of interest. The Dutch governments takes the view that an annual update is not sufficient for this purpose. Upon accepting such an interest, a member of government must make a provision to this effect instantly and notify the House of Representatives accordingly. Since the acquisition of such interests will, by its very nature, take place in the personal sphere of the member of government concerned and the Prime Minister cannot acquire knowledge of this independently, this obligation rests on the member of government himself. The Prime Minister informed the House of Representatives about the new requirement to report new financial interest during the time in office on December 15, 2021. At the start of the new government in January 2022, the members of government were informed about the new requirement. The requirement to report financial interests during the time of office is included in the Code of Conduct for members of government (art. 3.5).

Political party financing

Since the publication of the 2022 rule of law report the Netherlands has taken significant steps to enhance transparency regulation for political parties. The proposed amendment to the Political finance act (Wet financiering politieke partijen, Wfpp), which was mentioned in the input of the Netherlands for the 2022 rule of law report, has passed parliament and has come into effect on January 1st 2023. In addition, the government of the Netherlands has opened up a new law, the Political parties act (*Wet op de politieke partijen, Wpp*), for internet consultation.²⁶ This law aims firstly to incorporate existing rules on political party financing and introduces new transparency regulations with regards to the internal organization and advertising. Second, the law opens up the possibility for political parties at the local level to apply for state subsidies and requires them to adhere to (transparency) regulations. Third, the law establishes an independent authority to enforce the rules in the political parties act. Finally, the law specifies the grounds on which the Supreme court of the Netherlands (*de Hoge Raad*) can decide to prohibit and dissolve a political party.

²⁶ <https://internetconsultatie.nl/wpp/b1>

25. 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)

In 2022, legislation concerning the strengthening of the integrity of appointed officials on local and provincial level (Wet bevorderen integriteit en functioneren decentraal bestuur) was accepted by the Dutch Parliament. On January 1st 2023, this bill entered into force. The government is also working on a proposal for a second integrity bill, that mandates a risk analysis of the integrity of certain prospective local administrators. The aim of this proposal is to provide more insight in possible integrity vulnerabilities of appointed officials as well as to contribute to the integrity awareness of all those involved. This proposal is being made in coordination with umbrella organizations of municipalities and provinces and should promote that the risk analysis is effective while also ensuring sufficient protection of personal data and private life. In the meantime, local governments are encouraged to implement a risk analysis on a voluntary basis. A substantial part of the local governments has already implemented a risk analysis on the integrity of appointed officials.

For central government: please see the answers given above, in particular the new bill concerning post-employment measures for former members of government, the code of conduct for members of government, the special adviser to the government and integrity training.

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

The legislative proposal to implement the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (EU Whistleblowers Directive) was discussed in the Dutch House of Representatives since 1 June 2021. The Dutch House of Representatives attached great importance to incorporate the evaluation of the current Whistleblowers Authority Act in the legislative proposal to implement the EU Whistleblowers Directive. There were also wishes in the House of Representatives regarding optional provisions of the EU Whistleblowers Directive. To achieve this, a member of the House of Representatives issued a memorandum with various proposals in April 2022.²⁷ In response to these proposals, the Minister of Interior and Kingdom Relations sent a second letter of amendment on 29 June 2022²⁸ and a third letter of amendment on 1 November 2022 to the House of Representatives with the intention to implement the Directive as soon as possible.²⁹ The House of Representatives passed the legislative proposal unanimously on 20 December 2022, after accepting some of the proposed amendments. The legislative proposal will be further discussed by the Senate in January 2023. Now the Senate only has to pass the proposal (the Dutch Senate has no competence for amending the legislative proposal).

In addition to the protection of whistleblowers, the prevention of whistleblowing is considered of great importance. Efforts are aimed at encouraging employers to ensure a safe working and reporting climate. That is why we started a campaign to encourage organizations to ensure a safe working and reporting climate. We have started a network with employers and other parties, such as scientists, the Whistleblowers Authority, trade unions and Transparency International Netherlands. In 2023, meetings will be organized for employers to share knowledge and experiences in the field of a safe working and reporting climate. The aim is that a network of employers can exchange good examples with each other.

²⁷ Kamerstukken II 2021/22, 36079, nr. 2.

²⁸ Kamerstukken II 2021/22, 35851, nr. 12.

²⁹ Kamerstukken II 2022/23, 35851, nr. 18.

This does not alter the fact that protection of whistleblowers against retaliation remains necessary. Whistleblowers deserve protection and support if they experience retaliation after making a report of wrongdoing. A potential whistleblower will make a report more quickly if he knows that he can call on support. This contributes to the (faster) resolution of wrongdoings. Various pilots have been started to support the whistleblower. One pilot, intended for employees of the national government, focuses on legal support for whistleblowers. Another pilot focuses on psychosocial support for whistleblowers, which started in September 2022. The Whistleblowers Authority can refer whistleblowers to an organization that specializes in psychosocial support. Finally, exploratory talks are currently taking place with the Legal Aid Board (Raad voor rechtsbijstand) about a pilot for legal support for all employees.

In 2023 another legislative proposal will be prepared with further improvements for the protection of whistleblowers. The Minister of the Interior and Kingdom Relations will also inform the House of Representatives before the summer of 2023, in anticipation of the establishment of a fund to support whistleblowers, about proposals for the financing of the fund.

Whistleblower protection

Within the National Police, special attention is also paid to whistleblowers and measures are taken to implement and communicate the rules and safeguards arising from the current Whistleblower Protection Act. Furthermore, additional reporting procedures are being made in order to report specific cases safely. Network meetings are also being held with public and private partners to exchange best practices. In addition, the National Police is merging the different types of confidentiality work to create more consistency in approach and unity. This includes a focus on further training and information to know how to deal with whistleblowers and whistleblower reports. The Police Whistleblowers Hotline and staff involved in confidentiality work have case-by-case consultations where possible to arrive at a jointly supported approach.

Encourage reporting of corruption

Recalling last year's input, all agencies involved in (criminal) investigations on corruption provide information on their websites regarding systems for reporting corruption. This is encouraged through awareness raising activities. A few specific examples of this are:

The Ministry of Justice and Security initiated conversations with FIU-NL, FIOD/ACC, the PPO, the representatives of the legal profession (the Netherlands Bar Association and the Royal Dutch Association of Civil law Notaries) and their supervisory authority to consider how awareness of reporting obligations for unusual transactions related to foreign bribery can be further increased. Specifically, legal professions are being considered, as such professions may play a role in setting up complex business structures. The measure currently being considered is to create guidance regarding the Anti-Money laundering (AML)-reporting obligations in connection with red flags for foreign bribery-based money laundering and to make this guidance part of the regular training and courses for the legal profession. These guidelines are created in collaboration with the FIU-NL, and intend to lead to reports of unusual transactions at the FIU-NL. Moreover, the involved parties are considering to develop a flyer or leaflet with illustrative cases to provide to the legal profession via newsletters, websites, et cetera. Finally, parties intend to raise awareness by strengthening the feedback-loop, more specifically through publication of concrete cases among the legal profession.

Moreover, together with the representative body for accountants, the FIOD/ACC is updating the guideline regarding corruption risks. More examples of corruption investigations and 'shams' will be included in the new guideline, so that accountants can better recognize corruption. The same goes for

banks; the knowledge document for banks is also updated and more examples are included. Please see also the Dutch WGB input regarding recommendation 4 for more information.³⁰ Apart from that, in the thematic corruption risks in the healthcare sector, specific attention is drawn to the possibilities of reporting corruption signals to the FIOD/ACC or to the criminal intelligence team in case an informant wishes to shield his/her identity (please see also the input for indicator 27).

The Ministry of Foreign Affairs has revised the guide 'Doing business honestly without corruption' in 2022, together with various stakeholders.³¹ The target group of this document consists of Dutch small-and-medium enterprises that are or want to become internationally active in countries prone to corruption. The guide was published in October 2022. In this edition of the guide, it is explicitly stated that the PPO does not make an exception for facilitation payments in its prosecutorial policy. In addition, the guide also focuses on the organisations that may be able to help prevent corruption, as well as the bodies to which enterprises can report, in case of encountering corruption. This guide is a joint publication of the Ministry of Foreign Affairs, the Ministry of Justice and Security, the Ministry of Economic Affairs and Climate and the following business organisations: the International Chamber of Commerce Netherlands, the Confederation of Netherlands Industry and Employers (VNO-NCW) and the Royal Association MKB-Nederland (an organisation for small-and-medium-enterprises (SME)). In early 2023, an official launch and awareness campaign aims to actively promote the guide.

The abovementioned examples are related to foreign bribery. With regard to domestic corruption, the NIID provides information on its website on ways to report (suspicions of) corruption.³² The NIID also encourages reporting during awareness raising activities, including presentations and discussions at conferences and network meetings. Furthermore, the NIID developed a corruption awareness tool (*Signalenkaart Betrouwbare Overheid*) for bodies of public administration.³³ This tool, published in 2022, addresses professionals working in the public administration and provides recommendations on corruption prevention and ways to report suspicions of corruption. In the second half of 2022, the NIID launched a specific program targeting larger municipalities to increase awareness about corruption in the public administration, to help prevent corruption from arising, and to lower the threshold to report signals and signs of alleged corruption.

27. 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), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

As mentioned in previous input, the Netherlands does not conduct an overall risk-assessment on corruption across all sectors to determine which sectors are most at risk. Each sector is responsible for setting up its own systems to prevent corruption. This decentralised approach has not substantially changed. Nevertheless, certain sectors are more at risk than others of being involved in corruption. Below, some measures taken in specific sectors that can be identified in this regard are mentioned.

In last year's input, it was mentioned that mainports can be seen as a risk regarding integrity violations

³⁰ <https://www.oecd.org/daf/anti-bribery/netherlands-phase-4-follow-up-report.pdf>

³¹ [Eerlijk zakendoen, zonder corruptie | Brochure | Rijksoverheid.nl](#)

³² [Lees hoe u misstanden kunt melden | Rijksrecherche.nl](#)

³³ [Signalenkaart Rijksrecherche | Brochure | Rijksrecherche.nl](#)

and corruption, as organized crime groups require (use of or access to) this infrastructure to support their activities. This year, the Directorate General *Ondermijning* (serious and organized crime with a subversive impact), presented the plan on organized drug crime through mainports, in which anti-corruption is an important topic. An additional EUR 5 million has been made available for this approach, making a total of EUR 29 million available for the mainports approach and the fight against organised drug crime. An example of a corruption-related investment in this approach is the investigation into the possibilities of screening high-risk occupations in ports, in cooperation with 'Gatekeeper', a project launched in the port of Rotterdam. The aim of the project is to improve the possibilities of screening port employees with access to crucial information or with an interesting role for drug criminals, because drug smuggling almost always requires help from within. In this project, the Ministry of Justice and Security, Justis (the Integrity and Screening Office within the Ministry), the General Intelligence and Security Service of the Netherlands (AIVD), Customs, the Port of Rotterdam Authority and private partners are working together. Justis is currently investigating the possibilities of a Certificate of Conduct (VOG) with a specific screening profile for the port (the Port VOG). In practice, the idea is that all persons who need to apply for a VOG because of their work in the port will be specifically screened for antecedents related to drug crime. The ultimate goal of the project is to introduce the results of this project nationwide.

Moreover, there is a risk that public officials could be used for or involved in organised crime. A number of cases have shown that criminal syndicates use civil servants. This may include, for example, officials to obtain false travel documents or information from government systems. In that context, specific measures have recently been announced to mitigate that risk. Below, some examples (non-exhaustive) are described. For example on 8 July, the State Secretary for the Interior and Kingdom Relations informed the Parliament about the occurrence of corruption among municipal civil servants in relation to the issuance of passports. In the letter of 8 July 2022³⁴ and a follow-up letter of 8 November,³⁵ the State Secretary outlined measures aimed at improving both processes and supervision in order to ensure the reliability of travel documents. Discussions with and information tools for officials involved in issuing travel documents will be used to raise the awareness needed to detect and prevent corruption. Other measures are focused on strengthening processes and technology to prevent mistakes and fraud as much as possible. Integrity is also a human resources topic and municipal governments are themselves responsible for addressing this topic and taking measures. In cooperation with the issuing authorities, the Ministry of Interior and Kingdom Relations is investigating and developing supporting measures to improve (anti-corruption) knowledge, processes and policy. Some of these measures may become legally required. Another example is the measures in place within the Tax and Customs Administration to prevent abuse and corruption within the organisation.³⁶ Within the Tax and Customs Administration, a lot of attention is paid to integrity. To start with, all staff who join the Tax and Customs Administration take the oath/sworn commitment. During the onboarding process for new personnel, every new employee is made aware of the applicable internal integrity rules. This is done in part by discussing dilemmas and providing a seven step plan of moral consideration. Attention is also paid to how confidential information should be dealt with. Within the annual employee interview cycle, integrity is a recurring topic of conversation between the employee and the manager. Furthermore, there is a permanent intranet page on integrity and internal leaflets have been developed, such as the leaflet "A Tax and Customs Administration with integrity". This leaflet refers, among other things, to rules about integrity that are included in the Personnel Regulations of the Ministry of Finance and is intended to properly inform employees. The online course 'Online Security Awareness Game' that all

³⁴ Kamerstukken II, 2021/22, 25764, nr. 137.

³⁵ Kamerstukken II, 2022/23, 25764, nr. 140.

³⁶ Kamerstukken II, 2022/23, 2022Z19265.

employees of the Tax and Customs Administration are required to take, focuses specifically on how to deal with company assets and confidential information, for example from the Tax and Customs Administration's systems. Naturally, Tax and Customs Administration employees are also bound by confidentiality declarations, which they must sign upon commencing employment, and the Code of Conduct Integrity for the digital working environment, which also includes rules on consulting and sharing information. These rules are regularly highlighted in team meetings and at departmental meetings, for example. Furthermore, the Ministry of Finance's reporting and advisory landscape allows for discussion/consultation and reporting of suspected integrity violations (and hence abuse and corruption).

Another specific corruption risk sector is the health care sector. The FIOD/ACC, and the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation (FP) are drawing specific attention to corruption in this sector, having witnessed several large pharmaceutical companies pleading guilty on bribery accusations abroad in the last couple of years which ended in large settlements. The companies are not based in the Netherlands but also supply Dutch hospitals.

Therefore, a corruption investigation in the healthcare sector is being used to create a broader effect and raise awareness in the sector. A media strategy was in place:

- A press release³⁷ was published about the searches in the criminal investigation;
- Interviews³⁸ were given by representatives of FIOD/ACC to daily newspapers and medical magazines³⁹ with more background information on different types of corruption and a call for reporting wrongdoings in the sector;
- Discussions have been and will be organized with the Executive Boards of several hospitals to raise awareness on corruption risks;
- Discussions have been and will be organized with the accountancy sector to draw specific attention to corruption signals in the health care sector.

Furthermore cooperation is sought to combat corruption in the healthcare sector with:

- The supervisory authority who is going to investigate the registration of payments to (legal entities of) doctors. Law enforcement will provide these supervisory authorities with red flags and indicators, based on experiences from the criminal investigations and settlements abroad.
- The Tax and Customs Administration is going to look into payments to (legal entities of) doctors from a fiscal perspective.

Based on the modus operandi uncovered in criminal investigations, but also from the large settlements cases in other countries, a set of indicators for banks and the FIU-NL is compiled to identify possible new corruption signals in the medical sector, in addition to the already ongoing query on this sector.

28. Any other relevant measures to prevent corruption in public and private sector

Please see the input for indicator 26 for an example of public-private partnership to prevent corruption in the private sector. Please see the input for indicator 27 for several measures to prevent corruption in the public and private sector. Below, specific other relevant measures (non-exhaustive) are listed.

³⁷ <https://www.fiod.nl/onderzoek-naar-corruptie-bij-medisch-specialisten/>

³⁸ <https://www.nrc.nl/nieuws/2022/07/01/fiod-snakt-naar-tips-over-misstanden-in-medische-sector-a4135341>

³⁹ <https://www.medischcontact.nl/nieuws/laatste-nieuws/artikel/in-de-strijd-tegen-corruptie-kijkt-de-fiod-ook-naar-de-medische-wereld.htm>

FIOD Anti-Corruption Centre / PPO / FIU-Netherlands

As mentioned in the input for indicator 27, a set of indicators is being compiled for banks and FIU-NL to detect possible new corruption signals in the medical sector, in addition to the already ongoing query on this sector. This set is going to be used to explore the possibilities in data driven investigations to detect corruption. This will be further explored in 2023.

NIID

In specific cases, following a criminal investigation, the NIID provides a report of findings and recommendations to boost the resilience of the public sector authority concerned. This is in the form of a report with tailored advice to address the detected (structural) weakness(es) in the system(s) of the respective public sector body.

National Police

In order to create a safe working environment, to make employees and the organisation more resilient and to fight corruption, a joint and structured approach is being developed. It is about connecting existing practices and initiatives and complementing them where necessary. An essential part of the approach is the national information coordination with regard to police corruption and cooperation with the NIID and the PPO in addition to other partners such as the National Alliance against Subversive Crime (NSOC, formerly the Multidisciplinary Intervention Team (MIT)) and Customs. Over the past period, initial discussions have taken place and the cooperation will be shaped further. The shaping of a new organisational component has not yet started.

Police employees have access to a lot of information. They are not allowed to query this information other than for concrete work purposes. A successful campaign to prevent private searches has been running in one of the units. This campaign has resulted in fewer private searches and the plan is to deploy this campaign nationwide.

NSOC

The MIT, as mentioned in previous input, continues in the fight against organised crime under the name NSOC. Cooperation between the National Police, the PPO, Customs, the Tax and Customs Administration, the FIOD, the Royal Netherlands Marechaussee and other units of the Ministry of Defence is necessary in order to share information and develop new methods to disrupt criminal structures and their earning models. The new focus will be on tackling criminal financial flows and the underlying business structures, such as money laundering through trade flows and financial service providers assisting criminals with businesses, corruption and violence. In addition, the NSOC will specifically look at logistics service providers for criminals, as the Dutch infrastructure with its large transport sector, airports and seaports is unfortunately also abused for illegal activities. This is the core task of the new partnership. After a period of 18 months, in January 2024, the new method will be evaluated and assessed based on the results and added value of the partnership.

The Netherlands' open and internationally oriented economy and excellent infrastructure, whether physical, digital or financial, makes for a good business climate, but also makes the Netherlands attractive and therefore vulnerable to (inter)national criminal organisations. These organisations could abuse the logistics chain to carry out illegal trafficking in goods and persons. The Transport Facilitated Organised Crime (TFOC) programme contributes to preventing abuse of the logistics chain through a targeted intervention strategy involving prevention, awareness and knowledge enrichment among transport companies. In 2022, TFOC's activities will be intensified to keep the transport sector resilient. For example, a serious game (Zelos) has been developed and brought to the attention enterprises in the transport sector, awareness materials have been translated into several languages and a tool has been

created to support training, information and guest lectures in secondary schools and for vocational training.

The Strong Airport Project

In last year’s input the public-private partnership ‘The Strong Airport Project’ was mentioned. In this project, special attention is paid to corruption and especially reporting corruption. This program is still ongoing. The past year, representatives of the Program have given multiple presentations concerning serious and organized crime with a subversive impact at different companies and organisations at the airport, have attended employees-markets with an information-stand to open the dialogue with airport personnel on serious and organized crime with a subversive impact and handed out various promotion materials that lead to the website and/or e-learning (such as key cords, flyers, and keychains). In February 2023 the professional network comes together to celebrate the 1-year mark of the campaign,

Corruption on the grounds of article 177, 178, 328ter, 363 DCC							Until Oct 2022				
	2017		2018		2019		2020		2021		
Influx OM											
Influx of suspects at OM	62		77		54		129		94		86
Decisions OM / settlements OM											
Unconditional dismissals	12	18%	14	20%	17	27%	21	25%	42	24%	31
- Technical	9		8		10		9		31		27
- Policy	1		3		5		9		6		2
- Administrative	2		3		2		3		5		2
Conditional dismissals	2	3%	-	0%	-	0%	-	0%	1	1%	1
Settlements (OM transactions art. 74 DCC and penal orders art. 257a DCPC)	10	15%	5	7%	14	22%	15	18%	21	12%	16
Decisions to summon	42	64%	51	73%	32	51%	49	58%	108	63%	40
Total OM outflow	66		70		63		85		172		88

to look back on successful initiatives concerning awareness and resilience, and to look forward to upcoming projects. One of these upcoming project are a VR-training for airport personnel, a cooperation with the ROC Airport College to develop themed lessons regarding serious and organized crime with a subversive impact and corresponding (film)materials, the production of various animations on the website that show how employees can be approached for criminal activities, and the launch of a communication-campaign with *Meld Misdaad Anoniem* (Report Crime Anonymously).

C. Repressive measures

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

No substantial changes have occurred since the publication of the Rule of Law report 2022 in terms of criminalization of corruption offences.

30. *Data on investigation and application of sanctions for corruption offences⁴⁰, 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 up to and including October 2022, but also an update of 2021. This is because there is always post-processing of the data.

⁴⁰ Please include, if available the number of (data since 2019): indictments; first instance convictions, first instance acquittals; final convictions; final acquittals; other outcomes (final) (i.e. excluding convictions and acquittals); cases adjudicated (final); imprisonment / custodial sentences through final convictions; suspended custodial sentences through final convictions; pending cases at the end of the reference year.

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

As mentioned in last year's input and in the Phase 4 evaluation of the OECD WGB⁴¹, 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 whistleblower protection regime that has faced criticism pose obstacles for detecting and sanctioning foreign bribery.

Legal privilege

Delays in foreign bribery investigations caused by legal privilege claims over large datasets obtained in the context of investigations are and will continue to be subject of the WGB Netherlands Phase 4 evaluation and follow-up. Recalling previous input, several developments have taken place and (urgent) measures have been taken regarding (the processes for assessing) legal privilege claims, but none of these have yet solved the problem of delays that are caused by the processes for assessing these legal privilege claims. The issue of legal privilege will also be addressed in the broader context of a reform to modernize the Dutch Code of Criminal Procedure. Entry into force of the new Code of Criminal Procedure is currently scheduled for 2026. Important in this respect is that case law on this topic is continuously developing. Please see the OECD WGB input for more detailed information. The measures described in that input will lead to an unambiguous and more qualitative working method. It is not expected that the measures will directly lead to a reduction of the duration of the process. There is still also a need for more capacity, for example for 'examining magistrates' who have to make ruling in proceedings about legal privilege claims.

Self-reporting

In last years' input it was mentioned that the WODC was requested to conduct research on the use of self-investigations and self-reporting and that is was expected to be concluded in March 2022. This research was delayed and will be made public in January 2023. A response from the government on the findings will follow.

Logging and authorization

Logging is an automated registration of data, which is intended to keep track of which events/actions have taken place within information systems by individual accounts. Logging and access management (authorisation) in information systems of public sector organisations is vital to deter unlawful access. Furthermore, log files enable NIID investigators to determine which actions and queries were carried out and which type of data was accessed. They are of great importance for NIID investigations into breach of confidentiality cases. Inadequate logging and access management have a negative impact on the duration of investigations and can lead to the closing of investigations.

32. Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders.

In last year's input a few administrative measures and sanctions that are being examined and considered to tackle serious and organized crimes with subversive impact, including corruption were mentioned. Below an update is provided.

⁴¹ <https://www.oecd.org/daf/anti-bribery/netherlands-phase-4-follow-up-report.pdf>

Bibob Act

The Public Administration (Probity Screening) Act (commonly referred to as 'Bibob Act') protects the integrity of Dutch municipal governments and other public authorities. The Bibob Act mainly enables these governments and authorities to assess the criminal risks regarding permit applications and other governmental decisions. Public authorities can do their own risk assessments and can – if necessary - request the National Bibob Bureau (referred to as 'LBB') for an extended assessment designed in a formal advice on the criminal risks.

In addition to amendments of the Bibob Act in 2020, a second set of amendments were made to the Bibob Act in October 2022. These focused on the expansion of the powers of the public authorities to exchange information with each other and with the LBB.

Firstly, like the LBB, public authorities now need to record the outcomes of their own risk assessments in a register that is managed by the LBB. Other public authorities are able to consult this register (by a request at the LBB) and can obtain information about the outcome of the assessments on subjects they investigate in their own assessment. This information also contains the name of the authority that carried out the primary investigation, so that the assessing authority can request this other authority for all available information (provided that conditions in the Bibob Act are met). Due to legal requirements of confidentiality, sharing this kind of information between public authorities was not possible until the amendment in October 2022. Secondly, if public authorities have information about subjects who (presumptively) have relations with criminal activities, they are now able to alert other public authorities to start a risk assessments on these subjects. This is called a 'tip'. A tip is only an indication for starting such a risk assessment; meaning that the public authority that received a tip always needs to do its own risk assessment before it can (for example) grant, revoke or refuse a permit. As part of the expansion of the powers of public authorities to exchange information, the amendments of the Bibob Act also improved the information exchange between the LBB, local authorities and the Dutch '*omgevingsdiensten*', and the exchange of fiscal information between the Dutch Tax and Customs Administration and public authorities.

The amendments also extended the scope of the Bibob Act with new governmental decisions: real estate transactions containing building leases or perpetual clauses, public contracts (tenders) for social and other services such as healthcare services and specific planning permits for construction projects.

The amendments of the Bibob Act in October 2022 will strengthen the powers of public authorities to prevent them from unintentionally facilitate criminal activities.

Other – please specify

In addition to input from previous years regarding criminal investigations, which started with information coming from pgp encryption investigations (Encrochat/Sky): these investigations have led to criminal cases against public officials (amongst others against officers from the Police, the Royal Netherlands Marechaussee and Tax and Customs Administration). These cases resulted in convictions of those officers. Several investigations are still ongoing.

A new educational program of the Tax and Customs Administration contains a module on anti-corruption to train employees on detecting corruption. The educational program contains theory about corruption, criminal law, various appearances of corruption, how corruption can be detected in the work of the Tax and Customs Administration and case discussion.

III. Media freedom and pluralism

33. Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

Not applicable

A. Media authorities and bodies⁴²

34. Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

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

35. 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 latest Rule of Law Report.

36. Existence and functions of media councils or other self-regulatory bodies

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

B. Safeguards against government or political interference and transparency and concentration of media ownership

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

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

38. Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licences, company operation, capital entry requirements, concentration, and corporate governance

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

39. Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners as well as any rules regulating the matter

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

⁴² Cf. Article 30 of Directive 2018/1808.

C. Framework for journalists' protection, transparency and access to documents

40. Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications

The *Tijdelijk Steunfonds voor Lokale Informatievoorziening* (Temporary Support Fund for locally provided Information) has been stopped in 2022 due to the course of the corona crisis.

To improve the safety of journalists, measures are being taken into consideration to shield visiting addresses of a company in the Trade Register and personal data in the Kadaster from persons who are faced with (probable) security risks.

As of 15 December 2022, the Trade Register Decree of the Chamber of Commerce stipulates that a visiting address of a company registered in the Trade Register can be shielded if there is a threat. In addition, the possibility is included that persons belonging to a certain profession and for which agreements have been laid down in covenants, can request that the visiting address be shielded if the threat can probably be expected as a result of a certain professional practice. Journalists are one of these professions. In the short term, it will be regulated by law that sole proprietorships can always apply for protection (threat or not). One requirement is that the entrepreneur registers a public postal address in the Trade Register. The purpose of this requirement is that the public can check who they are doing business with and are able to contact them.

In July 2022, the Minister of Justice and Security presented the bill to the Parliament to make the use of personal data for intimidating purposes ('doxing') a criminal offense. The protection of journalistic sources is regulated in the Code of Criminal Procedure. Journalists have the right of nondisclosure. Software to enter automated works and the interception of communications can be used legally in the context of the investigation of criminal offenses and national security in accordance with the legal requirements that comply with the applicable international (human rights) treaties, such as the Charter and other Union law. For the Dutch practice, the Instruction on criminal proceedings against journalists applies. This instruction describes the standards that the Public Prosecution Service or the investigative services operating under the authority of the Public Prosecution Service must observe when criminal proceedings are taken against a journalist. As far as it concerns the Dutch intelligence and security services, the Intelligence and Security Services Act 2017 (ISS Act 2017) applies, which gives a high level of protection for journalists. For example, if the use of an investigatory power aims at a journalist and could lead to the acquisition of information about journalists' sources, the legal requirements carry more weight and the Court of The Hague must grant permission.

In 2022, the Parliament issued a motion asking the government to make the current funding for *PersVeilig* and the *Flexibel Beschermingspakket Freelancers* (Flexible Protection Package for Freelancers) structurally available, to increase capacity where possible and to finance this together with employers.⁴³ *PersVeilig* and the Flexible Protection Package for Freelancers will be evaluated in 2023. This evaluation is used for the development of the arrangements for structural financing.

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

Threats and violence against journalists remain a concern despite the government's continued efforts to

⁴³ Kamerstukken II, 2022/23, 32 827, nr. 254.

counter this phenomenon. The State Secretary for Education, Culture and Science (OCW) and the Minister of Justice and Security jointly set out their measures in the 'Plan of action for press safety and press freedom' in a letter dated 29 June 2022 to the Parliament.⁴⁴ This approach focuses on journalists. The letter explains four pillars of measures:

1. support for PersVeilig en Flexible Protection Package Freelancers;
2. increase awareness among citizens about the role of journalism;
3. tackling online harassment;
4. investigating and monitoring specific problems.

With regard to the latter point, PersVeilig published an investigative report in December 2022 on threats against female journalists. The State Secretary for Education, Culture and Science and the Minister of Justice and Security will work with PersVeilig to identify possible follow-up actions and implement them where necessary.

The government is aware of the need for an integrated approach to tackle aggression and intimidation of journalists and other media actors. The current policy focuses on prevention, repression and awareness. Many different organisations are involved within the government, as explained in the governmental response to the annual report of the *College voor de Rechten van de Mens* (Netherlands Institute for Human Rights).⁴⁵

The PersVeilig Protocol (2019) contains agreements on investigation and prosecution with the aim of taking effective action in the event of incidents of aggression and/or violence against journalists. Examples of these agreements are: a high priority status for cases, unambiguous registration of cases and an increased punishment in accordance with the Public Prosecution Service's directive for criminal procedure instructions and the applicable guidelines. The implementation of the PersVeilig Protocol is generally going well. Journalists receive a priority status from both police and Public Prosecution Service. Crime reports are processed with priority by the police, cases are registered unequivocally, victims are kept well informed of their case and prosecutions are initiated expeditiously. In instances in which the case is not dealt with properly, a solution can be found quickly through a report to PersVeilig or the Steering Group Aggression and Violence against Journalists. Also, the central contact points within each police unit for aggression and violence against journalists and employees with a public task play an important role. Through continuous internal communication, the police ensures that police employees remain informed of the existing agreements and act in accordance with the agreements in the PersVeilig Protocol. As mentioned before, PersVeilig, the Flexible Protection Package for Freelancers, the *Balie Persvrijheid* (Press Freedom Desk) and the Protocol PersVeilig will be evaluated in 2023.

42. Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

On May 1, 2022, the new Open Government Act (*Wet open overheid; Woo*) took effect which replaced the Freedom of Information Act (*Wet openbaarheid bestuur; Wob*). With this new act, the government shows its commitment to improving transparency and access to information. Currently, the new act is being implemented by national and regional governments. For example, last year all ministries appointed a Woo contact person where citizens and journalists can ask questions regarding the

⁴⁴ Kamerstukken II, 2021/22, 31 777, nr. 32.

⁴⁵ Kamerstukken II, 2021/22, 2022Z25966.

availability of public information. In addition, the Advisory committee public access and information management was established and is operational.

In the past year, several steps have been taken to increase government transparency, but at the same time the government acknowledges the complex challenges raised by the Commission in last year's report regarding the delays in processing requests for information and incomplete answers. Among the measures taken to accelerate processing requests for information, are implementing improved software to redact information that is excluded under statutory exemptions, and other ICT tooling to efficiently process, deduplicate and pseudonymise large amounts of information. Besides, the government is investing in tools and human resources to improve the state of the government's information management.⁴⁶ The government realises that these challenges will not be resolved overnight, because of the amount of extensive and complex information requests involving a large number of documents combined with the current state of the national government's information management.

In addition to these measures, the government wants to take other steps in the coming years to improve transparency and access to information. For example, an implementation test (invoeringstoets) of the new legal framework will be carried out in 2023 and data on the handling of information request will be added to the annual management report (Jaarrapportage Bedrijfsvoering Rijk). The implementation test identifies bottlenecks in the implementation of the new legal framework for administrative authorities and people using the Woo. The results can contribute to improving the feasibility of the legal framework. Furthermore, various international working visits have been made to learn how other countries implemented their freedom of information acts. Additionally, the results of a comparative legal study on the access to information in six different countries is being analysed to derive lessons learned. The insights that emerge from these initiatives can contribute to increasing transparency and access to government information in the Netherlands.

Finally, 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. This new policy aims to provide both Houses of Parliament and society with more insight into how policy choices are made by the government. As of September 2022, this policy has been further expanded. Since then, the underlying internal documents are added to every document sent to parliament.⁴⁷ In the coming years, the Netherlands is committed to move towards increasing active disclosure of information and public documents.

43. Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

On a national level, no substantial changes have occurred since the publication of the Rule of Law report 2022. As mentioned in last year's report, PersVeilig (Press Safety), a joint initiative of the police, the public prosecutor and journalism interest groups, aims to strengthen the position of journalists against violence and aggression on the street, on social media and against legal claims by means of serving as a contact point and by providing information and training to journalists. Furthermore, journalists can turn to the Balie Persvrijheid (Press Freedom Desk), a legal desk where journalists can ask for legal assistance (free of charge). The service does not only include help with possible SLAPP cases, but also (preemptive) advice on and help with for example copyright issues. Both Persveilig and the Balie Persvrijheid receive

⁴⁶ Kamerstukken II 2021/22, 33328, nr. 43.

⁴⁷ Kamerstukken II 2021/22, 28362, no. 59.

government subsidies for these activities. Neither have reported any occurrences of or calls for assistance on SLAPP related cases in 2022. However, this does not guarantee that no occur in the Netherlands. Further research is carried out this spring through a dedicated survey by the Netherlands Union of Journalists. Furthermore, a new initiative to safeguard the freedom and safety of press is a legislative proposal to prevent “doxing” (sharing personal data to intimidate). This proposal was published in July 2022 and is currently debated in parliament?⁴⁸

In 2022 the Commission published an anti-SLAPP recommendation and a proposal for a Directive aimed at improving protection of SLAPP-targets in the national context and in cross border situations respectively. As mentioned, there are currently no indications that SLAPPs occur in the Netherlands and under its national civil (procedural) law it is already possible to act against cases where it becomes evident that (procedural) law is abused by the claimant. However, the Netherlands supports the aim of better protecting SLAPP-targets in the EU in national and cross border settings. The Netherlands actively participates in the ongoing work on improving these anti-SLAPP initiatives, in accordance with its national position⁴⁹, with the aim of ensuring effective protection of the targets of SLAPPs whilst maintaining balanced access to justice, as emphasized in the JHA council of December 2022.

Other – please specify

IV. Other institutional issues related to checks and balances

44. Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable)

In the 2022 Rule of law report, the Netherlands was given the recommendation to continue efforts to ensure a comprehensive follow-up on the childcare allowances affair to address the potential structural issues, involving all relevant state authorities.

The information provided for the 2021 and 2022 report include a description of the parliamentary report ‘Unprecedented Injustice’ after a parliamentary inquiry into problems concerning childcare 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. The information provided for the 2021 and 2022 report, as well as the response to the rule of law report give an overview of the measures announced to strengthen the rule of law in the Netherlands.⁵⁰ The government continues its effort regarding the announced measures. Parliament is frequently informed about the progress of the recovery operation regarding the allowance affair, see for example the latest progress report.⁵¹ Parliament is also frequently informed about the progress and state report of the government-wide program Work on Implementation (Werken aan Uitvoering). This program is important to improve the help to citizens and entrepreneurs through appropriate services and tackling unintentional, but in practice harsh, laws and regulations.⁵² The Parliamentary Committee of Inquiry on fraud policy and government services (Parlementaire Enquêtecommissie Fraudebeleid en Dienstverlening) started in 2022 and will start with the first preliminary interviews shortly.⁵³ The Parliamentary Committee of Inquiry will investigate how

⁴⁸ Kamerstukken II, 2021/2022, 36171.

⁴⁹ Kamerstukken 2021/2022, 22112, nr. 3457.

⁵⁰ See Kamerstukken I 2021/22, 35295, nr. AC, p. 17-18 and Kamerstukken II 2021/22, 21501-02 nr. 2413.

⁵¹ Kamerstukken II 2022/23, 31066, nr. 1128.

⁵² Kamerstukken II 2022/23, 29362, nr. 308.

⁵³ Kamerstukken II 2022/23, 35867, nr. 3.

the government combats fraud. In doing so, the committee examines what went wrong in the provision of services to citizens and whether citizens had the opportunity to challenge government decisions. To investigate the fraud policy, the committee of inquiry will examine, among other things, the role of the House of Representatives and the use of discriminatory risk profiles.

One of the aforementioned measures is that the government is working on an amendment to the General Administrative Law Act (Awb) for the purpose of making it more human-centred. A more human-centred Awb would strengthen its ability to protect and safeguard the rights of the people in relation to the government. This Bill will be forwarded to the judiciary, municipalities and governmental organizations for an informal consultation in the first half of 2023. The aim is to provide an early possibility to make a first impact assessment of the consequences of the proposal. The informal consultation will be followed by a formal and (internet)consultation which gives stakeholders and everyone else interested the possibility to react via www.internetconsultatie.nl, the results of which will be publicly available. Furthermore a discussion session is organized with people who have experiences to share about situations which fall under the current General Administrative Act.

As mentioned in the rule of law report 2022, a State Committee on the rule of law was established. The State Committee on the rule of law is also part of the measures taken after the childcare allowances affair. The beginning of 2023 will be used for the preparations for this State committee in close cooperation between the Minister of the Interior and Kingdom Relations, the Minister for Legal Protection, representatives of both houses of parliament and representatives of the judicial power. It is expected that the State Committee will present its analysis and recommendations by the first of June 2024. It is foreseen that the State Committee will present a fundamental analysis, accompanied by practical answers and solutions. The work of the State Committee will contribute to tackle imperfections in today's functioning of the rule of law in the Netherlands.

A. The process for preparing and enacting laws

45. Framework, policy and use of impact assessments and evidence based policy-making, stakeholders⁵⁴/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

The aim of internet consultation is to provide citizens with an opportunity to express their thoughts on proposed legislation through www.internetconsultatie.nl. To achieve this, the government conducts research to improve the user experience of this website. In a recent survey more than 400 respondents participated and gave their feedback on how to make the website more accessible.

The previously announced revision of the Dutch Regulatory Impact assessment (het Integraal afwegingskader voor beleid en regelgeving, het IAK) will lead to a new instrument in 2023: het Beleidskompas. As in the IAK, 'het Beleidskompas' will support the policy officer in policy preparation. Het Beleidskompas will become the central working method in policy preparation, including for proposals for policy and regulations that are not submitted to parliament. In 'het Beleidskompas', the central question is: "Who are stakeholders?". By asking this question again in each phase, its importance is underlined and it is expected that cooperation with various parties, such as citizens, implementing organizations, umbrella organizations, supervisors, companies and NGOs will be further strengthened.

⁵⁴ This includes also the consultation of social partners.

In addition to this central question, 'het Beleidskompas' will use five questions to help clarify the policy problem, determine the aim and map out the consequences. For example, it requires thinking about feasibility and the effects of plans on, among others, implementing parties and citizens. The website, which is still under construction, will help to properly apply 'het Beleidskompas'. This website will inform policymakers of the importance of knowledge-based policy-making.

The legal protection aspect is already anchored in instruments that contribute to the quality of policy and regulations, such as 'het Beleidskompas' and the Instructions for regulation. Following a motion from Parliament, it will be examined in the near future how more explicit attention can be paid to the accessibility of legal protection.

In conjunction with the government-wide work agenda for public services, efforts are also being made to realize more and better cooperation between policy, legislation and implementation so that all relevant information is available at an early stage in order to make well-considered choices about new policy or legislation. This joint effort should ensure that the importance of policy and legislative quality becomes more central than hitherto in official and political decision-making. The existing government-wide legislative review will be strengthened by selectively and proactively contributing ideas at an early stage about the quality of proposals that are complex and can have major social consequences. The focus is on the 'human dimension', 'ability to do' and 'feasibility'.

46. 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)

When war broke out in Ukraine, a large number of displaced persons arrived in the Netherlands virtually overnight. Emergency legislation was used to lay down rules for how mayors and municipalities should manage their reception. A bill, required under emergency law, to continue the emergency legal framework was introduced and passed by the Parliament, and is currently pending in the Senate. Furthermore the government currently prepares a regular, temporary bill on the reception of displaced persons from Ukraine, which is to succeed the use of emergency legislation.

47. Regime for constitutional review of laws

As explained in the Dutch input for the Rule of Law Report 2021, article 120 of the Dutch Constitution prescribes that the courts cannot review the constitutionality of Acts of Parliament and treaties. However, as announced in the coalition agreement, in 2022 the Dutch government examined the question of constitutional review in the Netherlands, and assessed which form would best suit the Dutch legal system. In a letter to Parliament, the government expressed its preference for a system wherein every judge can review the compatibility of Acts of Parliament with certain freedom rights guaranteed by the Dutch constitution. For further details, reference is made to the letter to Parliament.⁵⁵ In the Dutch legal context, the Government believes this to be the most suitable system for improving the legal protection of citizens. In 2023 the Government, in dialogue with Parliament, will further work towards a system of constitutional review.

48. COVID-19: provide update on significant developments with regard to emergency regimes/measures 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*

⁵⁵ Kamerstukken II 2021/22, 35925-VI, nr. 169.

- *processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances*

Judicial and constitutional review

First Tranche amendment to the Public Health Act (Eerste tranche wijziging Wet publieke gezondheid)

Partly based on the advice of the Council of State (*Raad van State*), it has been decided to implement the necessary amendments to the Public Health Act in tranches (phases) considering that an integral overhaul of the Public Health Act would take up too much time. Therefore the first tranche of the amendment to the Public Health Act creates a structural legal framework for combating infectious diseases belonging to group A1 (classification for diseases with pandemic potential), or a direct threat thereof, in order to act decisively and adequately in the short term.

To this end, a new legal framework/basis was created for enacting collective measures including safeguards for the application of these legal powers. Said powers should be regarded as “dormant” law. They only can be activated upon designation of an infectious disease belonging to group A1, or after an infectious disease has been designated as such. Infectious diseases with pandemic potential can be placed in group A1 if it is in the best interest of the public health. The activated powers can only be used if this is both necessary and proportionate to combat (or a threat thereof) an epidemic of such an infectious disease.

Involvement of both Houses of Parliament is guaranteed when designating an infectious disease belonging to group A1, and when activating (and inactivating) of powers for enacting collective measures. This takes the form of the so-called preliminary procedure (*voorhangprocedure*) in which drafts of the ministerial decree – which must be followed up without delay by a proposal for an incorporation law – are notified in advance (a period of one week) to both the Parliament and the Senate. In the case of immediate urgency, a follow-up procedure (*nahangprocedure*) can also be followed, after which both the Parliament and the Senate will be informed within two days of adopting the regulation. If the Parliament does not agree with said regulation, it will lapse by operation of law (*ipso iure*). The Senate has no right of consent, but can exercise control by inquiring and submitting motions.

Court cases

Legal disputes were again mainly about whether the legal basis on which a measure was based was also a solid legal basis for the intended purpose. All cases were ruled in favor of the Dutch State. Most important among these cases concerned the temporary curfew that was imposed in January 2021 based upon the Civil Authorities (Special Powers) Act. The Supreme Court ruled on 18 March 2022 to uphold the Appeals Court’s decision meaning that the ruling did not contain any error of law and that the use of emergency legislation was allowed.⁵⁶

Other noteworthy legal disputes during 2022 pertained to the mandatory face mask rule and a request by the hospitality industry for disadvantage compensation caused by the corona measures. The mandatory face mask rule was already abolished on 20 May 2022, therefore the judge of the District Court of Den Haag ruled that plaintiffs already achieved the purpose of their legal claim thus declaring their claims inadmissible.⁵⁷

The Hospitality Industry (*Koninklijke Horeca Nederland*) held the Dutch State liable because it did not

⁵⁶ <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2022:380>

⁵⁷ <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2022:11258>

provide disadvantage compensation due to "the corona measures", on top of the generic corona support measures. The court of Den Haag dismissed all claims.⁵⁸

Lastly, a writ of summons has been served on 6 December 2022 regarding the unlawfulness of using a Covid Certificate during the period of 25 September 2021 till to 25 February 2022. The case is still pending.

Oversight by Parliament of emergency regimes and measures in the context of COVID- 19 pandemic *Scaling down measures (back to normal)*

The start of 2022 is characterized by scaling down of measures still in place after the announced "hard lockdown" in December 2021. The lockdown was deemed necessary to combat the Covid-19 pandemic, as a precaution for the still unknown Omicron variant and the already existing pressure on the Dutch healthcare system.

On 25 February 2022, among other things, the use of the Covid Certificate (*coronatoegangsbewijs*), adjusted opening hours, and the distance rule of 1.5 meters, were no longer mandatory. However, the obligation of wearing a face mask in public transport and at airports was still in place, and regarding indoor events with more than 500 people unseated, 'Testing for Access' (1G policy) was still required. These measures expired on March 23, 2022, which also marked the end of the last existing corona measures in the Netherlands.

End of Temporary Act Measures Covid-19 (Tijdelijke wet maatregelen Covid-19)

Partly due to aforementioned developments, on May 17, 2022, the proposal for the 5th extension of the Temporary Measures Act Covid-19 was rejected by the Senate. It was intended to be used only temporarily when measures were indispensable to prevent further spreading of the corona virus. Now that the indispensability was no longer as present and the First Tranche Amendment to the Public Health Act was due to follow shortly, it was reasoned by the Senate that the Temporary Measures Act Covid-19 was no longer deemed necessary.

However, without this legal basis, it was no longer possible to take any collective mandatory measures to combat the Covid-19 pandemic if the epidemiological situation at any point might worsen. In that case the use of emergency ordinances remained the only viable instrument for taking collective measures, the use of which was already under scrutiny.

Processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

Concerning processes related to lessons learned/crisis preparedness in terms of functioning of checks and balances, there were three separate reports drafted highlighting this subject.

The first report has been drawn up under the coordination of the Scientific Council for Government Policy (*Wetenschappelijke Raad voor het Regeringsbeleid*) on 4 September 2022, in collaboration and with many other advisory councils and bodies. In this report five scenarios are presented with possible futures for the development of the coronavirus and further elaborated for thirteen social domains. Six main themes are identified as overarching lessons that can be learned from thinking through the various scenarios: 1) measures and decision-making in advance; 2) proactive communication and thinking from the citizen's perspective; 3) the importance of alertness and maneuverability; 4) the importance of a robust digital infrastructure; 5) an eye for vulnerability; and 6) the importance of international

⁵⁸ <https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2022:11457>

cooperation. Finally – in addition to a wide range of theme-specific lessons and recommendations – the conclusion provides three important general points for attention for future corona policy: 1) prepare for epidemiologic severe times when the epidemic is dormant; 2) take broad social consideration into account; and 3) do not shy away from complicated choices.

In addition to the abovementioned report, on 30 September 2022, the Social Impact Team (*Maatschappelijk Impact Team*) presented the advice 'Fit for the autumn: attention points for the Social Impact Team in the long-term approach to COVID-19'. In this first advisory report, the Social Impact Team provides short- and long-term attention points to determine what may still be missing in the preparation for a new 'corona season' in the light of the five scenarios already distinguished by the Scientific Council for Government Policy.

Lastly, the second report of the Dutch Safety Board (*Onderzoeksraad voor veiligheid*), 'Approach to the Corona crisis, Part 2: September 2020 – July 2021.' was published on 12 October 2022, including a recommendation for RIVM (The Dutch National Institute for Public Health and the Environment). The recommendation addressed to the RIVM concerns drawing up 'rules of procedure' for the Outbreak Management Team (*OMT*). The RIVM is currently working on drawing up such rules of procedure. The resulting document will include agreements and principles that were already present, as well as more recent insights.

B. Independent authorities

49. 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 institutions⁵⁹

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

50. 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.

The National Ombudsman stated that he should be competent to handle all complaints that deal with the performance of public duty, even if that duty is partly outsourced to a private organization.⁶⁰ At present, the National Ombudsman experiences limitations in this regard because his authority is linked to acts performed by administrative bodies.

In response, the Minister of the Interior and Kingdom Relations promised to examine whether it is necessary to expand or otherwise clarify the powers of the National ombudsman in the laws and regulations regarding such public tasks.⁶¹

C. Accessibility and judicial review of administrative decisions

51. Transparency of administrative decisions and sanctions (incl. their publication and rules on

⁵⁹ Cf. the website of the European Court of Auditors:

<https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>

⁶⁰ Budget debate Ministry of the Interior and Kingdom relations, 2023, 12 October 2022, p. 111013

⁶¹ Budget debate Ministry of the Interior and Kingdom relations, 2023, 13 October 2022, p. 12317.

collection of related data)

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

52. 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 addition to last year's input, a number of possible innovations and experiments to enhance the law on administrative procedures are currently being explored, which aim to, among others, strengthen the position of citizens in appeal proceedings and contribute to timeliness of administrative decisions. Furthermore, as a part of the Program Renewal of the Legal aid system at the Ministry of Justice and Security, the program Citizen-centric government aims to improve the trust between citizens and government within the scope of Administrative law. The program undertakes various actions to reduce the number of, and preventing unnecessary Administrative law procedures. Among others, a project concerning the conduct of the government in administrative procedures has started, research is being carried out to gain more insight into the mechanisms that can trigger unnecessary procedures, there is an ongoing pilot concerning the strengthening of the collaboration between Legal services (het Juridisch Loket) and the Netherlands Employees and Insurgence Agency (UWV), and dialogues focused on bottlenecks in legislation, regulation and other (organisational) elements that influence the ability of administrative authorities to work citizen-centred are being held.

53. 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

As of January 1st, 2023 six judgments of the European Court of Human Rights remain to be (partly) implemented. The implementation of ECHR-Judgments, which often require changes in legislation, took three years on average.

54. Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

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

55. Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or on-line –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

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

56. Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

The Council of State has rendered advice in November 2021 on a proposed change to amend the Wet transparantie maatschappelijke organisaties (Wtmo). There have been no public developments since.

57. Rules and practices on the participation of civil society organisations and human rights

defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

The Dutch authorities actively invite and encourage civil society organisations and human rights defenders to participate in the process of developing government policies and drafting legislation. In the input for indicator 45, it has already been pointed out that in 2023, the *Beleidskompas* will be launched. Like its predecessor (the *Integraal afwegingskader voor beleid en regelgeving*) the *Beleidskompas* offers several instruments and methodologies that enable civil servants to set up a dialogue with civil society organisations and human rights defenders in the decision-making process. Since the *Beleidskompas* stimulates a multi-disciplinary approach, the set-up of such dialogues allows for different perspectives to be put forward. Furthermore, mid 2022 the *Invoeringstoets* was introduced. This *ex durante* assessment aims to improve the quality of legislation for both the target population and the administrative agencies. To that end it enables real time evaluation, thereby providing useful *prima facie* insights on the effects of recently enacted legislation. Where appropriate, civil society organisations and human rights defenders can contribute to these assessments.

D. Initiatives to foster a rule of law culture

58. 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, contributions from civil society, etc.)

As mentioned before, the State Committee on the rule of law is set up and will start its work shortly.. It is expected that the State Committee will present its analysis and recommendations in the course of 2024. It is foreseen that a fundamental analysis will be accompanied by practical answers and solutions. The work of the State Committee will contribute to tackle imperfections in today's functioning of the rule of law in the Netherlands.

Also, in 2023 it will be 175 years since the revision of the Constitution in 1848 was promulgated and 40 years since the constitutional revision of 1983. Both revisions have had a major impact on the current Dutch constitution (for example: establishment of parliamentary democracy, ministerial responsibility, freedom of education, fundamental social rights). The Constitution is essential for our democratic constitutional state, for our society and therefore these anniversaries should be celebrated. The Minister of the Interior and Kingdom Relations set out in a parliamentary letter through which activities the government and several organizations want to give attention to this historical celebration.⁶² These activities will also be used to raise attention to the Constitution itself and improve the knowledge of people in the Netherlands about the Constitution – for example through education.

In 2022 two dedicated debates about the (EU) rule of law were held in Parliament (on June 1 and on February 8). Two more debates are planned on January 19 (rule of law situation in the Netherlands) and on February 1 (rule of law developments in the EU). The topic is regularly touched upon during other debates.

Other – please specify

⁶² Kamerstukken II 2022/23, 36200-VII, nr. 143.