Annual Rule of Law Report - Input from The Netherlands

**** 8 May 2020 ****

I. Justice System

A. Independence

1. Appointment and selection of judges and prosecutors

The judiciary is tasked with the selection of judges. Following Article 91 Law on the judicial system (*Wet op de rechterlijke organisatie*) the Council for the Judiciary (*Raad voor de Rechtspraak*) is tasked to support the process. The formal legal requirement for the selection of a judge is to have Dutch citizenship (Article 4 Law on the legal position of judges, *Wet rechtspositie rechterlijke ambtenaren*) and educational requirements (Article 5 Law on the legal position of judges). The Council for the Judiciary has delegated the task of selection of judges to the national committee of selection of judges. This committee exists of judges, public administrators, researchers, lawyers and public prosecutors. Candidates for the committee are selected by a member of the Council for the Judiciary, a court president and an external adviser. The Council for the Judiciary appoints members for three years, which can be extended by one year. The Council for the Judiciary has commissioned an evaluation of the selection procedures of judges in in 2013 and again in 2019. The Judiciary improved the selection procedure, based on the evaluation, by streamlining the procedure and improving the analytical test and the assessment.

As of 1 January 2020 the selection procedure for trainee first instance and appeal judges is as follows:

- The vacancy notice is sent from the court to the national committee of selection of judges;
- The vacancy is published on the website;
- Selection of application letters by the national committee of selection of judges and the board of the court (selection of max. 5 application letters per position);
- Analytical tests at external consulting agency/assessment bureau;
- Interview at the court;
- Court informs national selections committee on selection of max 3 candidates per position;
- Assessment at external consulting agency/assessment bureau;
- Final interview with national selection committee;
- The board of the court is informed on the result of the interviews by the national selection committee: in the case more candidates are selected by the national selection committee, the board of the court decides the final selection. In theory, it is possible that a candidate applied for positions at different courts. If the candidate is selected for different courts by the national selection committee, the candidate chooses the court.

After selection, candidates start their training. Training is partly organised by the local courts and partly by the Training and study Centre for the Judiciary (*Studiecentrum Rechtspleging*), the joint training institute of the judicial system of the Netherlands and the Public Prosecution Service. After successfully ending training, the Council for the Judiciary recommends the candidate to be appointed as a judge. The Minister of Justice and Security checks solely if the applicant fulfils the legal requirements to be appointed by the King. So far, the Minister of Justice and Security has in all cases followed the recommendation by the Council for the Judiciary. The King finally appoints the candidate by Royal Decree as arranged in Article 117 of the Constitution (*Grondwet*) and Article 2 Law on the legal position of judges. The Royal Decree is countersigned (ex Article 47 of the Constitution) by the Minister of Justice and Security. The candidate then becomes judge for life.

Selection of Supreme Court judges

The selection and appointment of member to the Supreme Court has a similar procedure. A committee of judges of the Supreme Council selects potential members early in their career for the

Supreme Court. These candidates are followed during the rest of their career. When a position opens, the Supreme Court selects the best candidates for the position depending on their expertise. The committee draws a list of six candidates that are proposed to the general meeting of the Supreme Court. The Supreme Court has published its recruitment protocol for new Supreme Justices. It can be found here.

The committee of Justice and Security of the House of Representatives makes a selection of three candidates and invites the first person on the list for an interview. During the interview, the custom is that the committee will not ask questions on political preference, religion or beliefs of the candidate. The Minister of Justice and Security will recommend the selected candidate to be appointed by the King after reviewing the formal requirements. The King appoints the judge by Royal Decree (countersigned by the Minister of Justice and Security), which is a formal requirement. After the recommendation by the Minister of Justice and Security appointments always follow.

A Commission of State on the reform of the Parliamentary system ('*Commission Remkes*') has also advised on the manner of selection and appointment of the members of the Supreme Court. The Commission proposes a different selection and appointment procedure. The Government accepted the advice of the Commission and will start preparations for the necessary legislative changes to the Constitution.

Prosecutors

Appointments to the top of the Public Prosecution Service (*Openbaar Ministerie*, *OM*) are made by Royal Decree upon the recommendation of the Minister of Justice and Security (Article 2 of the Law on the legal position of judges, *Wet rechtspositie rechterlijke ambtenaren*).

This is without prejudice to the fact that the recruitment and selection of personnel as well as the establishment of the HRM policy is done by the Public Prosecution Service itself. In 2018, the Public Prosecution Service focused on greater transparency in the selection and appointment of employees at the top of the Public Prosecution Service. This includes the opening up of interest registers and clear communication about the requirements to be met, the manner in which the selection and appointment was made and the choice of the candidate in question.

2. Irremovability of judges, including transfers of judges and dismissal

Judges are appointed for life as stated in Article 117 of the Constitution. Judges can be dismissed upon their own request and when a judge reaches the age of 70 as found in Article 46h Law on the legal position of judges. A judge is appointed to one of the 11 courts, four courts of appeal, the administrative tribunals or the Supreme Court. By law there are possibilities for transferal. However, this is only possible with approval of the judge. According to Article 9 Law on the legal position of judges, the Council for the Judiciary may require a member of a court of appeal or district court to be deputized at another judicial office at a different court of appeal or district court. This is only possible with the agreement of the member concerned and the management board of the court where he or she is employed.

There are four disciplinary measures:

1. Formal written warning by the President of the court
2. Withholding half a month of salary by the Supreme Court
3. 3 month suspension by the Supreme Court
4. Dismissal by the Supreme Court

The relevant legislation contains an exhaustive summary of the grounds for dismissal which can be roughly divided into three categories: upon his own request (Article 46h Law on the legal position of judges), in case of illness (Articles 46i-46ka Law on the legal position of judges) and disciplinary dismissal (Articles 46l and 46m Law on the legal position of judges).

Dismissal can only be done by the Supreme Court as laid down in Article 46c Law on the legal position of judges. Neither the government nor Parliament have influence on the dismissal or transfers (or any other disciplinary measure) of judges. For more information on the disciplinary system see item 6 on the accountability of judges and prosecutors, including disciplinary regime and ethical rules.

3. Promotion of judges and prosecutors

Neither the government nor Parliament have influence on the promotion or demotion of judges. This is solely a decision made by the boards of the courts. If a position is vacant a vacancy notice is published, followed by a selection procedure at the Court. A judge can only be promoted after applying for a new position (e.g. of senior judge) and if he/she is selected for this position.

Concerning the promotion of prosecutors, the appointment procedure described under point 1 of this contribution is applicable. A 'promotion' at the Public Prosecution Service is equivalent to the appointment of an employee to a higher or more important position. This selection procedure is a 'normal' procedure for the filling of a vacancy; every employee of the Public Prosecution Service can respond to the vacancy.

4. Allocation of cases in courts

The board of the courts is responsible for the work of its judges as laid down in Article 41 Law on legal position of judges. The allocation of cases is organised in an objective manner that ensures independence and impartiality in a professional and timely manner. In January 2020, the Council for the Judiciary and the Presidents of the courts published a code for the allocation of cases. The Council is tasked with the promotion of a well-functioning court administration according to Article 91 Law on the judicial system. The promotion of objective rules for the allocations of cases was an aim of the new rules.

The boards of all district courts publish the method of allocation of cases for the different legal areas. In principal, the allocation is organised at random. In the administrative regulations published by the boards of the district courts it will specify if certain cases will not be allocated at random, in case of specific necessary expertise. After allocation, the name of the judge is announced to the parties. A transfer of the case to a different judge will always include the specific reasons for the transfer.

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

The independence of the judiciary in the Netherlands is safeguarded by the Council for the Judiciary. The Council consists of at least three and a maximum of five members according to Article 84 Law on the judicial system. The members are appointed for a period of six years by Royal Decree.

Currently the Council for the Judiciary has four members. In the event of a tied vote, the vote of the president is decisive. The president is by rule a judge, as is the majority or half of the Council. When a position is vacant, the Council publishes the vacancy in national news outlets. First, candidates will have an interview with the members of the Council for the Judiciary. Thereafter, a commission consisting of a court president, a representative of the Netherlands Association for the Judiciary (*Nederlandse Vereniging voor de Rechtspraak,* NVvR), a member of a district court (excluding judges) and a representative of the Ministry of Justice and Security will recommend one or more candidates. The commission is chaired by the court president.

Candidate members of the Council for the Judiciary will be recommended by the Council for the Judiciary to the Ministry of Justice and Security, and appointed by Royal Decree.

Within the judiciary it has been discussed whether judges should have a greater influence on the selection of the management of the judiciary, court boards and Council for the Judiciary. This issue has also been raised by Members of Parliament in a resolution. The Minister for Justice and Security has informed Parliament by letter that the Council for the Judiciary is in dialogue with its constituency on the selection of board members of the courts and members of the Council for the Judiciary. The Minister has asked the Council of State to advise on the matter.

In Article 91 Law on the judicial system the powers of the Council for the Judiciary are stated. These include the preparation of the budget and the oversight on the budget, the management of the daily routine of the courts, selection of judges, organisation of an IT structure, housing and security, quality and organisation of courts, HR affairs and other organisational facilities.

6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules.

The judiciary has its own system of accountability consisting of several aspects: to facilitate general external review, a code of ethics and transparency on specific cases for the press, register for ancillary activities, a complaint procedure and a disciplinary regime.

Annual report and review of the judiciary

Every year the judiciary (both the judiciary -consisting of first and second instance courts – and the Supreme Court separately) publishes annual reports consisting of data that informs the public of the management of the judiciary including the number of completed cases, duration of cases, disciplinary measures, complaints and requests for recusal.

Every four years the Judiciary commissions a review of a so-called 'visitation committee'. The committee consists both of judges and members of civil society. There are mandated to evaluate the quality of justice. The last report was published in 2018 and focused on modernization, HR policy and financial management. Furthermore every 3 years a court user survey is performed to assess the quality of justice at the courts according to parties and professionals (such as public prosecutors, lawyers etc.).

Press relations

Transparency is an important aim for the judiciary. Therefore it is important for the Judiciary to maintain a good relationship with the press in the Netherlands. During the last 15 years the Council for the Judiciary developed press guidelines which allows the judiciary to broadcast court cases that could be of particular interest to the public, and is explaining judicial decisions to the media.

Code of ethics

The judiciary has a code for judicial ethics, the "judges association Code", published by the NVvR, the Netherlands judges association. The organisation has 3100 members and represents around 75% of the judiciary of the Netherlands. The code sets outs the ethical values of judges including independence, autonomy, impartiality, integrity, expertise and professionalism. Training on judicial ethics is as well available.

Ancillary activities

By law, Article 44a Law on the legal position of judges, judges cannot fulfil positions that are deemed inappropriate. When obtaining a new position a judge has to notify the president of his or her court. The presidents of the courts have the responsibility to check if an ancillary activity is appropriate. The judiciary publishes the positions held by judges in a public register with a short summary of the position and if applicable information on the financial remuneration.

In 2014 the judiciary published a code to show the prevailing views of the judiciary on ancillary activities as a response on the open norms of Article 44a Law on the legal position of judges. The code can be seen as a directive for the presidents of the courts.

In 2019 the Ministry of Justice and Security announced that it would like to improve the rules for integrity on judges that obtain financial information. In specific cases judges can obtain information that has influence on the financial markets The proposed rules would create a duty for judges to notify the president of the court if they have financial interests on the financial markets.

Currently there is a new bill being drafted that will declare judgeship incompatible with membership of the national or European parliament.

Complaints procedure and recusal

Both the Council for the Judiciary and the courts have a complaints procedure. For parties it is possible to complain about a judge when he/she has behaved in an unprofessional or inappropriate manner during the court case. It is possible to appeal against a decision on a complaint at the Ombudsman. The recusal system is set in law, which means it is possible for a party to request a judge to withdraw from adjudicating a case when it is believed the impartiality of a judge is in question. The judiciary takes the decision on a request for recusal by a party. An appeal against this decision is not possible.

Disciplinary system

The disciplinary system has been in place for a long time and is based on Article 116, paragraph 4 of the Constitution, which provides that the supervision of judges shall be conducted by members of the judiciary responsible for the administration of justice. Thus, neither the government nor the Parliament have influence on this system. Until 2019, the disciplinary system used to consist of two measures: dismissal by the Supreme Court and a written warning by the President of the court. Upon request of the judiciary, the disciplinary measures have been extended.

As was explained before, currently the Supreme Court can give a written warning (in certain situations the President of the court is allowed to write the warning), deduct half a month of salary, suspend for a maximum of three months and to dismiss a judge (see Article 46ca Law on the legal position of judges).

These measures can be applied according to Article 46c Law on the legal position of judges in the following cases:

1. if a judge neglects the dignity of his or her work and duties;
2. if a judge breaches the provisions that are for him or her given as forbidden and if a judge acts in a specific case in a way that is deemed inappropriate for a judge;
3. if by the actions or by not acting of a judge significant harm has been cause to the judiciary or to the public trust in the judiciary.

The Supreme Court can under the new law only dismiss or suspend according to Article 46i Law on the legal position of judges in the following cases:

1. If a judge is unable to perform his or her duties in case of illness or mental problems;
2. If a judge accepts, a public position deemed incompatible with judgeship;
3. If a judge behaves in a manner deemed incompatible with judgeship such being sentenced for a serious criminal offence;
4. If a judges lacks the necessary knowledge or skills to fulfil his or her duties as judge. A judge should be first allowed to improve its performance.

The judiciary publishes the disciplinary measures taken in its annual report. The latest report of 2019 shows that 3 disciplinary measures against judges were taken. In 2018 two measures were taken against judges, which were two written warnings and one voluntary dismissal because of a work-related integrity question. The Supreme Court publishes the numbers of dismissals in its annual report. In 2018 (the annual report of 2019 has not yet been published) two judges were dismissed due to (partial) long-term illness.

Prosecutors

Complaints

Just like any other administrative body, the Public Prosecution Service is obliged to ensure that complaints are dealt with properly. The Public Prosecution Service deals with complaints on the basis of the uniform complaints procedure laid down in Title 9.1 of the General Administrative Law Act (*Algemene wet bestuursrecht, Awb*). The *Awb* stipulates that the complaint is handled by a person who has not been involved in the conduct to which the complaint relates. This applies to complaints from plaintiffs as well as complaints from employees of the Public Prosecution Service who, for example, have a complaint about the actions of managers or other colleagues.

The current system of complaint handling by the Public Prosecution Service is as follows:

- Complaints about members of public prosecutor's office are dealt with by the Chief Public Prosecutor of that public prosecutor's office or the Chief Advocate General.
- Complaints about (deputy) Chief Public Prosecutors and (deputy) Chief Advocate General are dealt with by the Board.
- Complaints about members of the Board are dealt with by the Minister of Justice and Security, who has mandated this power to the SG.
- In all the above cases, an independent complaints advisory committee may be set up.
- If, at the end of the complaint procedure, a complainant does not agree with the settlement, he/she can turn to the National Ombudsman pursuant to Title 9.2 of the General Administrative Law Act (*Awb*).

Integrity violations

In the case of violations of integrity, any Public Prosecution Service employee (whether or not through a confidential adviser) can report a case to the management of his or her Public Prosecution Service unit. The management of that Public Prosecution Service unit must then act in accordance with the Integrity Violation Reporting Toolkit. This means, among other things, that in the event of (suspected) violations of integrity or a breach of duty, the board must report the matter to the Integrity Office of the Public Prosecution Service (*Bureau Integriteit Openbaar Ministerie*, BIOM), after which, if necessary, an investigation by the BIOM can follow.

A report concerning a (deputy) Chief Public Prosecutor or a (deputy) Chief Advocate General can be made to the Board, which then reports it to the *BIOM*. A report regarding a Board member can be made directly to the *BIOM*, after which the Head of the *BIOM* can make a report to the department of Justice and Security.

In 2016, the Advisory Commission on the Settlement of Integrity Incidents was established. This committee is facilitated by the *BIOM* and advises the Board and the heads of the Public Prosecution Service units about the disciplinary measure that should be imposed in response to a violation of integrity. In this way, uniform action is taken within the Public Prosecution Service against similar violations of integrity. An important other recent measure is the strengthening of the *BIOM* in terms of the size of its formation and its independent position.

7. Remuneration/bonuses for judges and prosecutors

The remuneration of judges is arranged by Article 7 Law on legal position of judges. The Netherlands Association for the Judiciary (NVvR) and the Ministry of Justice and Security negotiate as part of the social dialogue about the collective labour agreement (CAO). The Council for the Judiciary takes part in this negotiations in an advisory capacity. An eventual increase of the remuneration of the members of the Judiciary (judges and prosecutors) is one of the components of the agreement. The most recent agreement was reached in June 2019. There is no bonus scheme for judges. Remuneration increases by a set amount each year the judge is working for the judiciary as laid down in Article 13 Law on legal position of judges until the maximum salary for a specific function (e. junior judge) is attained.

8. Independence/autonomy of the prosecution service

The Public Prosecution Service (OM), together with the courts, form the judiciary. Article 124 of the Judiciary Organisation Act (*Wet op de rechterlijke organisatie*, Wet RO) stipulates that the Public Prosecution Service is charged with the criminal enforcement of the legal order and with other tasks laid down by law. Pursuant to Article 125 of the Wet RO, the tasks and powers of the Public Prosecution Service are exercised by certain judicial officers, including the (Chief) Public Prosecutors and (Chief) Advocates General. Article 126 of the Wet RO lays down the conditions under which the powers of these judicial officers may be assigned to other officers of the Procurator General's Office. The Public Prosecution Service - and thus each individual member of the Public Prosecution Service - acts under the political responsibility of the Minister of Justice and Security. The guiding principle in the functioning of the Public Prosecution Service is that the Public Prosecution Service must be able to operate at a certain distance from the political administration. The Public Prosecution Service is therefore not part of the Ministry of Justice and Security. There is only an institutional link, because of the political responsibility of the Minister of Justice and Security. In parliamentary history, this principle has been described as follows: "As a rule, the distance between the political administration and the Public Prosecution Service will be greater the more individualised the decisions are, and smaller when it concerns more general policy issues. (...) The Minister must, on the one hand, give the Public Prosecution Service the room it needs to actually exercise the powers assigned to it and, on the other hand, the Public Prosecution Service must unreservedly ensure that the Minister can fulfil his responsibilities and exercise his say in any way he sees fit.[1]"

The Minister of Justice and Security is periodically informed by the Public Prosecution Service of the criminal cases that are important in the context of his political responsibility, the so-called 'sensitive cases'. The Minister can, in exceptional cases, give the Public Prosecution Service an instruction (Article 127 Wet RO) of how the Public Prosecution Service must act in a criminal case. The use of this possibility is surrounded by safeguards, pursuant to Article 128 Wet RO. In such cases, the Minister will first ask the Board of Prosecutors General for advice. The instruction must be in writing and must state the reasons on which it is based. If instruction of the Minister entails that someone will not be (further) criminally prosecuted, he must inform Parliament about his decision. The Minister of Justice and Security may also issue general instructions concerning the exercise of the tasks and powers of the Public Prosecution Service. Investigation and prosecution guidelines are therefore submitted to the Minister prior to their implementation.

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

The Netherlands Bar (*Nederlandse Orde van Advocaten,* NOvA) is the professional organisation of the legal profession. The NOvA was established by the Act on Advocates (*Advocatenwet*) with effect from 1 October 1952. All lawyers in the Netherlands jointly form the NOvA. All costs incurred by the

[1] https://zoek.officielebekendmakingen.nl/kst-24034-13.html

NOvA are being paid for by the lawyers through an annual financial contribution to the Netherlands Bar. As a result, the NOvA is completely independent of the government.

The NOvA draws up regulations and rules for the legal profession: the Legal Profession by-law and the Legal Profession Regulations. The adoption thereof is done by the board of representatives (*college van afgevaardigden*). The 54 deputies of the board are all chosen by lawyers in their own judicial district/region. The Act on Advocates governs the profession of lawyers. Under this law, the lawyer is compulsory part of the NOvA. On the basis of this Act, the NOvA may lay down rules for the professional practice, such as the financial administration and compulsory professional insurance.

The bar registration (*tableau*) contains all lawyers who may exercise their profession within the eleven judicial districts (regions) in the Netherlands. This national list is being maintained by the bar registration. Lawyers are registered after having been sworn in or after admission if they meet all requirements. Disbarment can take place at own request, by a decision of the disciplinary board or after the expiration of a conditional registration. In 2011 the number recognition system was introduced in the Netherlands. The NOvA considers a reliable number recognition system essential because conversations between lawyers and their client must always be able to be held in strict confidence.

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

Every year the Central Bureau of Statistics publishes its research on the trust in the judiciary, government and media. In 2012 68,8% of the general public that participated trusted the judiciary and this slowly increased to 72,6% in 2018. This means that the general public is positive to very positive about the trustworthiness of the judiciary.

In recent years, several judicial decisions led to societal and political discussion including the PAS ruling of the Council of State, the Urgenda ruling and the ruling on the return of IS children. Some politicians were more critical about the judiciary than is usual in the Netherlands. The criticism focused on the term “dicastrocacy” (i.e. ‘government by judges’) and resulted in a round table on the subject organised at the House of Representatives.

The Council for Public Administration (*Raad voor het Openbaar Bestuur*, ROB) recently stated in its advisory report on the rule of law in The Netherlands (“Een sterke rechtsstaat, verbinden beschermen in een pluriforme samenleving”) that the judiciary in the Netherlands is under pressure and over demanded. The Council for Public Administration concludes that (formally) the independence of the judiciary is guaranteed. However, the Council sees clear signs that the level of knowledge and perception of independent judiciary within the society could put the position of the judiciary under pressure.

Other information on the perception of the general public can be found in figures 47, 48, 49, 50, 51 of the European Justice Scoreboard 2019.

Supervision of the statutory duties of the Public Prosecution Service is carried out by the judiciary, by the Prosecutor General at the Supreme Court. This supervisory role is carried out in the form of periodic thematic investigations. In February 2020, it was decided to broaden this supervisory role to include incident investigations.

11. Other - please specify

Not applicable.

B. Quality of justice

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

The access to justice is right found in Article 17 of the Constitution. Within the system in the Netherlands, the directly applicable Article 6 ECHR is also relevant as well as, within the scope of EU-law, Article 47 of the EU Charter of Fundamental Rights.

Legal Aid

The Legal Aid system of the Netherlands provides legal aid to people of limited means. Anyone in need of professional legal aid but unable to (fully) bear the costs, is entitled to call upon the provisions as set down in the Legal Aid Act. Given their financial means, approximately 38% of the population in the Netherlands (with a total of 17 million people) would, according to the latest estimates, qualify for legal aid if circumstances so require. The legal aid itself is mainly financed by the state (the Legal Aid Fund) and only for a minor part by an income-related contribution of the individual client.

Falling under the competence of the Ministry of Justice and Security, an independent governing body called the Legal Aid Board (*Raad voor Rechtsbijstand*) is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the Legal Aid System.

The legal aid system is basically a threefold model in that it encompasses three 'lines' that provide legal aid. The legal aid system, therefore, is a mixed model, consisting of a public preliminary provision, public first-line and private second-line help.

Public preliminary provision

Online self-help, information and support is offered on the Rechtwijzer website (*Rechtwijzer* translates into Roadmap to Justice). *Rechtwijzer* is a preliminary provision and offers interactive decision trees' helping people to assess their situation. In addition, *Rechtwijzer* provides easy-to-understand information and guidance on possible solutions for the most common legal problems. *Rechtwijzer* combines publicly run guided pathways for common legal problems with online products and services from private service providers.

Public first-line help

The Legal Advice Centres act as what is commonly known as the 'front office' (primary help). Legal matters are being clarified to clients and information and advice given. Clients may be referred to a private lawyer or mediator, who act as the secondary line of legal aid. Clients may also apply for help from a subsidised lawyer or mediator directly. If necessary, clients can also be referred to other professionals or support agencies. Clients can turn to the centres with all kinds of judicial problems that concern civil, administrative, and criminal as well as immigration law. All services are free of charge. The organisation is made up of 30 offices around the country. These 30 offices share a website and a call centre. They have been evenly set up geographically, so that every Dutch citizen is within easy reach of a Legal Advice Centre.

Private second-line help

Private lawyers and mediators provide legal aid in more complicated or time-consuming matters (secondary help) in the form of certificates. A lawyer (or mediator) submits an application to the Legal Aid Board on behalf of his client. If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case. Lawyers and mediators are paid by the Legal Aid Board to

provide their services to clients of limited means. Generally they are paid a fixed fee according to the type of case, although exceptions can be made for more time consuming cases.

Besides certificates, the Legal Aid Board also provides duty lawyers. Each criminal suspect, alien or psychiatric patient who has been lawfully deprived of his liberty against his will is visited by a subsidised lawyer.

To some extent, trade unions and consumer organisations also provide legal aid. The number of legal aid insurance policies continued to rise for a long time and has stabilised around 42% of the households since 2010.

Future policy developments for the legal aid system

Currently the Ministry of Justice and Security is preparing a revision of the system of legal aid. One of the key elements is to better tailor (legal) aid to the demand of people needing help. The aim is to strongly improve the online provision of information, advice and help around legal problems. The ambition is that there is one clear site/platform where people can easily find reliable, understandable information which can help those who are able to solve their own problems. The information will be organised around life events, easily recognisable developments that everyone can encounter in their life and which can have great impact. Plans for an online platform are currently being made. Rechtwijzer, amongst others, provides a great learning experience from which to further develop such an online platform. For people who are not very digitally skilled or who need more personal help, there will be a telephone line and easily accessible locations where people can go for face-to-face help.

In order to increase access, the number of locations where the Legal Advice Centres offer their services will be increased. The aim is to provide the services closer to people: in neighbourhoods, municipalities, in libraries, in government offices, or other places where they are easy to find and to access. The new system will also include a much broader diagnosis of both the problem at hand as well as the underlying issues. The system will increase cooperation between legal and other (e.g. social) professionals, so people can be smoothly referred to other services when necessary. This means that social, financial or other issues causing the legal problem can be solved simultaneously and by the right professional. This should lead to more permanent solutions. For the second-line help, currently provided by lawyers and mediators, we wish to allow more innovation and new service providers into the system, of course subject to strict quality criteria. For much-experienced problems, best practices will be developed in order to make the legal aid provided both effective and efficient.

The plans were communicated to parliament in the following letters:

- Contourennota 9 november 2018;
- Voortgangsrapportage 12 juli 2019;
- Voortgangsrapportage 19 december 2019.

Court Fees

The system differs upon the legal area. In criminal law court fees do not exist. In civil and administrative law both parties are obliged to pay court fees. In civil cases up to 25.000 EUR only the plaintiff has to pay a court fee.

In civil law the court fee is dependent of the claim. For cases with a non- substantial value there is also a court fee. There is also a different court fee for non- natural person (mostly legal entities),

natural persons and persons without or limited income. The court fee for latter is a fixed fee independently of the value of the claim.

In administrative law there are court fees for all administrative decisions and tax cases.

13. Resources of the judiciary (human/financial)

General information can be found in the EJS 2019. Chapter 3.2.2. Resources. Figures 28- 34. Also i data is available in CEPEJ (Council of Europe).

Until 2002, the Ministry of Justice and Security was in the Netherlands responsible for the financial management of the Judiciary. As this was seen as contrary to the separation of powers between executive and judiciary, the Council for the Judiciary was founded and from then on responsible for the division of the budget and the funding of the judiciary.

In the Netherlands the funding of the judiciary is based on the Articles 97, first paragraph and 98 of the Act on the organisation of the Judiciary and the Decision Financing Judiciary 2005.

The financing of the Judiciary is based on two main pillars: fixed costs (e.g. costs for rent, IT etc.) and the amount of expected cases. The financing is based on objective indicators as formulated in the Decision Financing Judiciary 2005.

There are three-annual negotiations between the Council for the Judiciary and the Ministry of Justice and Security. The main indicator for the negotiations is the output of cases. This is based on 10 categories of cases. Around 95 % of the budget for the Judiciary is output based. The Council for the Judiciary is responsible for the financing of the courts. This is mostly – however more fine-tuned – according the some output mechanism.

Until 2019, the financing of the Judiciary was 95% based on P × Q (negotiated price and the amount of cases). In 2019, the Council for the Judiciary and the Ministry of Justice and Security agreed to lower the P×Q component to approximately 50%.

The annual budget of the Council for the Judiciary is around 1 billion EUR.

There is currently a discussion between the Council for the Judiciary, the Ministry of Justice and Security and Parliament with regard to the system of financing of the Judiciary and the separation of powers.

The Ministry of Justice and Security does not have any responsibility for or involvement in human resources. This is solely the responsibility of the Council for the Judiciary and the Boards of the Courts. The members of the Council of Judiciary and the judges in Courts and Courts of appeal are appointed by the King. See also under item 1.

Supreme Court and Council of State

The budget of certain parts of the judiciary - the Supreme Court (*Hoge Raad der Nederlanden*) and the Council of State (*Raad van State*) - who are not under the responsibility of the Council for the Judiciary is slightly different. The Council of State is financed by the Ministry of the Interior and Kingdom Affairs.

The financing of the Supreme Court is established in 2002 in a covenant between the Prosecutor-general of the Supreme Court and the Minister of Justice. On base of this covenant the Supreme Court has an annual budget. This budget is determined by the expected influx of cases on base of estimates of the prognoses.

The Administrative Jurisdiction Division of the Council of State is the highest Court in administrative cases. The Division has three Chambers: Environmental Chamber, the Aliens Chamber and the General Chamber. The Environmental and the General Chamber do have a lump sum financing. The Aliens Chamber is financed on the basis of a fixed price per case. This system involves a pre-calculation based on the influx of cases and a post-calculation based on case output.

The Council of State budget is regulated in a separate part of the general budget (HCvS IIB Article 1).

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

There is a quantitative and a quality system to assess the performance of the judiciary and the quality of justice.

The courts report every 4 months extensively about performance (number of cases, costs quality indicators) to the Council for the Judiciary. Additionally, monthly reports about influx and cases handled per court and per field of justice can be found on the intranet of the Judiciary. The annual external report of the Judiciary can be found online and contains a lot of figures. Generally speaking, the Judiciary is working on the further development of dashboards.

The Judiciary has set up a quality system. Three instruments are used to measure the level of quality of the judiciary on a systematic basis. Every four years the Judiciary commissions a review performed by a 'visitation committee'. The committee partially consists of judges, partially of persons from civil society. Their task is to look into the quality of justice. Furthermore every three years a court user survey is performed to research the quality of justice at the courts according to parties and professionals (such as public prosecutors, lawyers etc.). In addition, every four years a customer satisfaction survey (court user survey) is performed. And finally, every two years an employee satisfaction survey is performed. The results of the customer satisfaction survey and the employee satisfaction survey are used as input by the visitation committee. The last customer satisfaction survey dates from 2017, the visitation committee presented its report in 2018 and the employee satisfaction survey was held in 2019.

15. Other - please specify

Not applicable.

C. Efficiency of the justice system

16. Length of proceedings

Information about the length of proceedings is part of the European Justice Scoreboard. For the 2019 rapport, this is mentioned in figures 5- 12. The information in the EJS is based on data from CEPEJ and the questionnaire members expert group EJS.

17. Enforcement of judgements

Civil and administrative cases

In the Netherland the enforcement (execution) of judgements in civil cases is the responsibility of the parties involved. On basis of a court order the beneficiary party can rely on government powers to enforce compliance, if necessary. In practice, the government involvement in enforcement is limited. The foremost way for enforcement is that the parties revolve their case on basis of a court order themselves.

If this is not the case, there are two options:

If the judgement is a direct enforcement order one can ask a bailiff to do the service of the judgement to the debtor and do take all the necessary and lawful measures to execute the judgement. The debtor has the possibility to start an execution proceeding. If the judgement doesn't involve a direct execution order one can ask the court for a direct execution order ("grosse"). This all civil is regulated in the Civil Procedural Code (Article 430 ff. Rv)

Criminal cases

Since January 29th, 2020 the overall responsibility for the execution of judicial sentences and measures has moved from the Public Prosecution to the Minister of Justice and Security. A central authority coordinates on behalf of the Minister of Justice and Security the operational execution of all sentences and measures that are imposed for criminal offences. In this way the Minister is in control and the intended effect is a quick and correct execution of all sentences on individual levels. Besides that, the prosecutors can focus more on the main responsibility for the investigation and prosecution of suspects of criminal cases.

18. Other - please specify

Not applicable.

II. Anti-corruption framework

The Netherlands is party to the applicable UN, OECD and Council of Europe conventions on (combating) corruption. In 2020, the Netherlands is undergoing reviews under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD convention) and the United Nations Convention Against Corruption (UNCAC). These reports are expected to be published in the course of 2020. It is therefore not possible to cross-reference the most current information on the Netherlands. All OECD reports can be found here. UNCAC information in the public domain can be found here.

The Netherlands has been evaluated (as part of the fifth evaluation round) by GRECO on: "preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies" which became public in February 2019. The fourth evaluation round of GRECO focused on "prevention of corruption in respect of members of Parliament, judges and prosecutors." This became public on 18 July 2013. Several monitoring reports have also been made public in the context of the ongoing GRECO evaluation in the fourth round. The Netherlands translates and publishes these reports as letters to Parliament, which means the GRECO reports are all publicly available. All GRECO reports can be found here. A first monitoring report of the fifth round evaluation is currently scheduled for discussion and adoption in the October session of GRECO. As a result of the constraints imposed on the member states by COVID-19, the plenary meetings (and in case of the process of the second round evaluation of the UNODC on the UN Convention Against Corruption) of GRECO, OECD and UN will be re-scheduled/postponed. Cross reference will be made to the available reports where possible. The Netherlands has used its own written reports of other evaluations (GRECO, OECD, UN) as a base for this submission.

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

19. List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Where possible, please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant).

There are general independent institutions that play a role in preventing corruption and promoting integrity:

Court of Audit

The Court of Audit is one of the constitutionally enshrined independent advisory bodies (colloquially known as High Councils of State) and thus not part of the government or Parliament. Its formal constitutional position and composition are defined by Articles 76 *et seq.* of the Constitution. The Court of Audit investigates whether the Central Public Administration is spending public money efficiently and lawfully. Its statutory duty is to audit the income and expenses of the Central Public Administration as well as to report on these matters once a year to Parliament on so-called Accountability Day. Based on the opinion of the Court of Audit, Parliament decides whether to discharge the government from any liability. The Court of Audit also reports to Parliament on the outcomes of separate investigations it has conducted, so Members of Parliament can decide whether a Minister is pursuing an effective policy.

The Court of Audit decides for itself what to investigate. Members of Parliament, Ministers and State Secretaries sometimes request an investigation. These requests are often granted in practice if the powers of the Court of Audit would have an added value. Signals and reactions from society can also be taken into account during current investigations.

The Central Public Administration must account for its income, its expenditure and the use of its statutory powers. In order to audit these aspects, the Court of Audit has powers that are laid down in the Government Accounts Act (*Comptabiliteitswet*). All Ministries and other government

organisations that fall under the Central Public Administration can be audited. Organisations that do not form part of the Central Public Administration but which perform public duties can also be audited, such as the National Police. The Court of Audit is entitled to access all relevant information that it requires from the Central Public Administration or from third parties that have been tasked to perform duties by the Central Public Administration, including confidential information.

The Minister of the Interior and Kingdom Relations manages the budget of the Court of Audit, which amounts to more than 31 million euros for 2018. There are around 270 employees, all playing a role in increasing integrity.

National Ombudsman

The National Ombudsman is an independent and impartial office. His formal constitutional position and composition are laid down in Article 78a of the Constitution and are further defined by Act of Parliament: the Wet Nationale Ombudsman. The National Ombudsman expresses non-binding independent judgements on the propriety of concrete actions by government authorities. The ombudsman may also investigate complaints of citizens and reports on whether the authority concerned has or has not acted properly in the situation under investigation. When he concludes his investigations he makes a (non-binding) report on his findings and his recommendations. The reports by the National Ombudsman carry much public weight and also inform public administration agencies how they can improve their services. Subjects that cannot be made part of an investigation by the National ombudsman are defined by law. These concern matters that relate to general government policy, legislative acts and/or acts by the government against which administrative or judicial recourse is available/is being used. As such, the powers of the National Ombudsman supplement legal protection through the civil and administrative courts and the administrative appeals procedure. Everyone involved must cooperate in such an investigation and can be made to appear before the Ombudsman by law.

Around 170 specialists assist the National Ombudsman in its work (of which 69.4% are female and 30.6% are male). These specialists work in four investigative teams. The Facilities Department, IT, Secretariat, Communication and Library, Strategy and Policy, and Personnel and Finance all support the Office of the National Ombudsman in a different manner. The Bureau of the National Ombudsman is headed by a managing director. The Minister of the Interior and Kingdom Relations manages the budget of the National Ombudsman. The Minister also respects the independence and impartiality of the National Ombudsman. The budget of the National Ombudsman for 2018 is more than 18 million euros.

Knowledge of the law and public administration are the starting points for selecting a new ombudsman. Knowledge of public administration agencies and the way that these agencies operate is very important for National Ombudsman employees. It is also important that employees who deal with complaints have an understanding of the everyday life of the citizens concerned.

Like the above described Court of Audit the National Ombudsman is one of the constitutionally enshrined independent advisory bodies (colloquially known as a High Councils of State. These institutions are independent of the government. The Lower House of Parliament appoints the National Ombudsman and the Deputy National Ombudsman for a period of six years. The same person can then be reappointed for a further six years. The National Ombudsman issues a report to the Lower House of Parliament each year. The Lower House of Parliament may only dismiss the National Ombudsman on special statutory grounds; for example, acts (or neglects to act) in a way that leads the House of Representatives to decide that the confidence in him/her is severely damaged. The House of representatives can also suspend the Ombudsman on special statutory grounds, for example if the Ombudsman has been convicted of a felony. If the Lower House of Parliament requires a new ombudsman, it announces a vacancy for this purpose. A special committee oversees the selection procedure and advises the Lower House of Parliament in this

regard. This committee consists of the Vice-President of the Council of State, the President of the Supreme Court of the Netherlands and the President of the Court of Audit.

Because the National Ombudsman is a supplement to the administrative appeals procedure he/she can only deal with complaints after they have been reported by the complainant to the public administration agency that is the subject of the complaint. If the Ombudsman is unable to deal with a complaint, this fact will be explained to the complainant in a letter or telephone call. The complainant will then be referred to another institution that can provide assistance. If a complaint can be accepted for processing, there are a number of investigative options. The Ombudsman chooses the option that is the most suitable for each complaint. The options are: an intervention (a quick solution by the public administration), a mediation interview, an investigation with a report or an investigation with a letter (if the outcome is only important to the complainant or if the Ombudsman cannot form an opinion on a large portion of the complaint).

Whistleblowers Authority

The Whistleblowers Authority is available for people who wish to report a work-related situation of abuse. The Whistleblowers Authority provides advice and support, while it also investigates if necessary. Its service is confidential, independent and free of charge.

The organisation is divided among an Advisory Department, an Investigations Department, a Knowledge & Prevention Department and a small general staff component. The office is headed by a director. The Advisory Department advises people who suspect a work-related situation of abuse. At the request of a whistleblower, the Investigations Department can investigate a work-related situation of abuse or their treatment by the employer following the report of a situation of abuse. The Advisory Department and the Investigations Department work independently from each other and do not exchange any information. The Knowledge & Prevention Department develops guidelines and practical instruments for employers.

The Whistleblowers Authority is an independent administrative body. The Authority is accountable to the Minister of the Interior and Kingdom Relations only for its financial management. The Minister of the Interior and Kingdom Relations cannot determine the policy of the Authority. The Minister also cannot reverse any of its decisions. The Minister may not request information on matters being dealt with by the Authority. The executive board members of the Whistleblowers Authority are appointed by Royal Decree. The executive board reports directly to the Houses of Parliament. It is important that the information provided can never be traced back to specific whistleblowing cases. The Whistleblowers Authority's annual budget for 2018 is 3 million euros.

A rule applies within the Authority that executive board members, advisers and investigators may not have or previously have had any personal involvement in specific whistleblowing cases. If they have, or if this person previously worked at the employer involved, there is an internal duty of disclosure. The executive board member or employee will then be excluded from advisory and investigative duties relating to the specific whistleblowing case.

Employees may make reports if they believe that there is a situation of abuse within the organisation where they work. A report must relate to a situation of abuse of social relevance, such as a violation of a statutory rule, danger to public health, danger of harm to the environment, or danger to the effective functioning of a public administration agency or company because of improper acts or omissions. In principle, employees must first report such matters internally to their employer. If that report is ignored or not dealt with satisfactorily, a report may be made to an external body. This body is normally an inspectorate or supervisory authority. In some cases, the Investigations Department of the Whistleblowers Authority can also be requested to conduct an investigation.

The Whistleblowers Authority has the power to request information and visit workplaces. The employer and employee are obliged to attend if requested.

Information is gathered during the investigation. A draft report is prepared on the basis of the gathered information. The employee and the employer can respond to this report. A final report is then drafted. After the employee and employer have received the report, the investigation report is published on the Authority's website. The report describes the situation of abuse and any underlying cause. The report contains conclusions and, if necessary, recommendations to end the situation of abuse or to prevent repetition. The findings of the investigation and the opinion in the report are not binding on the parties involved. However, the employer concerned is obliged to inform the Whistleblowers Authority how it has followed the recommendations. If the employer does not follow the recommendations, it is obliged to state reasons.

An employee who has to put forward a defence in legal proceedings against measures taken by the employer under labour law following the employee's report may enter the report as evidence in the proceedings.

The Whistleblowers Authority has made arrangements for cooperation with the Public Prosecution Service. An investigation by the Whistleblowers Authority into a situation of abuse can coincide with a criminal investigation under the authority of the Public Prosecution Service. The investigations can be conducted simultaneously, after coordination between the Public Prosecution Service and the Authority. If necessary, the Public Prosecution Service can request information from the Whistleblowers Authority's investigation.

For more information on the legal framework concerning whistleblowers, see item 22.

Independence of the aforementioned bodies that play a role in preventing corruption and promoting integrity

The Whistleblowers Authority is an independent administrative body, which means that the Minister in principle does not bear responsibility for the execution of the duties and powers exercised by the Authority. Naturally, this fact also means that the Minister cannot interfere or intervene in individual cases. However, the Minister is responsible for ensuring that the Authority has sufficient funds at its disposal to function effectively, as well as for overseeing the organisations financial management and administrative processes. In derogation from the Framework Act on Independent Government Agencies (*Kaderwet zelfstandige bestuursorganen*), the Whistleblowers Authority Act (*Wet Huis voor Klokkenluiders*) prevents the Minister from laying down policy on the responsibilities of the Authority. Neither does the Minister have the power to quash any decisions of the Authority. These exceptions to the powers provided by the Framework Act in respect of other independent government agencies in general match the nature of the Authority's responsibilities. After all, the Authority's responsibilities are such that they require the Authority to have a position in respect of the Minister which is as independent as possible.

The High Councils of State are themselves responsible for their budgetary management and draw up their own budgets. Both the Court of Audit and the National Ombudsman are responsible for the management of their own budgets. In accordance with the Compatibility Act 2016, Article 4.4., they are responsible for budgetary management, financial management, operational management and the relevant administrative activities. The Councils themselves estimate the expenditure and income they consider necessary for the tasks they must implement. They report this to the Minister of the Interior and Kingdom Relations who combines them in a single budget statement, chapter IIB of the Government Budget.

It is the task of the Minister to assess proposals within the total of the Government Budget, in other words whether there are sufficient funds available and whether they are proportionate to Cabinet policy. Any differences of opinion that may arise about proposals are settled officially and if

settlement proves impossible, may be escalated up the political-administrative ladder; in reality a situation never arises in which no consensus is arrived at.

Several agencies are involved in the detection, investigation and prosecution of corruption. Organisations usually receive resources related to their overall operations; it is therefore not possible to indicate specific resources related to corruption. In some cases, targeted investments have been made, this is then mentioned specifically in the text below. In general, a distinction can be made between the agencies involved in detecting, investigating and prosecuting (a) corruption and misconduct in the public service in the Netherlands and (b) all other forms of bribery.

The Public Prosecution Service, PPS (*Openbaar Ministerie, OM*)

The Public Prosecution Service and the courts together make up the judiciary. The Public Prosecution Service is a national organisation divided over ten regions. The Public Prosecution Service is headed by the Board of Prosecutors General. They decide on the investigation and prosecution policy in the Netherlands. Together with the organisation's directors and staff officers, the Board of Prosecutors General constitutes the national head office of the Public Prosecution Service (*Parket-Generaal*).

National Public Prosecutor's Office (*Landelijk Parket, LP*)

The National Public Prosecutor's Office focuses on international forms of organised crime and on crime that undermines society, including domestic bribery of public officials. As these serious and often invisible forms of crime damage the fabric of society, they require a coordinated approach involving partners from both within and outside the Public Prosecution Service. The prosecutor responsible for domestic corruption and misconduct in the public service, the coordinating public prosecutor NPIID (or LOvJ RR) represents the National Prosecutor's Office.

National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation (*Functioneel Parket, FP*)

This office is responsible for complex cases regarding fraud and environmental crime, including cases of commercial bribery, foreign bribery and occasionally domestic bribery. In addition, it serves as the Public Prosecution Service's centre of expertise on confiscating the proceeds of crime. An amount of 20 million euros has been made available since 2016 by the federal government of the Netherlands for the improvement and intensification of the efforts to combat corruption as well as money laundering in the Netherlands. One of the results of this financial investment was the creation of the so-called 'corruption team' in 2017. It exercises authority over criminal investigations that the Anti-Corruption Centre (ACC) of the Fiscal Information and Investigation Service (FIOD) carries out on behalf of the Public Prosecution Service. The prosecutors in the corruption team work in the different offices within the Netherlands. Currently, three prosecutors work almost exclusively on foreign and commercial corruption cases. Six other prosecutors are considered to form part of the team, although they are not exclusively working on corruption and handle other fraud cases as well (the so-called *flexibele schil*). The National Coordinating Prosecutor on Corruption is responsible for coordinating the prosecution of commercial and foreign bribery, the professionalisation of the Netherlands approach towards this corruption and the development of knowledge in relation to this topic. The corruption team is also the point of contact for both national and international partners, while it also focuses on the acquisition and intake of cases within our legal and policy framework. The foreign bribery and commercial bribery cases are occasionally handled by public prosecutors from outside the corruption team. In principle, all divisions of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation and the National Prosecutor's Office are able to investigate these type of cases, provided that they have the necessary capacity and competences available at the time.

The team centralises the incoming cases, complaints, information and so on within the FIOD/ACC as well as the corruption team. These matters are then examined and discussed with the Public Prosecution Service (with the Intelligence public prosecutor). In addition, the prosecutor responsible for corruption regarding public officials in the Netherlands is part of the team, although he works at the LP and on other types of cases. This procedure was set up to enhance the cooperation between the different offices and investigative bodies.

Investigative authorities

Various investigative authorities are responsible for detecting corruption offences within their scope of activities and can carry out investigations: the National police, the NPIID, the Royal Netherlands Marechaussee (KMar) and the FIOD. We will focus on the main investigative authorities.

National Police Internal Investigations Department (NPIID, *Rijksrecherche*)

The NPIID falls under the authority of the Public Prosecution Service. This independent body investigates alleged cases of criminal conduct within the government, including when a public servant is suspected of a criminal offence such as fraud or bribery. A case may involve a police officer or a staff member at the Public Prosecution Service, but also a civil servant at the central, local or provincial government level could be under investigation. In addition, the NPIID is always called in use of severe violence (resulting in injury or death) against civilians by the police or in case of deaths in police cells (i.e. not deaths in custodial institutions). The NPIID conducts investigations when the integrity of the government is at stake, when it is a sensitive case and when any appearance of partiality has to be avoided. In sum the investigations will contribute to the integrity of and trust in the government and its authorities. The NPIID investigators are police officers, though the department is part of the Public Prosecution Office and acts under the authority of the Board of Prosecutors General. The main characteristic is that they are independent and impartial. The legal basis of their activities falls under art. 49 of the Police Act. The tasks and interventions by the Rijksrecherche are described in a(n) Instruction/Policy Rule. The capacity of the NPIID is divided over all its lines of work, depending on the inflow of investigations, investigators can conduct all types of investigations that fall under its responsibilities.

In 2001 the Board of Prosecutors General established the 'Coordination commission NPIID' (*Coördinatiecommissie Rijksrecherche* (CCR)). This commission, chaired by the member of the board of Prosecutors General responsible for the NPIID, decides on the engagement of the NPIID, policy related to this engagement and assesses (where required) the prioritization of the engagement by the management of NPIID and the coordinating public prosecutor NPIID ("*landelijk coördinerend officier van justitie rijksrecherche*" LOvJ RR). In all situations where in the course of an investigation or an investigation that is set to commence, capacity from the NPIID is required, the LOvJ RR must be informed by the thereto responsible officer (the "(*rijks)rechercheofficier*") of the related public prosecutor's office. The LOvJ RR makes a preliminary decision on the engagement of the NPIID, in consultation with the Steering Committee on Investigations, the management or NPIID duty officer. The LOvJ RR informs the CCR. The CCR then decides if the engagement of the NPIID is indeed required. The substantial management of the investigation is decided upon by the responsible office of the Public Prosecution Office. They are also responsible for progress and decisions on prosecution.

There is also an internal NPIID Steering Committee on Investigations (*Stuurgroep Opsporing*) which takes place every two weeks. The NPIID director for investigations chairs this meeting. Other members are the NPIID management team, secretary (*secretaris*) and the NPIID coordinating prosecutor. In this meeting, (ongoing) cases and procedures are discussed.

A recent legislative act has strengthened the sources NPIID can use for their investigations. As of 1 January 2020, a thematic register has been introduced.[2] Information from the police on bribery of public officials can be submitted to a thematic register, allowing this data to be saved and used at a later time in investigations or for commencing a new investigation.

FIOD

The FIOD is the special criminal investigation service of the Netherlands Tax and Customs Administration (NTCA), under the Ministry of Finance. The FIOD combats fiscal, financial-economic and commodity fraud, while it also safeguards the integrity of the financial system and combats organised crime, especially its financial component and money laundering. If the NTCA or supervisory bodies such as the Central Bank of the Netherlands or the Authority for the Financial Markets suspect fraud, the matter is referred to the FIOD. The FIOD is divided into six regions; there are offices at different locations in the Netherlands. The management team and the central staff are located in Utrecht. Investigation teams operate from all locations. In addition, there are anti-money laundering teams, strategic intelligence teams, an international team and a Criminal Intelligence Team (TCI). Moreover, the FIOD has its own arrest teams.

In September 2016, as a result of the aforementioned additional funding, a special Anti-Corruption Center (ACC) within the FIOD was established and operationalised. The ACC is a centre of expertise in the field of corruption within the FIOD. Having this specialised body in place enables the FIOD to detect signs of corruption at an early stage and investigate them immediately. The ACC, which consists of FIOD employees, is aimed at combating foreign and commercial bribery. Offences related to these foreign bribery offences are also investigated by the ACC. The ACC consists of three divisions:

1. Detection and Acquisition;
2. Investigation;
3. Knowledge.

In total, 35 FIOD employees work in the ACC, of whom some 75 per cent are financial investigators. In addition to these 35 employees in the ACC, there are dedicated financial investigators in the regional teams of the FIOD who also conduct corruption investigations.

The detecting phase of investigations where the ACC is involved is very much a collaboration between FIOD and OM. The process of assessing possible instances of corruption and selecting them for criminal investigation is carried out by the ACC together with the prosecutor responsible for coordinating and overseeing the flow of intelligence (the intelligence coordinator). The Netherlands feels this can be considered a best practice in our activities. The first step is for the ACC to make a quick scan of the initial intelligence in order to determine the broad outline of the case and what the possible criminal offences are, who the possible suspects are, whether the Netherlands may have jurisdiction, what other countries are involved and what the financial interest is. Using the results of the quick scan, the ACC, together with the intelligence coordinator of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation, assesses whether the existing intelligence warrants instituting a criminal investigation. The National Public Prosecutor on Corruption checks whether the case is in keeping with priorities. This means that the seriousness of the case is determined in relation to other cases, whether there is a reasonable chance of success, whether there is a good mix of commercial bribery and foreign bribery cases in the caseload. A preliminary report is drawn up, including a plan for the criminal investigation and its possible phases. Based on this, an official decision is made and a criminal investigation instituted. The decision is a matter for the Steering & Assessment Team, which includes representatives of the FIOD and the Public Prosecution Service.

[2] *Besluit themaverwerking ambtelijke omkoping en mensenhandel*, see https://zoek.officielebekendmakingen.nl/stb-2019-475.html

B. Prevention

20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)

Integrity framework

There is no general strategy or legal framework in place that focuses solely on anti-corruption or integrity. Nevertheless, the relevant policies, laws and regulations as a whole can be interpreted in such a way. Relevant provisions are included in e.g. the Dutch Constitution, the Dutch Criminal Code (*Wetboek van Strafrecht*) and the Civil Servants Act (*Ambtenarenwet*).

The Minister of the Interior and Kingdom Relations is (among other things) responsible for constitutional affairs, decentralisation, the organisation of internal administration, the civil service, housing and spatial planning. Political responsibility regarding integrity and transparency is decentralised. Thus each governmental organisation bears responsibility for the formulation and implementation of its own policies in these fields. The Minister of the Interior and Kingdom Relations bears a general responsibility for the system of integrity policy and for the quality of public administration (national government, provinces, municipalities and water authorities).

This framework responsibility for the system is made up of four key components: standards (through laws and regulations), monitoring (by way of a three-yearly public administration monitor that includes an integrity module), facilitation (through research, networking, agenda-setting and information provision; the independent Dutch Whistleblowers Authority, which carries out a role as an independent administrative body in this regard, is the remit of the Ministry of the Interior and Kingdom Relations) and intervention (option for retrieval of official notices, which rarely occurs). Regular contact takes place with the umbrella organisations of the local and regional authorities. Consultation and collaboration also take place with other government sectors, such as the Ministry of Defence and the National Police.

There are general institutions that play a role in preventing corruption and promoting integrity: the Supreme Audit Institution, the National Ombudsman and the Whistleblowers Authority described in paragraph 19.

The Civil Servants Act 2017 prescribes a Code of conduct for each government organisation (as defined in Article 2 the Civil Servants Act) to have a Code of Conduct in place as well as an official oath, and annual monitoring as well as reporting of integrity and conduct violations (including cases of corruption).

In addition to the statutory responsibilities, government employers are supported by the availability of model protocols, such as a model Code of Conduct and/or trainings and workshops aimed at the implementation, enforcement as well as development of policy in general and of the Code of Conduct in particular. The vast majority of policies, guidelines, model Codes of Conduct and protocols, and studies that have been developed are available on www.rijksoverheid.nl and/or www.kennisbankopenbaarbestuur.nl.

As part of the coordinating role of the Ministry of the Interior and Kingdom Relations, the Interdepartmental Platform on Integrity Management (*Interdepartementaal Platform Integriteitsmanagement*, IPIM) focuses on cross-government integrity policy, the monitoring and registration of violations, and the development of new instruments in the Central Public Administration. The integrity coordinators of all the Ministries and a number of major implementation organisations, such as the Tax and Customs Administration (*Belastingdienst en Douane)* as well as the Custodial Institutions Agency (*Dienst Justitiële Inrichtingen*), are members of the IPIM. The IPIM is supported by the Ministry of the Interior and Kingdom Relations. Both the model Code of Conduct and the 'Baseline Internal Personal Investigation following an integrity or

security incident' (*Baseline Intern Persoonsgericht Onderzoek na een integriteits- of beveiligingsincident*) are examples of instruments that have been developed on a cross-government basis, coordinated by the Ministry of the Interior and Kingdom Relations. There are also various working groups that deal with specific topical issues and convert them into protocols.

In addition, the IPIM advises other/higher bodies such as the Interdepartmental Committee on Organisational and Personnel Policy (*Interdepartmentale Commissie Organisatie- en Personeelsbeleid*, ICOP), the Interdepartmental Committee on the Operation of Government Agencies (*Interdepartementale Commissie Bedrijfsvoering Rijksdienst*, ICBR) and the consultations of the secretaries-general of the ministries (SGO) in the field of integrity management. The IPIM is guided by the principle that fostering an awareness of integrity in government employees' is an ongoing process of learning and development, where professional conduct ought to be the benchmark. The IPIM has a fixed composition of participants. Participants represent their organisations and are mandated to present their organisation's point of view to the IPIM.

Asset disclosure rules for ordinary civil servants

For individual civil servants the principles in the Civil Service Act 2017 (Article 5 and Article 8) apply in respect of financial interests, these include:

- designation by the employer of positions at risk of integrity violations in the organisation;
- financial interests harmful to the service are prohibited;
- the civil servant is obliged to report financial interests that may reasonably affect the correct execution of his duties or the functioning of the civil service.

Asset disclosure rules for Ministers and State Secretaries

'Prevention is better than cure' is the key principle that applies to the appointment of Ministers and State Secretaries. Candidates must resign from all secondary positions and business interests must be disposed of or placed at arm's length before taking office. Any appearance of subjective decision-making must be avoided in relation to the financial and business interests of Cabinet members. This is not limited only to the policy area for which a Minister or State Secretary is directly responsible, because they are involved in the decisions made on all issues that are raised in the Council of Ministers ('Ministerraad') ex Article 45, paragraph 3, of the Constitution. Over the years, rules of conduct have therefore been established, which Cabinet members must observe. These have been included in the "Handboek voor bewindspersonen" (also known as the Blue Book). This manual outlines the rights and obligations of Ministers and State Secretaries. It is not binding and enforceable, but provides clear guidelines on the basis of statutory provisions and predecessors' experiences and has been used for many years.

Before being confirmed as Ministers and State Secretaries, a special procedure applies for candidates. The procedure is set out in the *Handboek voor bewindspersonen*. First, three fact-finding exercises are carried out.

1. Judicial record: the judicial document register is consulted to determine whether there is any relevant information under criminal law relating to the candidate. This exercise is limited to completed cases that have led to a criminal conviction.

2. Background check by the General Intelligence and Security Service (AIVD): the AIVD verifies ex Article 2, subsection a, *Regeling naslag Wiv 2017* whether there is any relevant information in its files relating to the candidate which has been gathered in connection with its duties as specified in Article 8 of the *Wet op de inlichtingen- en veiligheidsdiensten 2017*. The background check by the AIVD yields information insofar as the service has previously 'encountered' the candidate and recorded information about them on that occasion for any reason. Only if there are serious indications that the candidate is a (possible) risk for national security the AIVD can conduct a more in

depth investigation (however this would no longer qualify as a background check, but as an operational investigation).

3. Background check of the tax file: the Tax and Customs Administration ("Belastingdienst") consults the candidate's tax file. On accepting office, Ministers and State Secretaries must resign from all paid and unpaid positions, secondary positions and other secondary activities. This rule exists to prevent conflicts of interests. Prerequisites, benefits in kind and any expense claims are made public, unless this publication is undesirable for security considerations.

Subsequently the formateur (i.e. person charged with forming a new government, usually the future Prime Minister) interviews a candidate Minister or State Secretary. By putting themselves forward as candidates, candidates agree to this procedure. During the interview with a candidate, the formateur shares the results of these exercises and discusses them with the candidate. It must be stressed that the prior background checks of the candidate serve only to support the formateur. These fact-finding exercises as well as the way that the formateur delves into specific aspects of them during a preliminary meeting with the candidate, do not affect the candidate's responsibility to raise all relevant facts and circumstances at their own initiative. The exercises and their scope are explained below. On the basis of Annex 1 of the *Handboek voor bewindspersonen* (which is a non-exhaustive list), all relevant interests must be communicated to the formateur before the candidate takes office. The list ends with the possible solutions that are accepted to date if there is a risk of an apparent conflict of interests.

The arrangement concerning the financial and business interests of Cabinet members (Ministers and State Secretaries) taking office is based on trust. Ministers and State Secretaries are personally responsible for preventing any conflict between their public and private capacities. The preliminary interview between the formateur and the candidate systematically looks at whether the candidate has any controlling rights in relation to relevant financial or business interests.

Where applicable, candidates must either fully dispose of these interests or enter into an arrangement by which they cannot and will not exercise their controlling rights during their period of office. If these controlling rights relate to relevant financial or business interests, candidate Ministers or State Secretaries must either fully dispose of these interests or enter into an arrangement by which they cannot and will not exercise their controlling rights during their period of office. Ministers or State Secretaries are also responsible for not participating in any decision-making on matters that involve their partner, children, other family members, business relations, interests, former interests or previous positions, insofar as participating could run counter to the proper performance of their duties. For this reason, Paragraph 5 of the Replacement Arrangements for Ministers in the Event of Temporary Absence stipulate that they will be replaced by another Minister insofar as performing their duties in a certain matter would mean that they could be personally and directly involved.

Ministers and State Secretaries are also obliged to resign from all other positions for the office. The rules of private and public law apply normally to the acts of former cabinet members, including the duties of confidentiality laid down in Articles 98 *et seq*. and 272 of the Criminal Code (*Wetboek van Strafrecht*).

Upon taking office Cabinet members take the oath of office that is specified in Article 1 of the *Wet beëdiging Ministers en leden Staten-Generaal*.

Although there are no statutory sanctions, Ministers or State Secretaries are accountable to the States-General for their conduct under the principle of Ministerial responsibility (also contained in Article 42 of the Constitution). Ministers and State Secretaries should both actively as passively (i.e. upon request ex. Article 68 of the Constitution) provide relevant information to Parliament. Parliament can demand explanations from Parliament and can ultimately be asked to leave their position when the majority of one of the Houses of Parliament revokes their trust in them. Thus, if

Cabinet members do not report information that they could suspect involves a risk or otherwise be politically relevant they risk being held accountable by Parliament. In addition to the principle of Ministerial responsibility, Minsters and State Secretaries can be prosecuted for misuse of their office. For the special procedure in these cases see item 27 in regards to political immunities.

Lobbying / Revolving doors

There is a ban on lobbying. For a period of two years after their resignation, it is not acceptable for former Ministers and State Secretaries to engage in any way with the employees of their former Ministry as lobbyists on behalf of a company, semi-public organisation or lobby organisation that represents interests in their former policy area. This ban means that they also cannot act as an intermediary, lobbyist or agent in commercial contacts with the Ministry. The term 'commercial contacts' must be interpreted broadly to mean not only physical meetings but also emails, telephone calls, other forms of telecommunication or participation in a business delegation (*Handelingen* (Parliamentary Records) II, 2016/17, 34376, No. 15 and the Circular on the Application of the lobbying ban to Cabinet members, 5 October 2017, appendices). The Secretary-General of the Ministry concerned may allow an exception to this rule. Due to their status and reputation abroad, former Cabinet members who work in trade and industry may head or form part of a trade delegation organised by a Ministry.

Local appointed and elected officials

Statutory rules for integrity for appointed and elected officials in subnational levels of government are laid down in the Municipalities Act, the Provinces Act and the Water Authorities Act. These rules are largely similar to those laid down for civil servants. Mayor and Commissioner of the King (province level) and chairman of the water authority are obliged to stimulate integrity. So they need to make a policy framework. There are also provisions that regulate the participation of local elected representatives and administrators in voting and decision-making in cases in which a holder of political office has a personal interest at stake. There are also rules concerning ancillary jobs.

All compensations and benefits for holders of political office are identifiable and verifiable as they must be based upon formal provisions in laws and regulations. Any benefit or provision not explicitly mentioned in laws and regulations, is not permitted.

As part of the supportive task of the ministry, model codes of conduct have been established which government authorities can use as a guide for their codes of conduct. The model codes of conduct for both elected officials and appointed officials can be found in the Integrity Guidelines for Holders of Political Offices (*Handreiking integriteit politieke ambtsdragers*).

When there is a supposed integrity scandal often advice is needed in the process steps of investigation. Therefore since 2015 the Advisory Team Integrity Investigation (*Steunpunt Integriteitsonderzoek Politieke Ambtsdragers*) gives independent advices to political responsible officials.

General transparency of public decision-making (including public access to information

As stated above, Article 42 of the Constitution is the codification of the principle of Ministerial responsibly. This entails that Ministers and State Secretaries (publicly) provide all relevant information to Parliament (and thereby the public) about the subject matter they are responsible for. Furthermore, pursuant to Article 68 of the Constitution, Ministers and State Secretaries provide "the information required by one or more of the members, orally or in writing, to the Houses of Parliament separately and in a joint session, provided that the disclosure of such information is not contrary to State interests".

In addition, Article 110 of the Constitution stipulates that the public administration must allow 'public access in accordance with statutory rules' during the performance of its duties. These rules are set out in the Government Information (Public Access) Act (*Wet openbaarheid van bestuur* or

Wob). The underlying principle of the *Wob* is that information in the possession of administrative bodies on an administrative matter is public (except for a closed number of statutory exceptions). Furthermore, the *Wob* stipulates that administrative bodies should provide information of their own accord in the interests of proper and democratic administration.

The *Wob* sets out which administrative bodies can be petitioned for the publication of information. These bodies include:

- the Ministries;
- the administrative bodies of the provinces (e.g. the Provincial Executive);
- the administrative bodies of the municipalities (such as the Municipal Executive);
- the administrative bodies of the water authorities (including daily management);
- public-sector organisations;
- institutions, agencies and companies that operate under the responsibility of the aforementioned administrative bodies. The jurisprudence indicates that this body must have a significant impact on said institution, agency or company.

A key example of a special administrative body for which no request based on the *Wob* can be submitted is the Whistleblowers Authority – for obvious reasons, in this case.

The disclosure and provision of information that can be requested on the basis of the *Wob* must relate to an administrative matter which concerns the policies of an administrative body. This definition also includes the preparation and the implementation of such policy. Whenever information is requested for internal reflection, any personal policy views contained therein must be redacted, however. There are a number of exceptions to this rule. For example, it may be justifiable with a view to sound and democratic governance for a personal view on policy to be disclosed in an anonymous form. The importance of protecting personal policy views must also be considered against the importance of disclosure in the case of environmental information. In addition, it is a requirement that the information is held by an administrative body; the method of storage of the information is irrelevant. Information that is both retained on a written document and stored on another medium, such as an audio cassette or a data carrier, may be published.[3] In the case of rejected *Wob* requests, applicants may lodge a complaint, which may give rise to an appeal to the court if it is not granted either. If the appeal is rejected in the lower court, applicants may appeal to a higher court (see under item 40 for further explanation of the administrative appeals system).

Information about the government budget is also publicly available as the budget is adopted by legislative procedure (to this see item 37 below). This budget is debated at length in the Lower House of Parliament and is public. The budget accountability session is also held in public in the Lower House of Parliament.

Apart from access to information on the basis of the Dutch Constitution and the Freedom of Information Act (*Wob*), the Cabinet decided in 2016 to publish relevant agenda appointments and public speeches through its personal web page on the national government website www.rijksoverheid.nl, in order to increase transparency about the meetings of Ministers on political and policy priorities. Each Minister is responsible for the content of their own web page on www.rijksoverheid.nl.

At the start of 2019, a bill to amend the Open Government Act (*Wet open overheid*, *Woo*) was submitted to the Lower House of Parliament. The aim is for the bill to be debated in the House during the autumn of 2020. This bill is intended to increase the transparency of the government. The bill will enhance the focus on the proactive disclosure of public information in order to serve the rule of law, democracy, citizens and public governance better. The cornerstone of the bill is Section 1.1: 'Everyone is entitled to public information without having to assert interest in that regard, subject to

[3] www.wob.nl

the restrictions imposed by this Act.' As such, the *Woo* centres on a list of compulsory documents to be disclosed. Following its introduction, the *Woo* will replace the Wob.

Furthermore, transparency by use of (online) consultations regarding legislation is discussed below in answer to item 37.

21. Rules on preventing conflict of interests in the public sector

Civil servants

The National Government Integrity Code of Conduct (GIR) contains the principle of not accepting any gifts with a value in excess of 50 euros. Article 8 of the 2017 Civil Service Act (*Ambtenarenwet 2017*) specifies that without permission from his employer, a civil servant may not accept or request gifts, payments, remunerations and rewards from a third party, if the civil servant maintains relations with that third party in his capacity as a civil servant. The GIR also contains a reporting obligation for financial interests and an obligation to report sensitive transfers to other employment. See GIR 2020, 4.1 and 4.4.

Government employers bear primary responsibility for pursuing a sound and consistent integrity policy. These government employers are mandated to do so under the Civil Servants Act. The Civil Servants Act includes the following provisions in respect to integrity in general and preventing conflicts of interest in specific:

The competent authority of civil servants that have been appointed by or on behalf of the government, the provinces, the municipalities or the water authorities:

> Art. 4
> a. will pursue an integrity policy which is aimed at promoting proper conduct as befits civil servants, and which in any case focuses on improving awareness of integrity as well as preventing misuse of powers, conflicts of interest and discrimination;
> b. will ensure that the integrity policy is a fixed component of human resources policy, in any case by addressing integrity during appraisal interviews and work consultations as well as by providing training and education in the field of professional integrity;
> c. will ensure the creation of a Code of Conduct with regard to proper conduct as befits civil servants;
> d. will publicize an annual report on the execution of this Article.
>
> Art. 5
> a. the oath of office or pledge that civil servants are required to affirm upon appointment;
> b. the reporting and registration of ancillary activities that may affect the interests of the agency, to the extent that they are related to job performance;
> c. the disclosure of ancillary activities, registered pursuant to part b, of civil servants appointed to a position for which the disclosure of such ancillary activities is crucial to protecting the integrity of the public service;
> d. the prohibition of ancillary activities as a result of which the effective execution of the position or the proper functioning of the public services would not reasonably be guaranteed, to the extent that they are related to job performance;
> e. the disclosure of financial interests relating to the possession of and transactions in securities respectively that may affect the interests of the public service, to the extent that they are related to the duties of the position, for civil servants appointed to a position that specifically entails the risk of a financial conflict of interest or the risk of the improper use of price-sensitive information;
> f. a procedure to handle civil servants' suspicions of abuses within the organisation at which they work.

The oath of office or pledge for civil servants
All civil servants, public administrators and elected representatives must abide by rules of conduct. Civil servants who take the oath of office or pledge swear or promise to abide by these rules. By taking the oath of office or pledge, civil servants, public administrators or elected representatives swear:

- that they will be loyal to the King and respect the Constitution as well as all other laws of our nation;
- that they neither directly nor indirectly in any form whatsoever have provided false information to obtain the office;
- that they have not made gifts or promises to third parties in order to obtain the office, nor shall do so;
- that they have not accepted gifts from third parties to obtain this office, nor that they have made promises to third parties or shall do so;
- that they shall execute their duties faithfully and scrupulously, and that any confidential matters which are brought to their attention by virtue of their position or of which the confidential nature should be clearly recognised shall be kept secret from persons other than those whom they are required to inform as part of their professional responsibilities;
- that they shall conduct themselves as befits a good civil servant, and be diligent, incorruptible and reliable, nor shall their conduct harm the authority of the office.

Basic integrity standards for civil servants
In addition to the legal standards, the government also has Basic Integrity Standards,[4] which must ensure that civil servants are able to carry out their duties with integrity. All government organisations are required to comply with these standards. Among other things, the Basic Integrity Standards stipulate that the organisation:

- must draft a written policy on integrity;
- must regularly examine which positions involve working with a significant amount of confidential information and where any risks lie with regard to fraud;
- must have its own code of conduct in place;
- must have rules on how to handle confidential informational, such as for the security of computer equipment;
- must verify the diplomas or certificates of new staff;
- must require that new members of staff hold a Certificate of Conduct (*Verklaring Omtrent het Gedrag*);
- must determine a procurement policy.

The Basic Integrity Standards also prescribe that civil servants:

- must take an oath of office or make a pledge;
- must disclose their ancillary activities;
- may not accept gifts or services with a value exceeding 50 euros.

<u>Ministers and State Secretaries</u>
As stated above under item 20, in the interview between the formateur and candidate a systematic analysis is made in order to see whether the candidate has any controlling rights in relation to relevant financial or business interests. Where applicable, candidates must either fully dispose of these interests or enter into an arrangement by which they cannot, and will not, exercise their controlling rights during their period of office. Furthermore, Ministers and State Secretaries may not hold any paid or unpaid ancillary positions.

[4] https://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/documenten/brochures/2005/09/26/modelaanpak-basisnormen-integriteit

Candidate cabinet members must declare that they have resigned from all paid and unpaid positions, secondary positions and any secondary activities before the government is sworn in. This is to prevent any possible appearance that secondary positions or other secondary activities could adversely affect objective decision-making. A secondary position may be continued or accepted only in highly exceptional cases and then only after the formateur or Prime Minister has given consent. This policy was further tightened in 2005 with regard to special memberships of recommendation committees.

The line of what constitutes relevant financial and business interests is drawn at the interests over which the candidate cabinet member has personal control or joint control. Therefore, the basic principle applied to placing financial and business interests at arm's length is that financial and business interests of a partner, adult children and other family members, in contrast to those of underage children and the partner in case of a marriage in community of property, are generally not considered relevant.

A letter at the start of a government's term of office in which the Prime Minister indicates which arrangements have been made by Ministers and State Secretaries concerning incompatible financial and business interests and which secondary positions are being maintained. Financial and business interests that are disposed of are not publicly declared. A register is not expedient because in principle no secondary positions are retained. During office, Ministers and State Secretaries must avoid any appearance of subjective decision-making. For further relevant details and provisions in this regard see item 20.

During their term of office, cabinet members are personally responsible for not participating in any decision-making if their participation could run counter to the due and proper performance of their duties. The personal responsibility of cabinet members is a primary concern, for reasons of privacy but also because of their insight into all relevant facts and circumstances. How cabinet members organise their private life and finances is something that should be able to remain private, in principle, as long as there is no specific reason to doubt whether this would influence the performance of their public duties. As referenced above Ministers or State Secretaries can be replaced due to conflicts of interest ex paragraph 5 of the Replacement Arrangements for Ministers in the Event of Temporary Absence.

When accepting a position after the end of their term of office, Ministers or State Secretaries must take care to act so as not to create the appearance that they have acted improperly during the performance of their official duties or dealt incorrectly with knowledge that they gained during that period. Any intention by cabinet members who are still in office to hold talks on future positions for themselves must first be submitted to the Prime Minister for approval.

Article 26 of the Rules of Procedure for the Council of Ministers, cabinet subcommittees and committees stipulates that a duty of confidentiality exists in relation to what is discussed or transpires at meetings. This duty of confidentiality also applies after leaving office. The rules of private and public law apply to the acts of former Ministers and State Secretaries, including the duties of confidentiality laid down in Articles 98 et seq. and 272 of the Criminal Code (*Wetboek van Strafrecht*). When accepting a position after the end of their term of office, it is also desirable that Ministers or State Secretaries take care to act so as not to create the appearance that they have acted improperly during the performance of their official duties or dealt incorrectly with knowledge that they gained during that period.

As mentioned in item 20 there is a ban on lobbying as explained before.

An instruction is included in the Protocol Instructions (Regulation of the Prime Minister, Minister of General Affairs, of 13 July 2016, no. 3884909, appendix IX) and applies to the acceptance of gifts by Ministers and State Secretaries: "Restraint is the basic principle to be applied when offering and receiving gifts. Received gifts are registered and stored. Received gifts with a value of €50.00 or more are not made available to the recipient."

The Integrity Guidelines for Holders of Political Offices (*Handreiking integriteit politieke ambtsdragers*) contains more information on integrity policies for public administrators and elected representatives.

22. Measures in place to ensure Whistle-blower protection and encourage reporting of corruption

See the answer to item 19 concerning The Whistleblowers Authority. The Dutch Whistleblowers Act includes several measures to protect whistleblowers, such as a broad prohibition of prejudice, such as dismissal and transfers, against whistle-blowers and mandatory reporting channels for organisations with 50 or more employees so that employees can report wrongdoings safely and confidentially. Similar provisions are also included in the collective labour agreement for central government and in the code of conduct for employees.

The Dutch Whistleblowers Authority provides information to both employers and employees, confidential advice to employees and conducts investigations into wrongdoings/misconducts and the treatment of whistleblowers.

Directive EU 2019/1937 introduces and harmonizes a number of protective measures for whistleblowers throughout the European Union that witness a breach of the EU law that is specified in the appendix to the Directive. The Ministry of the Interior and Kingdom Relations is responsible for implementing the Directive. The implementation is planned to be finished by the seventeenth of December of 2021. By implementing this Directive a number of things will change with regard to whistleblowing in the Netherlands.

Firstly, the group of persons that can make a notification will be expanded. Under current law, only employees, civil servants and some others may make a notification, but after implementation of the Directive this will also be possible for people related to a private or public body in another manner, for example as a job applicant or a shareholder.

Secondly, the threshold for determining whether a violation of a rule constitutes a 'whistleblower' case is lowered. Under current law, such violation must be a threat to the public interest. However, the Directive states that any violation of the EU law that is mentioned in the appendix to the Directive suffices to make it a 'whistleblower' case. Thus in case of breaches of the mentioned EU law, the requirement that the whistleblower proves that the public interest is at stake no longer applies.

Thirdly, it is no longer required that whistleblowers first notify a violation internally before they may address an external organisation to get protection: they may now choose whichever notification pleases them most.

Lastly, for all procedures of notification the required protection for the whistleblowers is improved and harmonized. This improvement includes privacy guarantees for whistleblowers, indemnity from certain legal procedures, a reversal of the burden of proof, a duty to inform for organisations and a duty to respond to whistleblowers within a certain period. Additionally, the existing Whistleblowers Authority Act is currently being evaluated. The evaluation is planned to be finished by June 2020. On the basis of the recommendations made in the evaluation, the Whistleblowers Authority Act may be further revised to facilitate the proceedings at the Whistleblowers Authority. One feature that might be improved, for example, is the manner in which the Advisory Department and the Investigations Department of the Whistleblowers Authority cooperate.

Encouraging reporting of corruption law enforcement

All agencies involved in (criminal) investigations on corruption provide information on their websites regarding systems for reporting corruption. This can be done under conditions of anonymity if desired. Within the financial sector, specific modalities are in place regarding the reporting of suspicious transactions.

Representatives of the ACC and corruption team of the Public Prosecution Service also undertake awareness-raising activities. They regularly meet with diverse parties such as banks, accountancy firms, the Tax Authority, compliance experts, law-firms and representatives of the International Chamber of Commerce in the Netherlands to share their experiences and discuss the impact of collaborating with the authorities.

The NPIID and LP also undertake awareness-raising activities and activities that add to a system of prevention. Since 2018, the focus on building relationships and increasing awareness within public administration (*openbaar bestuur)* is identified as a priority for the NPIID. The organisation aims to increase awareness within public administration of its important role as a partner for local governments and share their knowledge. This helps these organisations to assist their members, strengthens prevention of corruption and could also lead to an increase in signals or indicators for investigations. Several activities take place through the "*Netwerk voor Weerbaar Bestuur*".

23. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption in these sectors. (e.g. public procurement, healthcare, other).

The Netherlands does not execute an overall risk-assessment on corruption related to all sectors to identify which sectors are most at risk. Each sector has its own responsibility to set up systems to prevent corruption. Nevertheless certain sectors can be identified which pose more risks than other sectors. We will list some measures taken in specific sectors that can be identified in this context.

Measures taken for preventing corruption in the sector of public procurement

In the Netherlands, there are several procedures and legal provisions to avoid fraud and corruption in public procurement. Besides specific provisions in the Public Procurement Act, there are rules on the integrity of civil servants. In addition, the bribery or attempted bribery of civil servants is punishable by law. Quantitative indicators show that certain procurement procedures only received one bid or there was no prior publication of a call for competition. This does not mean that fraud was committed or corruption took place in these cases. In general, there are many possible legitimate reasons why only one bid was received or no prior call for competition was published. To ensure that legitimate reasons are not adduced in cases where they do not apply, proper control mechanisms must be in place both within the organisation of the contracting authority itself and independently of it.

Legal provisions

The Public Procurement Act (Aanbestedingswet 2012)

The Public Procurement Act implements the Procurement Directives, including the provisions on fraud, corruption and conflicts of interest.

Article 1.10b of the Public Procurement Act requires contracting authorities to take appropriate measures against different forms of corruption. The Article enshrined in the general part of the Act and applies to all procurement procedures regardless of the value of the contract. It reads as follows (unofficial translation):

Article 1.10b

1. A contracting authority or a public utility operator must take appropriate measures to effectively prevent, identify and remedy fraud, favourable treatment, corruption and conflicts of interest during a procurement procedure, to avoid any distortion of competition, ensure the transparency of the procedure and guarantee the equal treatment of all economic operators.

2. The concept of conflicts of interest as referred to in subsection 1 applies at least to any situation where personnel of the contracting authority, the public utility operator or a procurement service provider acting on behalf of the contracting authority or the public utility operator that is offering a supplementary Public Procurement Activity on the market, who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure, have a direct or indirect financial, economic or other personal interest which might be perceived as compromising their impartiality and independence in the context of the procurement procedure.

Article 2.51 regulates the involvement of economic operators in the preparation of the procurement procedure and thus fights conflicts of interests.

The Public Procurement Act lists mandatory (and non-mandatory) exclusion grounds. Under Articles 2.86 and 2.87 contracting authorities must or may exclude economic operators which have proven to be unreliable or have been convicted for criminal offences. Mandatory exclusion grounds apply to every tender. Mandatory grounds for exclusion are for instance bribery or fraud. The exclusion grounds are part of the European Single Procurement Document (ESPD) that is compulsory for European tenders.

The Public Administration Probity Screening Act (Bibob or Bevordering Integriteitsbeoordelingen Openbaar Bestuur)

The Public Administration Probity Screening Act Bibob offers authorities and public services obliged to apply tendering procedures new instruments to prevent criminals making use of specific government provisions. Bibob does not merely focus on tenders, but improves integrity for all measures of public bodies. The Bibob offers administrative bodies such as municipalities, provinces and the government the possibility to tackle criminal activities. Administrative bodies can deny licenses, subsidies and tenders for instance, when it becomes clear that there is a criminal activity behind the application. This may be the case for instance when there is a suspicion that the applicant or moneylenders are going to launder money or commit criminal offences with the license. It is also checked if a straw man construction is used. Administrative bodies can have the background of a company or person checked using Bibob. If there is a serious risk of the license or subsidy being used improperly, an administrative body may deny the application or pull the license or subsidy already issued. If a government order is at risk of being used inappropriately, the administrative body can exclude the candidate concerned.

Municipalities Act (Gemeentewet) and the Central and Local Government Personnel Act (Ambtenarenwet)

Besides the Public Procurement Act and the Public Administration Act BIBOB, there are rules governing integrity, for example, the general rules on integrity for civil servants (as laid down for example in the Municipalities Act (*Gemeentewet*) and the Central and Local Government Personnel Act (*Ambtenarenwet*)). Also, bribery or attempted bribery of civil servants is a criminal offence. If

provisions on integrity are infringed, concerned parties can take legal action against the infringing contracting authority.

Declaration of conduct for public procurement

Contracting authorities may require a declaration of conduct for public procurement (*Gedragsverklaring aanbesteden*, GVA). You can obtain a GVA (in Dutch) from the judiciary service Justis (Ministry of Justice and Security). Justis will do a background check on the economic operators.

Netherlands Authority for Consumers and Markets

The Netherlands Authority for Consumers and Markets (ACM) ensures fair competition between businesses, and protects consumer interests. In the case of a tender, there should be sufficient competition between the procuring companies. If there is a serious suspicion of coordination between the procuring companies (bid rigging), a tender registration can be put aside by the administrative body. Violations can be registered by the ACM.

Besides statutory provisions, there is also soft law that contains guidance on the prevention of integrity violations. By implementing and actively carrying out an integrity policy that includes procurement provisions, the main sources of fraud, corruption and conflicts of interest within a contracting authority can be eliminated.

Guidance

Several agencies have been set up specifically to give guidance to decentralised authorities, including on the implementation of the provisions on integrity by contracting authorities and public utility operators. These include, for example, the Association of Netherlands Municipalities (*Vereniging Nederlandse Gemeenten*) and *Europa Decentraal* (a knowledge centre for local and regional authorities for queries concerning European law). In addition, the central government website contains detailed information on preventing fraud and corruption within government in general and in procurement procedures in particular. The most detailed treatment of the provisions on preventing fraud and corruption within procurement can be found on the PIANOo website. PIANOo collects and presents information on the prevention of integrity violations on its website, gives advice and answers questions on this matter.

Law enforcement

One way in which the FIOD/ACC fights corruption is by adopting a project-based approach, for example by focusing on a particular industry, occupation or theme. The aim is to promote collaboration and raise awareness on corruption risks throughout the entire reporting chain. An example is a project started by the FIOD/ACC based on transactions declared suspicious by FIU-Netherlands and originally reported as 'unusual' by auditors under the WWFT (referred to below as suspicious transaction reports or STRs). In carrying out their duties within a company, auditors are well placed to identify transactions or activities for which no reasonable economic explanation can be given. Unusual transactions reported by an auditor are of great value to investigators. This is why such reports are considered in the context of a particular project or theme. Furthermore, a report submitted by an auditor to the FIU is hedged around by many safeguards based on statutory rules of conduct and professional rules and is prepared with such care that great value can be placed on its content. The aim of the suspicious transaction reports project is:

- in collaboration with enforcement partners, to use the reports for the purposes of investigation, supervision and prevention;

- to raise awareness among auditors about the various forms and indicators of corruption in order to increase the number and improve the quality of the reports;
- to improve the efficiency and effectiveness of the entire reporting chain.

Several measures were taken in order to achieve these aims, including:

- routinely assessing suspicious transaction reports over a five-year period to identify possible signs of corruption. Under this project, 70 reports of corruption indications have led to the institution of eight criminal investigations (including one case of foreign bribery) and 60 reports have been forwarded to the authorities for use in levying and collecting tax;
- organising two workshops together with the AFM and the Public Prosecution Service for auditors to brief them on corruption indicators, investigation methods and the FIU reporting process;
- publication in a national newspaper and sharing these experiences at an international conference.

The 2019 GRECO evaluation gives insight into the mechanisms in place within law enforcement related to certain corruption risks. Please see chapter V of this report regarding corruption prevention in law enforcement agencies**.** In line with this report the Netherlands has developed a draft legislation that extends the screening of police officers, both before the appointment and during the employment. This legislation is currently being discussed by the Senate. Please also refer to the answers under part 1 of this evaluation related to the Public Prosecution Service and the round 4 GRECO evaluation.

Responsible Business conduct

The Netherlands encourages and supports the practice of Responsible Business Conduct (RBC) by Dutch businesses. To this end, the Ministry of Foreign Affairs and Ministry of Economic Affairs commissioned an RBC Sector Risk Analysis (SRA) in 2014 of the economy of the Netherlands. The objective was to identify the sectors in which the international value chains are most prone to environmental and human rights abuse. Corruption risks are an integral part of the analysis.

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

The Netherlands strives to fight corruption effectively and thus undertakes several types of activities and has introduced measures to prevent corruption. Again, this can also be sector driven, so the following list is not a definitive list of activities.

Awareness-raising investigating and prosecuting authorities

The authorities focus on giving presentations to public and private sector stakeholders in order to raise awareness of the subject of foreign and commercial bribery, explain the approach adopted by the FIOD/ACC and the Public Prosecution Service and why this is being intensified, and enhance their detection capacities. Many presentations are given at law firms and accountancy firms and for compliance staff, audit and fraud specialists and fellow investigators and many (inter)national conferences are taken part in. Additionally we strive to also share our activities with authorities of other countries and support or take part in MATRA projects on this subject to enhance training of other authorities. By sharing knowledge about corruption and ways of detecting it in their own organisation, we strive to strengthen the capabilities of companies to report. In the last two years, the ACC has for example organised meetings with the Association of Certified Anti-Money Laundering Specialists (ACAMS), during which those attending were informed of the corruption red flags (based on the handbook created by the OECD's Task Force on Tax Crimes and Other Crimes (TFTC), and training was given on how to recognise corruption in these hypothetical cases. On behalf

of the government of the Netherlands, Atradius Dutch State Business (DSB) insures payment risks for Dutch exporters of capital goods, contractors that operate internationally, banks and investors. In 2019, the National Coordinating Public Prosecutor on Corruption, together with a representative of the FIOD/ACC gave a presentation at Atradius DSB for all staff involved in the due diligence process. This presentation focused on raising awareness of corruption risks and recognizing possible signs of corruption in the application process. The NPIID and LP together have also organised awareness-raising activities in the area of corruption within the public service and resilient governance (*weerbaar bestuur*). This was aimed at the municipal level (mayors and representatives of local governance). See above, under 23 for more information.

Financial sector

The FEC is a partnership between authorities that have supervisory, control, prosecution or investigation tasks in the financial sector and was founded to strengthen the integrity of the sector by taking preventive action to identify and combat threats to this integrity. The FEC also plays an important role in providing and disseminating information. By arranging for FEC partners and observers to exchange information, knowledge and skills among themselves, the FEC can act effectively and efficiently in tackling specific problems and achieve a wide-ranging effect. The FEC's annual plans for 2018 and 2019 list corruption as a priority topic. Together with FEC partners and private sector organisations (financial institutions), the FEC has launched a project to raise awareness about corruption risks, detect corruption risks at an early stage (by enhancing transaction monitoring by banks, based on corruption indicators), discuss corruption cases, indicators and trends and develop best practices. The purpose is to increase the effectiveness of public-private cooperation in order to combat foreign bribery and enhance knowledge sharing between public and private sector partners. The FEC plays a role in promoting corruption detection by private sector stakeholders. For example, it has prepared a corruption project for the FEC 2018 and 2019 Annual Plan. The overall aim of the project is for the participants (FEC partners and private sector organisations, in this case banks) to explore together ways of fighting corruption more effectively, for example by:

- raising awareness of corruption risks;
- detecting corruption risks in time;
- discussing corruption indicators and trends.

This translates into the following ambitions in this public private project:

- to enable banks to learn from one another by exchanging indicators and indications and sharing the information with public sector partners;
- to jointly develop red flags and prepare a factsheet; and to improve the quantity and quality of reports to the FIU based on the experiences of FIU-Netherlands with the Egmont Group and OECD indicator list.
- the Netherlands Banking Association (NVB) is responsible for ensuring that its wider membership is engaged with the theme of corruption.

A number of exploratory meetings were held in 2018 between the public sector partners (FIU, Public Prosecution Service, DNB and FIOD/ACC) and the four major banks. Work started in 2019 on compiling indicators for banks to enable them to detect corruption better. This is based on the OECD and Egmont indicators, as well as on the findings of criminal investigations into corruption. The indicators have been translated into a query that can be applied to transaction and customer data. The banks, together with the public sector partners, work on analysing and discussing the findings from the queries and the involved parties will further refine the query upon the findings. A corruption factsheet will also be compiled for bank employees. The first version of the factsheet has

already been drawn up at interbank level. After that, the factsheet will be supplemented by the Public Prosecution Service and FIOD/ACC. Once the factsheet is finished, it will be periodically updated.

FIU-Netherlands

Pursuant to the Money Laundering and Terrorist Financing (Prevention) Act (WWFT), FIU-Netherlands (FIU-NL) is the national centre to which entities that have a reporting obligation are required to report unusual transactions. The FIU receives, records, processes and analyses the unusual transaction reports it receives. By analysing reported unusual transactions, FIU-NL uncovers money flows that can be linked to money laundering, terrorist financing or underlying crimes such as fraud and corruption. Once transactions have been declared suspicious by the head of FIU-NL, they become police data and are registered in a system to which law enforcement and intelligence agencies have access. The transactions registered in this system can be a referral to law enforcement agencies to commence an investigation. In early 2017, FIU-NL prioritised detection of indications of corruption as a strategic theme. After carrying out strategic research, FIU-NL formulated and validated different queries with a view to actively detecting indications of corruption in the FIU database. Besides actively querying the database, FIU-NL also employs reactive methods, i.e. using information available from network partners such as law enforcement agencies. To raise awareness, FIU-NL informed the obliged entities on the findings and shared the indicators of corruption

Financial intelligence plays a vital role in detecting and prosecuting corrupt activities. To enhance the intelligence available to the FIUs, it is important for them to cooperate with law enforcement agencies, financial institutions and other frontline reporting entities in order to improve the identification of unusual transactions and the detection of activities indicative of corruption. To facilitate this work, the Egmont Group has compiled a set of indicators that may assist, in the context of a transaction or customer interaction, in identifying corruption and the laundering of the proceeds. The input provided by FIU-NL to the Egmont Group was based on a request for feedback from a selection of the reporting entities, the supervisory authorities, the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation and the FIOD/ACC in the Netherlands. Using input from all FIUs, the Egmont Group published a set of indicators in November 2018. FIU-NL produced a newsletter on this topic to inform the reporting entities in the Netherlands as well as the supervisory authorities. Besides sending newsletters to reporting entities and relevant counterparties such as the supervisory authorities, FIU-NL also regularly posts anonymised cases on its website. These cases deal with many different topics, including suspicion of corrupt activities and laundering of the proceeds. The cases are also channelled via LinkedIn, Facebook and Twitter.

Awareness-raising activities for private sector who do business abroad

Since the Netherlands' written follow-up report (March 2015) on the implementation on the OECD Anti-Bribery Convention, it has increased its foreign bribery awareness-raising efforts within the public and private sectors, where relevant, in cooperation with business associations. The policy note of the Minister for Foreign Trade and Development, 'Investing in Global Prospects', underlines the importance of promoting sustainable value chains (para. 3.4). Policy in the Netherlands in this respect approaches this issue from both a trade and development cooperation perspective and emphasizes that both trade and development cooperation need to be conducted sustainably and responsibly. The government of the Netherlands has developed extensive policy on Responsible Business Conduct (hereafter RBC) based on the OECD Guidelines for multinational companies.

For instance, the Ministry of Foreign Affairs, the Ministry of Justice and Security, the Ministry of Economic Affairs and Climate Policy, the Confederation of Netherlands Industry and Employers (VNO-NCW) and MKB-Nederland (the organisation for small and medium-sized enterprises) collaborated with the Netherlands' chapter of the International Chamber of Commerce (ICC Netherlands) and updated the booklet entitled 'Doing Business Honestly Without Corruption' in 2017 with support of Ministry of Foreign Affairs (MFA). This is a specific information booklet for companies. This booklet is written for SME's who are doing business abroad and aims to provide practical tools on how to improve integrity and mitigate risks. When companies have encountered corruption in their international business operations, they can contact the embassy for assistance and information.

Businesses are also informed about preventing corruption on the website of the Netherlands Enterprise Agency (RVO). Some examples of activities that have been undertaken in the past are roundtables and presentations organised by the MFA, together with business associations. Also, the Minister for Foreign Trade and Development Cooperation of the Netherlands delivered a speech on the importance of integrity and anti-corruption policies for companies and referred to the need for a joint contribution by both business and government in addressing these issues during the Anti-Corruption and Integrity Week organised by ICC Netherlands in December 2018.

On behalf of the government of the Netherlands, Atradius Dutch State Business (DSB) insures payment risks for Dutch exporters of capital goods, contractors that operate internationally, banks and investors. It offers a range of products (insurance and guarantees), including export credit insurance, against the risks encountered when doing business abroad. The government of the Netherlands is the insurer and guarantor of the policies and guarantees issued by Atradius DSB on its behalf. The due diligence currently performed by Atradius is based on the OECD anti-bribery recommendation (Council Recommendation on Bribery and Officially Supported Export Credits OECD/legal/0447), as adopted anew in 2019 for export credit insurers. The due diligence has been recorded in the export credit insurance procedures and policy implemented by Atradius. On 30 September 2019, the national coordinating public prosecutor on corruption, together with a representative of the FIOD/ACC, gave a presentation at Atradius DSB for all staff involved in the due diligence process. This presentation focused on raising awareness of corruption risks and recognizing possible signs of corruption in the application process.

Awareness-raising activities for public servants who are posted abroad

The MFA has an Annex on foreign bribery to its Code of Conduct with concrete steps to ensure that public servants report all suspicions of foreign bribery and that they are aware of this duty. Many awareness-raising activities, in which the duty to report is underlined, have been organised for the embassies in recent years. Examples are presentations on the topic of foreign bribery that were given for the heads of the economic departments of our embassies in 2017, 2018 and for the Ambassadors' Conference in 2019 by the MFA. Some activities have been organised together with the International Chamber of Commerce-Netherlands (ICC-Netherlands) and with the National Coordinating Prosecutor on Corruption.

The aims of the event were to make embassies aware of their role in preventing corruption and their duty to report instances of foreign bribery; to provide insight into business dilemmas in international business; to discuss dilemmas arising from the tension between the embassies' prevention role and their duty to report; to provide clarity about what ambassadors, the MFA, businesses and the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation can expect from each other; and to inform embassies about the policies on International Responsible Business Conduct (RBC) and anti-corruption.

C. Repressive measures

25. Criminalisation of corruption and related offences

Bribery is criminalized in the Articles 177, 178, 178a, 328ter, 363, 364 and 364a of the Criminal Code (*Wetboek van Strafrecht, Sr*). Articles 177 and 178 Sr apply to the bribing of public officials and judges, also known as active bribery. The passive form of bribery, so the accepting of a gift, promise or service in order to do or not do something as a public official or judge, is criminalized in Articles 363 and 364. Articles 178a and 364a determine that persons in the public service of a foreign state or of an international-law organisation are considered equivalent to a public official and that the judge from a foreign state or from an international-law organisation is considered equivalent to a judge. Acts of bribery related to the private sector are criminalized in Article 328ter.

Related offences are found in Article 225 Sr (regarding false documents), art. 336 Sr (re. false financial statements) and the money laundering offences (i.e. 420bis, 420bis.1, 420quator, 420quator.1, 420ter lid 1, 420ter lid 2 Sr)

In regard to Members of Parliament, Ministers and State Secretaries special provisions apply. Although their free speech in Parliament is guaranteed, these functionaries may be prosecuted for all other acts. In their case a a special procedure exists with the Supreme Court ("Hoge Raad") for violations of law made while in office. Article 119 of the Constitution states: *"Present and former members of the Staten-Generaal, Ministers and State Secretaries shall be tried by the Supreme Court for offences committed while in office. Proceedings shall be instituted by Royal Decree or by a resolution of the House of Representatives."* These proceedings regarding Ministers and State Secretaries are further laid out by the Act on Ministerial Responsibility. It arranges the way charges (against criminal actions committed during the exercise of one's duties) can be brought.

Only a limited range of crimes are considered crimes that can be committed during the exercise of one's duties. Ministers and State Secretaries remain liable for crimes committed in office after leaving their post. The crimes that are prosecuted under Article 119 of the Constitution are described by Title XXVIII of the Penal Code and in addition thereto increased penalties for regular crimes committed while misusing the powers of office are described in Article 44 of the Penal Code. All other crimes can be prosecuted under the regular justice process – i.e. crimes committed by Ministers or State Secretaries as private persons (where no link exists to their role as cabinet official and where no use is made of their powers of office). The special procedure with the Supreme Court for prosecuting violations of the law made in office works as follows:

The order to prosecute
The order to prosecute a Minister or State Secretary (or Member of Parliament) for is given either by the Government or by the House of Representatives to the Prosecutor General of the Supreme Court (PG). When the order is received the PG must immediately commence the prosecution.

Order by the Government
The Royal Decree must contain a precise description of the alleged offence and the order to the PG. Both chambers of Parliament must be notified of the order. If the Government has decided to order the prosecution Parliament cannot do so as well (regarding the same offence).

Order by the House of Representatives
If the Government has not decided or decided not to give the order the House can decide (by majority vote upon a written and reasoned charge by five or more Members) whether it shall consider giving the order to the PG. Before the House considers giving the order, the chairman of the House will arrange the possibility to be heard for the for the person against whom charges will be brought.

Upon considering the giving of the order to prosecute the House will establish a committee of inquiry (existing of a number of Members of Parliament who did not bring the charge) tasked with gathering information. The committee of inquiry will inform the House of its findings when it decides the charge is sufficiently illustrated. During deliberation of the charge by the House the person against whom the charge is made shall be given the chance to be heard and shall have the last word. If the House has decided not to consider the charge it can do so on a later date when new concerns arise (if this circumstance occurs the Government can also give the order to prosecute).

In deciding upon the charge, the House considers the alleged facts in light of the law, fairness, good morals, and the interest of the state. If the House decides sufficient grounds exist to prosecute the offence it orders the PG to commence the prosecution. Its decision thereto will contain a precise description of the alleged offence. Within three days after the decision by the House, it will be sent (together with the charge and the gathered information) to the PG. A notification thereof will be sent to the Senate and the Minister for Justice and Security. If the House has decided to order the prosecution, the Government cannot give the order of the same person in regard to the same facts.

When the House rejects the charge after the inquiry, neither the House or the Government can investigate or give the order to prosecute the person for the same facts (however, if new facts arise the possibility remains open). The House is considered to have rejected a charge if it has not taken a decision three months after it has received the charge by its Members (although the House can extend this term by a maximum of two months). When the charge is considered to be rejected, the Government remains authorized to order the prosecution of the same person in regard to the same facts.

Order upon report of violations of the law
When a report of a violations of the law made in office by a Minister of State Secretary is received by the ministry of Justice and Security the report will be forwarded to the PG, who shall be asked to report on their findings to the Minister of Justice and Security. If a report is made to a different ministry or the Public Prosecution Department it must be forwarded to the Minister of Justice and Security who will in turn forward to report to the PG, who shall be asked to report on their findings. If the report is made to the PG directly, they will inform the Minister of Justice and Security of the report and shall report on their findings. Upon receiving the report the PG will start a preliminary investigation and will inform the Minister of Justice and Security of their findings. The Government will decide whether an order to prosecute is given to the PG and informs the House of Representatives.

Incidentally, the above described procedure has never been used in practice and is currently being reviewed by a dedicated independent commission (Commissie Fokkens).

26. Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)

Sanctions for corruption offences can be found in the Criminal Code, (see under item 25), in the Law on economic crimes (*wet op de economische delicten*) and in the *"Wet verruiming mogelijkheden bestrijding financieel-economische criminaliteit"*.

This legislation introduced higher possible fines and custodial sentences, but also introduced the so-called "*flexibel boeteplafond*"- a possible fine of up to 10% of annual turnover of legal persons when the applicable fine of category 6 is deemed too low.

Prosecutions are conducted according to the principle of prosecutorial discretion (*opportuniteitsbeginsel*). Section 167 of the Code of Criminal Procedure delegates the decision to prosecute to the Public Prosecution Service. The Public Prosecution Service has a discretionary

power to dismiss a case, to settle a case out of court or to choose for what offence/which offences a suspect shall be prosecuted. The public prosecutor is subject to general guidelines, called Instructions (*Aanwijzingen*), for the prosecution of several offences. These Instructions counterbalance the discretionary powers of the Public Prosecution Service.

This procedure can involve summoning the suspect to appear in court, but the public prosecutor may also opt for an out-of-court settlement. Under certain circumstances, conduct related to bribery also constitutes violations of administrative law and can be dealt with administratively by the NTCA or the relevant supervisory body. This fact means that the NTCA or the supervisory body can impose a fine on the offender if violations of the applicable legislation are found. These are non-criminal sanctions.

A recent development related to sanctions is that the Netherlands is in the process of changing its current settlement regime. As was communicated to Parliament in 2019, a judicial oversight for the current high settlements regime will be introduced, ending the role of the Minister of Justice and Security in this process. Legislation to this effect is currently being drafted and is expected to be brought into consultation by summer 2020. An interim solution will be presented (expected by summer 2020) in order to introduce a temporary framework until the new legislation comes into force. The current "*Aanwijzing hoge en bijzondere transacties*" which guides the prosecution service in these settlements is available online.

Overview of Public Prosection Service (OM) in- and outflow of corruption cases (Articles 177, 178, 328Ter, 363 and 364 of the Criminal Code)

Corruption on the grounds of art. 177 Sr, 178 Sr, 328ter Sr, 363 Sr en 364 Sr	**2017**		**2018**		**2019**	
Influx OM						
Influx of suspects at OM	60		79		51	
Settlements OM						
- Unconditional dismissal	12	18%	14	18%	17	26%
Technical	*9*		*8*		*10*	
Policy	*1*		*3*		*5*	
Administrative	*2*		*3*		*2*	
- Conditional dismissal	*2*	3%	-	0%	-	0%
- Settlement (OM-transactie or penal order (OM-strafbeschikking))	10	15%	5	6%	14	21%
- Decisions to summon (Beoordeling Dagvaarden)	42	64%	58	75%	35	53%
Total OM outflow	66		77		66	

27. Potential obstacles to investigation and prosecution of high-level and complex corruption cases(e.g. political immunity regulation)

Several potential obstacles to the investigation and prosecution of corruption cases can be identified. For the input, we draw from our practical experience and international evaluations.

- international nature of cases, requiring cooperation with authorities of several countries.
- large data sets and privileged information
- time-span of cases

Political immunity regulations in the Netherlands have not been identified as an obstacle to the investigation of corruption cases within the international evaluations that have taken place.

Free speech of Members of Parliament, Ministers and State Secretaries is guaranteed in Parliament. They may not be prosecuted or otherwise held liable in law for anything they say during sessions of Parliament (the 'Staten-Generaal') or of its committees or for anything they submit to them in writing (Article 71 of the Constitution). However, Members of Parliament, Ministers and State Secretaries may be prosecuted for all other acts. See item 25 for the special procedure that applies for these functionaries.

III. Media pluralism

A. Media regulatory authorities and bodies

28. Independence, enforcement powers and adequacy of resources of media authorities and bodies

The Netherlands has free, independent, pluriform and high quality media, public media as well as commercial media. Journalists and programme makers are free to write, publish and broadcast what they wish. Central and local government does not interfere with content. The government may never check content in advance. This is laid down in both the Article 7 of the Constitution and the Media Act (Mediawet 2008).

In the Netherlands, the Dutch Media Authority (Commissariaat voor de Media) is responsible for supervising the media. In line with the (revised) Audiovisual Mediaservice Directive the Dutch Media Authority is an independent body, which has sufficient resources and enforcement powers based on the Media Act (chapter 7).

The Media Authority publishes all decisions regarding the Authority's policy, and can be requested to disclose information under the Government Information Act (Wet openbaarheid van bestuur).

29. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies

Pursuant to the Framework Act for Independent Administrative Authorities (Kaderwet zelfstandige bestuursorganen), the Minister of Education, Culture and Science appoints the head and members of the collegiate body of the Media Authority. This procedure will be adjusted soon and made more independent by means of a bill (which is currently pending in Parliament). In anticipation of the amendment to the law, the new procedure has already been applied: the Minister appoints the head and members of the collegiate body on the basis of unanimous advice from an independent appointment committee set up by the Media Authority. The Minister can only deviate from this advice if the rules of procedure were not respected or if an appointment would be contrary to the law. Suspension and dismissal will only take place due to unsuitability or incompetence for the position fulfilled or due to other compelling reasons related to the person concerned. Dismissal will also take place at own request.

B. Transparency of media ownership and government interference

30. The transparent allocation of state advertising (including any rules regulating the matter)

31. Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)

Answer for item 30 and 31:

Each year, the Media Authority allocates a number of hours on the three national public broadcasting (PSB) TV channels for government information, at the request of the Dutch Prime Minister (who is also Minister of General Affairs). The allocated hours are available for use by government agencies or persons designated by them. The allocated hours are used entirely and only for government information (Media Act 2008, Articles 6.5, 6.6 and 6.7).

In a state of emergency and extraordinary circumstances, the government can demand airtime and the use of studios for making announcements (Media Act 2008, Article 6.26).

Furthermore, the government can also purchase airtime and advertising airtime from commercial broadcasters.

Since long, based on an agreement between Ministers, the national government has been prohibited from participating in co-productions for radio and television programs.

32. Rules governing transparency of media ownership

There are no specific rules governing transparency of media ownership in the Netherlands. The Dutch Media Authority monitors the impact of financial-economic market developments and consolidation of ownership on media pluralism and independence of the supply of information in the Netherlands. General competition law applies to the media industry, including merger review by the Authority for Consumers and Markets (Autoriteit Consument en Markt, ACM).

C. Framework for journalists' protection

33. Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities

The Media Act 2008 (Article 2.88) guarantees the editorial independence for public and private broadcasters: the broadcasting organisations (audiovisual media services providers) are autonomous in the shape and content of their programmes. Both public and private broadcasters must have an 'editorial statute' in which the 'journalistic rights and duties' are formulated and which guarantees the editorial independence of the journalists.

The Dutch Constitution (Article 7) guarantees the freedom of expression: this applies to all citizens, including journalists. Nobody needs prior permission to express thoughts or feelings via the media or other means of publication. In addition journalists enjoy the protection of Article 10 ECHR.

In order to let journalists work professionally and independently, the protection of journalistic sources is crucial. Journalists have the right to protect their sources ex Article 218a of the Code of Penal Procedures. Only in specific cases, when there is an overriding reason to know the source (in cases of life and death, to prevent a terrorist attack etc.) it is possible that a Court decides that the journalist must reveal his/her source. But that is an exception to the general rule that a journalist can protect his/her sources. The reason is clear: when a journalist can be forced to reveal his/her source, this has a 'chilling effect' and makes it much more difficult for a journalist to report on sensitive matters (e.g. investigative journalism).

There is no separate legal status for freelance journalists; journalism is a free profession in The Netherlands, so everybody can call him/herself a journalist. The Union for Journalists in The Netherlands gives a 'Press Card' to professional journalists (who work for a journalistic medium) and for freelancers, on the condition that they 'earn a substantial part of their income via journalistic activities'. This 'Press Card' entitles them to be present at all sorts of meetings etc. There is a special 'Police Press Card' that is issued by the Union for Journalists: this is only given to professional journalists and entitles them to be present during demonstrations, riots, calamities etc. in order to do their journalistic work. This 'Police Press Card' is officially recognised by the Ministry of Justice & Security and by the Ministry of the Interior.

The Dutch government has a responsibility to stimulate and facilitate the conditions under which the media perform their work. This support is given via the Dutch Journalism Fund, funded by the Ministry of Education, Culture and Science, that is responsible for media policy (www.svdj.nl) and via the Dutch Fund for In-depth Journalism (www.fondsbjp.nl). The Dutch Journalism Fund awards up to around €2 million a year in grants for innovative journalism and regional cooperation between journalist organisations. The reason for these latter grants is that more and more local and regional newspapers, magazines and broadcasters are disappearing or having to cut back, which could harm democracy. The Dutch Fund for in-depth journalism grants subsidies to individual journalists who want to produce in-depth stories which would not be possible without this extra funding. On top of that, the current government decided in its 2017 coalition agreement to make 5 million euros per year structurally available for stimulating investigative journalism. In collaboration with the aforementioned funds, it was decided to spend the money in the first couple of years on investigative journalism, development of talent of journalists (e.g. through traineeships) and the strengthening of the position of journalists against threats, violence, etc.

There is a Council for Journalism in The Netherlands, a self-regulatory mechanism that can give an opinion about journalistic behaviour on the basis of a complaint from somebody in the public. This Council is comprised of 50% journalists and 50% other experts (legal expertise mainly) and operates fully autonomously. It is funded by the media/journalistic organisations themselves: public and private broadcasters, print-media, internet-media, Union of Journalists, etc. The Council gives an opinion on the specific complaint, and the medium in question is expected to publish that opinion and – when needed – rectify the original publication that has led to the complaint. However, the

Council cannot force said media to publish the Council's opinion or to rectify. Furthermore, the Council cannot impose financial sanctions. The Council publishes its own opinions on its website.

34. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

In July 2018 the Steering Group on Aggression and Violence against Journalists (the public prosecution service, the police, the Dutch Society of Editors-in-Chief and the Dutch Association of Journalists) has reached an agreement on the strengthening of the position of journalists against violence and aggression (https://www.ivir.nl/publicaties/download/Agreement-of-the-Steering-Group-on-Aggression-and-violence-against-journalists-EN-translation.pdf). This resulted in a protocol: *Persveilig* (https://www.persveilig.nl/).

35. Access to information and public documents

A way of making sure that the public, and so also the media, can check upon the government is the Government Information Public Access Act (a Freedom of Information Act), under which people can request information from the government on all levels. There is no specific regulation for journalists regarding access to information and public documents.

For further details in regard to access to information and public documents see item 20 and 37.

36. Other - please specify

Not applicable.

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

37. Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, 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).

Dutch legislative procedure and public consultations

The Constitution provides that 'Acts of Parliament shall be enacted jointly by the Government and the Parliament' (Article 81). If a Minister or State Secretary wishes to regulate a matter by law, he instructs his officials to draft a legislative proposal. The Ministers then discuss this proposal in the Council of Ministers. Sometimes Members of the House of Representatives themselves take the initiative of presenting a proposal.

After the drafting of the proposal it is submitted for (online) public consultation when it has major implications for citizens and companies by publishing the proposal on the website www.internetconsultatie.nl.[5] This has been government policy since 2011, after a two-year experiment with Internet consultation starting 2009. In practice, the minimum period for consultation is 4 weeks. Everyone can provide a comment/reaction. Commentators can decide whether they want their comment to be published on the website or not. The draft and the explanatory note are most commonly published for consultation, together with a summary of the answers to the seven questions of the Dutch comprehensive impact assessment system IAK (see www.naarhetiak.nl) and sometimes other background information documents (e.g. information about implementation aspects).

In addition to Internet consultation, other forms of consultation are also used; for example, meetings with representatives of parties which are affected by the draft or which have a role in the implementation of the draft. Social media (e.g. LinkedIn or Twitter) are sometimes used for consultation. More and more policy documents are also published for consultation on the website www.internetconsultatie.nl. When the consultation period is finished, all comments (published on the website or not) are used in order to improve the quality of the draft and the explanatory note. A short summary of the comments and what is done with them in the draft or explanatory note is published on the website www.internetconsultatie.nl after the Council of Ministers has decided on the draft and the draft has been sent to the Council of State for advice. The revised draft and explanatory note remain confidential until the draft is sent to Parliament. In the explanatory note, it is explained which comments were provided and what has been done with them in the draft and/or explanatory note.

The explanatory note on the draft discloses the influence of third parties on the decision-making. However, not every contact with third parties is described. The Dutch government emphasises that it is only relevant to describe in the explanatory note which external input/comments have played an important role in the decision-making. Confidential communication is sometimes necessary to receive relevant information or real criticism. This manner of reporting on contacts with third parties is part of the Dutch directives on legislation issued by the Prime Minister. Directive 4.44 of the directives on legislation concerns reporting on third parties contacts: 'In the explanatory note is described, if possible and relevant for the content of the regulation, which third parties have given input for the draft, in which way, the content of the input and what has been done with it in the draft.'

Once the text of a proposal is ready, it is sent to the Advisory Division of the Council of State for consultation. It critically examines the quality of the proposal in terms of substance and legal

[5] Guidance for regulations (*Draaiboek voor de regelgeving*), No 9A.

content and the quality of the legislative drafting. Article 73(1) of the Constitution provides that the Council of State or a division of the Council shall be consulted on proposals and draft orders in council as well as proposals for the approval of treaties by the Parliament. Such consultation may only be dispensed with in cases to be laid down by Act of Parliament. The Council of State's advisory opinion is authoritative but not binding. Usually it is followed (at least in part) and the proposal/explanatory memorandum is modified. The King subsequently presents the government proposal to the House of Representatives by a symbolic act, together with the advisory opinion of the Advisory Division of the Council of State and the response to the opinion.

In the House of Representatives each proposal is dealt with by the committee responsible for the policy field in question. During this procedure each Parliamentary party may submit its opinion, comments and questions about the proposal. If the plans are sensitive or controversial, the committee may decide to seek the views of experts and interested parties. If the committee considers that the proposal has been adequately prepared, it is tabled for debate in a plenary sitting of the House of Representatives.

A proposal is debated in the plenary sitting of the House of Representatives by the person or persons introducing it (usually one or more Ministers or State Secretaries and sometimes one or more Members of Parliament). Up to and including the plenary sitting the proposal may be amended by means of a memorandum of amendment lodged by the persons introducing the proposal. If Members of Parliament disagree with part of the proposal, they may submit proposals to change it. Such a proposal is called an amendment. This gives members of the public the possibility to indirectly influence the text of a proposal by contact with a Member of Parliament. After the plenary sitting Parliament votes on the amendments and the proposal.

After a proposal has been passed in the House of Representatives, it is sent to the Senate. Generally, the Senate examines and discusses the proposal as in the House of Representatives, that is to say first in writing and then in an oral debate. The Senate may only either approve or reject a proposal.

Once a proposal has been passed by the Senate as well, it is signed by the King and thereafter by the Minister concerned. This is known as the countersignature, which is intended to emphasize that it is not the King but the Minister who is responsible for the content of the legislation. Finally, the act is signed by the Minister of Justice and Security, who publishes it in the Bulletin of Acts, Orders and Decrees and the act can enter into force.

This procedure also applies to legislative proposals that concern (the organisation of) the judiciary. During the process judicial organisations are formally consulted (in Article 95 of the *Wet op de Rechterlijke Organisatie* the legislator has also given the Dutch Council for the Judiciary – in consultation with the courts – the task to advise the government and the States-General concerning Acts of Parliament and policies in the field of administration of justice).

The Council for the Judiciary has a general advisory task regarding new legislation, see art. 95 of the Act on the composition of the judiciary and the organisation of the justice system. According to this Article, the Council is tasked with advising the government and the States General on generally binding regulations and the policy to be pursued by central government in relation to the administration of justice. The opinions of the Council are adopted after consultation with the courts. The Council can advise upon request or upon its own initiative.

Transparency of the legislative process

Information about drafts that are being prepared by the central government is published on the public website https://wetgevingskalender.overheid.nl/.

All documents relating to the legislative process (e.g. proposals for legislation, consultations, amendments, transcripts of debates etc.) are published on the websites of the House of Representatives and the Senate and can be freely accessed. In limited cases exceptions apply for confidential documents/debates (e.g. for reasons of national security). When Parliament has

decided on the drafts, the final versions of the drafts are published on http://wetten.overheid.nl/zoeken.

As stated under item 20, Ministers and State Secretaries must actively and publicly provide all relevant information to Parliament. Such information is thereby also available to the public. This obligation flows from the principle of Ministerial responsibility which is laid down in Article 42 of the Constitution. Apart from this 'active' obligation to disclose relevant information, Article 68 of the constitution provides that Ministers and State Secretaries must provide both Houses of Parliament the information that Members of Parliament request. This applies to all questions and not just questions regarding legislation (although Minsters are not obliged to provide answers on topics that are not related to the policy field of their ministry). All such information is published online and is therefore publicly available. Requests for information by Members of Parliament can only be denied by Ministers or State Secretaries when providing such information is contrary to the interests of the State.

Also, every member of the public can request access to governmental documents. Article 110 of the Constitution provides that in the exercise of their duties government bodies shall observe the right of public access to information in accordance with rules to be prescribed by Act of Parliament. These rules are laid down in the Wet openbaarheid van bestuur (Wob). See for more information the section under item 20 regarding general transparency of public decision-making.

Emergency legislation

Article 103 of the Constitution provides for a state of emergency (so called 'staatsnoodrecht'). It states:

> 1. The cases in which a state of emergency, as defined by Act of Parliament, may be declared by Royal Decree in order to maintain internal or external security shall be specified by Act of Parliament. The consequences of such a declaration shall be governed by Act of Parliament.
>
> 2. Such a declaration may depart from the provisions of the Constitution relating to the powers of the executive bodies of the provinces, municipalities, public bodies as referred to in Article 132a and water authorities (waterschappen), the basic rights laid down in Article 6, insofar as the exercise of the right contained in this Article other than in buildings and enclosed places is concerned, Articles 7, 8, 9 and 12, paragraphs 2 and 3, Article 13 and Article 113, paragraphs 1 and 3.
>
> 3. Immediately after the declaration of a state of emergency and whenever it considers it necessary, until such time as the state of emergency is terminated by Royal Decree, the States General shall decide the duration of the state of emergency. The two Houses of the States General shall consider and decide upon the matter in joint session.

In which cases a state of emergency can be declared by the government in order to maintain the internal/external security, is left to the legislator (government and Parliament jointly). The third paragraph of Article 103 of the Constitution ensures that a state of emergency cannot be declared too easily. Immediately after its declaration the States General decide on its continuation and can at any time after consider its duration.

Furthermore, the legislator can deviate from only a limited number of fundamental rights determined by the Constitution (freedom of religion, freedom of expression, freedom of association, freedom of assembly, the inviolability of the home, and the right to private correspondence. Also, states of emergency provide an exception which allows other authorities than judges to impose punishments that deprive someone of their liberty). Moreover, the Act of Parliament that deals with the state of emergency can deviate from constitutional provisions concerning the competences of executives of provinces, municipalities and water authorities. It cannot deviate from the competences of the central government (government and States General).

The procedural provisions that deal with the declaration and ending of states of emergency (both a limited as general) are contained in the 'Coordination Act regarding states of emergency' (Coördinatiewet uitzonderingstoestanden). It also provides for procedural rules for the activation and deactivation of emergency legislation during the state of emergency. Annexes A and B contain an exhaustive list of the provisions of emergency legislation that can be activated in a general state of emergency and a limited state of emergency. These provisions are already contained in existing Acts of Parliament, but are not applicable until their activation during a state of emergency. The most important provisions that substantively implement states of emergency are the War Act for The Netherlands (Oorlogswet voor Nederland) and the Extraordinary Civil Powers Act (Wet Buitengewone bevoegdheden burgerlijke gezag).

In the current COVID-19 crisis such emergency legislation was not used. Instead use was made of the framework provided in the Wet Publieke gezondheid. Article 7 of this law gives the Minister of Health, Welfare and Sport the power to give directions to the chairman of a security region on how to combat infectious diseases. To combat the acute effects of the COVID-19 virus, the chairmen of the security regions used emergency decrees. Due to their inherent temporary nature, such decrees cannot be in effect for an extended period. Therefore, the Cabinet has announced (in a letter of 1 May 2020) that a legislative proposal for a (temporary) Act of Parliament will be submitted in the short term, which will function as a legal basis for a society dealing with the current crisis.

Fast track procedure

The legislation process in the Netherlands has no specific fast track procedure. However, some steps can be omitted or done with urgency:

- The intra/interdepartmental preparation of draft legislation can be done with high urgency.
- The official period of online consultation can be shortened to 4 weeks or less. In extraordinary situations, it can be even decided to omit this step.
- Regarding the implementation of EU-directives there is an agreement to put these proposals directly on the agenda of the Council of Ministers. This means that the discussion in high level official committees is omitted.
- According to Article 7.11 of the directive on legislation (*Aanwijzingen voor de regelgeving*) the Council of State can be asked to give an urgent advice on a regulation in extraordinary situations. The Council of Ministers has to approve the request for an urgent advice.
- Moreover, the Cabinet can ask the parliament to speed up the parliamentary process. This is ultimately a decision of the parliament.

These possibilities have been detailed in:

- the Directive on regulation (*Aanwijzingen voor de regelgeving*) which is authorised by the Prime Minister and binding only to civil servants of the national government;
- the Rules of procedure for the Council of Ministers (*Reglement van orde voor de ministerraad)* which is authorized by the Council of Ministers;
- policy letters on internet consultation authorised by the Council of Ministers and send to the national Parliament.

38. Regime for constitutional review of laws

In principle Dutch judges can test lower rules against higher rules. This has one notable exception. Article 120 of the Constitution does not allow judges to review the constitutionality of Acts enacted jointly by the Government and Parliament (so-called 'formele wetgeving' ex Article 81 *et seq.* of the Constitution) with regard to either the Charter for the Kingdom of the Netherlands, the Constitution, or unwritten principles of law. Because of this prohibition of judicial constitutional review, the Netherlands also has no Constitutional Court.

The central thought behind this judicial prohibition on constitutional review (which dates back to 1848) is to protect the interpretation of the Constitution from influence by the executive and the

judiciary by reserving questions of constitutionality to the legislator (who also drafts and amends the Constitution). The decision whether legislation is constitutional is therefore made by the legislator ex ante. To this end a check on constitutionality is performed in the legislative process. The explanatory note attached to legislative proposals explicitly deals with this in a separate paragraph and constitutional matters are discussed at length in Parliamentary debates (especially in the Senate). In order to aid civil servants in composing the constitutional paragraph in the explanatory note manuals have been compiled. Furthermore the Department for Constitutional Affairs and Legislation of the Ministry of Internal Affairs and Kingdom Relations can be consulted for advice in constitutional matters.

The prohibition does not apply to forms of derived legislation (e.g. governmental/Ministerial decrees) or legislation made by provincial/municipal legislatures. All judges can therefore asses the constitutionality of such legislative provisions. Furthermore, the Constitution allows all judges to determine whether laws made by the legislator conform to generally binding provisions in international treaties. In practice this means that all laws can be reviewed in light of e.g. the European Convention on Human Rights. Furthermore, every judge is competent and obliged to test whether all national rules are in conformity with EU law, including the Charter of Fundamental Rights. In this way, it is ensured that fundamental rights are legally enforceable and thus protected.

B. Independent authorities

39. independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies

College voor de Rechten van de Mens

The Netherlands Institute for Human Rights (*College voor de Rechten voor de mens, NIHR*) is the Dutch National Institute for Human Rights, as defined in Resolution A/RES/48/134 of the UN General Assembly of 20 December 1993 on National institutions for the promotion and protection of human rights and in Recommendation R (97) 14 of the Committee of Ministers of the Council of Europe of 30 September 1997 on the establishment of independent national institutions for the promotion and protection of human rights.

The NIHR aims to: protect human rights in The Netherlands, including the right to equal treatment; promote awareness of these rights; and to further compliance with these rights. These aims as well as the NIHR's powers are defined by Act of Parliament (Wet College voor de rechten van de mens).

Article 3 of the *Wet College voor de rechten van de mens* tasks the College with:

a. Doing research into the protection of human rights, including researching whether there exists discrimination as referenced in Article 10 of the Wet college voor de rechten van de mens.
b. Reporting and making recommendations about the protection of human rights, including reporting yearly about the human rights situation in The Netherlands.
c. Advice, as referenced in Article 5 of the Wet college voor de rechten van de mens.
d. Giving information and stimulating and coordinating education about human rights.
e. Stimulating research into the protection of human rights.
f. Structurally cooperating with civil society organisations and with national, Eurioean and other international institutions that are concerned with one or more human rights, including by organizing events together with civil society organisations.
g. Encouraging the ratification, implementation and compliance with Treaties about human rights and encouraging the lifting of reservations to such Treaties.
h. Encouraging to implement and comply with binding decisions of international organisations about human rights.
i. Encouraging compliance with European or international recommendations about human rights.

Article 4 of the *Wet College van de rechten van de mens* explicitly lays down the College's independence. This independence is guaranteed by the College's status as an 'independent administrative body' ('zelfstandig bestuursorgaan'). For such organs the politically responsible Ministers are only authorized to direct the independent administrative bodies to the extent provided for in law. In the case of the College the Ministry of Justice and Security is the ministry that manages its affairs and provides for its basic finances. The Ministry of Internal Affairs and Kingdom relations, the Ministry for Public Health, Welfare and Sports, the Ministry of Education, Culture and Science, and the Ministry of Foreign Affairs also contribute to this. The College operates at arm's length of these ministries. Acting within the framework of the Wet college voor de rechten van de mens the College is free to choose and handle cases and is can independently decide on how it spends its budget.

Articles 5 to 8 of the law further define the College's tasks and state the College's powers (e.g. advice on legislation and policy, requesting information to fulfil its tasks, conducting on-site investigations).

National Ombudsman

For a description of the structure, role and powers of the National ombudsman see item 19.

Equality bodies

At the central level the College voor de rechten van de mens is the main actor. On the regional level this role is mainly fulfilled by so-called antidiscriminatievoorzieningen ('ADV's'). The Municipal Antidiscrimination Provisions Act ('Wet gemeentelijke antidiscriminatievoorzieningen') governs these bodies and specifies that municipalities must provide independent organisations that are professionally equipped to register reports of discrimination and to offer assistance in instituting legal actions where necessary, and in complaint mediation. Based on their expertise, together with the person submitting the report, they can assess which follow-up steps are available. The reports of discrimination will also result in a local, regional and national picture of the problem of discrimination, that will form the basis for further coordinated action from the various layers of government, and from the chain partners including police and Public Prosecutor's Office. Municipalities generally (but not necessarily) join efforts and resources to provide the requisite independent organisations. Municipalities enjoy a relatively large discretion how such an organisation structured in order to provide a service that is most suited to regional needs. Currently there 38 ADV's are operating for the circa 380 municipalities.

C. Accessibility and judicial review of administrative decisions

40. modalities of publication of administrative decisions and scope of judicial review

Modalities of publication of administrative decisions

Publication is a necessary condition for coming into force of administrative decisions (Article 3:40 Dutch General Administrative Law Act; in Dutch: 'Algemene wet bestuursrecht' or 'Awb'). Publication of administrative decisions addressed to one or more persons concerned, is to be done by sending or presenting the administrative decisions to them (Article 3:41 Awb).

An important manifestation of communication by authorities concerns publications, notices and notifications of (proposed) administrative decisions not addressed to one or more persons concerned (general publications, notices and notifications). At the moment, various acts of law contain a diversity of rules on publication. Sometimes, publication is to be done in digital form on diverse websites. In other cases, publication in free local papers is required, whereas in some other cases administrative bodies can make their own choices.

Therefore, a bill has been put forward in Parliament (Digital Publications Act). The Digital Publications Act, intended date of commencement 1 January 2021, aims to increase accessibility of (proposed) administrative decisions not addressed to one or more persons concerned, by dictating that those decisions are to be published in the digital official journals of the administrative bodies. Just as generally binding regulations, which have all been published in the digital official journals since 2014. These official journals will all be referred to by means of one website (www.officielebekendmakingen.nl). Furthermore, citizens who have an activated digital public service account (MijnOverheid) at their disposal, can have a look at general publications, notices and notification concerning their environment through that account. Moreover, these citizens will automatically receive email relating to new publications concerning their environment. This notification service can be tailor-made and, if so desired, be switched off (opt out). Thus, the accessibility of (proposed) administrative decisions not addressed to one or more persons concerned will be increased; general publications, notices and notifications will be more cognizable.

Scope of judicial review of administrative decisions

For administrative disputes there exists a separate court system. Applicants wishing to challenge a decision must in principle first lodge an appeal at the respective administrative body for reconsideration of the decision (so-called 'bezwaar') ex Article 7:1 Awb read in conjunction with Articles 1:5 and 6:4 Awb.

Subsequently applicants can appeal the reconsideration at a court of first instance ("rechtbank"). The scope of the administrative appeal is determined by Article 8:69 Awb. It states that the rechtbank shall give judgment on the basis of the notice of appeal (bezwaarschrift), the documents submitted, the proceedings during the preliminary inquiry and the hearing. Furthermore, the rechtbank shall supplement the legal basis on its own initiative and may supplement the facts on its own initiative ex Article 8:69, paragraphs 2 and 3 Awb. The latter two provisions are aimed at aiding individual citizens, who are allowed to litigate their own appeal. Where notices of appeal are incomplete or lack legal basis, the judge can supplement it in order to rule on the grounds of appeal submitted by the applicant(s).

The decision by the rechtbank can be appealed in last instance (see Articles 8:114-8:118 Awb) at one of three high administrative courts depending on the subject matter. For general administrative law applicants can appeal at the Administrative Law Division of the Council of State. For disputes pertaining to social security and the civil services applicants can appeal to the Central Appeals Tribunal. Lastly for cases relating to the area of social-economic administrative law and appeals for specific laws, such as the Competition Act and the Telecommunications Act applicants can appeal to the Trade and Industry Appeals Tribunal (also known as Administrative High Court for Trade and Industry).

Administrative judges in principle apply a marginal review (‘marginale toetsing’) to decisions by administrative bodies. This means that the court in essence reviews whether the administrative body was reasonably permitted, in light of the relevant interests, to have taken the contested decision. The court thus, in principle, does not review the substance of the decision, but only whether the decision was made in a proper way. This however applies exclusively to the elements of the decision where the government had a margin to apply policy. Where legal norms do not leave a margin for the government to apply its policy (e.g. norms that can only be applied in a certain way, also known as a ‘gebonden bevoegdheid’), the court can test such elements of the decision fully. This system of marginal review aims to leave the government room space to make policy, as long as it is formed reasonably and takes into account all relevant interests.

41. implementation by the public administration and State institutions of final court decisions

The government and all government institutions always implement the decisions of the highest administrative courts. The government and all government institutions also carry out the rulings of other courts. When the government disagrees with the ruling, however, it can appeal. Then follows a ruling of the highest court, which is always adhered to.

D. The enabling framework for civil society

42. Measures regarding the framework for civil society organisations

Chapter 1 of the Dutch Constitution provides a catalogue of fundamental rights that creates a safe space in which civil life can bloom. These fundamental rights provide an important sphere for individuals, but is equally indispensable for civil society organisations. The most important rights for such institutions are contained in Articles 1 (Equality and non-discrimination), 5 (Right to petition), 6 (Freedom of religion and conviction), 7 (Freedom of expression), 8 (Freedom of Association), 9 (Freedom of assembly). A number of freedoms laid down in Chapter 1 can be restricted, but only by Acts of Parliament and only in the circumstances laid down in the respective Articles.

Apart from these constitutional provisions the European Convention of Human Rights (and other international fundamental rights treaties) are applied directly (via Articles 93 and 94 of the Dutch Constitution) in the Dutch legal system and thus afford additional protections. Also the EU Charter of Fundamental Rights applies in areas falling within the scope of Union law.

Furthermore the central government has a policy of pursuing an active dialogue with civil society organisations in the process of developing and applying policies. Such dialogue is generally seen as indispensable for developing effective public policies. Furthermore, civil society organisations are welcome to participate in legislative consultations.

Financially, there exists a special 'ANBI' status for institutions that contribute to the common good. When the Tax and Customs Administration (*Belastingdienst*) attributes ANBI-status to an organisation it does not pay taxes over donations (also there are certain advantages for the donor). ANBI status can be given to institutions that comply with number of criteria, e.g. being a non-profit, spend at least 90 percent of their work contributing to the common good. The ANBI status is provided for in Article 5b of the Algemene wet inzake rijksbelastingen (General Act on National Taxes).

Civil society organisations are often organised in the form of an association (*vereniging*) or foundation (*stichting*). A legislative proposal aims to provide more clarity for board members of associations and foundations as to what their tasks and responsibilities are (*Wet bestuur en toezicht rechtspersonen*). The proposal now lies in the First Chamber of Parliament. In order to provide more transparency, a legislative proposal (*Wetsvoorstel transparantie geldstromen naar maatschappelijke organisaties*) has been drafted for associations, foundations and churches to publicly disclose substantive donations they have received from outside the EU/EEA and in addition, for foundations to disclose their annual accounts. The proposal is currently being assessed by the Advisory Division of the Council of State.

43. Other - please specify

Not applicable.