

LIFTING THE LID ON LOBBYING
ENHANCING TRUST IN PUBLIC DECISION-
MAKING IN THE NETHERLANDS

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

EXECUTIVE SUMMARY

Dutch society has little insight on who is lobbying whom, with what means and to what end. When undertaken with integrity and transparency, lobbying can be a legitimate way for stakeholders to access public policy development and implementation. But, with hardly any regulation, the lobbying landscape in the Netherlands is opaque. Lacking even a definition of lobbying, the discussion on the desirability of lobbying or regulation of lobbying is often bogged down in platitudes.

This lack of regulation does not mean that all lobbying happens in the dark. Nor does it mean that the lobbying sector is small or silent. On the contrary, it is an active and growing sector. This is partially due to the nature of Dutch politics, which can be described as continuously striving for consensus and the creation of broad-based support (the *polder model*). One reason for the increase in lobbying activity may be new forms of partnership between government and the private and non-profit sectors (*publiek-private samenwerking*). The latter presents new challenges for public officials and politicians to make objective policy and decisions. This – combined with the fact that citizens actively wear several different “hats” and fulfil various roles as they contribute to society – may prove a risky combination, potentially leading to undue influence in decision-making.

Only a few people and organizations seem to value these risks. The majority appears to hold the opinion that there “is nothing wrong as long as the powers at work are somewhat in balance”.¹ Nevertheless, the past few years an increase in pressure demanding more transparency regarding lobbying activities can be observed. At the beginning of 2014, the Dutch ministers of Finance and of the Interior and Kingdom Relations answered questions from two MPs concerning the transparency of the lobbying practices of Dutch banks. The questions were:

Do you agree that transparency regarding lobbying activities is not only relevant for banks, but for all trade and industry? Do you share the opinion that more transparency is necessary regarding lobbying activities of the Dutch trade and industry? If yes, how will you ensure this? If no, why not?

The ministers answered as follows:

Within several sectors there is increasing social pressure for more transparency regarding lobbying activities. For each sector we will have to see whether more transparency is possible beyond the measures already in place.²

¹ “Roep om strengere regels voor lobbyisten neemt toe”, *De Gelderlander*, 21 June 2011. www.gelderlander.nl/algemeen/binnenland/roep-om-strengere-regels-voor-lobbyisten-neemt-toe-1.739695 <consulted 8 December 2014>

² Answers to the questions of MPs Nijboer and Bouwmeester (both PvdA) to the ministers of Finance and of the Interior and Kingdom Relations and concerning transparency in the lobbying practices of Dutch banks (sent in on 18 December 2013, published on 7 February 2014), 2. zoek.officielebekendmakingen.nl/ah-tk-20132014-1142.html <consulted 25 March 2015>

What are these “measures already in place”? Are they sufficient? Is more transparency possible? If so, is it desirable?

This report seeks to address such questions. The lobbying environment in the Netherlands at the national level³ is mapped out and discussed, and recommendations are provided on possible improvements. The report also explores the extent to which citizens have access to information on different aspects of public decision-making processes and lobbying activities (*transparency*); the mechanisms in place to promote ethical lobbying and deter undue influence (*integrity*); and whether the public decision-making process is sufficiently accessible to all relevant stakeholders and what measures might level the playing field (*equality of access*).

Since the turn of the century, there have been some developments regarding the regulation of lobbying. In 2001, the largest association of lobbyists (BVPA, *Beroepsvereniging voor Public Affairs*), introduced a code of ethics for its members, and, in 2012, the House of Representatives installed a “Lobbyist Register”.⁴ Both initiatives are limited in their effectiveness, however, due to their voluntary nature, their (practical) applicability and shortcomings in enforcement.

Furthermore, the integrity framework for public sector employees does not specifically cover lobbying-related issues; information about what lobbyists and decision-makers discuss is only piecemeal; and there are few rules on public disclosure regarding input from (informal) consultations, and even fewer on proactive disclosure by lobbyists.

This report is part of the ‘Lifting the Lid on Lobbying’ project, which involves 19 European countries assessing the situation with regard to lobbying and its regulation.⁵ In April 2015 the Secretariat of TI (TI-S) will publish a regional report on the key findings, trends, challenges and good practices across Europe. The methodology for the research has been developed by TI-S.

The research for this report was primarily qualitative: various secondary sources such as SOMO, Burson and Marstellers’ *The Guide to Effective Lobbying in Europe*, several OECD and GRECO reports, parliamentary documents and public websites, complemented by primary data obtained from 12 in-depth interviews with policymakers, former policymakers, lobbyists and experts in the field of lobbying. However, a quantitative element was also included. The data for this part of the research is based on a set of 65 questions (Annex V). Depending on the answers, the question was scored 0, 1 or 2.⁶ The overall score of the Netherlands (Annex VI), as a percentage of the maximum overall score, gives an indication of the current regulatory situation in the Netherlands concerning lobbying. For more on the methodology, please turn to Appendices II, IV, V and VI.

The results of the quantitative research confirm the need to regulate the lobbying sector. The scores for transparency (25%), integrity (38%) and equality of access (39%), as well as the overall average score (34%) show the limited extent to which the decision-making *processes* in the Netherlands at present protect against risks of undue influence from stakeholders and corruption.

It should be noted, however, that the fact that Netherlands scores quite low – though not excessively low when compared to other European countries – is due to the lack of statutory regulations. These scores have no direct relation with factual lobbying activities that take place in the Netherlands.

³ Because of the scope and time limiting this study, the provincial and local levels were not included in the research. An exception is the case study The budget-cut dialogue of Zeist. It is suggested that lobbying at provincial and local level may prove relevant for further study.

⁴ House of Representatives, *Lobbyistenregister* (date unknown). www.tweedekamer.nl/over_de_tweede_kamer/lobbyistenregister <consulted 9 October 2014>

⁵ The participating countries are Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom.

⁶ In a limited number of cases, where no logical intermediary position exists, only a minimum value of 0 and a maximum value of 2 are offered.

Key findings from this report include that lobbying is virtually unregulated. Risks include the current system of use of access passes (*rijkspassen*) to the House of Representatives, the unrestricted use of informal consultations, and the lack of rules concerning the composition of committee meetings (*rondetafelbijeenkomsten*) and hearings. The report further notes that the Internet and current information technology provide ample means to publish any stream of lobby information, which should make access to such information easy and more checks and counterchecks feasible.

RECOMMENDATIONS

In light of the findings of this report, Transparency International Nederland (TI-NL) makes the following recommendations. They represent a call to action to the government, private sector and civil society. In our view, it is necessary to move decisively to mitigate risks of undue lobbying and provide for a more fair and ethical representation of interests in the public decision-making process in the Netherlands.

- Broaden the legislative/decision-making footprint. All legislative proposals, and where feasible other decision-making processes, should include a “footprint”, which would track and summarize external input and contact between lobbyists and public officials/representatives.
 - Who: public officials/representatives responsible for proposals and lobbyists (pro-active disclosure).
- Carry out a review of public sector and MPs’ codes of conduct. Amend these to ensure that they include clear lobbying related standards on communication of public officials with lobbyists. This review should include broad consultation with all relevant stakeholders.
 - Who: minister of the Interior and Kingdom Relations, House of Representatives, Senate and stakeholders.
- Introduce a statutory code of ethics for lobbyists. Ensure that it includes clear lobbying related standards on communication between public officials and interest groups as well as what constitutes ethical and responsible lobbying. This code should be realized after broad consultation with all relevant stakeholders.
 - Who: minister of the Interior and Kingdom Relations, BVPA and other stakeholders.
- Repeal the so-called Lobbyists Register at the House of Representatives, and remove all regular access passes to the House of Representatives (*rijkspas*) from the system, except from incumbent MPs and their staff. Former members of the House of Representatives should not have special access to the parliaments building.
 - Who: House of Representatives.
- Introduce a register of lobbyists that is mandatory and requires timely registration by lobbyists, with detailed disclosure of information on whom they represent, whom they

target with their lobbying activities, when and how they lobby, as well as which supporting evidence they utilize. A well-funded, independent authority should monitor this register and the statutory code of ethics for lobbyists. Disclosed information should be published in an easily accessible electronic format.

- Who: minister of the Interior and Kingdom Relations.
- Ensure lobbying regulation is based on a set of broad definitions which capture all those paid to lobby or who lobby on behalf of an organization and all key lobbying targets: public officials and politicians.
 - Who: minister of the Interior and Kingdom Relations.
- Introduce post-employment cooling-off periods (two years) for all former public officials and public representatives before they can work as lobbyists and/or require them to receive permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer.
 - Who: minister of the Interior and Kingdom Relations for all public officials (at all ministries) and House of Representatives and Senate for MPs.
- Improve and expand public consultation mechanisms to ensure they cover the entire law-making process and allow for meaningful participation by a broad range of interests in the political process. Input in the consultation procedure should be made public at all times, without exceptions.
 - Who: minister of the Interior and Kingdom Relations, together with all ministries.
- Introduce a legal requirement on public bodies to publish the results of consultation processes, including the (summarized) views of participants in the consultation process.
 - Who: minister of the Interior and Kingdom Relations.
- Ensure there is a well-resourced independent body charged with oversight and enforcement of rules regarding transparency of lobbying activities and rules regarding ethical conduct (post-employment, conflicts of interest, gifts and hospitality, etc.).
 - Who: minister of the Interior and Kingdom Relations.
- Introduce guidelines for the choice of experts and stakeholders at committee meetings (*rondetafelbijeenkomsten*) and hearings.
 - Who: House of Representatives and Senate.
- Continue professionalizing the public affairs sector, by introducing educational requirements and mandatory ethics training for all lobbyists.
 - Who: BVPA, Logeion and other sector organizations.

INTRODUCTION

Transparency International's European National Integrity System (NIS) regional report *Money, Power and Politics* (2012) found that in most European countries, the functioning and influence of lobbyists is shrouded in secrecy and a major cause for concern.⁷ When undertaken with integrity and transparency, lobbying is a legitimate avenue for interest groups to be involved in the political decisions that may affect them. Problems arise when lobbying is non-transparent and unregulated, and where privileged access is granted to a select few while others are excluded from decision-making processes. Corporate lobbying in particular raises concerns because it often involves companies with vast sums at their disposal developing close relationships with lawmakers and thus possibly gaining undue and unfair influence in a country's politics and policies,⁸ or even at the EU level.

A recent Eurobarometer report revealed that 81% of Europeans agree that overly close links between business and politics in their country has led to corruption and more than a half believe that the only way to succeed in business in their country is through political connections.⁹ This corroborates the data from Transparency International's Global Corruption Barometer 2013, which found that in many European countries more than 50% of the people believe that their country's government is to a large extent – or even entirely – run by a few big interests.¹⁰

This report is part of the Lifting the Lid on Lobbying project, which involves 19 European countries assessing the situation with regard to lobbying and its regulation. This report aims to:

- Assess existing lobbying regulations, policies and practices in the Netherlands
- Compile evidence about corruption risks and incidences related to lack of lobbying regulation
- Highlight promising practices concerning lobbying found in the Netherlands
- Provide recommendations and solutions for decision-makers and special interest representatives in the public and private sectors

As mentioned above, Transparency International does not see lobbying in itself as a negative phenomenon. It has the potential to be a positive force, but there are risks. Lobbying becomes problematic when:

- Influence or access is provided in exchange for money or favours (this is likely to constitute bribery or abuse of office on the part of the official)
- It is conducted in secret
- It misrepresents or conceals the interests it seeks to promote
- It misinforms, i.e. provides false, one sided or misleading information
- It grants or facilitates preferential access to some groups or individuals, or serves only narrow interests rather than or at the expense of the public interest

⁷ Transparency International, *Money, Politics, Power: Corruption Risks in Europe*, Berlin: Transparency International, 2012. www.transparency.org/enis/report <consulted 8 December 2014>

⁸ Transparency International, *Money, Politics, Power: Corruption Risks in Europe*, Berlin: Transparency International, 2012. www.transparency.org/enis/report <consulted 8 December 2014>

⁹ European Commission, *Eurobarometer: Special Report on Corruption*, Brussels: European Commission, 2014, 7. ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf <consulted 8 December 2014>

¹⁰ Transparency International, *Global Corruption Barometer 2013*, Berlin: Transparency International, 2013. www.transparency.org/gcb2013/report <consulted 8 December 2014>

Regulating lobbying is therefore about mitigating such risks, rather than trying to curb it or stamp it out.

In the Netherlands, lobbying is largely unregulated and therefore no clear information exists on the extent to which Members of Parliament (MPs) and government departments and institutions are influenced by lobbyists. How MPs and public officials deal with the information given to them by different types of lobbyists is left up to their own discretion and not bound by any specific norm.

Definitions

The definition of lobbying for this project is:

Any direct or indirect communication with public officials, political decision-makers or representatives for the purposes of influencing public decision-making carried out by or on behalf of any organised group.¹¹

Lobbyists can include not only professional lobbyists, but also private sector representatives (in-house lobbyists), public affairs consultancies, representatives of NGOs (including Transparency International), corporations, industry/professional associations, trade unions, think-tanks, law firms, faith-based organizations and academics.¹² Any – future – regulation should capture all those who lobby professionally. However, the definition purposefully excludes individual citizens lobbying on their own behalf, as this is not something that should be regulated.

The definition of corruption for this project is:

The abuse of entrusted power for private gain.¹³

Report outline

This report begins by mapping the lobbying landscape in the Netherlands, providing a contextual analysis of the national historical, socio-political and legal situation with regard to lobbying. Following this, the report discusses the intensity and scale of lobbying efforts and the various cultural understandings of the term “lobbying” and perceptions of lobbying practices in the Netherlands. Other relevant issues such as self-regulation of lobbying activities and the role of the media and civil society as watchdogs in monitoring and reporting on lobbying activities, are also discussed.

The report then assesses the degree to which national regulation (public law and private self-regulation) adequately provides for *transparency* of lobbying activities and public decision-making, *integrity* in lobbying and the conduct of public officials, and *equality of access* to public decision-making processes.

¹¹ This definition draws heavily on the Sunlight Foundation Lobbying Guidelines. sunlightfoundation.com/blog/2013/12/03/announcing-sunlights-international-lobbying-guidelines/ <consulted 8 December 2014> See also the OECD Report on Progress made in implementing the OECD Principles for Transparency and Integrity in Lobbying, Paris: OECD 2014. www.keepeek.com/Digital-Asset-Management/oced/governance/lobbyists-governments-and-public-trust-volume-3_9789264214224-en#page1 <consulted 25 March 2015> Hereinafter: “OECD, *Report on Progress OECD Principles for Transparency and Integrity in Lobbying 2014*”.

See further: Council of Europe Parliamentary Assembly Recommendation 1908 (2010) on lobbying in a democratic society. assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/EREC1908.htm <consulted 25 March 2015>

¹² Transparency International, “Lobbying in the European Union: Levelling the Playing Field”, Regional Policy Paper 3, Berlin: Transparency International, 2012. www.transparency.de/fileadmin/pdfs/Themen/Politik/ENIS_Regional_Policy_Paper_Lobbying.pdf <consulted 2 October 2014>

¹³ Transparency International, *The Anti-Corruption Plain Language Guide*, Berlin: Transparency International, 28 July 2009, 14. www.transparency.org/whatwedo/publication/the_anti_corruption_plain_language_guide <consulted 27 March 2015>

The research was primarily qualitative, through secondary data complemented by primary data obtained from interviews. A quantitative element was included in order to evaluate the robustness and efficacy of national regulations and self-regulation mechanisms around lobbying. To this end, a set of 65 indicators was scored by the researchers based on the qualitative information gathered through the research (see Appendix V).

Assessing lobbying rules and practice: Our approach

Transparency is crucial if there is any chance of public trust in politics being restored and enhanced. When looking at transparency around lobbying practices, the research sought to answer the following overarching questions: To what extent does the public have sufficient knowledge of (a) who is lobbying public representatives, (b) on what issues they are being lobbied, (c) when and how they are being lobbied, (d) how much is being spent in the process, and (e) the result of these lobbying efforts?

Transparency of lobbying must be embedded within a broader public sector **integrity** framework, which mitigates the risks of conflicts of interest when important decisions are being taken. To understand how well-insulated countries are against undue lobbying, the research sought an answer to the following overarching questions about ethical lobbying: Is there a robust ethical framework for lobbyists (and companies) and lobbying targets in the country and to what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives?

Finally, when regulating lobbying, transparency and integrity measures are crucial, but they must be accompanied by rules that allow for **equality of access** to decision-makers, which is essential for fairness and pluralism in the political system. The research asked whether there are enough spaces in the system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions which best serve society and broad democratic interests.

Finally, a number of case studies are included throughout the report, which highlight lobbying in several sectors, among which are the lottery, financial and defence sectors. They demonstrate that there may be risks for society at large when lobbying is allowed to take place without any regulation. There are also some promising practices identified in the research, such as a case involving the extensive participation of the public during a process of local budget cuts.

MAPPING THE LOBBYING LANDSCAPE

NATIONAL CONTEXT

Lobbying is an accepted practice in the Netherlands. Dutch lobbying practice is perceived as relatively transparent,¹⁴ although many people are not sure whether lobbying is (sufficiently) regulated.¹⁵ There is also a strong awareness that lobbying can contribute to democratic society.¹⁶ In a Burson Marsteller study on lobbying conducted in 2013, 84% of the Dutch respondents¹⁷ either agreed or strongly agreed with the statement that in the Netherlands “ethical and transparent lobbying helps policy development”.¹⁸ However, most groups of lobbyists active in the Netherlands did not score well when it came to perceptions of their levels of transparency. Most notably academics (33%), PA agencies (23%), think-tanks (28%) and law firms (11%) scored low when asked to what extent it was clear whose interests these groups represented.¹⁹

Lobbying is part of Dutch political decision-making. It is seen as an important way to exchange all sorts of important information, to influence the decision-making process and to increase public support for decisions.²⁰ The extent to which MPs are influenced varies from one individual to another.²¹

Nevertheless, in the last few years lobbying has been more closely monitored by the media, the public and in the political arena. Within several sectors there is increasing social pressure for more transparency regarding lobbying activities.²² In the banking sector for instance, this is especially due to the financial crisis and the role of financial institutions and their lobbies. The Centre for Research on Multinational Corporations (SOMO, *Stichting Onderzoek Multinationale Ondernemingen*), an NGO mostly concerned with corporate social responsibility, published a report on the transparency of Dutch banks' lobbying activities, called *Taking Lobbying Public*.²³ Also, during the parliamentary enquiry into the financial crisis, lobbying efforts by the Dutch financial sector were critically scrutinized by the Commission responsible for the parliamentary enquiry (Commission De Wit):

Recommendation 18: Transparency of extra parliamentary influence and lobby-activities

The commission recommends the House of Representatives to investigate the possibilities to create more transparency concerning the influence of special-interest stakeholders on the

¹⁴ Burson Marsteller, *A Guide to Effective Lobbying in Europe*, Brussels: Burson Marsteller, 2013, 46-47. www.burson-marsteller.com/what-we-do/our-thinking/a-guide-to-effective-lobbying-in-europe-2/ <consulted 19 March 2015>

¹⁵ Ibid., 12.

¹⁶ Ibid., 9.

¹⁷ Ibid., 5: “Interviewees included politicians (both Members of national Parliaments (MPs) and Members of the European Parliament (MEPs)) and senior officials from national governments and the European institutions. In total, nearly 600 interviews were conducted.”

¹⁸ Ibid., 63. The question answered by the respondents was: “To what extent do you agree that ethical and transparent lobbying helps policy development?”

¹⁹ Ibid., 64. The question answered by respondents was: “On a scale of 1 to 5, where 1 is ‘I never know who they represent’ and 5 is ‘always know who they represent’, to what extent would you say each of the following is transparent in lobbying?”

²⁰ Transparency International Nederland, *National Integrity Systems Assessment Netherlands*, Amsterdam: Transparency International Nederland, May 2012, 51. www.transparency.nl/wp-content/uploads/2012/05/TI-NL-NIS-report.pdf <consulted 25 March 2015>

Hereinafter: “Transparency International Nederland, *NIS Assessment 2012*”.

²¹ Ibid., 51.

²² Answers to the questions of MPs Nijboer and Bouwmeester (both PvdA) to the ministers of Finance and of the Interior and Kingdom Relations and concerning transparency in the lobbying practices of Dutch banks (sent in on 18 December 2013, published on 7 February 2014), 2. zoek.officielebekendmakingen.nl/ah-tk-20132014-1142.html <consulted 25 March 2015>

²³ SOMO, *Taking Lobbying Public: The Transparency of Dutch Banks' Lobbying Activities*, Amsterdam: SOMO, December 2013. www.somo.nl/publications-nl/Publication_4016-nl/ <consulted 5 November 2014>

content and realisation of laws and regulations. They might consider a system of a 'legislative footprint', a system in which the legislator points out which actors have been involved in the realisation of legislation.²⁴

In the 2012 National Integrity Systems (NIS) Study for the Netherlands, TI-NL drew attention to the "polder model", with its emphasis on reaching consensus and the creation of broad-based support, and the fact that citizens actively wear several different "hats" and fulfil various roles as they contribute to their society:

At all levels room is provided to individuals and collectives to look after their own interests. (...) Informal networks thereby form the cement for that society.²⁵

There are risks inherent to these different roles and hats. In the NIS report, it was concluded:

The challenge for the Netherlands will be to retain the good elements of our consensus- and network-society, all while keeping an eye on conduct that sometimes may not fall directly under the definition of corruption; situations where nonetheless one can still speak of 'abuse of entrusted power for private ends'.²⁶

Below, is an outline of the different contexts from which the lobbying landscape can be assessed: the political, historical, social and legal context.

Holland Financial Centre

In 2007 the Dutch financial sector was not growing as fast as financial sectors in other, comparable, countries. To improve the "financial climate", the Holland Financial Centre (HFC) was established. This foundation was initiated by the financial sector, with parties from banks, insurance companies and law firms. The proposal was encouraged by the ministry of Finance, which cooperated with the creation of the HFC. Other parties that cooperated were supervisory authorities like the Authority Financial Markets (AFM, *Autoriteit Financiële Markten*) and The Dutch Central Bank (DNB, *De Nederlandsche Bank*).²⁷

At the time of creation, it was stressed that the HFC was not a lobby organization.²⁸ Its main purpose was to compete with major financial centres in the world, like London, Dublin and Dubai. To achieve this, cooperation between all involved parties was necessary. In the HFC, private parties would be able to give their opinion on public matters in an effective manner (and possibly influence future legislation). The ministry welcomed this process, because it enabled it to be close to the market and if necessary lend an ear. As Ter Haar, former director financial markets of the ministry of Finance,

²⁴ House of Representatives, meeting year 2009-2010, 31 980, numbers 3-4, 20. zoek.officielebekendmakingen.nl/kst-31980-4.html <consulted 25 March 2015>

²⁵ Transparency International Nederland, *NIS Assessment 2012*, 291.

²⁶ Ibid.

²⁷ "Nederlandse financiële sector mikt op inhaalslag", *Belegger.nl*, 10 April 2008. www.belegger.nl/nieuws/47200/nederlandse-financieumlle-sector-mikt-inhaalslag.html <consulted 5 February 2015>

²⁸ Interview with MP Merkies, 19 August 2014, Parliament building, The Hague.

mentioned:

“Ideas could arise that would lead to changes, for example on fiscal matters”.²⁹

In following years the banks became less optimistic about the, in effect, lobbying that was facilitated by the HFC. The 2008 crisis and corruption scandals in the financial sector resulted in public officials and politicians losing trust in the financial sector.³⁰

The nationalization of SNS Reaal in 2013 raised concerns on the supervisory authorities and the private financial sector and also the role of the HFC. An evaluation committee concluded at the beginning 2014 that DNB had been insufficiently critical regarding SNS Reaal.³¹ In the end, SNS Reaal had to be nationalized (costing approximately 3.7 billion euros) in order to prevent it from collapsing.³²

Minister of Finance Dijsselbloem remarked on the close relationships that existed within the HFC. In the wake of the nationalization of SNS he mentioned that DNB was too close to the sector it should monitor,³³ with HFC as example thereof.³⁴ To put an end to the lobbying that was facilitated by the HFC, Dijsselbloem ended the cooperation of the ministry with the HFC in February 2013.³⁵ With the government stepping out, the HFC lost an important part of its function and a year later the private partners also stepped out, thus ending the HFC.³⁶

Political context

The Netherlands is a constitutional monarchy with a parliamentary representative democratic system. The country's institutions are stable and appear to largely ensure the rule of law and the consolidation of democracy. The Netherlands is frequently considered to be a low-corruption country in the eyes of international business, as recent publications of corruption indices from Transparency International show: in the Corruption Perception Index 2014, the Netherlands ranked number 8 with a score of 83, and in the Bribe Payers Index 2011 Dutch corporations rank at the top jointly with the Swiss with a score of 8.8. The Fragile States Index 2014 ranks the Netherlands 166 out of 178 countries.³⁷

²⁹ “Nederlandse financiële sector mikt op inhaalslag”, *Belegger.nl*, 10 April 2008. www.belegger.nl/nieuws/47200/nederlandse-financieumlle-sector-mikt-inhaalslag.html <consulted 26 March 2015>

³⁰ “Holland Financial Centre nu twee jaar bezig: ‘Teer kindje, maar gezond’”, *Accountant.nl*, October 2009. www.accountant.nl/Accountant/Archief/Archief+%27de+Accountant%27/2009/Oktober+2009/Holland+Financial+Centre+nu+twee+jaar+bezig.aspx <consulted 5 February 2015>

³¹ “Het rapport van de Evaluatiecommissie Nationalisatie SNS Reaal”, *Rijksoverheid*, Uitgeverij Balans: Amsterdam, 23 January 2014. www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2014/01/23/het-rapport-van-de-evaluatiecommissie-nationalisatie-sns-reaal.html <consulted 6 November 2014>

³² “Staat nationaliseert SNS Reaal - kosten 3,7 miljard”, *NRC.nl*, 1 February 2013. www.nrc.nl/nieuws/2013/02/01/staat-nationaliseert-sns-reaal/ <consulted 28 March 2015> See also: minister Dijsselbloem, ‘Besluit tot onteigening van effecten en vermogensbestanddelen SNS REAAL NV en SNS Bank NV in verband met de stabiliteit van het financiële stelsel, alsmede tot het treffen van onmiddellijke voorzieningen ten aanzien van SNS REAAL NV’, 1 February 2013. www.rijksoverheid.nl/documenten-en-publicaties/besluiten/2013/02/01/onteiengingsbesluit-sns-reaal-en-sns-bank.html <consulted 28 March 2015>

³³ “DNB en banken te innig”, *Trouw*, 4 February 2013. www.trouw.nl/tr/nl/4504/Economie/article/detail/3388095/2013/02/04/DNB-en-banken-te-innig.dhtml <consulted 4 February 2015>

³⁴ Ibid. See also: “Belangengroep financiële sector wil overleg met Dijsselbloem”, *nu.nl*, 24 February 2013.

www.nu.nl/economie/3112265/belangengroep-financiele-sector-wil-overleg-met-dijsselbloem.html <consulted 4 February 2015>

³⁵ “Dijsselbloem wil eind maken aan financiële polder”, *Findinet*, 3 February 2013.

www.findinet.nl/news/bedrijfsvoering/wetenswaardigheden/dijsselbloem-wil-eind-maken-aan-financiele-polder/ <consulted 28 March 2015>

³⁶ “Holland Financial Centre stopt definitief”, *NRC.nl*, 15 January 2014. www.nrc.nl/nieuws/2014/01/15/holland-financial-centre-stopt-definitief/ <consulted 28 March 2015>

³⁷ Fund for Peace, “The Fragile States Index 2014”. library.fundforpeace.org/library/cfsir1423-fragilestatesindex2014-06d.pdf <consulted 26 March 2015>

Yet even in the Netherlands there are signs of a lack of transparency, integrity and accountability, as shown by Transparency International's NIS Report of the Netherlands.³⁸

The government

The government consists of the king, the prime minister, the ministers and state secretaries. The ministers and the state secretaries together are also referred to as the Cabinet. Its role is to take decisions on overall government policy, promote the coherence of policy and submit legislative proposals to parliament.

The government prepares and implements legislation, oversees local government and other institutions, carries out the day-to-day business of government and maintains international relations. The constitution determines how the powers are divided. The government is permanently subject to parliamentary scrutiny.

Parliament

The Dutch parliament consists of an upper house – the Senate – and a lower house – the House of Representatives. The system of two chambers offers the possibility that the Senate assesses bills by reference to quality criteria after they have passed through the House of Representatives.

The House of Representatives (*Tweede Kamer*, or Second Chamber) is elected at least every four years in direct national elections.³⁹ It consists of 150 full-time politicians. The House of Representatives is mainly engaged in day-to-day politics. As such, it calls ministers and state secretaries to account, conducts debates on new policy and undertakes detailed examinations of bills. The House of Representatives approves the budget and has the right of legal initiative, the right to submit amendments, the right to start its own inquiries and the right of interpellation. It has exercised its right to institute a parliamentary inquiry on several occasions on a range of issues, such as corruption in construction (1986-1988), investigative methods (1994), the fall of Srebrenica (2002) and the financial system (2010-2012).

The 75 members of the Senate (*Eerste Kamer*, or First Chamber) are chosen through indirect elections. Members of the Senate are mostly part-timers who hold other positions as well. The Senate is concerned with the broad outline of policy. It can operate rather more independently than the House of Representatives, although recent events may indicate a more politicized approach of the Senate than before.⁴⁰ The Senate has a revising role in relation to draft legislation. Its members do not have the right to amend bills. They can only vote on law proposals and either accept or reject them or send them back to the House of Representatives for further amendments. Members of Senate make much less use of the right to ask written questions than the members of the House of Representatives. They receive an allowance that is about a quarter of the salary of the members of the House of Representatives.

Together, the House of Representatives and Senate constitute The States General (*Staten Generaal*).

³⁸ Transparency International Nederland, *NIS Assessment 2012*.

³⁹ Read more on the Dutch House of Representatives website. www.houseofrepresentatives.nl/elections <consulted 2 October 2014>

⁴⁰ "Verkiezingsdag van paradoxen", *NRC Reader*, 18 March 2015. www.nrcreader.nl/artikel/8413/verkiezingsdag-van-paradoxen <consulted 27 March 2015> "Hoe het kabinet ineens in crisissfeer belandde", *NU.nl*, 17 December 2014. www.nu.nl/weekend/3955229/kabinet-opeens-in-crisissfeer-belandde.html <consulted 27 March 2015>

Elections and political parties

There are free and fair elections at national, regional and local level. The system of proportional representation results in coalition governments at all levels. In the Netherlands there is free political competition for government offices among political parties and individuals.

Nonetheless, undeniably political party membership plays an important role in the appointment of key positions in public administration. This is an informal process, whereby political parties that have proven to be stable (i.e. shown the ability to take on responsibility as a coalition party in government) grant or propose these positions to candidates with the required expertise and the desired political party membership.⁴¹

As mentioned, the Netherlands is usually governed by a coalition of different political parties. The prime minister is usually chosen from the party that won the elections. Until 2012, the king gave the leader or an important politician of the party that won the elections the task of forming a new government.⁴² Since 2012, the House of Representatives fulfils this task. The constitution does not permit an MP to serve in the government (if an MP is chosen for government, she or he has to step down as MP).

Members of parliament

The work of MPs largely consists of attending meetings and discussing and voting on political issues. These activities are preceded by the necessary preparations, such as the close examination of documents, working visits, opportunities for the public to make their opinions heard, consultations with stakeholders and the general public. The working visits serve to gain information on a certain situation or to learn how specific problems are dealt with abroad. During such activities MPs can be lobbied by stakeholders.

Important issues are almost always dealt with in plenary sittings, for instance general (political or financial) considerations, debates about important topical issues and the deliberations on bills and budgets. Final decision-making also takes place in plenary sittings, e.g. voting on bills, amendments and motions. Interestingly enough, the number of plenary sittings has been quite stable over the past few years, but the hours spent during these meetings have increased (1,117 hours in 2011, 1,299 hours in 2013).⁴³

One development that needs to be regarded in this respect is the increase in the amount of information Dutch MPs receive, for example through (social) media and lobbyists, and their workload. Even though most interviewees believed MPs and public officials are quite professional when dealing with information received from lobbyists,⁴⁴ practice shows this is not always the case.⁴⁵ MPs depend more and more on their staff members for preparing and carrying out their work,⁴⁶ including doing research and double-checking facts and figures received from lobbyists. This may also be the reason, contrary to the expectations of the *Presidium* (speaker of the House of Representatives and her team),⁴⁷ that the number of initiative bills did not increase in 2013. The staffing for MPs is often called too meagre.

⁴¹ Transparency International Nederland, *NIS Assessment 2012*, 35.

⁴² Read more on the Dutch parliament website. www.parlement.com/id/vh8lnhronvvr/de_koning <consulted 4 February 2015>

⁴³ House of Representatives, meeting year 2013-2014, 33 924, no. 4, 3. zoek.officielebekendmakingen.nl/kst-33924-4.html <consulted on 25 March 2015> The year 2012 was interrupted by elections and therefore not representative.

⁴⁴ Transparency International Nederland, *NIS Assessment 2012*, 51.

⁴⁵ See below "The RamBam case and the BVPA".

⁴⁶ Transparency International Nederland, *NIS Assessment 2012*, 46.

⁴⁷ House of Representatives, meeting year 2013-2014, 33 924, number 4, 7. zoek.officielebekendmakingen.nl/kst-33924-4.html <consulted on 25 March 2015>

“Every politician gets the lobbyist they deserve.”

- Van Venetië

There are several bureaus that support MPs in their work, such as the Bureau of Legislation (*Bureau Wetgeving*), the Bureau of Research and National Expenditure (*Bureau Onderzoek en Rijksuitgaven*) and the Central Information Point. It would be valuable to research the functioning and efficiency of these bureaus in supporting MPs.

Arrangement of business

At the start of each newly elected parliament, standing committees are set up for each ministry, except for General Affairs (prime minister’s office), as well as an additional Committee for European Affairs and Kingdom Relations.⁴⁸ The speaker of the House of Representatives (*Voorzitter*, the speaker) decides on the number of MPs per standing committee and appoints the members and their substitutes, but the political parties are free to decide differently.⁴⁹ The parliament can also set up general committees, for highly important topics related to several ministries, and temporary committees.

The parliament sets its own agenda for the plenary meetings as proposed by the speaker or an MP.⁵⁰ The agenda is drawn up several times a week during the so-called “arrangement of business”.

The parliament is summoned for a plenary meeting as frequently as the speaker considers this to be necessary. The speaker can also summon it if 30 or more MPs request a plenary meeting via a written request; they do not need to provide a reason. The government can request a plenary meeting on the condition that it provides a solid reason to do so.⁵¹

The meetings of the House of Representatives are almost always public. All public meetings are recorded and streamed online.

The (standing) committee meetings normally deal with specific issues. Policy documents can be discussed with Cabinet members during policy meetings, and specific bills can be discussed during meetings on legislation. MPs who specialize in the subject concerned discuss the government’s policy with the responsible minister or state secretary in a committee meeting. MPs ask questions, and the minister or state secretary replies. The committee meetings on policy documents and bills relieve the activities during plenary meetings, since during these committee meetings the more specific and technical aspects are discussed in detail, leaving the plenary meeting to deal with the more general outlines.⁵²

These committees further regularly conduct hearings and round table meetings (*rondetafelbijeenkomsten*) to get to know the opinions of stakeholders and experts on a particular subject. There is no obligation to have a balanced composition of experts or stakeholders invited to these hearings or round table meetings in terms of private sector and civil society representatives. In addition, lobbyists and corporate executives are allowed to sit on advisory or expert groups in a personal capacity. These stakeholders and experts routinely exercise influence over policy formulation and implementation at all levels. Therefore, these hearings and round table meetings

⁴⁸ Article 15 and following, Regulation of Order of the House of Representatives of the States General.

⁴⁹ Ibid., article 25.

⁵⁰ Ibid., article 54.

⁵¹ Ibid., article 54.

⁵² Read more on the Dutch House of Representatives website. www.houseofrepresentatives.nl/house-representatives-work <consulted 2 October 2014>

are important for influencing legislation and policy. Inherent risks to these forums are what might be termed as institutional or insider lobbying.

Historical context

Before the 1990s corruption was deemed to be virtually non-existent in the Netherlands,⁵³ a similar lack of awareness or attention for this important issue could also be seen in most other Western European countries. At the beginning of the 1990s this began to change on a global scale. The starting point of the Netherlands' anti-corruption policy is usually placed in 1992. At a conference for Dutch municipalities, minister Dales of the Interior and Kingdom Relations addressed corruption in the public sector and the problems it creates.⁵⁴ Only recently, integrity became one of the priority areas addressed by the Dutch authorities.⁵⁵

The first public incident that centred on lobbying and undue influence took place in 1996. VVD political party leader Bolkestein tried to influence the policy of minister Borst (healthcare) on several occasions, while representing the pharmaceutical company MSD, where Bolkestein was a non-executive board member (the so-called "Dear Els"-letters). At that time, the political landscape was divided in its judgment of the actions of Bolkestein. The liberal party VVD argued it was permissible, but D66 and the PvdA qualified it as undesirable and "not done".⁵⁶

The next year a first measure was implemented to safeguard the integrity of public officials. From then on public officials had to register any position outside of their public role that could have a negative effect on the correct fulfilment of their public function.⁵⁷ From that point lobbying activities of public representatives were more actively scrutinized.

In the following years attention was given to the negative effects of lobbying by certain sectors. The World Health Organization Framework Convention on Tobacco Control (WHO FCTC), which was signed in 2003, can be seen in this light. Under the FCTC parties are obliged, in setting and implementing their public health policies with respect to tobacco control, to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.⁵⁸

In recent years lobbying by big companies and banks has gained more attention. In 2010, during a parliamentary inquiry into the financial sector by Commission De Wit, it was recommended:

... to examine the possibilities to increase transparency of influence of stakeholders on the realisation of laws and regulations. In that relation a system of a "legislative footprint", a system in which the legislator indicates what actors have been involved in what way during the realisation of a certain piece of legislation, could be explored.⁵⁹

⁵³ A well-known deviation from this was the Lockheed-affair in 1977, in which in during a Dutch parliamentary inquiry the Commission found that Prince Bernhard, the husband of the then Queen, had been involved in bribery by U.S. aerospace company Lockheed.

⁵⁴ House of Representatives, meeting year 1993-1994, 23 400 VII, no. 11.

⁵⁵ www.eerstekamer.nl/overig/20130701/rapport_van_de_greco/document <consulted on 25 March 2015>

⁵⁶ GRECO, *Evaluation Report Netherlands: Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors*, Fourth Evaluation Round, Strasbourg: GRECO, June 2013, par. 1.

⁵⁷ www.eerstekamer.nl/overig/20130701/rapport_van_de_greco/document <consulted 19 March 2015> Hereinafter: "GRECO, *Evaluation Report Netherlands 2013*". On 10 March 2015, the ministries of Security and Justice, Economic Affairs, Foreign Trade and Development Aid and Finance have published a policy letter on the prevention of and fight against corruption. A large part of this letter addresses integrity. <http://www.transparency.nl/2015/03/beleidsbrief-corruptie/> <consulted on 25 March 2015>

⁵⁸ "Verdeeldheid in coalitie over commissariaat VVD-leider leidt niet tot veroordeling; Bolkestein lobbyt voorlopig niet voor MSD", *De Volkskrant*, 3 October 1996.

⁵⁹ Government Gazette 1997, 224. zoek.officielebekendmakingen.nl/stb-1997-224.xml <consulted 13 August 2014>

⁵⁸ WHO, *Framework Convention on Tobacco Control* 2005, article 5.

⁵⁹ House of Representatives, meeting year 2009-2010, 31 980, no. 4, 10 May 2010, recommendation 18.

zoek.officielebekendmakingen.nl/kst-31980-4.html <consulted 13 August 2014>

In 2012 the Dutch Court of Audit noted that, “the information position and influencing possibilities of (parts of) the tobacco branch is (...) in fact better than that of the House of Representatives”.⁶⁰ This reignited the attention given to the lobbying power of certain sectors. Shortly after this MP Bouwmeester of the PvdA stated that she was preparing a bill to increase the transparency of lobbying by registering which lobbyists came to the ministries, representing what interests, what arguments they used and what the public officials did with these arguments.⁶¹ This bill is still under preparation at the time of writing.

Also in 2012, the House of Representatives installed a so-called Lobbyist Register. Some suggest this was a reaction of the former speaker Verbeet (chair of the Presidium) to the wish of MPs to enhance transparency in the House of Representatives.⁶² The GRECO evaluation team mentioned that the register “was introduced to curb practices of some lobbyists, who were abusing their formerly free right of access to the House of Representatives”.⁶³

A memo of the director of management, personnel and organization of the House of Representatives provides clarification.⁶⁴ According to this memo, during the debate on the preliminary budget of 2012, Heijnen (then an MP for the PvdA) asked the speaker to provide the House of Representatives with a public register for lobbyists.⁶⁵ Heijnen stated it is a democratic value that citizens can judge who tries to influence politics professionally.

It is part of transparency, openness and clarity to know what interests play a role in the assessment of decision-making in the House of Representatives.

- Drs. P.M.M. Heijnen

He further stated that this register is a service that provides citizens and MPs with information on whom to contact to discuss certain interests. The lobby register was not meant to be a service to lobbyists to have easy access to the House of Representatives.

In her reaction to Heijnen, Speaker Verbeet mentioned that it is possible for lobbyists to acquire a regular access pass to the House of Representatives. According to the rules applicable at that time, in order to acquire that access pass lobbyists needed to spend at least 80% of their activities in the House of Representatives. This access pass was distributed to an organization or company, rather than a person. Speaker Verbeet agreed that transparency was important and promised to follow up on the issue.⁶⁶ She added that in the end it is the responsibility for political groupings and MPs to receive people or not: “The Presidium sees no need to only allow lobbyist with some kind of a quality mark [*keurmerkje*] in the building”.⁶⁷ Access passes give the holder access to the entire premises of the House of Representatives, including chambers of MPs. Only a few rooms have special security or access codes.

On 4 April 2012 the Presidium accepted new rules on access of lobbyists to the House of Representatives, taking effect from 1 July 2012. According to these rules three types of interest groups/lobbyists can be included in the ‘Lobbyist Register’, which makes them eligible for a regular access pass:

⁶⁰ Dutch Court of Audit (Algemene Rekenkamer), *Bestrijding van accijns fraude bij alcohol en tabak* 2012, 13.

⁶¹ See Nieuwsuur (18 June 2012), nieuwsuur.nl/onderwerp/385341-lobby-moet-transparanter.html <consulted 25 March 2015>

⁶² See: www.pa-cc.nl/haags-lobbyistenregister/#more-1063 <consulted 5 November 2014>

⁶³ GRECO, *Evaluation Report Netherlands 2013*, par. 49.

⁶⁴ This memo is available through Transparency International Netherlands. Please contact: communication@transparency.nl.

⁶⁵ House of Representatives, meeting year 2010-2011, 32 745, no. 17, 4. zoek.officielebekendmakingen.nl/kst-32745-17.html <consulted 17 December 2014>

⁶⁶ *Ibid.*, 47-48.

⁶⁷ *Ibid.*

- Staff of public affairs and public relations offices
- Representatives of public organizations/trade organizations
- Representatives of municipalities and provinces

If lobbyists fit into one of these groups and desire a regular access pass, they have to send a written request to the director of management, personnel and organization of the House of Representatives, in which they must state a plausible need for regular access to the House of Representatives. The old access passes of all three categories have become invalid. The Lobbyist Register further requires lobbyists to disclose their names and the organizations they represent. Only one person per organization is allowed. This list is publicly accessible,⁶⁸ and updated every few weeks. The Register does not require a record of information on whom the registered person contacts, when they contact them and on what specific subject.

Other recipients of access passes are directors of communications from the different government departments, spokespersons for senior leadership and representatives of the bureaus of the European Commission and Parliament based in the Netherlands. Furthermore, also MPs, MP staff and personnel receive a regular access pass. Finally, former MPs have the right to keep their access passes.

In 2013, another initiative was proposed by MP Van Gerven of the SP.⁶⁹ In response to a SOMO report on the biofuels sector lobby,⁷⁰ he proposed a motion for an open and public lobby register, for both the House of Representatives and the Senate, with the European Parliament system as an example. The main reason for this proposal was to eliminate conflicts of interest. During the debate about biofuels, there was some debate about the initiative of Van Gerven. First, state secretary Mansveld (infrastructure and the environment) advised against the initiative, stating this was not for the government, but for the House of Representatives and Senate to decide: "Mister Van Gerven shall have to mobilise the House of Representatives and Senate and the European Parliament himself".⁷¹ When Van Gerven insisted he would like to hear the opinion of the government on the matter, Speaker Verbeet stepped in:

Mister Van Gerven, before I give the floor to the state secretary, I will point out to you that the Chamber already has a lobby register. Thus, the House of Representatives has already arranged this!⁷²

At Van Gerven's own request, voting on this motion was postponed.⁷³

In 2014, MP Merkies of the SP proposed an initiative concerning transparency of contacts between supervisory authorities for the financial sector and the financial lobby,⁷⁴ stating that this would contribute to the understanding of society on the policy of supervisory authorities. He envisaged this transparency, by requesting the government to oblige the supervisory authorities to add a chapter to their annual report on meetings with the sector, concerning their organization, the people present

⁶⁸ See: www.tweedekamer.nl/over_de_tweede_kamer/lobbyistenregister <consulted 9 October 2014>

⁶⁹ House of Representatives, meeting year 2012-2013, 32 813, no. 27. zoek.officielebekendmakingen.nl/kst-32813-27.html <consulted 25 March 2015>

⁷⁰ See also SOMO, *Advocacy by the Dutch Biofuels Sector*, Amsterdam: SOMO, 2012. www.somo.nl/publications-nl/Publication_3910-nl <consulted 5 November 2014>

⁷¹ House of Representatives, meeting year 2012-2013, meeting no. 40. zoek.officielebekendmakingen.nl/h-tk-20122013-40-6.html <consulted 25 March 2015>

⁷² Ibid.

⁷³ House of Representatives, meeting year 2012-2013, 32 813, no. 27. zoek.officielebekendmakingen.nl/kst-32813-27.html <consulted 25 March 2015>

⁷⁴ House of Representatives, meeting year 2014-2015, 33 957, no. 10. zoek.officielebekendmakingen.nl/kst-33957-10.html <consulted 16 December 2014>

during the meetings and the topics of conversation. Although many MPs voted in favour, the motion was repudiated by a majority of the House of Representatives.⁷⁵

This short history shows that policies concerned with lobbying since the 1990s were mostly directed at public officials with multiple functions. In the last decade attention has shifted to sectors that have a large degree of influence on policy-making. Although MPs are aware of this influence, this has so far not resulted in clear and effective regulation aimed at making these lobbying practices more transparent.

Social context

The model of democracy in the Netherlands is built around the idea of the general interest (*intérêt général*).⁷⁶ Prevention of corruption in respect of MPs relies to a large degree on mutual trust, openness and public scrutiny.⁷⁷ MPs do not enjoy immunity from prosecution for criminal conduct. Other than that, there are few mandatory regulations, restrictions and even less supervision. MPs are encouraged to fully engage in society through accessory activities to avoid the so-called ivory tower effect.

In Dutch society trust in institutions and individuals is relatively high, although it has decreased slightly in the last couple of years.⁷⁸ As a result of this relatively high level of trust, integrity has – until recently – not been among the priority areas addressed by the Dutch authorities.⁷⁹ Nevertheless, the level of trust differs considerably from institution to institution. Trust in politicians and political parties is relatively low while trust in the judiciary is high.⁸⁰

There are few rules pertaining to the integrity of MPs. Upon taking up their elected function they pledge an oath, but this is rarely followed up, for example in the form of explicit discussions on integrity. The topic has traditionally been left to political parties and groupings to deal with, according to their own systems of values and beliefs. The system is reactive, relying mainly on the media to expose misconduct and – where warranted – on the MP concerned to step down (either on their own initiative or at the request of their political party). Recent years have shown many examples of this custom.⁸¹

In 2013, the Group of States against Corruption (GRECO, part of the Council of Europe) stated that there is room for improvement concerning integrity in the Dutch parliament. According to GRECO the parliament, as an institution, could take on a more proactive role to increase the awareness of its members towards ethics, integrity and exposure to possible conflicts of interest. GRECO recommended the development of codes of conduct, including notably guidance on prevention of conflicts of interest, gifts and other advantages, accessory activities and financial interests, disclosure requirements, misuse of information, contacts with third parties such as lobbyists for members of the House of Representatives and the Senate.⁸²

⁷⁵ House of Representatives, meeting year 2014-2015, meeting no. 40. zoek.officielebekendmakingen.nl/h-tk-20142015-10-17.html <consulted 17 December 2014>

⁷⁶ Council of Europe, *Venice commission report on the role of extra-institutional actors in the democratic system (lobbying)* (Strasbourg: Council of Europe, 2013), 5, par.19. www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282013%29011-e <consulted 25 March 2015>

⁷⁷ See further Transparency International Nederland, *NIS Assessment 2012*, 58.

⁷⁸ OECD, *Report on Progress OECD Principles for Transparency and Integrity in Lobbying 2014*, 16. Edelman Trust Barometer: www.slideshare.net/fullscreen/EdelmanInsights/global-deck-2013-edelman-trust-barometer-16086761/6 <consulted 3 October 2014> Gallup World Poll: www.gallup.com/poll/world.aspx?ref=b <consulted 3 October 2014>

⁷⁹ GRECO, *Evaluation Report Netherlands 2013*, 4.

⁸⁰ Transparency International Nederland, *NIS Assessment 2012*, 16.

⁸¹ 'Politieke Integriteitsindex 2014', *Vrij Nederland* (no date). www.vn.nl/Politieke-Integriteitsindex.htm <consulted 26 March 2015>

⁸² GRECO, *Evaluation Report Netherlands 2013*, 4, 12.

The Senate has followed up on some of these recommendations and is currently reviewing its rules of procedure, especially concerning integrity.⁸³

Notably, some GRECO recommendations were dismissed by the Senate committee responsible for the review:

- a uniform code of conduct – according to the committee this can become suffocating, pose problems in implementation and enforcement, encourage abuse, does not sufficiently guarantee the autonomy and freedom of the individual members, and finally integrity issues also change with the passing of time;⁸⁴
- disclosure of financial interests in accessory activities – according to the committee being a senator is a part-time job and it is up to the individual member to decide whether they want to fulfil accessory activities or not;⁸⁵
- a lobby register for the Senate – according to the committee senators should be able to decide for themselves whom they wish to talk to and should decide on their own accord and responsibility whether and how they use this information in their parliamentary duties, there will be little added value to a register since the Senate only holds sessions once a week and will thereby generally be approached outside of the parliamentary building,⁸⁶ and
- post-employment restrictions – according to the committee, they are only part-time politicians and one of their characteristics is that they also fulfil other functions, they are not part of the executive branch.⁸⁷

The dismissal of these GRECO recommendations by the committee confirms the view that there is trust in MPs, and political party and political grouping (*fractie*) discipline. Nonetheless, there have been instances that ancillary positions, integrity-transgressions and misconduct of MPs and politicians caused commotion in the Netherlands. The Dutch Political Integrity Index, published by the weekly *Vrij Nederland*, documented a record of 62 integrity breaches by Dutch politicians in 2013.⁸⁸

Legal context

Lack of statutory regulation

Lobbying is not regulated in the Netherlands. Apart from the above-mentioned voluntary register of the House of Representatives and the voluntary self-regulation of the largest association of lobbyists (BVPA, *Beroepsvereniging voor Public Affairs*), there are no specific rules on the activities of lobbyists or pressure groups within the Dutch parliament.⁸⁹ The 2013 Burson Marseller report provides relevant data in this regard. Only 17% of the Dutch respondents⁹⁰ thought there was no applicable regulation, while 33% thought there was a voluntary register.⁹¹ The other 50% did not know whether there was any regulation.⁹² On the question of whether a mandatory register would be

⁸³ "Eerste Kamer volgt aanbevelingen van GRECO op en past Orderelement aan", *Rijksoverheid*, 23 June 2014.

raad.van.europa.nl/vertegenwoordiging.org/nieuws/2014/juni/eerste-kamer-neemt-orderelement-aan.html <consulted 3 October 2014>

⁸⁴ Senate, Report of the temporary commission GRECO-Report, meeting year 2013-2014, CX, A, 9.

zoek.officielebekendmakingen.nl/kst-CX-A.html <consulted 25 March 2015>

⁸⁵ *Ibid.*, 13.

⁸⁶ *Ibid.*, 15.

⁸⁷ *Ibid.*, 16.

⁸⁸ See for instance 'Politieke Integriteitsindex 2014', *Vrij Nederland* (no date). www.vn.nl/Politieke-Integriteitsindex.htm <consulted 26 March 2015> Examples of integrity breaches involve: embezzling money, fraud, forgery of documents, money laundering, abuse of power, tax evasion, leaking of confidential information, etc.

⁸⁹ OECD, *Report on Progress OECD Principles for Transparency and Integrity in Lobbying 2014*, 52.

⁹⁰ Burson Marsteller, *A Guide to Effective Lobbying*, 5.

⁹¹ Burson Marsteller, *A Guide to Effective Lobbying*, 65. The question asked to the respondents was: "Is lobbying in your country today...?", with "Not regulated", "Voluntary register", "Mandatory register" and "Don't know" as possible answers.

⁹² *Ibid.*

useful, 39% said yes, 28% were neutral and 33% did not think a mandatory register would prove useful.⁹³

As mentioned, in July 2012 a Lobbyist Register was introduced in the House of Representatives. Lobbyists can voluntarily request the director of management, personnel and organization for a permanent access pass. The Register is publicly available on the House of Representatives' website.⁹⁴ The access pass entitles the holder to gain access to the parliamentary premises to contact MPs, to attend public meetings and to consult documents.⁹⁵

The Netherlands joined GRECO in 2001. The Netherlands ratified the Council of Europe Criminal Law Convention on Corruption on 11 April 2002, which entered into force in respect of the Netherlands on 1 August 2002. The UNCAC (United Nations Convention on Corruption) was signed by the Netherlands on 10 December 2003 and submitted to parliament by the minister of foreign affairs in September 2006 for tacit approval. Article 94 of the Dutch Constitution states that provisions of international treaties override statutory law if those provisions are binding on all persons. Accordingly, with its publication the Criminal Law Convention on Corruption and the UNCAC became an integral part of Dutch domestic law, ranking above national legislation.

Trading in influence

Different types of societies have different types of corruption. Even though Western societies score well on Transparency International's Corruption Perceptions Index this does not mean corruption does not exist. A type of corruption that is particularly common in Western societies is trading in influence,⁹⁶ i.e. "when a person who has real or apparent influence on the decision-making of a public official exchanges this influence for an undue advantage".⁹⁷

There are no specific provisions on trading in influence in Dutch legislation. In order to keep it that way, the Netherlands made a reservation to the Criminal Law Convention on Corruption, which states that, "[i]n accordance with Article 37, paragraph 1, the Netherlands will not fulfil the obligation under Article 12".⁹⁸

According to the 2008 GRECO report the Dutch government maintains that:

... certain forms of influence (whether financial or not) over decisions of public officials or politicians may be lawful, for instance where representatives of interest groups perform lobbying activities. It is only when the lobbying or the attempt to exert influence results in holding out the prospect of specific advantages to public officials who are involved in the decision-making process, that the bounds of propriety are overstepped.⁹⁹

⁹³ Ibid., 66.

⁹⁴ See: www.tweedekamer.nl/over_de_tweede_kamer/lobbyistenregister <consulted 6 November 2014>

⁹⁵ Institute of Public Administration, *Regulation of Lobbyists in Developed Countries, Current Rules and Practices* (no date), 17. www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownload,2048,en.pdf <consulted 26 March 2015>

⁹⁶ Grant Thornton and Norton Rose, *Tien keer tien. Corruptie in 10 vragen en 100 antwoorden*, 2011. www.nortonrosefulbright.com/files/tien-keer-tien-55877.pdf <consulted 5 October 2014>

⁹⁷ OECD, *Corruption – a glossary of international criminal standards*, OECD: 2007, 25. www.oecd.org/corruption/anti-bribery/39532693.pdf <consulted 31 March 2015>

⁹⁸ GRECO, Evaluation Report on the Netherlands on Incriminations (ETS 173 and 191, GPC 2), Brussels, 13 June 2008, par. 60. zoek.officielebekendmakingen.nl/kst-31200-VI-187-b1 <consulted 26 March 2015> Article 12 requires state parties "to adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result."

⁹⁹ Ibid., par. 61.

According to the government, trading in influence is covered by the provision in the Dutch Criminal Code prohibiting bribery and the bribery provision provides sufficient opportunity to prosecute the exercise of improper influence for obtaining an undue advantage and no separate offence needs to be established in order for this to be a criminal offence.¹⁰⁰ To date, there have been no prosecutions under the bribery legislation for trading in influence. TI-NL concluded in the NIS report that the provisions in Dutch law with regard to trading in influence are insufficient.¹⁰¹

Public bribery

Articles 177 to 178a of the Penal Code (PC) establish as a criminal offence the active bribery of public officials. These provisions also cover persons whose appointment as a public official is pending and former public officials. Articles 362 to 364a of the PC cover passive bribery of domestic public officials. These provisions on active and passive bribery include the terms “gift”, “promise” and “provide or offer a service”. All gifts, including customary gifts of little value (for example representational gifts) potentially fall within the scope of the criminal provisions on bribery.

The articles do not provide a definition of the term “public official”. In case law, the term “public official” is understood to include “anyone who has been appointed by the public authorities to a public position, in order to perform a part of the duties of the state and its bodies”.¹⁰² Moreover, “whether the person can also be classified as a public official in terms of employment law is irrelevant”.¹⁰³ Instead, it matters that “the person has been appointed under the supervision and responsibility of the government to a position of which the public nature cannot be denied”.¹⁰⁴ Articles 178a and 364a of the PC ensure that public officials under Dutch legislation are equated with “persons in the public service of a foreign state or of an international organization”.¹⁰⁵

It is not necessary for the bribe-payer to hand the gift or service to the public official directly. Intermediaries fall within the scope of the bribery provisions.¹⁰⁶ The gift or service may also be intended for a third-party beneficiary. The provisions on passive bribery include the element of request or acceptance of a gift, promise or service. It is irrelevant whether the public official accepted the gift or promise in the capacity of a public official. Gifts accepted outside the public official’s activities also classify as objects of bribery. It is not required that the public official is authorized to carry out an official act. It is only required that his/her functions enabled him/her to carry out the act. It is irrelevant whether the act or omission actually takes place. Recent cases concerning corruption involving public officials have raised attention for public bribery.¹⁰⁷

By law of 19 November 2014, articles 177 and 363 of the PC were changed, criminalizing active and passive bribery of a public official, irrespective of whether the public official was bribed to act (or not to act) in breach of his or her duties. In this new law the maximum penalty was increased to six years’ imprisonment.¹⁰⁸

¹⁰⁰ Ibid.

¹⁰¹ Transparency International Nederland, *NIS Assessment 2012*, 273.

¹⁰² Supreme Court, 30 January 1911, W9149.

¹⁰³ Supreme Court, 18 October 1949, NJ 1950, 126, and more recently: Supreme Court, 18 May 2004, NbSr 2004, 248.

¹⁰⁴ Supreme Court, 18 May 2004, NbSr 2004, 248.

¹⁰⁵ GRECO, Evaluation Report on the Netherlands on Incriminations (ETS 173 and 191, GPC 2), Brussels, 13 June 2008, par. 10 and 86. zoek.officielebekendmakingen.nl/kst-31200-VI-187-b1 <consulted 26 March 2015>

¹⁰⁶ Ibid., par. 21.

¹⁰⁷ On 3 December 2013 former provincial council member of Noord-Holland Hooijmaijers was sentenced to three years for corruption, money laundering and forgery. Both Hooijmaijers and the Public Prosecutor appealed against this judgment. www.om.nl/actueel/nieuwsberichten/@88545/hoger-beroep-4-jaar-0/ <consulted 27 March 2015> On 15 January 2015 Van Rey, former alderman of Roermond, was charged with bribery, money laundering and electoral fraud. www.nrc.nl/nieuws/2015/01/15/corruptiezaak-rondom-jos-van-rey-blijkt-nog-groter/ <consulted 27 March 2015>

¹⁰⁸ In December 2012, the text of the instruction on investigation and prosecution of foreign corruption was changed, emphasizing a more proactive approach when another country has already started a criminal investigation in cases where the Netherlands also has

Private bribery

Active and passive bribery in the private sector have been criminalized in article 328ter of the PC. This provision concerns every form of bribery that does not involve a public official, without making a distinction by sectors of society (profit/non-profit). Article 328ter of the PC does not restrict the criminalization of private sector bribery to acts committed “in the course of business activity”. The nature of the activities is irrelevant (it may also involve non-commercial activities).¹⁰⁹

By law of 19 November 2014, article 328ter of the Penal Code was changed,¹¹⁰ placing the central focus on conduct contrary to one's duty as an employee.¹¹¹ Also, a higher maximum sentence of four years' imprisonment was introduced for bribery in the private sector.¹¹²

Gifts and entertainment

MPs are not subject to any restriction as regards their contacts with third parties or from accepting gifts. For reasons of transparency, members of the House of Representatives have to register gifts, which have a value in excess of 50 euro within a week. They are further obliged to report foreign trips made at the invitation of third parties, no later than one week after their return to the Netherlands.¹¹³ The registers of gifts and travel may be consulted online on the House of Representatives' website. MPs are reminded to declare gifts and trips two or three times a year by their administrative services.¹¹⁴

These reporting requirements do not exist for the members of the Senate. Nevertheless, the Senate keeps a list of gifts received by its members.

However, neither of these registers covers other benefits, such as hospitality and invitations to different kinds of events. The lack of rules and guidance available to parliamentarians about their expected conduct when receiving gifts and other advantages is worrying. Unlike other professional categories, such as public servants or judges, MPs and political parties deal with these matters themselves, each in their own way. It would be helpful if a clear line were drawn between acceptable and unacceptable gifts, benefits and hospitality and this rule applied to all MPs and local politicians.¹¹⁵

Party financing

Political parties have sufficient financial means available, which mostly stems from the government subsidies the parties receive (under certain conditions; see the Political Parties Grants Act (*Wet subsidiëring politieke partijen*)).¹¹⁶ Even though on 1 January 2014 less than 2.5% of the Dutch

jurisdiction. See instruction on investigation and prosecution of foreign corruption of 13 December 2012, no. 26 939.

www.om.nl/organisatie/beleidsregels/overzicht-0/specialistisch/@86294/aanwijzing-opsporing-0/ <consulted 4 February 2015>

¹⁰⁹ GRECO, Evaluation Report on the Netherlands on Incriminations (ETS 173 and 191, GPC 2), Brussels, 13 June 2008, par. 52. zoek.officielebekendmakingen.nl/kst-31200-VI-187-b1 <consulted 26 March 2015>

¹¹⁰ Government Gazette, 2014, 445. zoek.officielebekendmakingen.nl/stb-2014-445.html <consulted 4 February 2015>

¹¹¹ House of Representatives, meeting year 2014-2015, 33 685, no. C. zoek.officielebekendmakingen.nl/kst-33685-C.html <consulted 4 February 2015>

¹¹² The EU Anti-Corruption Report highlighted the lack of evidence of adequate measures being taken to tackle foreign bribery. The commission recommended that the Netherlands should be “focusing efforts on prosecuting both natural and legal persons for corruption in international business transactions, also by increasing capacity to investigate and prosecute foreign bribery in a more proactive manner. See European Commission, *ANNEX Netherlands to the EU Anti-Corruption Report*, Brussels: European Commission, 2013, 9. ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_netherlands_chapter_en.pdf <consulted 17 December 2014>

¹¹³ Article 150a of the Rules of Procedure of the House of Representatives. wetten.overheid.nl/BWBR0006023/geldigheidsdatum_20-03-2015#HoofdstukXIIc <consulted on 20 March 2015>

¹¹⁴ GRECO, *Evaluation Report Netherlands 2013*, 13.

¹¹⁵ Ibid.

¹¹⁶ Transparency International Nederland, *NIS Assessment 2012*, 21 and 204-6.

population was shown to be a member of a political party,¹¹⁷ political parties nonetheless play an important role in Dutch democracy (see section “Political context”).

Until 2013, a serious threat in regard to the integrity of political parties was the lack of adequate legislation concerning their non-governmental financing. Some parties, especially the Party for Freedom (PVV, *Partij Voor de Vrijheid*), resisted transparency of (monetary) gifts. Since 7 March 2013, a new law on Financing Political Parties sharpened the rules on the transparency of gifts. The law obliges political parties to report annually on gifts from 4,500 euro and up, and debts over 25,000 euro. This includes financial support to affiliated institutions and gifts in kind.

According to the GRECO Evaluation Committee, the new law on Financing Political Parties partly complies with the GRECO recommendations. Improvements could be made concerning the minimum threshold for compulsory registering and disclosing gifts, which is still relatively high, and restriction of donations from foreign donors. Also, the Committee cautioned that the supervision by the ministry of the Interior and Kingdom Relations is not equivalent to an independent supervisory body. Another shortcoming, mentioned in the Dutch NIS study, is that the provisions do not apply to regional or local political parties.¹¹⁸

On 1 October 2014, the first reports were made public on donations to political parties.¹¹⁹

TYPES AND SCALE OF LOBBYING

There is little official data on the scale of lobbying in the Netherlands. However, there are some figures that can shed light on the number of lobbyists in the Netherlands. The BVPA counts over 600 members. Officially professionals can only become a member if they spend at least 50% of their time on public affairs,¹²⁰ so it seems reasonable to expect that this number does not encompass all lobbyists active in the Netherlands. In Brussels, the Netherlands has 347 lobbyists registered in the EU register (marking it seventh out of approximately 100 countries in terms of numbers of lobbyists active in the EU). In the House of Representatives, around 90 lobbyists are registered.¹²¹

An expert practitioner has estimated that there are approximately seven full-time lobbyists per member of the House of Representatives.¹²² Other estimates from professionals and experts range from 400 to 25,000.¹²³ These numbers indicate there are different approaches to defining who is a lobbyist.

¹¹⁷ Rijksuniversiteit Groningen, *Documentatiecentrum Nederlandse politieke partijen* (no date).

pub.dnpp.eldoc.ub.rug.nl/FILES/root/DNPPledentallen/2014.pdf <consulted 9 October 2014> One of the more popular parties, the Party for Freedom (PVV) of Geert Wilders, does not offer membership possibilities.

¹¹⁸ Transparency International Nederland, *NIS Assessment 2012*, 211.

¹¹⁹ See: www.rijksoverheid.nl/onderwerpen/democratie/documenten-en-publicaties/publicaties/2014/10/01/overzichten-financiering-politieke-partijen-2013.html <consulted 9 October 2014>

¹²⁰ From the data available from the Membership Research of the BVPA, it appears that 18% of the respondents did in fact spend less than 50% of their work time on lobbying.

¹²¹ See: www.tweedekamer.nl/over_de_tweede_kamer/lobbyistenregister <consulted 9 October 2014>

¹²² “The Hague is a Lobby Paradise” [*Den Haag is een lobbyparadijs*] E. van Venetië, press release, 23 March 2012.

www.erikvanvenetie.nl/docs/bericht%20lobby%20NCRV-radio.pdf <consulted 5 October 2014>

¹²³ One expert answered 16,000,000, stating everyone – except maybe small children and the very elderly – is a lobbyist.

The professionals that make up public affairs departments of companies and organizations seem quite eligible for the qualification of “lobbyist”. An important part of these departments are made up out of former public officials, journalists, parliamentarians and political advisors. These professionals usually know their way around the political system in the Netherlands and are in contact with policy-makers or public officials.

“Influence, including lobby-influence, is hard to measure.”¹²⁴

- Prof. Timmermans

To give an impression of the way lobbying is regarded in the Netherlands, who is lobbying and how these professionals try to influence policy, the first part of this chapter will look at the different definitions and types of lobbying activities found in the Netherlands. The second part addresses who lobbyists are and what players most prominently engage in lobbying activities in the Netherlands.

Definitions

On 29 September 2014, professor Timmermans held his inaugural lecture. He sketched the cultural understanding of lobbying in the Netherlands as being two-sided. On the one hand, “[i]n the dark arena of influence and power, bigger interests always win from the smaller, and the rich lobby gets its way more often than the organizations or groups that depend on volunteers”.¹²⁵ On the other hand, “[a]dvocacy specialists provide our political decision makers and public officials with useful and reliable information that makes their decisions grow and flourish”.¹²⁶

Even though lobbying is an accepted practice in the Netherlands, awareness grows that it should take place in an ethical and transparent manner. At present, the two-sidedness that Timmermans points out is reflected in the definitions of lobbying.

The English word of ‘Lobbying’ is also used in Dutch. Most practitioners, however, prefer the label “public affairs”, “public relations” or “government affairs”, as they consider the word lobbying old-fashioned, obsolete and often controversial. A few prefer to use the general word “influencing”, as it describes the process of ‘making a desired difference’ more accurately.¹²⁷ Some professionals are of the opinion that lobbying is not a profession¹²⁸ or distance themselves from the word: “We are no lobby club, we are an interest organization”.¹²⁹

¹²⁴ Prof. Dr. Timmermans, *On Speaking Terms. Public Affairs en de dialoog tussen wetenschap en praktijk*, University of Leiden, 2014, 7. bvpa.nl/documents/at-oratie.pdf <consulted on 25 March 2015>

¹²⁵ Prof. Dr. Timmermans, *On Speaking Terms. Public Affairs en de dialoog tussen wetenschap en praktijk*, University of Leiden, 2014, 6. bvpa.nl/documents/at-oratie.pdf <consulted on 25 March 2015>

¹²⁶ Ibid.

¹²⁷ Interview with Prof. Van Schendelen, 20 August 2014, Erasmus University Rotterdam.

¹²⁸ “Geleerd om nooit blij te zijn”, Carla van Os from Defence for Children, *Trouw*, 30 July 2014. www.trouw.nl/tr/nl/4492/Nederland/article/detail/3706178/2014/07/30/Geleerd-om-nooit-blij-te-zijn.dhtml <consulted on 25 March 2015>

¹²⁹ “Echt een héle goede lobbyclub”, Esther Voet from CIDI in *NRC Handelsblad*, 18 August 2014.

www.nrc.nl/handelsblad/van/2014/augustus/18/echt-een-hele-goede-lobbyclub-1410030 <consulted on 25 March 2015>

Definitions of lobbying: The Netherlands

This table contains some definitions of lobbying from well-known sources. All but *More Machiavelli in Brussels* are originally in Dutch. The translations are ours.

DEFINITION	TRANSLATION	SOURCE
Door gesprekken proberen belangrijke beslissingen te beïnvloeden.	Trying to influence important decisions by means of conversation.	<i>Van Dale dictionary</i> ¹³⁰
Het geheel van rechtmatige acties dat wordt ondernomen om de (politieke en ambtelijke) besluitvorming te beïnvloeden.	All permitted actions undertaken to influence the political and official decision-making process.	BVPA ¹³¹
De professionele en transparante belangenbehartiging waarbij de eigen organisatie doorlopend wordt betrokken bij politieke en maatschappelijke besluitvormingsprocessen.	The professional and transparent advocacy in which the own organization is continuously involved in political and social decision-making processes.	<i>Handboek public affairs, Van Drimmelen (2014)</i> ¹³²
Alle activiteiten (...) die erop gericht zijn de beleidsvorming, uitvoering van het beleid of de besluitvorming van de EU instellingen direct of indirect te beïnvloeden.	All activities (...) carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions.	Agreement between the European Parliament and the European Commission ¹³³
Lobbyen is het informeel beïnvloeden van formele besluitvorming. Of in meer alledaagse woorden: iemand voor je karretje spannen om er zelf beter van te worden.	Lobbying is the informal influence on formal decision-making. Or to speak more plainly: make someone dance to your tune in order to benefit thereof.	<i>Het grote Lobbyboek, Van Venetië and Luikenaar (2009)</i> ¹³⁴
The build-up of unorthodox efforts to obtain information and support regarding a game of interest in order to eventually get a desired outcome from a power-holder.		<i>More Machiavelli in Brussels, Van Schendelen (2010)</i> ¹³⁵
Lobbyen betekent kortweg dat u vanuit uw belang probeert het besluitvormingsproces van een ander te beïnvloeden.	In short, lobbying means that you – based on your interest – try to influence the decision-making process of someone else.	Samenwerkende patiënten- en consumentenorganisaties provincie Utrecht ¹³⁶

¹³⁰ Van Dale online dictionary. www.vandale.nl/opzoeken?pattern=lobbyen&lang=nn#.VFVRGvI5OSo <consulted 1 November 2014>

¹³¹ BVPA, *Handvest*, 2007. bvpa.nl/documents/BVPA_Handvest.pdf <consulted 26 March 2015>

¹³² Van Drimmelen, *Handboek Public Affairs*, Prometheus Bert Bakker, 2014.

¹³³ "Interinstitutional Agreements", *Official Journal of the European Union*, 22 July 2011, par.8. [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011Q0722\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011Q0722(01)&from=EN) <consulted 17 December 2014>

¹³⁴ Van Venetië and Luikenaar, *Het Grote Lobbyboek*, Business Contact: Amsterdam, 2013.

¹³⁵ Prof. Van Schendelen, *More Machiavelli in Brussels – The Art of Lobbying in the EU*, Amsterdam: Amsterdam University Press, 2010, 48.

¹³⁶ 'Gemeenteraadsverkiezingen 2006: 10 stappenplan voor politieke lobby', Platform GGZ, 2006.

www.praatboek.nl/tijdelijk/lokaleversterking/plv/download/handreikingen/html/stappenplan-lobby-a5.doc.html <consulted 1 November 2014>

Types of lobbying

Although it is difficult to precisely define lobbying in the Netherlands, it is possible to recognize ways in which lobbyists try to influence policy. While politics has always involved attempts to influence by individuals and groups, large-scale professional lobbying is a relatively new phenomenon in the Netherlands. The occupation is steadily growing, and there is an increasing call for further professionalization. Timmermans calls this the “paradox of public affairs”:

...it gets more and more important to professionalise public affairs, but it gets harder and harder to do it well.¹³⁷

Politics gets more complicated everyday with more players and more interests. People, businesses, local/provincial government and organizations have a need to make their voices heard in the political arena and media. They either do this themselves through in-house lobbyists, or hire professionals (consultant-lobbyists).

This research distinguishes between the following types of lobbying in the Netherlands: consultation, revolving door lobbying, informal lobbying and lobbying with scientific data.

Consultation

There are several ways in which the legislative process is open for consultation. A relatively new possibility is Internet consultation. In the Netherlands each ministry (except for the ministries of Defence, General Affairs and Foreign Affairs)¹³⁸ participates in Internet consultations. Each of the participating ministries promised to present at least 10% of their proposals for new laws, decrees and regulations on their website for comments.¹³⁹ They are free to choose which proposals are eligible for Internet consultation.¹⁴⁰ The ministry of Security and Justice supports and monitors the effect of the consultation process on the legislative process.¹⁴¹

Everyone is able to respond to a proposal when it is open for consultation. Every contributor is required to enter a name, and can tick a box to indicate whether their name and contribution is allowed to be publicly published. The reaction of the ministry is always made public, even if a person chooses to not to openly publish his or her identity and contribution.¹⁴²

The trial phase of Internet consultations took place between 24 June 2009 and 1 June 2011. The evaluation of this phase provides valuable data. On 1 June 2011, 105 bills had been consulted online, with a total of 4,993 contributions.¹⁴³ On average there were 48 contributions per bill, with a peak of 2,082 contributions on a bill concerning education. The explanatory memorandum of that bill, contains a paragraph on contributions from parents (45%), teachers (17%), supervisors (14%), school boards (9%) and other stakeholders (15%). This paragraph mentions their concerns, certain specific subjects, suggestions and changes introduced to the draft bill and details specific parts of its explanatory memorandum based on these contributions.¹⁴⁴

¹³⁷ Prof. Dr. Timmermans, *On Speaking Terms. Public Affairs en de dialoog tussen wetenschap en praktijk*, University of Leiden, 2014, 8. bvpa.nl/documents/at-oratie.pdf <consulted on 25 March 2015>

¹³⁸ According to the evaluation of the Internet consultation: “The nature and extent of the law making production of these ministries is such, that de facto it cannot be consulted”. See House of Representatives, meeting year 2010-2011, 29 279, attachment to no. 121. www.internetconsultatie.nl/ <consulted 17 December 2014>

¹³⁹ Internetconsultatie Rijksoverheid. www.rijksoverheid.nl/doe-mee/lopende-projecten/internetconsultatie <consulted 4 February 2015>

¹⁴⁰ See: www.internetconsultatie.nl/algemenevoorwaarden <consulted 2 October 2014>

¹⁴¹ House of Representatives, meeting year 2010-2011, 29 279, attachment to nr. 121.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ House of Representatives, meeting year 2011-2012, 33 106, no. 3, pp. 60-61.

From the side of the ministry, the evaluation also provides data. Around three-quarters of the public officials reached one or more new target groups that they otherwise would not have reached. Mostly these concerned small entrepreneurs and private individuals.¹⁴⁵ Two-third of the public officials received useful reactions with specific suggestions – mostly concerning legal or policy aspects – leading to changes to the bill or the addition of information. Around half of the public officials actually changed the bill because of the information received – though usually only the explanatory memorandum. A downside to the Internet consultation was the amount of time spent on processing the reactions (mostly around eight hours, for a quarter more than 40 hours). Nonetheless, the Internet consultation does not lengthen the overall duration of the law-making process. It is often combined with other types of consultation.

According to the evaluation report “some members of staff think that internet consultation may replace other forms of consultation in the law-making process”.¹⁴⁶ These other types of consultation concern processes such as written consultation from interest groups or professional associations. Also, the public official respondents indicated they would envisage using the website for other purposes than bills, such as consultations for policy proposals.

Finally, the evaluation shows that citizens, companies and civil society appreciate the added transparency, stating that it helps understanding the length and different phases of the law-making process. These respondents further recommended the online consultation possibilities should be brought to the attention of target groups more actively.

Other consultation practices concerning bills are not open to the public. The Dutch government (or in case of initiative bills, MPs) can choose to consult research institutions, stakeholders or other interested parties, without restrictions.

A relevant issue with Internet consultations is that they do not account for influence on the law proposal before or after the public consultation period. The time it takes to develop a proposal is often much longer than this, for example, prior to the Internet consultation, public officials usually deploy an informal pre-consultation. They are not public and not documented and raise concerns relating to possible undue influence and trading in influence.

Revolving door lobbying

In the Netherlands a prevalent risk of non-transparent lobbying seems to be public officials who start working in the private sector they previously regulated. This is most commonly known as the revolving door. As the case study below indicates, revolving doors are common among high government officials.¹⁴⁷

There are several ways in which the revolving door between the public and private sectors presents risks. A high-ranking official is usually in contact with the private sector while still in office. Without a policy designed to stem the risks associated with revolving doors, situations can arise where a former official moves directly into a position in the private sector where he or she can lobby his previous department. This former official may be particularly desirable by the private sector because of insider knowledge obtained while in office. The suggestion or offer of a lucrative future position might influence the official's decision-making while in office. It is also possible that professionals from the private sector move to the public sector. In both cases substantial financial interests may be involved. It is certainly not always the case that a career switch from public to private or vice

¹⁴⁵ House of Representatives, meeting year 2010-2011, 29 279, attachment to no. 121.

¹⁴⁶ Ibid.

¹⁴⁷ Also see SOMO, *Taking Lobbying Public*, 25 and 29.

versa is a result of or would result in undue lobbying. The risks are however real and even the perception of impropriety may be damaging for public trust in institutions.

At this moment it appears that the revolving door situation is not discouraged by the government, as the “Defence and other revolving doors” case study below shows. In the Netherlands there are two reasons for this. First, trust in the integrity of officials is high and emphasis lies on self-regulating measures that protect the integrity of the government. For instance, the public officials’ oath in which the individual pledges not to act in a corrupt manner. This general rule is often seen as a sufficient guarantee. The second reason is the duty of public officials to apply for a new position. After discharge or the end of their mandate, politicians and senior public officials receive so-called “waiting money”. This is a form of unemployment benefits they receive until they have found a new job or have gone into retirement. In order to limit the period in which public officials are entitled to such benefits, they have a duty to apply for a new position.

This point of view was recently expressed by minister of Finance Dijsselbloem. He stated that it is reasonable to expect that policy-makers and politicians look for employment that connects with their competence and experience. According to the minister:

While the government is cautious concerning the issue of politicians moving to the private sector, it is not sensible to introduce new codes or rules. There is a clear framework, in which the starting point is that senior public officials and (decentralized) politicians move on towards other functions in politics or society. This is formalized in the duty to apply for a new position.¹⁴⁸

Defence and other revolving doors

On 3 April 2014 the Dutch minister of Finance Dijsselbloem stated that, “it seems reasonable that policymakers and politicians [when leaving their public function] find a working environment that is related to the person’s acquired capabilities and experiences”.¹⁴⁹ This statement was made in reaction to MP Merkies’ proposal to implement a cooling-off period for policy-makers and politicians. Dijsselbloem’s reaction is a prime example of the way in which Dutch politicians engage in society and the private sector.

A well-known example is the matter of De Vries, former state secretary of the ministry of Defence. De Vries, at the time state-secretary, was an advocate of the purchase of the Joint Strike Fighter (JSF) aeroplane, which has been severely disputed because of its increasing costs. In 2011 De Vries started working at Hill and Knowlton, a communication and advisory agency, which also represents the Dutch airline industry and subsequently backed the JSF purchase. When asked if he would be the one to contact the ministry of Defence, De Vries stated that he did not know, but he also did not see “any objections or problems” in contacting the ministry.¹⁵⁰

Earlier, in 2008, when still in the function of state secretary, De Vries responded to questions of an MP regarding former Dutch Army Commander Berlijn, who after a career in defence started working for Thales Nederland, co-developer of the JSF:

¹⁴⁸ J. Dijsselbloem, Letter ‘*Future financial sector*’ (3 April 2014). House of Representatives, meeting year 2013-2014, 32 013, no. 56, par. 6. zoek.officielebekendmakingen.nl/kst-32013-56.html <consulted on 25 March 2015>

¹⁴⁹ Ibid.

¹⁵⁰ “Jack de Vries mag voorlopig nog niet lobbyen bij Defensie”, *NRC Handelsblad*, 16 June 2011. www.nrc.nl/nieuws/2011/06/16/jack-de-vries-mag-voorlopig-nog-niet-lobbyen-bij-defensie/ <consulted 15 September 2014>

For lobbying practices or attending symposia organized by the defence-industry, the restrictive rules formulated in Directive SG A/872 are fully applicable. (...) Conform Directive SG A/872, Berlijn will not be accepted as negotiating partner.¹⁵¹

Directive SG A/872 prohibits the ministry of Defence to engage with former government officials until two years after their employment, if they represent the business community. A spokesperson of the ministry of Defence stated in 2011 that, "De Vries is allowed to engage in the JSF discussion, but not in our direction".¹⁵² Whether De Vries actually influenced political decisions concerning the purchase of the JSF with insider knowledge obtained while working at the ministry is not known; but his previous position gave rise to legitimate concerns.

Another example of revolving doors is the case of Zalm. Zalm was minister of Finance twice, between 1994 and 2007. In 2006 the House of Representatives adopted a motion aiming to prohibit credit commercials on television. DSB Bank spent the most money on such commercials: 38 million euros per year (in total 45 million euro per year was spent by financial institutions for the entire branch).¹⁵³ A few months before this, Zalm was seen with DSB CEO Scheringa.¹⁵⁴ When the motion was adopted Zalm refused to carry it out because, according to him, the commercials were protected by the freedom of expression and banning them would be paternalistic.¹⁵⁵ Six months later Zalm was head of economic strategy and later financial director at DSB Bank. Since 2009, Zalm has been CEO of ABN AMRO, one of the largest banks in the Netherlands.¹⁵⁶

These are two cases in which high government officials attain positions in the industry they formerly regulated. There are numerous other examples where revolving door issues possibly exist: Verhagen, former minister of Economic Affairs, Infrastructure and Innovation, started working at *Bouwend Nederland*, a branch organization for the construction and infrastructure sector;¹⁵⁷ Buijink, the secretary-general at the ministry of Economic Affairs left to start working at the Dutch Association of Banks;¹⁵⁸ Eurlings started working with KLM Royal Dutch Airlines after being minister of Traffic, Public works and Water management;¹⁵⁹ former minister of Finance De Jager became CFO at KPN (a large telecom company);¹⁶⁰ and some time ago, Gmelich Meijling, lobbied on behalf of Israeli weapon producer Rafael, which he had been involved with previously as state-secretary for defence.¹⁶¹

These practices and minister Dijsselbloem's approach show that revolving doors form an intricate part

¹⁵¹ House of Representatives, meeting year 2009-2010, addendum 2326.

www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2009/08/14/2009-2326.html <consulted 25 March 2015>

¹⁵² 'De Vries mag niet lobbyen bij Defensie', *Volkskrant*, 16 June 2011. www.volkskrant.nl/politiek/de-vries-mag-niet-lobbyen-bij-defensie~a2446057/ <consulted 2 November 2014>

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¹⁵⁴ See SOMO, *Taking Lobbying Public*, 25.

¹⁵⁵ "Evaluatie regels kredietreclame", letter of G. Zalm to the speaker of the House of Representatives, 7 December 2006.

www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2008/08/05/evaluatie-regels-kredietreclame.html <consulted 26 March 2015> See also House of Representatives, meeting year 2006-2007, 29 942, no. 38, 3, where Zalm's party colleague, Mr Weekers, voiced the same criticism. zoek.officielebekendmakingen.nl/kst-29942-38.html <consulted 26 March 2015>

¹⁵⁶ "Gerrit Zalm", *ABN AMRO*. www.abnamro.com/nl/about-abn-amro/corporate-governance/managing-board/gerrit-zalm.html <consulted 26 March 2015>

¹⁵⁷ "Maxime Verhagen nieuwe voorzitter Bouwend Nederland", *Elsevier*, 7 February 2013.

www.elsevier.nl/Economie/nieuws/2013/2/Maxime-Verhagen-nieuwe-voorzitter-Bouwend-Nederland-1169274W/ <consulted 4 February 2015>

¹⁵⁸ "Buijink nieuwe voorzitter NVB", *de Financiële Telegraaf*, 25 February 2013.

www.telegraaf.nl/dft/nieuws_dft/21329687/___Buijink_nieuwe_voorzitter_NVB___html <consulted 4 February 2015>

¹⁵⁹ "Kamerlid, minister en tot gisteren Camiel for president", *de Volkskrant*, 16 October 2014. www.volkskrant.nl/economie/kamerlid-minister-en-tot-gisteren-camiel-for-president~a3770171/ <consulted 4 February 2015>

¹⁶⁰ "Jan Kees de Jager wordt cfo bij KPN", *Financieele Dagblad*, 21 July 2014. fd.nl/ondernemen/365578/jan-kees-de-jager-wordt-cfo-bij-kpn <consulted 4 February 2015>

¹⁶¹ "Joviaal lobbyen voor wapentuig", *ad.nl*, 6 November 1999. www.ad.nl/ad/nl/4566/Geld/article/detail/516278/1999/11/06/Joviaal-lobbyen-voor-wapentuig.dhtml <consulted 4 February 2015>

of the Dutch culture. The revolving door between the political world and the corporate/lobbying world is one of the riskier and least regulated phenomena in the Netherlands. As the OECD puts it:

...[I]t increases the likelihood that those making policies are overly sympathetic to the needs particularly of business – either because they come from that world or they plan to move to the private sector after working in government.¹⁶²

Also, former government officials have the network and knowledge to unfairly influence the public decision-making process for the benefit of their new employer.

Informal lobbying

In 2012 the House of Representatives introduces, as discussed before, the Lobbyist Register. Lobbyists recorded in this register have an access pass which gives them access to the parliamentary premises. There are around 90 lobbyists on the list,¹⁶³ although all interviewees for this report¹⁶⁴ agree that at the very least around 400 lobbyists are active at the House of Representatives and Senate. By way of comparison, more than 600 lobbyists are registered at the BVPA. This means many lobbyists are not registered in the House of Representatives. Some even expressly refuse to register, stating that they do not see the point of having an access pass and there are no quality criteria involved (one needs three endorsements by MPs and a Certificate of Conduct (*Verklaring Omtrent Gedrag*) to be enlisted).

“The problem of lobbying is not with official lobbyists, but with the lobbying that happens in the grey-area.”

- MP Merkies

Without being registered, lobbyists can still have meetings with MPs in the parliament building (they would have to make an appointment, wait in line and go through security) or outside the premises. A potential problem with this type of lobbying is the lack of transparency.

Lobbying using scientific data

Lobbying usually occurs through direct communication. This can either be communication that is transparent, such as a public letter to the minister or a debate on national television, or non-transparent, such as a telephone call or a word at an informal dinner. Nonetheless, there are other methods to influence policy-making.

The 2013 Burson Marsteller survey shows that 61% of the decision-makers in the Netherlands value lobbyists most for providing useful and timely information. This is well above the European average of 28%.¹⁶⁵ This issue here is to what extent lobbyists and decision-makers are well-informed. Several interviewees mentioned that there is a knowledge asymmetry between decision-makers and lobbyists. According to them, lobbyists have more knowledge because they often have more

¹⁶² OECD, *Revolving Doors, Accountability and Transparency - Emerging Regulatory Concerns and Policy Solutions in the Financial Crisis*, Paris: OECD, 28 April 2009, 8.
[www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/ETH\(2009\)2&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/ETH(2009)2&docLanguage=En) <consulted 19 March 2015>

¹⁶³ As of 19 March 2015. www.tweedekamer.nl/sites/default/files/atoms/files/lobbyistenregister_19032015.pdf <consulted 26 March 2015>

¹⁶⁴ See Appendix III.

¹⁶⁵ Burson Marsteller, *A Guide to Effective Lobbying*, 46-47.

resources. A report from the Dutch Court of Audit in 2012 indicated the same. The report concluded that tobacco lobbyists were often better informed than MPs.¹⁶⁶ The inferior information position of decision-makers can be an important component in the value they give to useful and timely information. However, the other side of the coin is the lack of opportunity to verify information received from lobbyists and the potential one-sidedness of information provided. After lack of transparency (38%), not providing neutral information was considered the second most negative aspect of lobbying in the Netherlands (33%), according to conclusions of the 2013 Burson Marsteller report.¹⁶⁷

A recent possible example of knowledge asymmetry relates to the information communications technology sector. According to journalists from *Zembla*, a company from this sector was able to unduly influence public decisions on the procurement of software, because they had far more knowledge than the government.¹⁶⁸ A similar argument is made in the SOMO report *Taking Lobbying Public*, where they argue that “growing complexity of a sector is a characteristic that increases its possibilities for capturing the regulator.”¹⁶⁹

Several interviewees and other sources mention pieces of draft legislation or their accompanying texts being directly copied from the input of lobbyists,¹⁷⁰ or being asked by public officials to have a look at draft bills during the draft phase, when they are still supposed to be confidential. It is logical that lobbyists suggest amendments – that indeed is part of their job – but when full passages of position papers are copy-pasted into (draft) laws or their accompanying texts, this warrants concern about too much influence and the objectivity of such passages.

There are several methods in which lobbyists try to inform decision-makers of their point of view. One of these is to organise a scientific conference in which a certain knowledge perspective can be propagated. These conferences usually carry authority and are therefore attractive for a company or organization in their efforts to influence decision-makers. A lecture of a scholar with high status can increase the authority of the conference. The past shows that such scholars can be biased, or at least may have unclear motives. Especially in case of professors holding endowed chairs, it is not always clear who pays for the chair or who funds the foundation that supports the chair. This raises questions, while – with more transparency – clear answers might be available.

Who is a lobbyist?

As mentioned, there are roughly two types of lobbyists in the Netherlands: in-house lobbyists and consultant lobbyists. The lobbying activities undertaken by these groups are diverse. They range from community groups or charities seeking policy changes at local authority level, to formal processes established to allow various interest groups to make submissions to parliamentary committees or central government.

¹⁶⁶ “Onvoldoende zicht op bestrijding van accijnsfraude bij de handel in alcohol en tabak”, *Algemene Rekenkamer*, 5 June 2012, par. 5. www.rekenkamer.nl/Nieuws/Persberichten/2012/06/Onvoldoende_zicht_op_bestrijding_van_accijnsfraude_bij_de_handel_in_alcohol_en_tabak <consulted 2 October 2014>

¹⁶⁷ Burson Marsteller, *A Guide to Effective Lobbying*, 62.

¹⁶⁸ Zembla, 2 October 2014. zembla.incontxt.nl/seizoenen/2014/afleveringen/02-10-2014 <consulted 3 October 2014>

¹⁶⁹ SOMO, *Taking Lobbying Public*, 16. At page 4, regulatory capture is described as “the process where policymakers and supervisors defend the interest of the sector they are meant to regulate and supervise, even at the expense of the public interest.”

¹⁷⁰ “Hoe Den Haag de banken bediende: onderzoek politiek en kredietcrisis”, *NRC Handelsblad*, 27 June 2009.

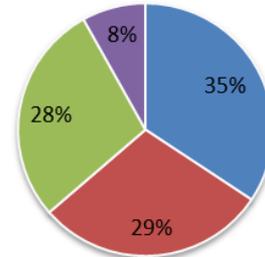
www.nrc.nl/handelsblad/van/2009/juni/27/hoeddenhaagdebankenbediende-11747411 <consulted 25 March 2015>

SOMO, *Advocacy by the Dutch Biofuels Sector*, 39: “Input is often asked for policy proposals”.

There is no specific training, nor are there requirements to become a lobbyist. As discussed, there are no mandatory regulations governing the profession. The 2013 Burson Marstellers research shows that there is a broad understanding on what constitutes a lobbyist. Most respondents in that study answered that trade associations (94%), as well as public affairs agencies (89%) and NGOs (78%) were deemed to be lobbyists. They concluded that, “in these countries [Estonia (100%), Finland (93%), Latvia (80%) and the Netherlands (78%)] there appeared to be a general willingness to define a wide range of groups as ‘lobbyists’”.¹⁷¹

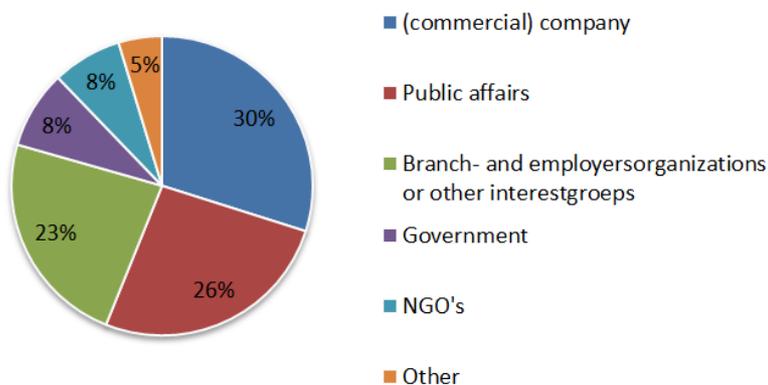
Years active in Public Affairs

- More than 10 years
- Between 6 - 10 years
- Between 2 -5 years
- Less than 2 years



Again, the BVPA is a source that can shed some light on the composition of the lobby profession in the Netherlands. Between 25 April and 6 May 2014, the BVPA conducted a membership research.¹⁷² During this research, 166 of the 570 members filed in a complete response, which is a response rate of 29%. Even though this is not very high for a closed group, it nevertheless gives a unique view on the thoughts of public affairs professionals concerning the functioning of the BVPA and several topical issues related to the profession (transparency, integrity, lobbying register and cooling-off period).

Type of organisation



Most respondents were male (62%) and between 35 and 55 years old (62%). Only 9% were older than 55 years old and 29% were younger than 35. A large percentage were active in public affairs for more than 10 years. A half of the respondents studied a discipline relevant for public affairs (mostly political science, a special public affairs course or public administration). The respondents were active in

a wide variety of sectors (top: consultancy/intermediary (16%), (semi)public sector (12%) and financial services (9%)).

In-house lobbyists were usually part of the communications or public affairs department of (large) companies or organizations. Consultant-lobbyists worked at lobby, communications or PR firms. These firms ranged from a single employee to several dozen employees. Both generally had a good understanding of the political and policy-making system, well developed contacts across various government departments and perhaps even strong personal relationships with public officials and policy-makers.

¹⁷¹ Burson Marsteller, *A Guide to Effective Lobbying*, 8.

¹⁷² Noordam & De Vries, *Samenvatting en conclusie ledenonderzoek*, 28 May 2014.

The members of the BVPA had mixed associations with the BVPA (59% positive and 41% negative). The networking possibilities, the organization of various meetings and the role the BVPA played as a representative of their profession (including bringing it to a higher professional level) were the most important positive associations members made with the BVPA. Mostly mentioned negative associations were related to the closed character and the low visibility of the organization.

Values like integrity, trust, professionalism, transparency and honesty were held to be an important part of the public affairs sector. Between 93% and 98% of the BVPA members found these values important or extremely important. Integrity is seen as the most important value. Members were divided about the method by which the BVPA conveys the values of integrity and transparency.

So far, law firms do not frequently lobby in the Netherlands. This is reflected in data from LobbyFacts, which lists no Dutch law firms lobbying in Brussels.¹⁷³ This LobbyFacts list ranks law firms according to their declared turnover relating to lobbying activities in the most recent year for which they have provided figures. The organizers of LobbyFacts are particularly concerned that many law firms, which carry out EU lobbying activities refuse to sign-up to the lobby transparency register.

Players in the field and their position towards lobbying

In terms of the scale of involvement, it is well established that in all democratic political systems lobby groups exert a strong influence when public policy is formulated and political decisions are made.¹⁷⁴

Interviews with government, business and non-profit sector representatives suggest that decision-makers are willing to meet with stakeholders, either by consenting to meet them upon request or by inviting them to contribute with technical information and points of view when a new policy is being formulated (for MPs mostly through hearings and round table meetings – see ‘Arrangement of business’ above). According to the 2013 Burson Marsteller report on lobbying, decision-makers in the Netherlands find industry meetings the most helpful to make informed decisions.¹⁷⁵ As the industry obviously has its own agenda this is a serious concern. This concern can be addressed if industry meetings with decision-makers were fully transparent.

This section will look at both in-house and consultant lobbyists and their associations, as well as some of the industry players and their position towards lobbying.

In-house lobbyists

In-house lobbyists are lobbyists that function within an organization or company. Large and medium commercial enterprises generally employ in-house staff whose work involves targeting decision-makers in their organization's fields of interest. These lobbyist do not merely fulfil an external role, but also have internal roles within the organization. Since they usually lobby for one interest only, they are perceived as more transparent. Their employer, as well as their general position in debates, will be known to most of their colleagues and lobby targets.

In-house lobbyists generally have more resources to lobby than other types of lobbyists. Due to the lack of comprehensive official data on lobbying activities, it is not possible to calculate how much money is spent (attempting) to influence policy.

¹⁷³ Lobbyfacts, *Law firms with the biggest lobbying turnover*, snapshot 26 January 2015. lobbyfacts.eu/reports/turnover/law-firms?page=2&sort=cntry&order=asc <consulted 27 March 2015>

¹⁷⁴ Council of Europe, *Venice Commission Report on Lobbying*, 5, par.17.

¹⁷⁵ Burson Marsteller, *A Guide to Effective Lobbying*, 71.

More and more companies and organizations realize that lobbying is an essential part of their advocacy, looking after their (business) interests and necessary to make their voice heard. This group of lobbyists is probably already one of the largest groups of lobbyists (see “Who is a lobbyist?”) and is steadily growing.

Lobby firms and consultants

There are several large lobbying firms in the Netherlands, as well as communications and PR firms with a section specialized in public affairs. Public affairs firms cater to a range of clients. There are also several small consultancy firms made up by a single or a few employees. Some of these are former MPs, making use of their old network, knowledge and unrestricted access pass to the premises of the House of Representatives. The consultant from the case study “The RamBam case and the BVPA” below, is a one-man business consultant.

Consultant-lobbyists often represent multiple interests, making it harder to determine what they are lobbying for and on whose behalf.

Dutch Association for Public Affairs

The BVPA is the Dutch Association for Public Affairs. The association promotes the interests of all public affairs professionals in the Netherlands. The BVPA is a fast growing association that at present counts over 600 members. Membership is open to all professionals active in the public or the private sector (for more than 50% of their time on lobbying). Members work in companies, lobby firms, NGOs or government.

The mission of the BVPA is threefold. First, it tries to increase the professionalism of its members by offering knowledge, skills and information about everything that concerns the profession. Second, it wants to increase the familiarity of public affairs to a broader audience. Third, it wants to increase the reputation of the profession in society and to be the leading spokesperson of the profession.¹⁷⁶

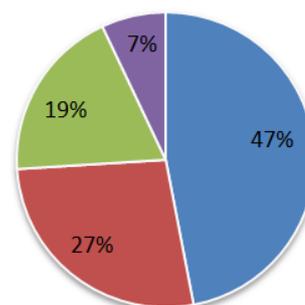
The BVPA’s attitude towards lobbying can be most clearly seen in its Charter, which sums up a number of rules and principles that are endorsed by its members. According to this document, public affairs is a “profession that needs to be practiced in all openness”.¹⁷⁷ The Charter, according to its wording, is a way to show the world that member lobbyists adhere to rules and principles that are in line with the highest ethical standards.

Members of the Dutch Association for Public Affairs are honest and trustworthy in their professional contacts with politicians, policy-makers, other professionals and the public.

- Article 1 of the Charter of the Dutch Association for Public Affairs

Size of organization

■ 100+ ■ 10 - 100 ■ 2 - 10 ■ self-employed



¹⁷⁶ See: bvpa.nl/over-bvpa/vereniging <consulted 4 February 2015>

¹⁷⁷ BVPA, *Handvest*, 2007. bvpa.nl/documents/BVPA_Handvest.pdf <consulted 26 March 2015>

Since 2013, the BVPA sponsors a professor occupying an endowed chair in public affairs at the University of Leiden, Professor Arco Timmermans. The goal of this chair is to establish more structural scientific research into advocacy and public affairs in the Netherlands.¹⁷⁸

Logeion: The professional association for communication professionals

Logeion is the Dutch association for communication professionals. It aims to be a platform for Dutch communications professionals from different sectors, such as government, private companies, education and consultancy.

Just like the BVPA, Logeion is a fast growing association that currently consists of 3,250 members. Its mission is professionalizing and promoting the profession by enabling interaction and knowledge transfer. Logeion organizes 70 meetings per annum on several themes and trends and calls itself a “community of communities”. This is reflected in its different theme groups, which vary from corporate communications (1,378 members), CSR / sustainability (369 members), to public affairs (350 members).¹⁷⁹

Logeion is a mere platform: there are no rules, principles or standards members have to adhere to, nor is there a monitoring body.

Since 2008, Logeion has sponsored a professor occupying an endowed chair in strategic communications at the University of Amsterdam, Professor Noelle Aarts. As of September 2013, this endowed chair has been extended for five more years. According to Logeion, the chair is established in order to fulfil a “bridge function” between science and professional practice.¹⁸⁰

VNO-NCW

The Confederation of Netherlands Industry and Employers (VNO-NCW) is the largest employers’ organization in the Netherlands. It publicly presents itself as a lobbying organization that represents the common interest of the Dutch business sector.¹⁸¹ Members of VNO-NCW are companies and (sector) organizations; most companies with more than 10 employees are represented by VNO-NCW. Combined with the members of the organizations, they represent 115,000 companies. VNO-NCW does not only represent Dutch employers in the Netherlands, but also on a European level, which is why they have an office in Brussels.

Partly because of its broad constituency, VNO-NCW is one of the most powerful lobby organizations in the Netherlands.

The banking sector

The Dutch Association of Banks (NVB, *Nederlandse Vereniging van Banken*) is an important player in the banking sector because it represents the interests of almost all (Dutch and foreign) banks active in the Netherlands. The NVB is a supporter of transparency. Positions on public issues are made public and the NVB openly refers to its policy programme and annual report. To increase transparency, the NVB calls for standards on consultation. These standards should be set by the government and should give clear guidelines for consulting, which would improve transparency.

¹⁷⁸ “Universiteit Leiden benoemt Lobbyprofessor”, *de Volkskrant*, 26 August 2013.

www.volkskrant.nl/vk/nl/26886/Binnenland/article/detail/3498233/2013/08/26/Universiteit-Leiden-benoemt-Lobbyprofessor.dhtml

<consulted 2 October 2014>

¹⁷⁹ See: www.logeion.nl/vakspecialismen <consulted 2 October 2014>

¹⁸⁰ See: www.logeion.nl/logeion-leerstool <consulted 2 October 2014>

¹⁸¹ Website VNO-NCW. www.vno-ncw.nl/English/Pages/default.aspx <consulted 4 February 2015>

The NVB seems to have a slightly more critical approach towards the legislative footprint. It stresses the importance of cooperation by all parties involved. According to the NVB, this would be the only way to provide a clear picture of the process leading up to a certain policy or legislation.¹⁸²

In December 2013, SOMO published its report *Taking Lobbying Public*. Its conclusion was that the Dutch banking-sector was less transparent than it claimed to be.¹⁸³ In response to the report the six banks involved in the research made promises to improve transparency.¹⁸⁴ Rabobank and ABN AMRO promised to display their positions towards public policy and their consultation submissions online.¹⁸⁵ On other recommendations the banks were less willing to comply. They did, for instance, not want to give insight into meetings with supervisors or policy-makers.¹⁸⁶ Transparency towards revolving doors between the private and public financial sector was also not favoured.¹⁸⁷

The promised initiatives of the influential banking lobby are hopeful. Yet, as the “Holland Financial Centre” and the “Defence and other revolving doors” cases show, providing further transparency on meetings and possible revolving doors are necessary steps towards a more open and reliable financial sector.

The Dutch Association of Banks

In 2003, minister of Justice Donner introduced legislation to expand the possibilities for banks to remove lending activities from their balance sheet.¹⁸⁸ Analysis of the explanatory memorandum showed that more than 50% thereof was a copy of a letter of the NVB.¹⁸⁹ According to SOMO, the letter of the NVB consisted mostly of very selective quotes of DNB.¹⁹⁰

In its report about lobbying by banks, SOMO concluded that even though “the common lobby of banks through the NVB was hampered not only as a result of increased public vigilance, but also due to internal fights”,¹⁹¹ the banking lobby held sway. The SOMO report continued with a quote from Hans Hoogervorst, then director of the AFM, “the government gave too much room to the NVB to influence the decision-making process”.¹⁹²

After the financial crisis of 2007 and 2008, the Dutch financial sector was under attack from the media, politics and civil society. The role of financial institutions had become more dominant over the past few decades, also in formulating public policies affecting that same financial sector. The

¹⁸² ‘Reactie SOMO-rapport: Nederlandse Vereniging van Banken voor transparante lobby’, press release NVB, 17 December 2013. www.nvb.nl/nieuws/2013/2445/reactie-somo-rapport-nederlandse-vereniging-van-banken-voor-transparante-lobby.html <consulted 25 March 2015>

¹⁸³ “SOMO beweegt banken tot meer transparantie over hun lobbyactiviteiten”, press release SOMO, 17 December 2013. somo.nl/news-nl/somo-beweegt-banken-tot-meer-transparantie-over-hun-lobbyactiviteiten <consulted 2 October 2014>

¹⁸⁴ SOMO, *Taking Lobbying Public*, 4 and 55. The six banks involved in the research are: ING Group, Rabobank, ABN AMRO, SNS REAAL, ASN Bank and Triodos.

¹⁸⁵ SOMO, *Taking Lobbying Public*, 55.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ House of Representatives, meeting year 2002-2003, 28 878, no. 3. zoek.officielebekendmakingen.nl/kst-28878-3.html <consulted 28 March 2015> See also: “Politiek volgde wensen banken”, *NRC.nl*, 27 June 2009.

vorige.nrc.nl/economie/article2283976.ece/Politiek_volgde_wensen_banken <consulted 28 March 2015>

¹⁸⁹ SOMO, *Taking Lobbying Public*, 24.

¹⁹⁰ Ibid. See also: “Hoe Den Haag de banken bediende: onderzoek politiek en kredietcrisis”, *NRC Handelsblad*, 27 June 2009.

www.nrc.nl/handelsblad/van/2009/juni/27/hoe-den-haag-de-banken-bediende-11747411 <consulted 28 March 2015>

¹⁹¹ SOMO, *Taking Lobbying Public*, 29.

¹⁹² SOMO, *Taking Lobbying Public*, 29.

impression amongst many of the victims of the crisis and critics of the financial sector was that the banks had put their own interests first, “at the expense of the rest of society”.¹⁹³

In 2013, the NVB made a transition to a more open advocacy for the interests of banks in the Netherlands, with a different focus. They accomplished this by a change of strategy, from, generally speaking, more defensive to more proactive and a new tone at the (new) top. Together with the banks the NVB formulated a joint vision, a social charter, and codes of conduct (including a “banker’s oath”)¹⁹⁴ including enforcement measures.¹⁹⁵ These regulations will come into force in April 2015.

The change of strategy was noticed in the political arena. During a general deliberation concerning the future of the banking sector in April 2013, minister of Finance Dijsselbloem stated the following:

How lobbying takes place? It is very varied, it takes place in many different ways, in different places, and in different stages of the process. Does that make lobbying suspicious or impermissible? No. I am under the impression that for instance the lobby of the NVB concerning leverage ratio has been conducted with full disclosure. (...) Go to the website of the NVB and you see what the financial sector thinks of these themes. It is, however, for the Lower House to judge, adjudicate and if necessary, reject. Again, wherever it’s possible to make things more transparent, we do that. We process responses resulting from consultations, we comment on them and we mention them in the final bill. Nowadays, the explanatory memorandum discusses the outcome of the consultation rounds and will mention who took part in the consultations. I am attentive for further possibilities [to make things more transparent]. (...) It is interesting to see that in that same broadcast of *Buitenhof* the interviewer was able to produce how we [the ministry] reacted on the lobby-activities of the NVB on a specific subject (...). That showed that we are clear in our documentation on how we deal with input from lobby organizations.¹⁹⁶

In January 2015, however, the minister wrote a critical opinion piece in *NRC Handelsblad* about the lobby of banks, insurance companies and pension funds, that according to him tried to move away from taking measures for a more sustainable economic recovery in the Netherlands, with “artificial and factually incorrect arguments”.¹⁹⁷ The Federation of the Dutch Pension Funds (*Pensioenfederatie*), NVB and the Dutch Association of Insurers (*Verbond van Verzekeraars*) reacted in the same newspaper on these accusations, stating that the facts were different than the way the minister had put them in his opinion piece, and restating their positions on the matter.¹⁹⁸

Even though there still may be a long way to go before public trust is fully restored in the banking sector, the NVB has made considerable progress in becoming more transparent. It publishes its position papers online, and has held open/public consultations on its banker’s oath, code of conduct

¹⁹³ SOMO, *Taking Lobbying Public*, 8.

¹⁹⁴ Please note that this self-regulating banker’s oath is based on the statutory stemming from the *Wijzigingwet financiële markten 2013*, the *Wijzigingwet financiële markten 2015* and the *Regeling eed of belofte financiële sector*.

¹⁹⁵ These documents are collected in the document “Future-oriented Banking”, see: www.nvb.nl/media/document/001801_nvb-toekomstgericht-bankieren-statuut-codebanken-gedragsregels.pdf <consulted 15 January 2015>

¹⁹⁶ House of Representatives, *Future financial sector*, meeting year 2013-2014, 32 013, no. 57, 8 April 2014. zoek.officielebekendmakingen.nl/kst-32013-57.html <consulted 31 March 2015>

¹⁹⁷ Opinion minister Dijsselbloem, ‘Banken, stop die lobby, anders komt 2008 terug’, *NRC Handelsblad*, 17 January 2015.

¹⁹⁸ *digitaleeditie.nrc.nl/digitaleeditie/NH/2015/0/20150117___/2_02/index.html#page2* <consulted 31 March 2015> See also: ‘Dijsselbloem laakt lobby financiële sector’, *FD*, 18 January 2015. fd.nl/economie-politiek/1089063/dijsselbloem-laakt-lobby-financiele-sector <consulted 31 March 2015>

¹⁹⁸ ‘Pensioenfederatie, NVB en Verbond van Verzekeraars reageren in NRC op ingezonden brief Dijsselbloem’, *Pensioen Federatie*, 20 January 2015. www.pensioenfederatie.nl/actueel/nieuws/Pages/Pensioenfederatie_NVB_en_Verbond_van_Verzekeraars_reageren_in_NRC_op_ingezonden_brief_Dijsselbloem_919.aspx <consulted 31 March 2015>

and social charter. It publicly reacted to the SOMO report, stating that in general it agreed with SOMO's criticism and was willing to follow up on some of the recommendations.¹⁹⁹

This example of the NVB defies the myth that the greatest presumed obstacle to regulation is that lobbyists themselves fight "tooth-and-nail against such regulation".²⁰⁰ In particular younger Dutch lobbying professionals are in favour of creating a lobbyist register and applaud transparency in their work. As the NVB writes: "The NVB is a supporter of transparency and strives for it".²⁰¹

¹⁹⁹ 'NVB reactie op SOMO rapport', press release NVB, 3 November 2012. www.nvb.nl/nieuws/2012/1487/nvb-reactie-op-somo-rapport.html <consulted 23 October 2014>

²⁰⁰ C. Holman and W. Luneberg, *Lobbying and transparency: A comparative analysis of regulatory reform*, *Interest Groups & Advocacy* (2012)1, 75-104. Published online on 20 March 2012: www.palgrave-journals.com/iga/journal/v1/n1/full/iga20124a.html <consulted 26 March 2015>

²⁰¹ 'Reactie SOMO-rapport: Nederlandse Vereniging van Banken voor transparante lobby', press release NVB, 17 December 2013. www.nvb.nl/nieuws/2013/2445/reactie-somo-rapport-nederlandse-vereniging-van-banken-voor-transparante-lobby.html <consulted 25 March 2015>

SELF-REGULATION OF LOBBYIST ACTIVITIES

The BVPA

Around 2001, the BVPA adopted a Code of Conduct, in the form of a Charter. The Charter describes the field of public affairs and formulates principles and rules that members of the association need to observe during their daily work. At the General Membership Meeting (ALV, *Algemene Ledenvergadering*) of 20 November 2013, the membership of the BVPA adopted amendments to its articles of association, internal regulations and complaints procedure, entailing a new framework for examination of complaints about integrity breaches by BVPA members and enforcement of the Charter.²⁰²

The Charter contains the following elements.²⁰³

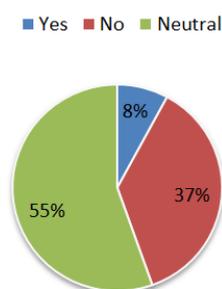
- Requiring honesty and accuracy of information provided to public officials
- Requiring early disclosure to public officials of the identity of client and interests being represented (name or organizations paying for the lobbying activities, names of the lobbyists' clients, and specific subject matter lobbied)
- Refraining from encouraging public officials to violate the law
- Refraining from using information obtained in violation of the law
- Requiring speedy disclosure of any conflict of interest and management of such conflicts of interest or recusal
- Establishing a reasonably independent mechanism for monitoring and enforcing compliance to the ethics code
- Making ethics training a condition of membership in the association

The Charter is applicable to all members. All members of the BVPA are registered and a list thereof is publicly available.²⁰⁴ Of all members, the following information is provided: a photo, the first and last name of the lobbyist, the organization they work for, the address of the organization and a telephone number.

For complaints by members or third parties, a Complaints Committee has been established. This Committee investigates, adjudicates and advises the Board. After the advice of the Committee, the Board can impose the following sanctions: reprimand, suspension or expulsion. It is possible to appeal this decision at the general assembly of members.²⁰⁵

Until now, only one case led to a sanction, which is described in "The RamBam case and the BVPA". Although the actions of the lobbyist concerned were aired on national television, only one complaint was filed, by a BVPA member. While one complaint is sufficient for the Committee to handle this case, it shows that the complaints mechanism is not well-known to BVPA members or the public. Lobbyists interviewed for this report stated they were unhappy with the "RamBam lobbyists", yet none filed a complaint. Combined with the fact that even though 55% of the BVPA members that responded to the internal BVPA investigation held that their colleagues do not

Do PA professionals act in accordance with the Charter?



²⁰² See: bvpa.nl/gedragscode <consulted 4 February 2015>

²⁰³ BVPA, *Handvest*, 2007. bvpa.nl/documents/BVPA_Handvest.pdf <consulted 26 March 2015>

²⁰⁴ See: bvpa.nl/leden/ledenlijst <consulted 4 February 2015>

²⁰⁵ BVPA, *Handvest*, 2007. bvpa.nl/documents/BVPA_Handvest.pdf <consulted 26 March 2015>

conduct their professional activities in accordance with the Charter, no other complaints have been filed except the one concerning the RamBam case, this indicates that lobbyists themselves are not eager to file a complaint.

Only 8% of the respondents thought public affairs professionals act in accordance with the Charter.

The BVPA aims at further professionalizing the public affairs sector in the Netherlands, *inter alia* by providing mandatory ethics training every two years. The willingness of members to be regulated, however, is divergent, making it hard to actually make this change. As the earlier discussed research of the BVPA concludes:

... [m]embers are, so it seems, not enthusiastic about issues that the BVPA would like to regulate or make obligatory. There is little interest for a certification mark for individual members, organizations or companies, and transparency, integrity, a lobby register or a cooling-off period also find little endorsement once they are connected to binding responsibilities, legislative footprint, internal rules, obligations, binding minimal demands, or legally binding regulations.²⁰⁶

Especially introduction of a lobby register and a cooling-off period are disputed.

The RamBam case and the BVPA

In April 2013, Dutch television programme RamBam (VARA), made a programme on lobbying.²⁰⁷ The journalists, Linda Hakeboom and Ronald Snijders, posed as individuals who wanted to exploit a (fictional) commercial sperm bank, Seed4U. The presenters had made up this issue and the commercial interest. They hired a lobbyist to help their cause.

The lobbyist, who was unaware of the cameras and was made unrecognisable in the broadcast, advised them on how to bring their cause to the political arena. He made appointments for them with politicians and advised them to set up a foundation in order to conceal their commercial interest in Seed4U. He called politicians “ventriloquist's puppets” (*buikspreekpoppen*) and described his job as being an “oiler” (*oliespuitje*): he could “either make the machine run smoothly, or throw sand in the mechanism”.²⁰⁸

His work, however, actually paid off. Within two months the fictional cause of the non-existent company was placed on the political agenda. Two MPs asked questions to the minister of Health, Welfare and Sport about waiting lists in the sperm bank business.²⁰⁹ Minister Schippers answered she would research the matter.²¹⁰

The BVPA was unhappy with the way the lobbyist had acted. Then chair of the BVPA Halma said that

²⁰⁶ Noordam & De Vries, *Samenvatting en conclusie ledenonderzoek*, 28 May 2014.

²⁰⁷ The programme is available (in Dutch) at: www.npo.nl/rambam/08-04-2013/VARA_101307288 <consulted 2 October 2014>

²⁰⁸ *Ibid.*, at 07:46 min.

²⁰⁹ House of Representatives, meeting year 2012-2013, 32 610, meeting number 59, item 5. zoek.officielebekendmakingen.nl/h-tk-20122013-59-5.html <consulted 6 February 2015>

²¹⁰ House of Representatives, meeting year 2012-2013, 32 610, meeting number 59, item 8. zoek.officielebekendmakingen.nl/h-tk-20122013-59-8.html <consulted 28 March 2015>

the BVPA values transparency, especially regarding who the lobbyists works for and which interests he or she represents. “The suggestion to set up a foundation in order to conceal the commercial interest does not fit this principle. It is contrary to our code of conduct”.²¹¹ The BVPA Board further argued that enhancing the reputation of lobbyists is one of the main goals of the BVPA. Transparency is the main principle in this fight.²¹² The Complaints Committee confirmed this point of view and added that violation of the Charter may also lead to reputational damage for the association as a whole. The Committee advised the Board to reprimand the lobbyist, which happened.

This case also demonstrates that politicians do not always check information they receive before using it, a point earlier made in this report. Whether this is due to lack of time and resources is unclear.

WATCHDOGS: THE ROLE OF MEDIA AND CIVIL SOCIETY IN MONITORING LOBBYING

The Dutch government does not have an official lobbying oversight agency. This can be explained by the lack of rules concerning lobbying. In the private sphere there is a limited array of “watchdogs”.

In the Netherlands, international treaties and Dutch law guarantee a free and independent media. The degree to which the media are able to monitor government activities is in practice sometimes limited. The Public Access to Government Information Act (*Wet Openbaarheid van Bestuur*) is not always effective. Government authorities frequently invoke one of the available grounds of exception, or information is delivered late so judicial intervention becomes necessary (see “Towards transparency”). Nonetheless, in general, the media are able to investigate and report on acts of government and governmental affairs. With increasing regularity they report about corruption, integrity and related issues.

Some media look critically at the possible negative consequences of unchecked lobbying. The case studies mentioned in this report were all widely covered by the media. Since the financial crisis in 2008, the media have been following the financial sector more closely, which has resulted, as discussed, in more self-scrutiny by the financial sector.²¹³ There are certain media outlets that specifically focus on preserving integrity, like *Follow the Money* (*ftm.nl*), which focuses on accountability of powerful people and organizations and *Civis Mundi*, which reflects on the functioning of society. There are also media that target a certain sector. One of those is *tobaccono.nl* (*tabaknee.nl*), a journalistic research website about the activities of the tobacco lobby.

General media also have attention for lobbying and influence: in 2010-2011 *nrc.next* published a series on lobbying “How the Hague works” (*Hoe Den Haag werkt*), since 2012 *NRC Handelsblad* took over this series, calling it “Hague Influences. Who should you monitor in order to understand The Hague?” (*Haagse invloeden. Op wie moet je letten om Den Haag te begrijpen?*) and in 2013 *Vrij Nederland* published a series of articles on the tobacco lobby.²¹⁴

²¹¹ Jasper Mulder, ‘Berisping voor lobbyist’, 12 August 2013. www.communicatieonline.nl/nieuws/berisping-voor-lobbyist <consulted 6 November 2014>

²¹² Advice Complaints Committee, 8 July 2013. bvpa.nl/page/downloads/Klacht_nav_RamBam.pdf <consulted 2 October 2014>

²¹³ SOMO, *Taking Lobbying Public*, 6.

²¹⁴ “Onderzoek: de laatste vriend van de sigaret”, *Vrij Nederland*, 24 July 2013. www.vn.nl/Archief/Samenleving/Artikel-Samenleving/De-laatste-vriend-van-de-sigaret.htm <consulted 24 July 2013> “De tabakslobby: de industrie en de winkelier”, *Vrij Nederland*, 13 August 2013. www.vn.nl/Archief/Politiek/Artikel-Politiek/De-tabakslobby-de-industrie-en-de-winkelier.htm <consulted 2 October 2014> “De onderzoeker en de tabak”, *Vrij Nederland*, 22 August 2013. www.vn.nl/Archief/Samenleving/Artikel-Samenleving/De-onderzoeker-en-de-

Other than the media there are no specific organizations that monitor lobbying behaviour in the Netherlands. This may be explained by the active role the media fulfils and the lack of a solid regulatory framework on lobbying. Several civil society organizations investigate the integrity, accountability and sustainability of companies. Only sporadically do these organizations pay special attention to lobbying in certain sectors, such as SOMO, which researches the consequences of the activities of multinational corporations. In the report *Taking Lobbying Public* SOMO researched the impact of lobbying activities by banks, before as well as after the financial crisis of 2008.²¹⁵ Earlier they reported on advocacy in the Dutch biofuels sector.²¹⁶ In this report, they investigated the influence of this sector on government decisions. The report is largely based on two requests for information under the Public Access to Government Information Act. SOMO concluded:

It is remarkable that public servants incorporate proposals from the industry in policy proposals, and in some cases even work with lobbyists to create policy. The ministry has to ensure that all interested parties are heard, so also groups that encounter drawbacks from the biofuels sector.²¹⁷

Transparency International Nederland has raised attention to lobbying in its 2012 NIS Report and in this current project.

The Dutch Lottery and conflicts of interest

In the beginning of 2014 the Council of State considered a new law proposal concerning the legalization of foreign providers of online gambling. In this proposal terms were set under which online gambling organizations could compete with Dutch lottery organizations. An elaborate file accompanied the proposal, as the Dutch gambling organizations feared a drop in revenue. Since the Dutch Charity Lotteries are obliged by law to donate 50% of their profit to charities, the charities took the lead in the discussion.

In March 2014, it was held in a publication that the advisory function of the Council of State was compromised. Research conducted by newspaper *NRC Handelsblad* indicated that certain members of the Council were in a situation of conflict of interests.²¹⁸ Two State Councillors (*staatsraden*) had ancillary positions at lottery organizations. Two other State Councillors were managing social organizations that were financed with lottery money previous to their function in the Council.

The two members with positions at lottery organizations were Griffith and Franssen. Griffith is a member of the supervisory board at the Holding National Charity Lotteries (*Nationale Goede Doelen Loterijen*), which lobbied heavily against the legalization of foreign online gambling. Franssen is chairman of the Foundation General Lottery Netherlands (*Stichting Algemene Loterij Nederland*), which supports charities with the help of lottery-revenues.²¹⁹

In a reaction to the publication, the Council of State stated that the situation had its attention. It also mentioned that the two members were not part of the Advisory Division in which the advice was to be

tabak.htm <consulted 2 October 2014> "Den Haag en de Tabakslobby", *Vrij Nederland*, 5 September 2013.

www.vn.nl/Archief/Samenleving/Artikel-Samenleving/Den-Haag-en-de-Tabakslobby.htm <consulted 2 October 2014>

²¹⁵ SOMO, *Taking Lobbying Public*, 9.

²¹⁶ SOMO, *Advocacy by the Dutch Biofuels Sector*.

²¹⁷ *Ibid.*, 39-40.

²¹⁸ This section is largely based on this article: "Experts Raad van State hebben nevenfuncties bij loterijen", *NRC Handelsblad*, 6 March 2014. www.nrc.nl/nieuws/2014/03/06/experts-raad-van-state-hebben-nevenfuncties-bij-loterijen/ <consulted 15 September 2014>

²¹⁹ *Ibid.*

prepared,²²⁰ although they might be part of the process of confirming the advice.²²¹

The members who had ties with lottery in the past *were* part of the Advisory Division of the Council. Timmerman-Buck was a board member of “Skanfonds” between 2002 and 2007 and chairman between 2007 and 2010. This charity foundation is dependent on lottery money. Gonçalves-Ho Kang You was chairman of Amnesty International, which has a long history of receiving funds from the National Postal Code Lottery (*National Postcode Loterij*).²²²

This case shows that ancillary positions of persons able to influence the legislative process needs to be thoroughly checked. Conflicts of interest pose serious risks to a democratic and open legislative process. In this case the media were able to notice the risk, but a case can be made that situations that might entail a danger to the trust in our democracy should at times be both internally dealt with and made publically accessible at an early stage of the process.

²²⁰ Council of State Act as amended by the Act of 22 April 2010 with regard to the restructuring of the Council of State, Section 27a. www.raadvanstate.nl/over-de-raad-van-state/english-version-wet-op-de-raad-van-state.html <consulted 29 March 2015>

²²¹ “Experts Raad van State hebben nevenfuncties bij loterijen”, *NRC Handelsblad*, 6 March 2014.

²²² *Ibid.*

REGULATING LOBBYING

In this chapter the report will assess the degree to which public law and self-regulation in the Netherlands adequately provides for *transparency* of lobbying activities and public decision-making, *integrity* in lobbying and conduct by public officials and *equality of access* to public decision-making processes.

Regulation should capture all who lobby professionally and this definition purposefully excludes, as mentioned, individual citizens lobbying on their own behalf, as this is considered part of a normal, healthy democratic process and not something which should be regulated.

TRANSPARENCY, INTEGRITY AND EQUALITY OF ACCESS

Towards transparency

This section analyses the transparency of lobbying activities and public decision-making. The analysis will mainly revolve around the following questions: to what extent does the public have sufficient knowledge of (a) who is lobbying public representatives and public officials, (b) on what issues they are being lobbied, (c) when and how they are being lobbied, (d) how much is being spent in the process, and (e) the result of these lobbying efforts? Is the onus for transparency placed on both lobbyists and public officials/representatives?

Access to information

Access to information legislation enables citizens to access data held by national governments. This “right-to-know” is essential for transparency of decision-making. In order to scrutinize public decision-making, the public needs to know who has made certain decisions, why they were made and who had what influence during this process.

The most broadly worded provision in Dutch law regarding access to information can be found in article 110 of the Constitution:

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.²²³

Even though this article is part of the legislation and administration section of the Constitution and not the fundamental rights section, it still provides a broad and strong statutory basis.²²⁴

In line with article 110 of the Constitution, the Public Access to Government Information Act was established in 1991. The aim of this law is to have an open public administration.²²⁵ To this end the law states that anyone can apply for information. The scope of the information that is accessible is

²²³ Minister of the Interior and Kingdom Relations, *The constitution of the Kingdom of the Netherlands 2008*, article 110. www.government.nl/documents-and-publications/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008.html <consulted 29 March 2015>

²²⁴ Global Right to Information Rating, “Netherlands Government Information”. www.rti-rating.org/view_country.php?country_name=Netherlands <consulted 23 September 2014>

²²⁵ *Wet openbaarheid bestuur*, 1991. wetten.overheid.nl/BWBR0005252/geldigheidsdatum_23-09-2014 <consulted 23 September 2014>

limited in sections 10 and 11, for instance if it concerns information that could impair national security, international relations or commercial interests (section 10), or information that consists of 'personal opinions on policy' (*persoonlijke beleidsopvattingen*) (section 11). Section 10 also contains a catch-all clause, that in case disclosure disproportionately favors or prejudices involved natural or legal persons, access to information can be denied. In general the scope of the information that is potentially accessible is comprehensive, but the possible exceptions are numerous.

One of the strong features of available government information in the Netherlands is its accessibility in practice. The website www.overheid.nl provides up-to-date information regarding the Dutch government.²²⁶ A marginal note may be that finding the right documents requires some skill.

The laws concerning access to information and the comprehensive online access are meant to increase public access to government data, which in turn enhances the democratic decision-making process. On an international scale the position of the Netherlands regarding open government data varies. Different reporting systems rank the Netherlands differently.

In a report from Global Right to Information, first published in 2011, the Netherlands ranks 53 (83 out of 150 points) in a total of 98 countries.²²⁷ This research found the Netherlands especially lacking (2 out of 16 points) in promotional measures, including dedicated officials with the task to ensure that the public authorities disclose information; and public awareness-creating efforts, including training programmes, etc.²²⁸ The Netherlands also scored low on appeals against negative decisions on requests for information, especially due to the lack of an independent, administrative oversight body – other than the judiciary – to lodge an appeal (14 points out of 30).²²⁹ Such an oversight body would increase the accountability of the government in the case access to information is denied.

The Open Data Barometer report, published in 2013, was more positive regarding the way the Netherlands handles open government data. In this report the Netherlands ended on a shared position with France at 10 out of a total of 77. With regard to Europe, the report placed the Netherlands at 7 out of 22 European countries.²³⁰ The report's main findings were that the Dutch government is committed and capable to implement open data. The government is also implementing rules to establish further openness. On the downside, the report found shortcomings in the *impact* of open government data measures. According to the report open government data in the Netherlands does not rigorously improve transparency, accountability, government efficiency, economic growth, environmental sustainability and inclusion of marginalized groups.²³¹ This last insight seems meaningful, but should be regarded with some reserve because measuring the impact of open government data is difficult. Also, since the report does not provide individual country analyses, it is hard to assess the reasons that caused this lack of impact.

Although the two international comparisons are inconclusive on the way the Netherlands handles open government data, it is still possible to draw some careful conclusions.

The legal right to access seems to be well established in the Netherlands with article 110 of the Constitution and the Public Access to Government Information Act. Commitment and capability to implement these measures is also available. Access to information seems to be well established with websites that give access to open government data. Nevertheless, when applied to information

²²⁶ Archived data is also accessible, such as the parliamentary documents from 1814-1995 on www.statengeneraal.digitaal.nl.

²²⁷ Global Right to Information, "Country Data". www.rti-rating.org/country_data.php <consulted 23 September 2014>

²²⁸ Global Right to Information Rating, "Netherlands Government Information".

www.rti-rating.org/view_country.php?country_name=Netherlands <consulted 23 September 2014>

²²⁹ Ibid.

²³⁰ Open Data Barometer, *Global Report 2013*, 31 October 2013, 26 and 31. www.opendataresearch.org/dl/odb2013/Open-Data-Barometer-2013-Global-Report.pdf <consulted 23 September 2014>

²³¹ Open Data Barometer, *Global Report 2013*, 21.

on the law-making process and/or lobbying information, public officials could invoke one of the exceptions of section 10 or 11.²³²

Legislative process

A serious gap in government transparency concerns the starting point of the creation of legislation. Numerous of the interviewed experts and professionals addressed the start of the legislative process, stating that this is the most relevant part of decision-making, where most influence can be exerted. In the Netherlands legislation normally begins at the ministerial departments.

How a law is made in the Netherlands

In order to pass as law, a bill needs to follow some essential steps.

First, if ministers or secretaries of state want to deal with a certain issue, they instruct their public officials to draft a bill. In order to obtain support for this bill, public officials sometimes consult stakeholders, for instance through an Internet consultation.

They further write an explanatory memorandum to the bill. This explains the hows and whys of the bill. It then moves to the so-called "civil vestibule" (*ambtelijk voorportaal*); a deliberation of senior public officials involved in the bill.

MPs can also submit bills (the right of initiative). Between 2000 and 2014, of the 110 submitted initiative bills, 38 became law. In 2013 there were 10 initiative bills, against 235 bills from the government.

After the civil vestibule, the proposal is discussed in a committee with all ministries involved. After that, it is discussed in the Council of Ministers. If this Council approves the proposal, it is sent to the Council of State.

The Council of State provides the government with independent (non-binding, but very authoritative) advice on all bills introduced in parliament by the government. It checks whether the bill is practicable and not contrary to the constitution. During the deliberation of the Council of State, the bill is secret. If the Council advises against the bill, it is sent back to the Council of Ministers. In its "further report" (*nader rapport*) the minister has to explain how the advice of the Council of State has been dealt with.

The bill is sent to the House of Representatives, together with the explanatory memorandum, the advice from the Council of State and the further report. At that point, the bill becomes public. In the House of Representatives the bill is assessed by a specialized (standing) committee. After that, the minister defends the proposal in a plenary debate. After consideration of the bill in the plenary meeting, MPs vote on the amendments and the bill itself. If the bill is accepted, it moves to the Senate.

In the Senate, the bill is first examined by a specialist committee. If so desired, a plenary debate follows. Eventually, the senators vote on the bill. The Senate can only adopt or reject a bill. If the Senate has any objections against a specific part of a bill, it can reject the bill. If the Senate threatens to reject a bill, the government can prevent this by introducing an amended bill, a so-called "novelle". This novelle must be adopted by the House of Representatives first, before the Senate examines it.

²³² For further information on jurisprudence concerning this issue, please consult Villamedia. www.villamedia.nl/thema/wet-openbaarheid-van-bestuur/jurisprudentie/ <consulted on 31 March 2015>

Once a bill is accepted by both chambers, it needs to be signed by the king and countersigned by the minister in charge. Finally, the minister of Security and Justice signs the law and publishes it in the Bulletin of Acts and Decrees, the official Government Gazette. At that time, the new law has come into force, unless the law mentions a different moment.

In one of the most important parts of this process, the start of it, it is unclear who potentially influences the bill, since contacts of the public officials drafting the bill are not registered. Although hard to substantiate, many interviewees mentioned that private meetings between ministries, stakeholders and experts occur regularly during this period. Most respondents however, saw no harm in this process, stating that the public officials involved exercise their professional judgment to find a right balance between the different interests. Others mentioned that public officials were quite secretive during this period, making it hard to monitor the process and for lobbyists to do their job.

In any case, information disclosure on the entirety of the legislation process is a necessary step in order to have a meaningful lobbying policy that is transparent. It also improves the legitimacy and support for new laws in society.²³³ The Council for Public Administration (*Raad voor het openbaar bestuur*), which aims to improve effectiveness and efficiency within governmental administration, emphasized this in November 2013. In reaction to a minister's questions, relating to the speed of the realisation of legislation,²³⁴ the Council recommended:

A more transparent process with active disclosure of information is (...) an important step for the improvement of the early stage of the legislative process [*'ambtelijke voorfase'*]. Transparency is necessary for detection and reparation of imperfections. This would be an investment in the time it takes [*'doorlooptijd'*] for the following [legislative] phases.²³⁵

A more extensive legislative footprint that also covers the first phase of the legislative process (at the ministry) would solve some of these issues. As mentioned earlier, some public officials proposed that (public) Internet consultations may replace other forms of consultation in the law-making process, and envisage wider application to policy proposals.²³⁶

The argument that is often used against expanding transparency in the early stages of law-making, is that transparency is impossible, for it will obstruct political compromise. This argument is yet to be tested. Or, as the Council for Public Administration phrases it: "[a]s long as there is no experience in this field, this attitude is a self-fulfilling prophecy".²³⁷

Regulation of behaviour towards lobbyists

There are no principles, rules, standards or procedures in place that regulate public officials' behaviour towards lobbyists, other than the general principles applicable to all public officials, the General principles of proper administration (*Algemene beginselen van behoorlijk bestuur*). These principles mandate the rules of behaviour of public officials regarding citizens generally. For example the equality principle (*gelijkheidsbeginsel*), which instructs officials to treat equal matters equally and the motivation principle (*motiveringsbeginsel*) which instructs public officials to motivate their decisions: the facts should be correct and the motivation sound and understandable.

²³³ "Je kunt ook te veel met de rechtsstaat aankomen", interview with Van Lochem in *Advocatenblad*, February 2015, 25-27.

²³⁴ Letter of the minister of the Interior and Kingdoms relations, 10 April 2013. www.rob-rfv.nl/documenten/adviesaanvraag_beleidscontinuïteit.pdf <consulted 6 October 2014>

²³⁵ Council for Public Administration, "Beleidscontinuïteit in tijden van discontinuïteit", 1 November 2013. www.rob-rfv.nl/documenten/advies_beleidscontinuïteit_in_tijden_van_discontinuïteit.pdf <consulted 6 October 2014>

²³⁶ *Ibid.*

²³⁷ *Ibid.*, 5.

Regulation of behaviour towards MPs

There are specific rules for direct contact between public officials and MPs, the so-called Directive external contacts government officials (*Aanwijzingen externe contacten rijksambtenaren*). In general, these rules instruct public officials to inform their minister about questions from MPs before answering them. These rules were set up in 1998, as a reaction to a period during which the media continuously reported on incidents that damaged the trust in politicians and senior government officials. In order to curb the contacts between public officials and politicians and to explicitly reiterate the principle of ministerial responsibility (article 42 of the Dutch Constitution), the government decided to collect the fragmented rules already applicable in a new Directive.²³⁸

This Directive (also called *Oekaze Kok*) is still applicable, even though in 2008 (Motion Duyvendak c.s.) and in 2012/2013 (Motion Voortman), MPs expressed dissatisfaction with the Directive. According to them, it was too stringent and obstructive.²³⁹ In 2008, in reaction to the Motion Duyvendak, the minister of the Interior and Kingdom Relations, Ter Horst, issued a manual for using the Directive.²⁴⁰ It stated clearly that the minister himself is the only point of contact for MPs who want information and opinions concerning policy preparation (for example draft bills and regulations). In 2011, prime minister Rutte stated that he was supportive of contacts between public servants and MPs in a “relaxed” way (“*zo ontspannen mogelijke wijze*”), stating that it is possible to ask factual questions by telephone or email to public servants in the ministries.²⁴¹ The prime minister was of the opinion that in practice the Directive and manual prove sufficient to offer adequate and speedy information service to MPs.²⁴²

Registration and disclosure by lobbyists

As discussed above, registration and disclosure on lobbying activities in the Netherlands is very limited. Individual lobbyists and lobbying organizations are not obliged to register or disclose information about their lobbying activities. The following sections will demonstrate that there is hardly any onus for transparency on lobbyists.

Some lobbyists claim that the focus should not be on lobbyists, but rather on public officials and politicians to ensure that citizens know who influences the policies and regulations they make.²⁴³ According to them, public officials and public representatives have a legal duty to act with integrity. Public officials should be required to proactively publish information on how decisions are made, which individuals and groups they have meetings with and who they invite to sit in various expert groups.

In-house lobbyists seem to have fewer problems with reporting on their activities themselves. This may be due to the growing number of corporate reporting frameworks, which assess companies' corporate governance and sustainability practices. These frameworks have become more extensive, and although they still do not require companies to report on their full public affairs policies, guideline SO5 of the Sustainability Reporting Guidelines asks companies to report on “Public policy

²³⁸ Bureau Algemene Bestuursdienst, *Bekend maakt bemind. Tweede Kamerleden en ambtenaren in gesprek*, ministry of Foreign Affairs, The Hague: 2006, 8.

²³⁹ House of Representatives, meeting year 2013-2014, 33 750 VII, no. 31. zoek.officielebekendmakingen.nl/kst-33750-VII-31.html <consulted 26 March 2015>

²⁴⁰ Letter of minister Ter Horst, 15 July 2008, meeting year 2007-2008, 30 184, no. 21. zoek.officielebekendmakingen.nl/kst-30184-21.html <consulted 26 March 2015>

²⁴¹ House of Representatives, meeting year 2010-2011, 32 500 III, no. 10. zoek.officielebekendmakingen.nl/kst-32500-III-10.html <consulted 26 March 2015>

²⁴² Letter prime minister Rutte, 3 December 2013, meeting year 2013-2014, 33 750 VII, no. 38. zoek.officielebekendmakingen.nl/kst-33750-VII-38.html <consulted 19 March 2015>

²⁴³ See speech of former chair of the BVPA, Marcel Halma, 20 January 2015. bvpa.nl/actueel/blogs/het-openbaar-bestuur-kan-wel-wat-meer-transparantie-gebruiken <consulted 5 February 2015>

positions and participation in public policy development and lobbying".²⁴⁴ In the Netherlands, some front-runners have become more transparent on their positions. For instance, the Dutch Investors' Association (VEB, *Vereniging van Effectenbezitters*) devotes a full chapter of its annual report to public affairs.²⁴⁵

The next section concerns lobbying at the House of Representatives only. Please keep in mind that lobbying at the ministries, which is viewed by most to be the most opportune and important moment to influence decision- and law-making, is completely unchecked.

Registration and duty to report

Currently, leaving the European Voluntary Transparency Register aside,²⁴⁶ there are two ways in which a lobbyist can register. First, the lobbyist can become a member of the BVPA, in which case the lobbyist is registered and becomes subject to the code of conduct and the Complaints Committee (see "Self-Regulation of Lobbyist activities"). Second, the lobbyist can register in the so-called Lobbyist Register of the House of Representatives (see "Historical context").

Registration is *only* needed if a lobbyist wants an access pass to the House of Parliament. As some interviewees point out, the need for such access is limited: if you desire a meeting with a public representative you can make an appointment, which automatically gives you access (although you have to wait in line, go through security and wait for someone to pick you up) or meet outside. An access pass will enable cutting the line and gives access to the non-public part of the House of Representatives (the work chambers of MPs etc.).

The rules concerning who is able to register in the Lobbyist Register of the House of Representatives are not very consistent, as they exclude one of the largest groups of professional lobbyists. As mentioned earlier, the three types of lobbyists allowed to register do not encompass in-house lobbyists of companies. According to the director of management, personnel and organization of the House of Representatives the Register is meant for overarching or sector organizations (such as the NVB and VNO/NCW) and not for individual organizations. Nonetheless, there are several such organizations on the list. This can be explained by the reality that individual organizations (whether part of an overarching or sector organization or not) still have their own interests. As mentioned before, the number of lobbyists is growing steadily.

Currently, the access passes are used to facilitate special access for lobbyists entering the House of Representatives, instead of levelling the playing field among those seeking to influence the government.²⁴⁷ A lobbyist, Krijvenaar, expressed the hope that the "register might end the opaque practice of old MPs, that use their regular access pass to lobby in the House of Representatives for their new employer".²⁴⁸ That this was indeed one of the aims of the Register is confirmed by a memo of the Directorate of the House of Representatives.²⁴⁹ It states: "From former MPs who are not registered as a lobbyist and are clearly undertaking lobbyist activities, the pass can be taken away". Further inquiry with the Directorate revealed that in practice no access pass has ever been taken away from a former MP.

²⁴⁴ Global Reporting Initiative, Sustainability Reporting Guidelines, SO5 indicator protocol. www.globalreporting.org/reporting/G3andg3-1/guidelines-online/G3Online/StandardDisclosures/Society/Pages/SO5IndicatorProtocol.aspx <consulted 26 March 2015>

²⁴⁵ VEB NCVB Year Report 2013, 37-43. www.veb.net/content/Bestanden/pdf/2014/VEBjaarverslag2013.pdf <consulted 26 March 2015>

²⁴⁶ 'Transparency and the EU'. ec.europa.eu/transparencyregister/public/homePage.do?locale=en#en <consulted 5 February 2015>

²⁴⁷ C. Holman and W. Luneberg, *Lobbying and transparency: A comparative analysis of regulatory reform*, Interest Groups & Advocacy (2012)1, 75-104. Published online on 20 March 2012: www.palgrave-journals.com/iga/journal/v1/n1/full/iga20124a.html <consulted 26 March 2015>

²⁴⁸ "Haags lobbyistregister", PA-CC, 1 June 2012. www.pa-cc.nl/haags-lobbyistenregister/ <consulted 5 November 2014>

²⁴⁹ This memo is available through Transparency International Netherlands. Please contact: communication@transparency.nl.

If they register, organizations that lobby or individual lobbyists are not obliged to disclose any relevant information on their lobbying objectives, such as who they are lobbying or what they are advocating. Nor do they disclose payments to political parties and candidates, “in-kind” contributions like advertising, the donation of equipment, or other lobbying expenditures.

The Lobbyist Register (*Lobbyistenregister*) therefore to some extent creates a false sense of transparency, mainly because there is no obligation to register, and even those who register are required to share very limited information. The registration system is not applied uniformly and has several historical anomalies. Implementing a mandatory register and obligatory disclosure of relevant information would broaden the responsibility of transparency beyond the responsibility of public officials mentioned earlier (see ‘Types of lobbying’, ‘Consultation’ above and ‘Legislative footprint’ below) to the private sector, thereby increasing the scope of a transparent and accountable society.

It is important to point out here that anyone accessing non-public areas of the House of Parliament has to either use a general access pass (which is automatically registered on the CDP database), or register at the guard before accessing the building. The information about who enters the non-public area is therefore available and it would be possible to make this information known to the public.

Oversight, verification and sanctions

An independent oversight entity is necessary to monitor organizations and individuals that lobby. This entity should be independent, mandated and well resourced. The main purpose would be to manage the registration of lobbyists, offering guidance to individuals and organizations, monitor regulations and investigate apparent breaches or anomalies.

At this point no such entity exists in the Netherlands, other than the voluntary, self-regulating BVPA (see “Self-Regulation of Lobbyist activities”) and the Directorate of Management, Finance, Personnel and Organization of the House of Representatives. Lacking a mandatory register and mandate, these entities are currently not able to fulfil this role.

This mandate should preferably be endowed to an existing body, given the large range of oversight bodies that already exist. The most appropriate and efficient oversight body to take on this role should be subject to further study.

Legislative footprint

A legislative footprint is a document that details legislator’s contact with stakeholders, including the time, person and subject discussed. Published as an annex to legislative reports, it would provide insight into who gave input into draft legislation and help to insure that interest groups’ influence on policy-making is not disproportionate.²⁵⁰

In February 2014, MP Merkies proposed to add a lobby paragraph to bills.²⁵¹ Minister of Finance Dijsselbloem responded that the government has an important responsibility – to the extent possible – to give insight into the influence of stakeholders on the content and realisation of policy. According to the minister the explanatory memorandum of the law already contains a paragraph stating which parties have been actively consulted, which of those parties reacted and, generally what their reaction was and what has been done with it. In short, the minister argued that a lobby paragraph already exists. However, in the event the explanatory memorandum contains this information (not all

²⁵⁰ Transparency International, *Legislative Footprint*, Anti-corruption Helpdesk, Berlin: Transparency International, 2013, 1. www.transparency.org/files/content/corruptionqas/legislative_footprint.pdf <consulted 28 September 2014>

²⁵¹ House of Representatives, meeting year 2013-2014, 32 013, no. 56. zoek.officielebekendmakingen.nl/kst-32013-56.html <consulted 17 December 2014>

do), it only mentions parties that have been *actively* consulted during the consultation or Internet consultation. It does not mention parties that were able to influence law proposals prior to the official consulting process, for instance through private meetings or by providing information to public officials working on a draft bill.

In their numerous external contacts, senior public officials and public representatives most likely find the sources of their ideas about new legislation. To prevent undue influence in this stage, proactive publication of documents related to meetings with lobbyists should be a requirement. Currently there are no requirements to make such documentations public. A more extensive lobby paragraph, containing this information, would be a welcome addition to the explanatory memorandum to bills.

In this regard, a balance should be struck between the importance of transparency and sound, responsible decision-making on the one hand and the economic costs on the public and private sectors, confidentiality and protection of information (for example, trade secrets) on the other hand. As Prof. Van Schendelen mentioned in his interview:

Nowadays, most of what happens behind (in itself often useful) closed doors, sooner or later comes into the daylight. The practitioner must behave so that any part of the entire process can be fully and publicly explained afterwards and then by outsiders be considered legal and legitimate behaviour. This is a matter not of moral but (much better) pragmatic prudence.²⁵²

Score in the category of transparency

In order to level the playing field among stakeholders in the decision-making process, all stakeholders should have access to information on how and by whom decisions were influenced. The OECD has pointed out openness and inclusiveness as key policy dimensions to enhance trust in government, improving transparency, accountability and engagement.²⁵³ According to an OECD survey,²⁵⁴ 74% of the lobbyists and 68% of the legislators (strongly) agreed that transparency in lobbying would increase citizens' trust in the decision-making process.

Transparency of lobbying comes down to information on who is influencing whom, with which means and to what end. Public officials and politicians and the lobbyists themselves can distribute such information. Even though the Netherlands scores relatively well concerning access to information, elements like registration and disclosure by lobbyists and its oversight are virtually lacking. With the introduction of Internet consultations there has been improvement of forming a so-called legislative footprint, but this system should be further developed.

²⁵² Interview with Prof. Van Schendelen, 20 August 2014, Erasmus University Rotterdam.

²⁵³ OECD, *Report on Progress OECD Principles for Transparency and Integrity in Lobbying 2014*, 24.

²⁵⁴ *Ibid.* 33-34.

For more information on the scoring system, please consult the appendices II, III, V and VI of this report.

SUB-CATEGORY	SCORE
Access to information	67%
Registration and disclosure by lobbyists	10%
Oversight of register and sanctions	0%
Pro-active disclosure/Legislative footprint	25%
Total	25%

Fostering integrity

Transparency should not stand on its own. It gives insight into the process, but does not influence the process as such. It needs to be accompanied by a broader integrity framework applicable to both legislators and those who seek to influence them. A modern approach to conflicts of interest policy seeks to strike a balance by identifying risks; prohibiting unacceptable forms of private interest; raising awareness of the circumstances in which conflicts can arise; and ensuring effective procedures to resolve conflicts of interest situations.²⁵⁵

This section looks more closely at the ethical framework for lobbyists and lobbying targets. What stands out is that there are hardly any measures to prevent former public officials from working as lobbyists in the same sector (see under the section ‘Types of lobbying’, ‘Revolving door lobbying’). There are mechanisms in place to encourage integrity in the public sector, but these are of a more general nature. A code of ethics for lobbyists exists (see: ‘Self-Regulation of Lobbyist activities’, above), but this is entirely based on self-regulation (not statutory) and not strictly enforced.

Post-employment and pre-employment restrictions

One of the biggest concerns when fostering integrity is the revolving door. On the one hand it is understandable that personal contacts, knowledge of “how things work” and influence are essential for lobbyists. Former public officials have this insider perspective and network due to their position at the local level, in a ministry or the parliament. On the other hand, the risks of conflicts of interest and misuse of power are a growing concern.²⁵⁶

For public officials, the Netherlands established a measure against revolving doors in 1999, when the government issued a circular letter against revolving doors in the public service.²⁵⁷ In an OECD report this measure has implicitly been qualified as a cooling-off period.²⁵⁸ However, the scope of this measure is very limited and it is legitimate to ask if the qualification of the OECD is appropriate.

²⁵⁵ OECD, “Fighting Corruption in the Public Sector”. www.oecd.org/corruption/ethics/managingconflictsofinterestinthepublicservice.htm <consulted 8 December 2014>

²⁵⁶ OECD, *Report on Progress OECD Principles for Transparency and Integrity in Lobbying 2014*, 69-70.

²⁵⁷ Translated from the Dutch: Circulaire tegenaan draaideurconstructies binnen de rijksdienst, 13 September 1999. www.integriteitoverheid.nl/fileadmin/BIOS/data/Wet%20en%20Regelgeving/Nota_integriteit_openbaar_bestuur_bijlage_3.pdf <consulted 4 October 2014>

²⁵⁸ OECD, *Post-Public Employment: Good Practices for Preventing Conflict of Interest*, Paris: OECD, 2010, 68. www.oecd-ilibrary.org/governance/post-public-employment_9789264056701-en <consulted 19 March 2015>

The measure states that a former public official who worked at a ministry cannot be *hired* as a *consultant* by the same department until two years after resignation. This effectively means that there is no restriction on former public officials lobbying their former ministries.

A specific measure has been installed for the ministry of Defence, due to the large financial and strategic interests at stake in the defence sector.²⁵⁹ In the Directive of the Secretary General concerning protection of integrity, referred to above in the ‘Defence and other revolving doors’ case study,²⁶⁰ high government officials of this ministry cannot, for two years after resignation, be a “negotiating partner” (*gesprekspartner*) with the ministry on behalf of a company. However, as the case study on revolving doors shows, it is not well known by those involved. There is no further indication on the effectiveness of this measure, nor is there any information on how it is monitored.

For former members of the Cabinet, there is merely a general rule of conduct, entailing that departing members of the Cabinet should not create any impression that they would abuse the knowledge acquired during their term of office.²⁶¹ At the same time, there are numerous cases that show former Cabinet members moving into the lobbying sector, as is shown in the case study “Defence and other revolving doors”.

MPs, judges and prosecutors have no post-employment restrictions. GRECO reported extensively on this during its Fourth Evaluation Round of Corruption Prevention in respect of members of parliament, judges and prosecutors. For all three sectors, GRECO found that there are no post-employment restrictions in the Netherlands, and recommended “that codes of conduct for the members of both Chambers of Parliament be developed and adopted with the participation of their members and be made easily accessible to the public”,²⁶² including rules on post-employment restrictions.²⁶³

Besides the circular letter, the general code of conduct and the rule for the ministry of Defence there are no other measures against revolving doors for public officials or public representatives. After resignation, Cabinet members can freely join a lobbying firm or business without having to consult a designated ethics office or agency to receive permission. In fact, no independent oversight entity exists for guiding individuals and organizations in managing post and pre-employment restrictions.

Codes of ethics for public sector employees and lobbyists

Apart from the general principles on behaviour of public officials regarding citizens, the general principles of proper administration (*Algemene beginselen van behoorlijk bestuur*), there are several codes of ethics in the Netherlands that apply to the public sector. Some address integrity in general, but do not mention specific measures to promote integrity. The Dutch Code for Good Public Governance is such a code.²⁶⁴ This is meant for municipalities, provinces, water authorities and the public service. One of the starting principles of this Code is that government is open and honest. To achieve this, the trust of citizens and organizations in the government and transparency in general should be increased. Specific measures that address ethical lobbying are not included.

²⁵⁹ See Addendum 1, Written answers of the minister of Foreign Affairs and Kingdom Relations (2 December 2010), House of Representatives no. 30, 116.

²⁶⁰ Directive SG no. A/872, *Aanwijzing SG nr. A/872 inzake integriteitsbescherming*. Not available online, but referred to in: www.tweedekamer.nl/kamerstukken/detail?id=2011D52277&did=2011D52277 <consulted 4 February 2015>

²⁶¹ Letter of the Prime Minister to the House of Representatives, meeting year 2002-2003, 28 754, no. 1, 5. zoek.officielebekendmakingen.nl/kst-28754-1.html <consulted 29 March 2015>

²⁶² GRECO, *Evaluation Report Netherlands 2013*, par. 36.

²⁶³ GRECO, *Evaluation Report Netherlands 2013*, par. 48, 101 and 165.

²⁶⁴ Ministry of the Interior and Kingdom Relations, *Nederlandse code voor goed openbaar bestuur*, June 2009.

www.rijksoverheid.nl/documenten-en-publicaties/brochures/2009/06/23/brochure-nederlandse-code-voor-goed-openbaar-bestuur.html <consulted 6 November 2014>

More specific rules can be found in the Basic norms of Integrity (*Basisnormen Integriteit*). All government organizations should adhere to these rules, which state that public officials need to report ancillary activities. Mentioning such activities can prevent a situation in which a conflict of interest emerges. The document also states how to deal with gifts and other services. All gifts and services should be reported and in general the rule applies that a gift or service with a value exceeding 50 euro should not be accepted.²⁶⁵

The Integrity guide for public officials (*Handreiking integriteit politieke ambtsdragers*) also mentions certain common rules that apply to public officials and public representatives. These rules state that ancillary activities should be reported and that public officials cannot vote on matters in which they have a personal interest.²⁶⁶ The document also makes clear that public officials should be sworn in (as is obliged by law) and promise that they will adhere to certain general rules that are aimed at maintaining integrity.²⁶⁷

If any of these codes is violated, there is a mechanism in place that allows for complaints by public officials or citizens at the organization concerned to be submitted on the website of the government (www.rijksoverheid.nl). Individuals who are dissatisfied with the handling of their complaint can contact the independent National Ombudsman.

While there are therefore several codes of ethics for the public sector, none of the applicable rules specifically addresses lobbying. As mentioned, there is no statutory code of conduct for lobbyists.

Self-regulatory codes of ethics for lobbyists

The Dutch Association for Public Affairs, as discussed, has its own Charter. One of its leading principles is that “public affairs” is a transparent profession. The Charter does not only mention openness as a goal, but also provides specific guidelines to reach this goal (see ‘Self-Regulation of Lobbyist activities’ above).

While the Charter itself does not specifically mention the banning of gifts, it clearly urges members to respect the standard practices and codes of clients, employees, customers, colleagues, other professions and the public. As mentioned in the chapter “Self-Regulation of Lobbyist activities”, members and non-members of the BVPA are able to report violations of the lobbying code.

The self-regulatory code established by the BVPA covers a lot of ground and the BVPA is serious in its endeavour to create an ethical lobbying sector. The BVPA has an important role in professionalizing the public affairs sector, by introducing educational requirements and mandatory ethics training for all lobbyists. Also, it should remain performing the network and advisory functions it currently fulfils. Nevertheless, its voluntary character and its lack of enforcement warrants that a well-funded, independent authority that should monitor the mandatory register and statutory code of conducts for lobbyists be considered.

Score in the category of integrity

Integrity is one of the key policy dimensions mentioned by the OECD to enhance trust in governments.²⁶⁸ The transparency measures mentioned in the previous section, should be embedded within a broader integrity framework applicable to all stakeholders. This framework

²⁶⁵ Ministry of the Interior and Kingdom Affairs, *Modelaanpak basisnormen integriteit openbaar bestuur en politie*, 2006, 11. www.integriteitoverheid.nl/instrumenten/handreikingen/modelaanpak-basisnormen.html <consulted 26 March 2015>

²⁶⁶ Rijksoverheid, *Integriteit Overheid* (date unknown), par. 4. www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/integriteit-overheid <consulted 5 October 2014>

²⁶⁷ Rijksoverheid, *Integriteit Overheid* (date unknown), par. 2. www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/integriteit-overheid <consulted 5 October 2014>

²⁶⁸ OECD, *Report on Progress OECD Principles for Transparency and Integrity in Lobbying 2014*, 24.

should offer clear codes of conduct for politicians and public officials, and those seeking to influence them. Not only should private interests of public representatives be disclosed along with rules on gifts and hospitality, also rules concerning prevention of conflicts of interests (rules concerning possible conflicts rising from ancillary positions and controlling the revolving door between public and private sectors). For the private sector, ethical business conduct – especially regarding in-house lobbyists – should be promoted.

The integrity frameworks currently in place are lacking in their protection of the system against undue lobbying. Even though politicians and public officials have elaborate codes of conduct, behaviour towards lobbyists is not specified. The BVPA has a code of conduct for lobbyists which demands high standards, but it is only obligatory for BVPA members and not strictly enforced. With an average score of 38% for integrity, there are clear improvements possible for further enhancement of the integrity framework in the Netherlands.

For more information on the scoring system, please consult the appendices II, III, V and VI of this report.

SUB-CATEGORY	SCORE
Post-employment and pre-employment restrictions	8%
Code of conduct for public sector employees	75%
Statutory code of conduct for lobbyists	0%
Self-regulatory codes of ethics for lobbyists	67%
Total	38%

Equality of access: Levelling the playing field

Balanced policy-making in the public interest is a key feature of democracy. To achieve this, stakeholders should be ensured of fair and equitable access to decisions-making processes. The next section will assess if there is sufficient room in the Dutch system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions that best serve society and broad democratic interests.

Consultation and public participation in decision-making

The consultation procedure in the Netherlands, as discussed below, differs per item that is under consideration. While there is a legal framework allowing for citizens and the public to provide input, it does not always make provisions regarding equal access, including providing sufficient notice and time to deliver substantial input. This leads to a reasonably open consultation process (Internet consultation) on the one hand and consultations that are confidential and only open to invited stakeholders on the other. The confidential character of some consultation meetings also illustrates that information is not always made public. While in some cases there is a (limited) paragraph on consultation in the explanatory memorandum of a law, in other cases no information thereon is made public.

Internet consultation is the most public form of participation in the legislative process in the Netherlands.²⁶⁹ Every citizen is able to contribute to Internet consultations and a reflection on this input is part of the explanatory memorandum of the bill. Internet consultation is still limited to around 10% of the bills of each ministry (except for the ministries of Defence, General Affairs and Foreign Affairs).²⁷⁰ These proposals can be of their own choosing, but there are some guidelines in this process. The Integral consideration policy and regulations (IAK, *Integraal afwegingskader beleid en regelgeving*) supplies government policy-makers with standards for good policies and regulations.²⁷¹ One of the main issues the document requires to be addressed is: who are the parties involved? If a department concludes that the rights and duties of citizens, companies and institutions will be significantly affected by the implementation of a certain proposal, the proposal should be consulted via the Internet.²⁷² There are some exceptions to this provision, for example in the case of emergency legislation.

In 2011 the Dutch Cabinet announced that it intended to use this form of consultation more often, in addition to standard consultation practices.

Internet consultation is relatively successful, but this public participation process is still based on policy directives. A more specific and robust regulatory framework to clearly formulate varied means of public participation would cement the concept of diverse participation more firmly.

The budget-cut dialogue of Zeist²⁷³

As a result of the 2008 financial crisis, budget cuts were necessary at almost all levels of government. In 2010 it became clear that the municipality Zeist needed to reduce expenses by 6.2 million euro. A small working group under the guidance of the municipal secretary was asked to develop three scenarios that could be presented to the population of Zeist. The working group quickly realized that the scenarios they developed might not be realistic and would possibly not instigate a meaningful public debate. To address this, it was decided that more involvement of the population of Zeist would be beneficial to the establishment of new budget-cuts.

To involve citizens, the working group looked at methods used by the European Commission. Citizens were invited to discuss problems and solutions around certain themes. Public officials gave guidance to these groups. These so-called “chefs” were not selected because of their expertise on a certain subject, but rather because of certain competences, of which communication was the most important.

The chefs were primarily in charge of creating (citizen) expert groups. To create a good picture of the problems around the budget-cuts, the groups consisted of a mixture of experience, expertise and interest. To involve people who usually would not participate in these kinds of activities, unconventional techniques were used to get people interested. Youth were also involved through

²⁶⁹ Ministry of Security and Justice, *Internet Consultation*, par.1. www.kcwj.nl/kennisbank/draaiboek-voor-de-regelgeving/hoofdstuk-2-formele-wetten-op-voorstel-van-de-regering-n-19#c <consulted 8 October 2014>

²⁷⁰ According to the evaluation: “The nature and extent of the law making production of these ministries is such, that de facto it cannot be consulted”. See House of Representatives, meeting year 2010-2011, 29 279, attachment to no. 121. www.internetconsultatie.nl/ <consulted 17 December 2014>

²⁷¹ Kenniscentrum Wetgeving en Juridische zaken, *Integraal Afwegingskader beleid en regelgeving* (date unknown). www.kcwj.nl/kennisbank/integraal-afwegingskader-beleid-en-regelgeving <consulted 30 March 2015>

²⁷² Kenniscentrum Wetgeving en Juridische zaken, *Nr. 9a (Internetconsultatie). Draaiboek voor de regelgeving* (date unknown). www.kcwj.nl/kennisbank/draaiboek-voor-de-regelgeving/hoofdstuk-2-formele-wetten-op-voorstel-van-de-regering-n-19 <consulted 30 March 2015>

²⁷³ Municipality Zeist, *De Bezuinigingsdialoog*, 2013. tinyurl.com/n7drumw <consulted 16 September 2014>

school projects about the upcoming budget-cuts.

After the kick-off, six meetings followed, which were separated into two phases. The mission during these phases was as follows:

- Make specific proposals for the theme, aimed at the realization of the new relationship between government and society
- Make specific proposals that contribute to a 10% cut on the theme
- Create a broad perspective and design these proposals in cooperation with your discussion partners

In the first phase, the background and context of the cuts were outlined. These documents were subsequently reviewed by the Municipal Council. After approval by the Council the next phase began and cut-back proposals were formulated, based on ideas formulated in the first phase.

The project resulted in 200 cut-back proposals. These proposals were bundled and presented to the Municipal Council, which adopted the proposal with just a few minor adjustments. Zeist also realized a closed budget in 2012.

The actions of the municipality of Zeist resulted in an open and broadly organized dialogue about topics that had a significant influence on the municipality. Involving citizens in these important decisions increased trust and established stronger ties between community and government.

A point of critique could be the recruitment of the chefs. They were recruited from inside the public service and had a strong influence on the content of the expert groups and an important role in the eventual establishment of the proposals. To increase openness and public involvement it is recommended that recruitment of such “chefs” should happen in a transparent way and citizens should be involved in the process.

Even though it concerns the local level, this case is a good example of an open and involved consultation process. As the decentralization of the government in the Netherlands continues, it will become more important to enhance involvement at the local level, as municipalities gain greater responsibilities. If the public is to trust those with responsibilities, initiatives like the budget-cut dialogue should be encouraged.

Advisory and expert group composition

The Dutch legal framework on the legislative procedure leaves room for different types of consultation. As discussed before, the different types of (public) consultation that are routinely used, are:

- Informal consultation with selected groups
- Broad circulation of proposals for comment
- Public notice and calling for comment (Internet consultation)
- Public meetings
- Posting proposals online
- Advisory/expert groups
- Preparatory public committee

The advisory or expert type of consultation is hardly bound by any rules, while the influence of such groups can be substantial. There is for instance no legal obligation to have a balanced composition

between private sector and civil society representatives. In practice this can easily lead to groups that are not well balanced. Interviewees mentioned that the legitimacy of some parties in such groups can be questioned at times, because it is unclear if they represent a significant number of people or if they have sufficient resources to research a particular subject. Another term frequently heard when discussing expert meeting composition was “the usual suspects”, usually the large organizations and companies instead of smaller, more specialized ones.

Increasing transparency in the way expert groups are established could solve this issue. Currently there are no standard rules or criteria. Some interviewees mentioned that being invited to an expert meeting was a matter of networking.

Score in the category of equality of access

In order to influence the decision-making process, a person or entity needs access to decision-makers. This can happen in varied ways, though consultation, open letters, conversations, etc. (see also for methods above). Access should be equal: all interested parties should have the same opportunities to make their voices heard.

The research on the consultation procedure in the Netherlands shows mixed findings. With an average score of 39% for equality of opportunities to participate in public decision-making, there is ample room to improve public participation. There are some firm basic rules in place that allow citizens to provide input. There are also initiatives that encourage public consultation, like Internet consultations. At the same time the way expert groups and other expert forums are established can be arbitrary. To increase public trust in the decision-making process clear rules of these forums should be established.

Diverse participation and contribution of ideas and evidence by a broad range of interests are necessary for the development of policies, laws, and decisions, which best serve society and broad democratic interests. The expansion of Internet consultation, in terms of the number of bills it applies to, the time periods allowed for consultation, and its active dissemination to stakeholders, and the balancing of the composition of expert groups and hearings would prove useful in improving equality of access.

For more information on the scoring system, please consult the appendices II, III, V and VI.

SUB-CATEGORY	SCORE
Consultation and public participation in decision-making	58%
Advisory/expert group composition	20%
Total	39%

APPENDICES

I. ABBREVIATIONS

BVPA	Professional association for Public Affairs (<i>Beroepsvereniging Public Affairs</i>)	PA	Public Affairs
EU	European Union	SOMO	The Centre for Research on Multinational Corporations (<i>Stichting Onderzoek Multinationale Ondernemingen</i>)
MP(s)	Member(s) of Parliament (Senate and House of Representatives)	VNO-NCW	Confederation of Netherlands Industry and Employers (<i>Verbond van Nederlandse Ondernemingen en Nederlands Christelijk Werkgeversverbond</i>)
NVB	Dutch Banking Association (<i>Nederlandse Vereniging voor Banken</i>)	WHO	World Health Organization

II. METHODOLOGY

The Lifting the Lid on Lobbying Project of Transparency International consists of an evidence-based advocacy approach with three components:

1. RESEARCH / FACT FINDING

- Stocktaking and identification of key challenges and good practices in 19 EU member states;
- Background research: overview on key issues, good practices and innovative approaches world-wide;
- Parallel research streams on specific solutions for the public sector, the private sector and citizen initiatives for greater transparency;
- Stakeholder analysis, incl. political will analysis.

2. OUTREACH

- Outreach planning meeting for project partners;
- Publications at national level;
- Regional report on the key findings, trends, challenges and good practices across Europe;
- Promotion of solutions towards public decision-makers (public officials, parliamentarians, etc.);
- Promotion of solutions towards private sector (companies, lobbyists, etc.);
- Alliance-building with key stakeholders and engagement of citizens.

3) EVALUATION

- Assessment of results and impact of project;
- Sustainability planning.

III. LIST OF INTERVIEWEES

For this research, several interviews were conducted. Most interviews lasted between 1 and 1,5 hours. Minutes were made of all interviews (in Dutch) and all interviewees approved the minutes.

Interviewees

Lobby project

This table shows date and place of interviewees, as well as the function of the interviewee.

NAME	DATE AND PLACE	FUNCTION
Ms Aleid van Zwan	14 August 2014, office NVB Amsterdam	Head Public Affairs NVB
Mr Arnold Merkies	19 August 2014, Parliament building The Hague	Member of the House of Representatives
Prof. Rinus van Schendelen	20 August 2014, Erasmus University Rotterdam	Prof. Public Affairs, Erasmus University Rotterdam
Prof. Arco Timmermans	9 September 2014, Leiden University, Campus The Hague	Prof. endowed chair on Public Affairs, Leiden University
Mr Wijnand van Zanten	11 September 2014, Transport en Logistiek Nederland (TLN), Zoetermeer	Secretary BVPA & Manager Public Affairs TLN
Mr Niels Lemmers	16 September 2014, Office TI-NL Amsterdam	Legal & Public Affairs Manager Vereniging Effecten Bezitters (VEB)
Mr Rens van Tilburg	18 September 2014, Amsterdam Central Station	Specialist; researcher SOMO report 'Taking Lobbying Public'
Mr Erik van Venetië	22 September 2014, Station Amersfoort	Specialist Public Affairs
Mr Marcel Halma	24 September 2014, New Babylon The Hague	Head BVPA & Energy Policies Manager Akzo Nobel
Ms Kirsten Verbeek	24 September 2014, New Babylon The Hague	Boardmember BVPA & Advisor Public Affairs Pro Rail
Prof. Marjan Olfers	28 October 2014, IJkantine Amsterdam	Prof. Sport and Law, VU University, Amsterdam
Mr Niek Jan van Kesteren	8 January 2015, VNO-NCW Office, The Hague	General Director VNO-NCW

IV. DATA COLLECTION AND VALIDATION

The research was carried out by Transparency International Nederland during the period from July 2014 to March 2015. When conducting the research, the researchers drew on various secondary sources such as SOMO, Burson and Marstellers' The Guide to Effective Lobbying in Europe, several OECD and GRECO reports, parliamentary documents and public websites.

This secondary data was complemented by primary data obtained from 12 in-depth interviews with policymakers, former policymakers, lobbyists and experts in the field of lobbying. Interviews were particularly useful for finding out additional information not on the public record, and for gathering evidence on the implementation of regulations and more generally, what is happening in practice. A list of interviewees is included in Appendix III of this report.

The research was primarily qualitative; however a quantitative element was also included in order to evaluate the robustness and efficacy of national regulations and self-regulation mechanisms around lobbying and to allow for some comparison across the countries.²⁷⁴ To this end, a set of 65 indicators were scored by the researchers, based on the qualitative information gathered through the research. The 65 questions and answers can be found below in Appendix V 'Data Collection Questionnaire', and the score can be found below in Appendix VI 'Scores'. A 3-point scale was used to score the indicators.²⁷⁵

In order to calculate the overall scores for the country, and for the three dimensions of Transparency, Integrity and Equality of Access, a simple aggregation was performed. Specifically, a total score (as a percentage) was calculated for 10 sub-dimensions (Access to information, Lobbying registration systems, Verification and oversight mechanisms, Legislative footprint, Pre- and post-employment restrictions, Codes of conduct/ethics for policymakers, Codes of conduct/ethics for lobbyists, Self-regulation of the industry, Consultation and participation mechanisms in public-decision-making and Expert and advisory group composition). A simple average was then calculated to provide an overall score for the three key dimensions of Transparency, Integrity and Equality of Access. The overall country score was calculated by averaging these three dimensions. The completed questionnaire and scores are included as appendix to this report (see Appendices V and VI).

It should be noted that the fact that Netherlands scores quite low – though not excessively low when compared to other European countries – is due to the lack of statutory regulations. These scores have no bearing on the factual lobbying activities that take place in the Netherlands.

²⁷⁴ A regional report compiling and comparing the national results will be published on 15 April 2015.

²⁷⁵ In a limited number of cases, where no logical intermediary position exists, only a minimum value of 0 and a maximum value of 2 are offered.

V. DATA COLLECTION QUESTIONNAIRE

Definitions

- 1. To what extent does the law clearly and unambiguously define ‘lobbyists’ to capture all who lobby professionally including professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organizations and academics?**

0 – No definition/Wholly inadequate definition covering a small proportion of lobbyists

1 – Partially but inadequately/too narrowly/too broadly defined

2 – The law clearly and unambiguously defines lobbyists to include professional lobbyists, public consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organizations and academics.

Check all categories covered by law:

- Professional lobbyist
- Private Sector Representatives
- Public affairs consultancies
- Representative from NGO
- Representative from a for-profit corporation
- Representative from industry/professional association
- Trade unions
- Think tanks
- Law firms
- Faith-based organizations
- Academics
- Other, please specify _____

- 2. To what extent does the law/regulation define ‘lobbying targets’ in a sufficiently broad manner to include members of national and subnational legislative and executive branches (including advisors) and high level officials in national and subnational public administration, regulatory bodies and private bodies performing public functions?**

0 – Lobbying targets are not defined in law/ Wholly inadequate definition covering a small proportion of lobbying targets

1 – Lobbying targets are inadequately defined in law (including some but not all of the above-mentioned targets)

2 – Lobbying targets are broadly and adequately defined in law to include members of national and subnational legislative and executive branches (including advisors) and high level officials in national and subnational public administration, regulatory bodies and private bodies performing public functions

Check all categories covered by law:

- National Legislators
- Subnational Legislators
- National Executive
- Subnational Executives
- Executive Advisors
- High-level public officials
- Regulatory bodies
- Private bodies performing public functions
- Other, please specify _____

- 3. To what extent is the term ‘lobbying’/‘lobbying activities’ clearly and unambiguously defined in law/regulation to include any contact (written or oral communication,**

including electronic communication) with lobbying targets (see above) for the purpose of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position?

0 – No definition/Wholly inadequate definition covering a small proportion of lobbying activity

1 – Partially but inadequately/too narrowly defined

2 – Definition is clear and unambiguous and is comparable to the following international standard: any contact (written or oral communication, including electronic communication) with lobbying targets for the purpose of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position.

Transparency

Framing Questions to bear in mind when constructing the narrative for this section: To what extent does the public have sufficient knowledge of (a) who is lobbying public representatives (b) on what issues they are being lobbied (c) when and how they are being lobbied (d) how much is being spent in the process (e) what is the result of these lobbying efforts etc? Is the onus for transparency placed on both lobbyists and public officials/representatives?

Access to Information

4. To what extent is there a comprehensive access to information law that guarantees the public's right to information and access to government data?

0 – No law exists

1 – Law exists but with inadequacies

2 – Comprehensive law in place

5. In practice, to what extent do citizens have reasonable access to information on public sector activities and government data?

0 – In practice, citizens face major problems in accessing information and/or frequent violations of the law

1 – In practice, access is not always straightforward/citizens often face obstacles to access

2 – In practice, it is easy for citizens to access to information on public sector activities and government data

6. Do access to information laws apply to lobbying data?

0 – No law exists/Law does not apply to lobbying data

1 – Some but not all lobbying data accessible under access to information laws

2 – Access to information laws cover lobbying data

Registration and Disclosure by Lobbyists

7. Is there a lobbyist register in the country?

0 – No register exists

1 – Voluntary register exists/A register for a particular institution exists but does not apply to all lobbying activity

2 – A mandatory register exists

8. Where a register exists, to what extent does it capture all who lobby professionally including professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organizations and academics in the country?

0 – Wholly inadequate scope covering only a small proportion of lobbyists

1 – Register captures many of the categories of lobbyists mentioned above but there are still some gaps

2 – The register clearly captures professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organizations and academics.

Check all categories covered by register:

- Professional lobbyist
- Private Sector Representatives
- Public affairs consultancies
- Representative from NGO
- Representative from a for-profit corporation
- Representative from industry/professional association
- Trade unions
- Think tanks
- Law firms
- Faith-based organizations
- Academics
- Other, please specify _____

9. To what extent are lobbyists required to register in a timely (within 10 days of beginning of lobbying activity) manner?

0 – No compulsory registration

1 – Lobbyists required to register, but with significant time lag (more than 10 days)

2 – Lobbyists required to register within 10 days of beginning lobbying activity

10. To what extent are lobbyists required to report regularly on their lobbying activities and expenditures in a timely manner (max real-time - min quarterly)?

0 – No requirement to report/Reporting less often than annually

1 – Reporting requirement less often than quarterly but more often than annually

2 – Realtime - Quarterly reporting required

11. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant personal and employment information: name of the organization (if applicable); address and contact information; names of all active lobbyists working on behalf of the organization (if applicable)?

0 – No information required to be publicly disclosed by lobbyists

1 – Only basic information required to be publicly disclosed

2 – Sufficient information required to be publicly disclosed

Check all categories covered by law:

- Name (of individual or organization)

- Address and contact details
- Names of all active lobbyists working on behalf of organization
- Other: company/organization lobbying for and subject (can be very short)

12. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on lobbying objectives and clients: name of the persons or organizations paying for the lobbying activities; names of the lobbyists' clients; specific subject matter lobbied?

0 – No information required to be publicly disclosed by lobbyists

- 1 – Only basic information required to be publicly disclosed
- 2 – Sufficient information required to be publicly disclosed

Check all categories covered by law:

- Name of the persons or organizations paying for the lobbying activities
- Names of the lobbyists' clients
- Specific subject matter lobbied
- Specific legislative proposals, bills, regulations, policies, programmes, grants, contributions or contracts sought

13. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on who they are lobbying and what they are advocating: name and title of the public representative or public body with whom the lobbyist engaged and the date and type of such engagement as well as any information and/or supporting documentation communicated to policymakers?

0 – No requirement to report

- 1 – Only basic information required to be publicly disclosed
- 2 – Sufficient information required to be publicly disclosed

Check all categories covered by law:

- The name of the public representative or public body with whom the lobbyist engaged
- Date of engagement
- Type of engagement (personal visit, accepted invitation to event, official hearing)
- Supporting documentation communicated to policymakers

14. To what extent are lobbyists and organizations that lobby required to publicly disclose lobbying expenditures, including spending on efforts to support lobbying, loans, sponsorships, retainers, or the purchase of tickets for fundraising events?

0 – No information on expenditures required to be publicly disclosed by lobbyists

- 1 – Only basic information on expenditures required to be publicly disclosed
- 2 – Sufficient information on expenditures required to be publicly disclosed

15. To what extent are lobbyists and organizations that lobby required to publicly disclose political donations to parties and candidates?

0 – No requirement for public disclosure of political donations [the political parties and candidates are required to disclose information on donations above a certain threshold]

- 1 – Insufficient requirements for public disclosure of political donations
- 2 – Sufficient information on political donations required to be publicly disclosed

16. To what extent are lobbyists required to publicly disclose ‘in kind’ contributions: In-kind contributions may include advertising, use of facilities, design and printing, donation of equipment, or the provision of board membership, employment or consultancy work for elected politicians or candidates for office?

0 – No information on ‘in-kind’ contributions required to be publicly disclosed by lobbyists

- 1 – Insufficient information on ‘in-kind’ contributions required to be publicly disclosed by lobbyists
- 2 – Sufficient information on ‘in-kind’ contributions required to be publicly disclosed

17. Is information disclosed by lobbyists publicly available online in a searchable machine-readable open-data format?

0 – Information not available online

- 1 – Information available online but not in a searchable machine-readable open-data format (eg. Hand-written and scanned documents used)
- 2 – Information publicly available online in a searchable machine-readable open-data format

18. To what extent do the lobbyists register and provide sufficient/timely information in line with legislative obligations?

0 – N/A

- 1 – Some lobbyists comply but there are many cases of non-compliance
- 2 – Broad compliance with legal obligations

Oversight, Verification and Sanctions

19. To what extent is there an independent, mandated and well-resourced oversight entity charged with managing registration of lobbyists, offering guidance to individuals and organizations, monitoring returns, and investigating apparent breaches or anomalies (this includes powers to investigate complaints made but also to instigate investigations even where no complaint has been lodged)?

0 – No oversight entity exists

- 1 – Oversight agency exists but it is under-resourced and/or insufficiently mandated to provide meaningful oversight
- 2 – A fully mandated and resourced oversight entity is in place

20. To what extent is there a pro-active verification mechanism to audit disclosures and reports and detect anomalies?

0 – No verification mechanism exists

- 1 – Verification exists but is inadequate
- 2 – Adequate verification mechanism exists

21. In practice, to what extent are anomalies detected and followed up on by the oversight body?

0 – Little or no detection of anomalies

- 1 – In general, the oversight body is somewhat active in following up on anomalies detected
- 2 – In general, the oversight body is active in following up on anomalies detected

22. In practice, to what extent are anomalies detected and reported by others (e.g. investigative journalists) followed up on by the oversight body?

0 – Little or no detection of anomalies

- 1 – In general, the oversight body is somewhat active in following up on anomalies detected and reported by others
- 2 – In general, the oversight body is active in following up on anomalies detected and reported by others

23. To what extent does the law provide for penalties for knowingly filing a false lobbying registration return or failure to file a return?

0 – No penalties exists

- 1 – Penalties exist but they are inadequate
- 2 – Adequate penalties exist in law

24. To what extent are penalties for knowingly filing a false return or failure to file a lobbying registration return implemented in practice?

0 – N/A

- 1 – Sometimes
- 2 – Always

25. To what extent are oversight bodies required to publicly disclose the names of all individuals or organizations found to have violated lobbying rules or regulations?

0 – No requirement to publicly disclose names of those who violate rules

- 1 – Disclosure of names of those who violate rules is at the discretion of the oversight body
- 2 – Mandatory disclosure of names of those who violate rules and details of the violation

26. To what extent are the names of all individuals or organizations found to have violated lobbying rules or regulations published in practice?

0 – N/A

- 1 – Sometimes
- 2 – Always

Legislative Footprint

27. To what extent does the law require the publication of a ‘Legislative Footprint’ (document that details the time, event, person, and subject of legislators’ and senior public officials’ contact with a stakeholder) as an annex to all legislative records?

0 – No legislative footprint foreseen in law

1 – Piecemeal requirements to indicate who has sought to influence legislative or policy making processes in place

2 – The law requires publication of a legislative footprint as an annex to all legislative records

28. In practice, do legislators/public officials publish a legislative footprint including details of the time, person, and subject of contacts with stakeholders?

0 – No information on contacts publicly disclosed by legislators/public officials

1 – Some but insufficient information on contacts publicly disclosed by legislators/public officials

2 – Sufficient details of legislators’ contact with stakeholders published

29. To what extent are senior public officials required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?

0 – No requirement to make documentation related to meetings public

1 – Piecemeal requirements to make documentation related to meetings public

2 – The law requires publication of comprehensive documentation related to meetings: calendars, agendas, documentation received from lobbyists

30. To what extent are public representatives (national and subnational legislators) required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?

0 – No requirement to make documentation related to meetings public

1 – Piecemeal requirements to make documentation related to meetings public

2 – The law requires publication of comprehensive documentation related to meetings: calendars, agendas, documentation received from lobbyists

Integrity

Framing Questions to bear in mind when constructing the narrative for this section: Is there a robust ethical framework for lobbyists (and companies) and lobbying targets in the country and to what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives?

Post-employment and Pre-employment Restrictions

31. To what extent does the law provide proportionate moratoria or ‘cooling off periods’ before former members of parliament, senior public servants, ministers and advisers can work as lobbyists?

0 – No cooling off period in place, except for Defense sector

1 – Less than 2 year cooling off period in place

2 – Cooling off period of at least 2 years in place

32. To what extent do ‘cooling off periods’ for those who wish to work as lobbyists apply to former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers?

0 – No cooling off period in place

1 – Cooling off period is in place but does not apply to all categories above

2 – Cooling off period applies to all categories above

Tick categories covered:

- Former members of parliament (national)
- Former members of parliament (sub-national)
- Former members of national Executive
- Former members of subnational Executives
- Advisors
- Senior Public Servants
- Senior staff of regulatory bodies
- Other: only the ministry of Defense has a cooling off period concerning lobbying of two years; in civil service there is a cooling off period of two years that is limited to the hiring of the ex-public servant as external force (for instance an advisory function) by the ministries.**

33. In practice to what extent do former members of parliament, senior public servants, members of the executive and advisers move easily and directly into the lobbying sector?

0 – There has been a significant number of cases of former members of parliament, senior public servants, ministers, ministerial advisers moving directly into the lobbying sector

1 – There have been a number of cases of former members of parliament, senior public servants, ministers, ministerial advisers to moving directly into the lobbying sector

2 – Former members of parliament, senior public servants, ministers, ministerial advisers rarely move directly into the lobbying sector, usually respecting a cooling off period

34. To what extent does the law require former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers to receive permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?

0 – No permission required

1 – Insufficient Restrictions (Insufficient coverage)

2 – Permission required and applies to all above-mentioned categories

35. In practice, to what extent do former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers seek permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?

0 – Never

1 – Sometimes

2 – Always

36. To what extent is there an independent, mandated and well-resourced oversight entity charged with managing post and pre-employment restrictions, offering guidance to individuals and organizations, and investigating apparent breaches or anomalies?

0 – No oversight entity exists

- 1 – Oversight agency exists but it is under-resourced and/or insufficiently mandated to provide meaningful oversight
- 2 – A fully mandated and well-resourced oversight entity is in place

Codes of Ethics for public sector employees

37. To what extent is ethical/responsible lobbying addressed in public sector codes of conduct (e.g. do they specify standards on how public officials should conduct their communication with interest groups, specify a duty of documentation of contacts, duty to report unregistered or unlawful lobbying to superiors?)

- 0 – No code of conduct exists for public officials and/or codes of conduct do not reflect ethical lobbying guidelines**
- 1 – Codes of conduct address ethical lobbying in a piecemeal or insufficient manner
- 2 – Codes of conduct comprehensively address ethical lobbying

38. To what extent do public sector codes of conduct specify standards on how public officials should deal with conflicts of interest issues?

- 0 – No code of conduct exists for public officials and/or codes of conduct do not adequately reflect conflict of interest issues
- 1 – Codes of conduct address conflict of interest issues in a piecemeal or insufficient manner
- 2 – Codes of conduct comprehensively address conflict of interest issues**

39. To what extent do public sector codes of conduct specify standards on how public officials should deal with gifts and hospitality issues?

- 0 – No code of conduct exists for public officials and/or codes of conduct do not adequately reflect gifts and hospitality issues
- 1 – Codes of conduct address reflect gifts and hospitality issues in a piecemeal or insufficient manner
- 2 – Codes of conduct comprehensively address gifts and hospitality issues**

40. To what extent do public sector codes of conduct deal comprehensively with interest and asset declaration issues?

- 0 – No code of conduct exists for public officials and/or codes of conduct do not adequately reflect asset declaration issues
- 1 – Codes of conduct address asset declaration issues in a piecemeal or insufficient manner
- 2 – Codes of conduct comprehensively address asset declaration issues**

41. To what extent is there a complaint mechanism allowing any public official or citizen to report violations of the public sector code of conduct?

- 0 – No complaints mechanism exists
- 1 – Complaints mechanism exists but is limited in scope
- 2 – Robust complaints mechanism exists**

42. To what extent are there training and awareness-raising programmes for public officials on integrity issues, including lobbying rules and guidelines?

- 0 – No training/awareness-raising programmes exist on integrity issues

1 – Piecemeal and irregular approach to training/awareness-raising on integrity issues

Please note that there are quite extensive training and awareness-raising programmes for public officials on integrity issues, but since there are no lobbying rules and guidelines, these are not part of this training.

2 – Comprehensive and regular training/awareness-raising on integrity issues

Codes of Ethics for Lobbyists

43. To what extent is there a statutory code of conduct for lobbyists including clear sanctions for failure to adhere to lobbying regulations?

0 – No statutory code of conduct exists

1 – Code of conduct exists but it is inadequate

2 – Statutory code of conduct including sanctions exists

44. In practice, to what extent are sanctions applied for failure to adhere to lobbying regulations?

0 – Sanctions rarely/never applied because no statutory lobbying regulations exist

1 – Sanctions applied, but inconsistently

2 – Sanctions consistently applied

45. To what extent does the law and/or the lobbyists' code of conduct require disclosure regarding and provide restrictions on lobbyists being hired to fill a regulatory, financial decision-making or advisory post in government?

0 – No disclosure requirements or restrictions in place

1 – Insufficient Restrictions and disclosure requirements (e.g. lobbyist must deregister but no further restrictions)

2 – Sufficient disclosure requirements and restrictions in place (e.g. potential veto of appointment and/or restriction in types of decisions the employee would be involved in making)

46. To what extent does the law and/or codes of conduct prohibit simultaneous employment as a lobbyist and a public official?

0 – No mention of prohibition of simultaneous employment as a lobbyist and a public official, except for Defence Sector

1 – Law/Code of conduct discourages but does not explicitly prohibit simultaneous employment as a lobbyist and a public official

2 – Law/Code of conduct explicitly prohibits simultaneous employment as a lobbyist and a public official

47. To what extent is there a complaint mechanism allowing any policy-maker or citizen to report violations of the statutory lobbying regulations?

0 – No complaints mechanism exists because no statutory lobbying regulations exist

1 – Complaints mechanism exists but is limited in scope

2 – Comprehensive complaints mechanism exists

Self-regulatory Codes of Ethics for Lobbyists

48. To what extent are there self-regulatory code(s) of ethics managed by professional association(s) for lobbyists or by companies themselves?*

- 0 – No code of ethics exists
- 1 – Code of ethics exists but it is inadequate
- 2 – Code of ethics including sanctions exists**

49. To what extent do existing self-regulatory codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations?*

- 0 – Codes do not provide any behavioural principles that steer lobbyists away from unethical situations
- 1 – Codes mention behavioural principles but are vague and/or incomplete
- 2 – Codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations**

Check all categories covered by codes:

- Requiring honesty and accuracy of information provided to public officials
- Requiring early disclosure to public officials of the identity of client and interests being represented
- Refraining from using information obtained in violation of the law
- Refraining from encouraging public officials to violate the law
- Banning gifts above a de minimis value, fees, employment or any other compensation from a lobbyist to a public official.
- Requiring speedy disclosure of any conflict of interest and management of such conflicts of interest or recusal
- Making ethics training a condition of membership in the association.
- Establishing a reasonably independent mechanism for monitoring and enforcing compliance to the ethics code.
- Others, please specify _____

50. To what extent do existing self-regulatory codes require lobbyists to publicly disclose the identity of who they are representing and what they are lobbying for?*

- 0 – No information required to be publicly disclosed by lobbyists
- 1 – Only basic information required to be publicly disclosed and/or the information is not public
- 2 – Sufficient information required to be publicly disclosed (name of the persons or organizations paying for the lobbying activities; names of the lobbyists' clients; specific subject matter lobbied)**

51. To what extent do existing self-regulatory codes prohibit simultaneous employment as a lobbyist and a public official?*

- 0 – No mention of prohibition of simultaneous employment as a lobbyist and a public official**
- 1 – Code of conduct discourages but does not explicitly prohibit simultaneous employment as a lobbyist and a public official
- 2 – Code of conduct explicitly prohibits simultaneous employment as a lobbyist and a public official

52. To what extent is there a complaint mechanism allowing any member or non-member of the association to report violations of the lobbying code of ethics?*

- 0 – No complaints mechanism exists
- 1 – Complaints mechanism exists but is limited in scope**

2 – Robust complaints mechanism exists

53. To what extent are there reasonably independent mechanisms for the monitoring and enforcement of compliance with the ethics code(s)?*

0 – No monitoring and enforcement mechanisms exists

1 – The monitoring mechanism exists but is not independent, or is limited in scope

2 – A robust and reasonably independent monitoring and enforcement mechanism exists

Equality of Access - The Level Playing Field

Framing Questions to bear in mind when constructing the narrative for this section: Are there sufficient spaces in the system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions which best serve society and broad democratic interests?

Consultation and Public Participation in Decision-making

54. To what extent is the Parliament required by law to allow citizens and the public (corporations and civic organizations) to provide equal input to members regarding items under consideration, with sufficient notice and time incorporated in the legislative process to receive this input?

0 – The legal framework does not consider the provision of input to the legislative process.

1 – The legal framework allows for citizens and the public (corporations, civic organizations) to provide input to parliament, but it does not make any provisions regarding equal access, sufficient notice and time to receive this input

2 – Parliament is required by law to allow the citizens and the public (corporations and civic organizations) to provide equal input to members regarding items under consideration, with sufficient notice and time incorporated in the legislative process to receive this input.

55. To what extent does the legal framework lay out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies?

0 – There are no procedures and rules for participation in policy discussions and decision making processes, or they are ad hoc to each policy and decision making process.

1 – There are some provisions for making public the means of participation in policy, but they are not specific, or they are relegated to policy directives.

2 – Yes, there is a specific regulatory framework that clearly lays out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies.

56. To what extent does the legal framework explicitly require public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes?

0 – There are no provisions regarding the consultation of groups and stakeholders affected by policy.

1 – Some provisions regarding the equal participation of affected groups exist, but they are not specific, or they are relegated to policy directives.

2 – The legal framework explicitly requires public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes.

57. In practice, which of the following forms of public participation are routinely used?

- Informal consultation with selected groups
- Broad circulation of proposals for comment
- Public notice and calling for comment
- Public meeting
- Posting proposals online
- Advisory/Expert Groups
- Preparatory Public Commission/committee
- Others, please specify _____

58. In practice, to what extent are consultations open to participation from any member of the public?

0 – Consultations are rarely/never open to any member of the public

1 – Consultations are sometimes but not always open to any member of the public

2 – Consultations are generally open to any member of the public

59. In practice, to what extent are the views of participants in the consultation process made public?

0 – The views of participants in the consultation process are rarely/never made public

1 – The views of participants in the consultation process are sometimes but not always made public

2 – The views of participants in the consultation process are always made public

60. To what extent does the legal framework explicitly require public authorities to provide a detailed justification on why and how various submissions have or have not been taken into account in policy and decision-making processes after consultation?

0 – There are no provisions requiring public authorities to explain whether and how they have considered participation, or there is no participation provided for.

1 – There are some provisions requiring public authorities to explain whether and how they have considered submissions, but they are not specific, or they are relegated to policy directives.

2 – The law explicitly requires public authorities to provide a detailed justification on why and how submissions have or have not been taken into account in policy and decision-making processes after consultation.

Advisory/Expert Group Composition

61. To what extent is there a legal obligation to have a balanced composition (between private sector and civil society representatives) of advisory/expert groups?

0 – No requirement to have balanced composition

2 – The law requires meaningful balanced composition between private sector and civil society representatives

62. In practice, to what extent is there a balanced composition (between private sector and civil society representatives) of advisory/expert groups?

0 – Advisory groups are generally biased towards particular interests

1 – Advisory groups are sometimes balanced, sometimes not

2 – There is a meaningful balance between private sector and civil society representatives on advisory groups

63. To what extent are lobbyists prohibited from sitting on advisory/expert groups in a personal capacity?

0 – Lobbyists can freely sit on advisory groups in a personal capacity

2 – Lobbyists are prohibited from sitting on advisory/expert groups in a personal capacity

64. To what extent are corporate executives prohibited from sitting on advisory groups in a personal capacity?

0 – Corporate executives can freely sit on advisory groups in a personal capacity

2 – Corporate executives are prohibited from sitting on advisory/expert groups in a personal capacity

65. With regard to advisory/expert groups, to what extent is membership information, agendas, minutes and participants' submissions required to be made public?

0 – Information not publicly available

1 – Information available, but only on request

2 – Information publicly available online or in print form

VI. SCORES

Category	Sub-category	Indicator	Score	SUM	Tot	Sub-category score	Category score	Total score		
Transparency	Access to Information	4. To what extent is there a comprehensive access to information law?	2	4	6	66,67%				
		5. To what extent do citizens have reasonable access to information on public sector activities and government data?	1							
		6. Do access to information laws apply to lobbying data?	1							
									34,03%	
		Definitions	1. To what extent does the law clearly and unambiguously define 'lobbyists'?	0	3	30	10,00%	25,42%		
		Registration and Disclosure by lobbyists	2. To what extent does the law/regulation define 'lobbying targets'?	0						
			3. To what extent is the term 'lobbying'/'lobbying activities' clearly and unambiguously defined	0						
			7. Is there a lobbyist register in the country?	1						
			8. Where a register exists, to what extent does it capture all who lobby professionally?	1						
			9. To what extent are lobbyists required to register in a timely manner?	0						
			10. To what extent are lobbyists required to report regularly on their lobbying activities	0						
			11. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant personal and employment information?	1						
			12. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on lobbying objectives and clients?	0						
			13. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on who they are lobbying and what they are advocating?	0						
			14. To what extent are lobbyists and organizations that lobby required to publicly disclose lobbying expenditures?	0						
			15. To what extent are lobbyists and organizations that lobby required to publicly disclose political donations?	0						
			16. To what extent are lobbyists required to publicly disclose 'in kind' contributions?	0						
			17. Is information disclosed by lobbyists publicly available online in a searchable machine-readable open-data format?	0						
			18. To what extent do the lobbyists register and provide sufficient/timely information in line with legislative obligations?	0						
			Oversight, Verification and Sanctions	19. To what extent is there an independent, mandated and well-resourced oversight entity charged with managing registration of lobbyists?	0	0	16	0,00%		
				20. To what extent is there a pro-active verification mechanism to audit disclosures and reports and detect anomalies?	0					
		21. In practice, to what extent are anomalies detected and followed up on by the oversight body?		0						
		22. In practice, to what extent are anomalies detected and reported by others (e.g. investigative journalists) followed up on by the oversight body?		0						
		23. To what extent does the law provide for penalties for knowingly filing a false lobbying registration return or failure to file a return?		0						
		24. To what extent are penalties for knowingly filing a false return or failure to file a lobbying registration return implemented in practice?		0						
		25. To what extent are oversight bodies required to publicly disclose the names of all individuals or organizations found to have violated lobbying rules or regulations?		0						
		26. To what extent are the names of all individuals or organizations found to have violated lobbying rules or regulations published in practice?		0						
		Legislative Footprint	27. To what extent does the law require the publication of a 'Legislative Footprint'?	1	2	8	25,00%			
			28. In practice, do legislators/public officials publish a legislative footprint including details of the time, person, and subject of contacts with stakeholders?	1						
	29. To what extent are senior public officials required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?		0							
	30. To what extent are public representatives (national and subnational legislators) required to pro-actively publish documentation related to meetings?		0							

Integrity	Post-employment and pre-employment restrictions	31. To what extent does the law provide proportionate moratoria or 'cooling off periods' before former members of parliament, senior public servants, ministers and advisers can work as lobbyists?	0	1	12	8,33%	37,50%
		32. To what extent do 'cooling off periods' for those who wish to work as lobbyists apply to former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers?	1				
		33. In practice to what extent do former members of parliament, senior public servants, members of the executive and advisers move easily and directly into the lobbying sector?	0				
		34. To what extent does the law require former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers to receive permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?	0				
		35. In practice, to what extent do former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers seek permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?	0				
		36. To what extent is there an independent, mandated and well-resourced oversight entity charged with managing post and pre-employment restrictions, offering guidance to individuals and organisations, and investigating apparent breaches or anomalies?	0				
	Code of Conduct for Public Sector employees	37. To what extent is ethical/responsible lobbying addressed in public sector codes of conduct (e.g. do they specify standards on how public officials should conduct their communication with interest groups, specify a duty of documentation of contacts, duty to report unregistered or unlawful lobbying to superiors?)	0	9	12	75,00%	
		38. To what extent do public sector codes of conduct specify standards on how public officials should deal with conflicts of interest issues?	2				
		39. To what extent do public sector codes of conduct specify standards on how public officials should deal with gifts and hospitality issues?	2				
		40. To what extent do public sector codes of conduct deal comprehensively with interest and asset declaration issues?	2				
		41. To what extent is there a complaint mechanism allowing any public official or citizen to report violations of the public sector code of conduct?	2				
		42. To what extent are there training and awareness-raising programmes for public officials on integrity issues, including lobbying rules and guidelines?	1				
	Code of Conduct for Lobbyists	43. To what extent is there a statutory code of conduct for lobbyists including clear sanctions for failure to adhere to lobbying regulations?	0	0	10	0,00%	
		44. In practice, to what extent are sanctions applied for failure to adhere to lobbying regulations?	0				
		45. To what extent does the law and/or the lobbyists' code of conduct require disclosure regarding and provide restrictions on lobbyists being hired to fill a regulatory, financial decision-making or advisory post in government?	0				
		46. To what extent does the law and/or codes of conduct prohibit simultaneous employment as a lobbyist and a public official?	0				
		47. To what extent is there a complaint mechanism allowing any policy-maker or citizen to report violations of the lobbying regulations?	0				
	Self-regulatory code(s) of ethics	48. To what extent are there self-regulatory code(s) of ethics managed by professional association(s) for lobbyists or by companies themselves?*	2	8	12	66,67%	
		49. To what extent do existing self-regulatory codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations?*	2				
		50. To what extent do existing self-regulatory codes require lobbyists to publicly disclose the identity of who they are representing and what they are lobbying for?*	2				
		51. To what extent do existing self-regulatory codes prohibit simultaneous employment as a lobbyist and a public official?*	0				
		52. To what extent is there a complaint mechanism allowing any member or non-member of the association to report violations of the lobbying code of ethics?*	1				
		53. To what extent are there reasonably independent mechanisms for the monitoring and enforcement of compliance with the ethics code(s)?*	1				

Equality of Access	Consultation and Public Participation in Decision-making	54. To what extent is the Parliament required by law to allow citizens and the public (corporations and civic organizations) to provide equal input to members regarding items under consideration, with sufficient notice and time incorporated in the legislative process to receive this input?	1	7	12	58,33%	39,17%
		55. To what extent does the legal framework lay out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies?	1				
		56. To what extent does the legal framework explicitly require public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes?	2				
		58. In practice, to what extent are consultations open to participation from any member of the public?	1				
		59. In practice, to what extent are the views of participants in the consultation process made public?	1				
		60. To what extent does the legal framework explicitly require public authorities to provide a detailed justification on why and how various submissions have or have not been taken into account in policy and decision-making processes after consultation?	1				
	Advisory/Expert Group Composition	61. To what extent is there a legal obligation to have a balanced composition (between private sector and civil society representatives) of advisory/expert groups?	0	2	10	20,00%	
		62. In practice, to what extent is there a balanced composition (between private sector and civil society representatives) of advisory/expert groups?	1				
		63. To what extent are lobbyists prohibited from sitting on advisory/expert groups in a personal capacity?	0				
		64. To what extent are corporate executives prohibited from sitting on advisory groups in a personal capacity?	0				
		65. With regard to advisory/expert groups, to what extent is membership information, agendas, minutes and participants' submissions required to be made public?	1				

VII. SUGGESTIONS FOR FURTHER RESEARCH

The following subjects may prove relevant for further study:

- Lobbying at local and provincial level of political parties and authorities;
- Behaviour of Dutch lobbyists in Brussels (also compared to other countries);
- Professors occupying an endowed chair: what foundation is behind this endowed chair and who is paying that foundation?
- A review of the 'polder model';
- Research the functioning and efficiency of the Bureau Legislation (*Bureau Wetgeving*), Bureau Research and National Expenditure (*Bureau Onderzoek en Rijksuitgaven*) and the Central Information Point;
- What independent, mandated and well-resourced oversight entity is suitable to keep organizations and individuals that lobby in check?

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