



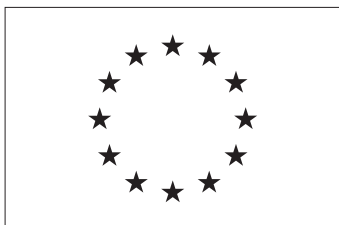
**NATIONAL INTEGRITY
SYSTEM ASSESSMENT
NETHERLANDS**

Transparency International (TI) is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, TI raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

Transparency International Netherlands (TI-NL) is the NL Chapter of TI and raises awareness about corruption in the Netherlands.

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A full list of persons who have been interviewed can be found in the Annex III.

PREFACE

TOWARDS A MORE TRANSPARENT AND INTEGRITY-FOCUSED NETHERLAND

During the year 2011, some 25 chapters of Transparency International participated in a Europe-wide assessment regarding their national integrity systems (NIS). These studies analysed each country's ability to prevent, detect, deter and penalise corruption and to what extent they did so in practice. These assessments covered principal state and non-state institutions such as the Judiciary, Political Parties, the Executive, Anti-corruption Agencies, the Media and Business. While highlighting strengths and weaknesses in the overall governance system, the assessments focussed on factors of particular significance for anti-corruption efforts, namely the independence, transparency and accountability of each institution. The assessment procedure was always consultative, involving government, business and civil society representatives. The results are meant to be used as the basis for an advocacy programme for reform in the member-states. The Dutch chapter, Transparency International Nederland (or TI-NL for short), was a party to this pan-European operation. The Netherlands is frequently considered to be a corruption-free society in the eyes of international business, as recent publications of corruption perception indices from Transparency International itself show.

Yet there are signs of a lack of transparency, of integrity, of accountability even in the Netherlands, as recent examples in this study for sectors as different as real estate, education and public procurement show. Transparency International highly welcomes that public tolerance for integrity breaches has been reduced. This is in line with a more general trend towards condemning corruption in the different sectors of society.

The NIS aims to give a holistic view of the whole national integrity system, and encompasses the evaluation of a broad range of institutions. This is at the expense of a very detailed assessment of specific aspects of the anti-corruption system. New in this study is the use of a system approach as a method for analysing the vulnerability to corruption. This approach

makes it possible to recognise patterns in the interactions between the different sectors of society. It shows how correction mechanisms between the pillars and within the pillars of Dutch society are changing.

The NIS results offer an independent, civil-society perspective, while the usual GRECO/UNCAC/OECD mechanisms are all peer-review evaluations with a degree of co-ownership between the government of the country being evaluated and the broader group of peers. The intergovernmental compliance evaluations of these institutions tend to be more legalistic and/or home in specific aspects of corruption. While the NIS process, in particular in the Netherlands, did include very active engagement with the government and other stakeholders, it was quite clearly owned, led and published by the TI organisation.

A thorough investigation had to be carried out in a very short time-frame. Transparency was able to secure the services of Saxion University of Applied Sciences, and in particular Mrs. Willeke Slingerland, who is currently writing a dissertation at Erasmus university on corruption prevention and the use of the systems approach to analyse the corruption phenomenon, supervised by Professor Wempe from this University. A small coordination centre had to be set up, and many meetings and interviews arranged. The resources needed for this independent assessment were provided by the European Commission via the TI-S International Secretariat in Berlin. The Ministry of Security and Justice, was willing to assist with a grant of EUR 60,000 to enable Dutch participation in the Europe-wide exercise. There were no strings attached.

The study carried out by Mrs. Slingerland has resulted in different kinds of recommendations. For example, it has become clear that governmental decision-makers should systematically look at their own integrity and behaviour. Why is there still no code of conduct for parliamentarians? The whole area of parliamentary integrity mechanisms is lacking. The parliamentary debates concerning disclosure of party financing and election financing were highly due. External political influence bought by large anonymous private parties has to be made more transparent or stopped. More attention is in order for controlling the revolving-door between public and private sectors. These factors are

probably also contributory to the low place of politics and political representatives in the public esteem. More in general it is necessary for top level decision makers both in the public and private sector to be more accountable to each other as to their integrity

Another conclusion is that the system of checks and balances to realise more integrity is incomplete in the Netherlands. Currently there is no systematic relationship between the public and private sectors or for that matter civil society for improving integrity and fighting corruption. Integrity improvement is left to individual public-sector bodies, while the private sector supposedly is not hampered by corruption, though international research indicates that public and private sector corruption nowadays match each other. The social partners and the public sector should join forces to improve transparency, give an impulse to integrity and fight corruption in the Netherlands, but also abroad when Dutch nationals or companies or foreign subsidiaries thereof are involved.

The prosecution by Dutch authorities of corruption in other countries has to be brought into line with similar efforts by the USA with its decades of old FCPA, the UK with its Bribery Act, and Germany through its Federal State Prosecution Offices. Similarly, it is clear that the protection of whistle-blowers is in need of

improvement not only in the public but also the private sector. This protection is not only crucial for the individuals concerned, but also necessary in the public interest. In many cases a whistle-blower warns against integrity breaches with clear repercussions for his or her own institution, but also with negative consequences for society at large. Similarly, wrongdoing in the public sector can be discovered by accessing governmental information. The Act on Public Access to Governmental Information could be improved to that end.

Though the report is written by Mrs. Slingerland and remains her responsibility, the Board of Transparency International Nederland is pleased with the results obtained. We consider the National Integrity Study for the Netherlands as a wake-up call. Its publication is to be the start for all kinds of activities to change attitudes, culture, rules and regulations, as well as enforcement practices. Transparency International trusts that many will answer this challenge.

Alphons Ranner and Paul Arlman

*The Hague, April 2012
(Members of the Board of
Transparency International Netherlands)*

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ABBREVIATIONS

ABRvRS	Administrative Jurisdiction Division of the Council of State (Raad van State Afdeling Bestuurs Rechtspraak)	BuZa	(Ministry of) Foreign Affairs (Ministerie van Buitenlandse Zaken)
AFM	Authority for the Financial Markets and Competition (Autoriteit Financiële Markten)	BV	Private limited liability company (Besloten Vennootschap)
AIVD	General Intelligence and Security Service (Algemene Inlichtingen- en Veiligheidsdienst)	BZK	(Ministry of) the Interior and Kingdom Relations (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties)
AMvB	General Administrative Order (Algemene Maatregel van Bestuur)	CAOP	Netherlands' largest knowledgeable and service centre for the labour market and labour relations within the public domain (kennis- en dienstencentrum op het gebied van arbeidszaken in het publieke domein)
ANBI	Public benefit organisation (Algemeen Nut Beogende Instelling)	CBA	A strategic assessment of the occurrence of a specific crime (Criminaliteits beeld analyse)
AR	Netherlands Court of Audit (Algemene Rekenkamer)	CBF	Central Bureau for Fundraising (Centraal Bureau Fondsenwerving)
Awb	General Administrative Law Act (Algemene Wet Bestuursrecht)	CBP	Dutch Data Protection Authority (College Bescherming Persoonsgegevens)
AZ	(Ministry of) General Affairs (Ministerie van Algemene Zaken)	CBS	Central Bureau of Statistics (Centraal Bureau voor de Statistiek)
BBI	Bureau of Professional Skills and Integrity (Bureau Beroepsvaardigheden en Integriteit)	CCR	Coordination Commission Rijksrecherche (=Coördinatie commissie Rijksrecherche)
BFT	Financial Supervision Agency (Bureau Financieel Toezicht)	CDA	Christian Democratic Appeal (Christen Democratisch Appel)
BIBOB Act	Public Administration Probity in Decision-Making (Wet bevordering integriteitsbeoordelingen door het openbaar bestuur)	CIO	Commission on Integrity Government (Commissie Integriteit Overheid)
BIO	Bureau Internal Investigations (Bureau Interne Onderzoeken)	CIPO	Integrity Commission for Public Broadcasting (Commissie Integriteit Publieke Omroep)
BIOM	Bureau Integrity OM (Bureau Integriteit OM)	CIVICUS	World Alliance for Citizen Participation
BIOS	Office for Promoting Integrity in the Public Sector (Bureau Integriteitsbevordering Openbare Sector)	CNV	National Federation of Christian Trade Unions in the Netherlands (Christelijk Nationaal Vakverbond)
BIV	Bureau of Integrity and Security (Bureau Integriteit en Veiligheid)	CPB	Netherlands Bureau for Economic Policy Analysis (Centraal Planbureau)
BOR	Bureau Research and Government Expenditure (Bureau Onderzoek en Rijksuitgaven)	CSI	Civil Society Index
BPI	Bribe Payers Index	CSO	Civil society organisations
BR	Regional police forces have joint investigation units (Bovenregionale recherche)	CSR	Corporate Social responsibility
		CTG	Committee on Tariffs in Healthcare (College Tarieven Gezondheidszorg)
		CU	Christian Union (Christen Unie)

CvdM	Media Authority (Commissariaat voor de Media)	KB	Royal Decree (Koninklijk Besluit)
CVV	Centre for Crime and Security (Centrum voor Criminaliteitspreventie en Veiligheid)	KLPD	National Police Services Agency (Korps Landelijke Politie Diensten)
		KR	Dutch Electoral Council (Kiesraad)
		Ksa	Special supervisor body for the gambling sector (Kansspel autoriteit)
DNB	Dutch Central Bank (De Nederlandsche Bank)	MHP	Federation of Managerial and Professional Staff Unions (Vakcentrale voor middengroepen en hoger personeel)
DPG	De Persgroep	MOT	Report Unusual Transactions (Melding Ongebruikelijke Transactie)
D66	Democrats 66 (Democraten 66)	MVO	Corporate Social Responsibility (Maatschappelijk Verantwoord Ondernemen)
ECHR	European Convention on Human Rights (Europees Verdrag voor de rechten van de Mens)	NBA	Dutch Professional Associations of Accountants (Nederlandse Beroepsorganisaties van Accountants)
EK	Senate (Eerste Kamer der Staten-Generaal)	NCP	National Contact point (Nationaal Contactpunt)
EL&I	(Ministry of) Economic Affairs, Agriculture and Innovation (Ministerie van Economische Zaken, Landbouw & Innovatie)	NIS	National Integrity System (Nationaal Integriteitssysteem)
EMB	Electoral Management Body	NMa	Dutch Competition Authority (Nederlandse Mededingings autoriteit)
EVD	Agency which falls under the Dutch Ministry of Economic Affairs, Agriculture and Innovation, now: Agentschap NL)	NOS	Dutch Broadcasting Foundation (Nederlandse Omroep Stichting)
FCPA	Foreign Corrupt Practices Act	NPO	Dutch Foundation for Public Broadcasting (Nederlandse Publieke Omroep)
FIOD	Fiscal Intelligence and Investigation Services (Fiscale Inlichtingen- en Opsporingsdienst)	NPS	Dutch Program Service
FIU-NL	Financial Intelligence Unit	NSB	National Socialist Movement (Nationaal-Socialistische Beweging)
FNV	Federation of Netherlands Trade Unions (Federatie Nederlandse Vakbeweging)	NV	Public limited liability company (Naamloze Vennootschap)
GRECO	Group of States against Corruption	NVB	Dutch Banking Association (Nederlandse Vereniging van Banken)
HBO-raad	Netherlands Association of Universities of Applied Sciences	NVJ	Dutch Association of Journalists (Nederlandse Vereniging van Journalisten)
HoR	House of Representatives (Tweede Kamer)	NVP	Dutch Association for Human Resources Management and Organisation Development (Nederlandse Vereniging voor Personeelsmanagement en Organisatieontwikkeling)
HR	Supreme Court of the Netherlands (Hoge Raad der Nederlanden)	NVVK	Dutch Association for Public Credit (Nederlandse Vereniging voor Volkskrediet)
IDH	Dutch Sustainable Trade Initiative (Initiatief Duurzame Handel)		
IFRS	International Financial Reporting Standards		
I&M	(Ministry of) Infrastructure and Environment (Infrastructuur en Milieu)		

NVvR	Dutch Association for the Judiciary (Nederlandse Vereniging voor Rechtspraak)	SAINT	Self-Assessment INTeegrity Monitor
		SBBI	Organisation of social importance (Sociaal Belang Behartigende Instellingen)
OCW	(Ministry of) Education, Culture and Science (Ministerie van Onderwijs, Cultuur en Wetenschap)	SBIB	Foundation Integrity Assessment for the construction industry (Stichting Beoordeling Integriteit Bouwnijverheid).
ODIHR	Office for Democratic Institutions and Human Rights (Organisatie voor Democratische Instituties en Mensenrechten)	SEC	Securities and Exchange Commission
		SER	Social and Economic Council of the Netherlands
OECD	Organisation for Economic Cooperation and Development (Organisatie voor Economische Samenwerking en Ontwikkeling)	SGL	Sustainable Governance Indicators
		SGP	Reformed Political Party (Staatkundig Gereformeerde Partij)
OM	Public Prosecution Service (Openbaar Ministerie)	SIOD	Social Intelligence and Investigation Services (Sociale Inlichtingen- en Opsporingsdienst)
OSCE	Organisation for Security and Co- operation in Europe (Organisatie voor Veiligheid en Samenwerking in Europa)	SMEs	Small and medium-sized enterprises (Midden- en Kleinbedrijf)
		SP	Socialist Party (Socialistische Partij)
OSF	Independent Senate Group (Onafhankelijke Senaatsfractie)	SRM	Judiciary Selection Commission (Selectiecommissie rechterlijke macht)
		SSR	Justice Study Centre (Studiecentrum Rechtspleging)
PACI	World Economic Forum Partnering Against Corruption Initiative	Stb.	Netherlands Bulletin of Acts and Decrees (Staatsblad)
PBO	Statutory Trade Organisation (Publiekrechtelijke Bedrijfsorganisatie)	Stc.	Dutch Government Gazette (Staatscourant)
PEC	Principal Electoral Committees (Kieskringen)	StvdA	Labour Foundation (Stichting van de Arbeid)
PPP	Public-private partnership (Publiek private samenwerking)	SZW	(Ministry of) Social Affairs and Employment (Ministerie van Sociale Zaken en Werkgelegenheid).
PvdA	Dutch Labour Party (Partij van de Arbeid)		
PvdD	Party for Animals (Partij voor de Dieren)		
PVV	Party for Freedom (Partij voor de Vrijheid)	TI-N	Transparency International Netherlands (Transparency International Nederland)
		TI-S	Transparency International Secretariat (Transparency International Secretariaat)
RAD	Central Audit Service (Rijks audit dienst)	TMG	Top Management Group
Raio	Judicial Civil Servant in training (Rechterlijk ambtenaar in opleiding)	TON	Proud of the Netherlands (Trots op Nederland)
RJ	Council for Annual Reporting (Raad voor de Jaarverslaglegging)		
Rob	Dutch Council for Public Administration (Raad voor het openbaar bestuur)	UNCAC	United Nations Convention against Corruption
Rvdr	Council for the Judiciary (Raad voor de Rechtspraak)	URI	Uniform Registry of Integrity Violations (Uniforme Registratie Integriteitsschendingen)
RvS	Council of State (Raad van State)		
RWT	Entities with statutory duties (Rechtspersoon met een Wettelijke Taak)		
		VAN	Gambling machines industry branch (Speelautomaten Branche Organisatie)
SAI	Supreme Audit Institution		

VBA	Association of Investment Experts (Beroepsvereniging van Beleggingsdeskundigen)	Wet GBA	Municipal Database Personal Files Act (Wet gemeentelijke basisadministratie persoonsgegevens)
VJ	(Ministry of) Security and Justice (Ministerie van Veiligheid en Justitie)	WFPP	Proposed bill on the Financing of Political Parties (Wetsvoorstel financiering politieke partijen)
VNG	Association of Dutch Municipalities (Vereniging van Nederlandse Gemeenten)	Wno	National Ombudsman Act (Wet Nationale ombudsman)
VOG	Certificate of Good Conduct (Verklaring omtrent gedrag)	Wob	Openness of Government Act (Wet openbaarheid van bestuur)
VPI	Confidence Person Integrity (Vertrouwens persoon Integriteit)	WODC	Research and Documentation Centre (Wetenschappelijk Onderzoek- en Documentatiecentrum)
VROM	(Ministry of) Housing, Spatial Planning and Environment (Volkshuisvesting Ruimtelijke Ordening en Milieubeheer)	Wopt	Law on the disclosure of top incomes financed by public means (Wet openbaarmaking uit publieke middelen gefinancierde topinkomens)
VU	Vrije Universiteit Amsterdam	Wpg	Police Data Act (Wet politiegegevens)
VVD	People's Party for Freedom and Democracy (Volkspartij voor Vrijheid en Democratie)	WSPP	Political Parties Grants Act (Wet subsidiëring politieke partijen)
VVOJ	Association of Investigative Journalists (Vereniging van Onderzoeksjournalisten)	WWFT	Act to prevent money laundering and terrorist financing (Wet ter voorkoming van witwassen en financieren van terrorisme)
VWS	(Ministry of) Health, Welfare and Sport (Ministerie voor Volksgezondheid, Welzijn en Sport)		
Wbp	Dutch Data Protection Act (Wet bescherming persoonsgegevens)	ZBO	Independent administrative body (Zelfstandig Bestuursorgaan)
WEF	World Economic Forum		

1. ABOUT THE NATIONAL INTEGRITY SYSTEMS (NIS) ASSESSMENT

INTRODUCTION

A series of high-profile corruption cases in the private and public sectors has highlighted the urgent need also to confront corruption in Europe. Corruption undermines good governance, the rule of law and fundamental human rights. Seventy-eight per cent of Europeans surveyed for the EU Commission's 2009 Eurobarometer survey believed that corruption was a major problem in their country.

This report is part of a pan-European anti-corruption initiative, supported by the DG Home Affairs of the European Commission and the Dutch Ministry of Security and Justice. The main terms of reference were established by the European Commission and Transparency International Secretariat (TI-S). The objective of the report is to assess systematically the National Integrity Systems (NIS) of 25 European States, and to advocate for sustainable and effective reform, as appropriate, in different countries.

What is the NIS?

The NIS assessment approach used in this report provides a framework to analyse the effectiveness of a country's institutions in preventing and fighting corruption and in fostering transparency and integrity. The NIS concept has been developed and promoted by Transparency International as part of its overall evidence-based approach to countering corruption. A well-functioning NIS provides effective safeguards against corruption. However, when the institutions are characterised by a lack of appropriate regulations and by unaccountable behaviour, corruption is likely to thrive, with negative knock-on effects on the goals of good governance, sustainable development and social cohesion. Strengthening the NIS promotes better governance across all aspects of society and, ultimately, contributes to a more just society overall.

Background and history of the NIS approach

The concept of a "National Integrity System" originated within the TI movement in the 1990s as TI's primary conceptual tool of how corruption could be best fought and, ultimately, prevented. It made its first public appearance in the TI Sourcebook, which sought to draw together those actors and institutions which are crucial in fighting corruption in a common analytical framework, called the "National Integrity System". The initial approach suggested the use of 'National Integrity Workshops' to put this framework into practice. The focus on "integrity" signified the positive message that corruption can indeed be defeated if integrity reigns in all relevant aspects of public life. In the early 2000s, TI then developed a basic research methodology to study the main characteristics of actual National Integrity Systems in countries around the world via a desk study, no longer using the National Integrity Workshop approach. In 2008, TI engaged in a major overhaul of the research methodology, adding two crucial elements – the scoring system as well as consultative elements of an advisory group – and reinstating the National Integrity Workshop, which had been part of the original approach.

While the conceptual foundations of the NIS approach originate in the TI Sourcebook, they are also closely intertwined with the wider and growing body of academic and policy literature on institutional anti-corruption theory and practice.¹ The NIS research approach is an integral component of TI's overall portfolio of research tools which measure corruption and assess anti-corruption efforts. By offering an in-depth country-driven diagnosis of the main governance institutions, the NIS' main aim is to provide a solid evidence-base for country-level advocacy actions on improving the anti-corruption mechanisms

1 Rose Ackerman, S. (1999); OECD Public Sector Integrity: A Framework for Assessment (2005); Head, Brown and Connors 2008; Huberts, L.W.J.C., Anechiarico F. and Six F. (2008).

and their performance. It is complemented by other TI tools, which are geared more towards raising public awareness of corruption and its consequences through global rankings (e.g. Corruption Perception Index, Bribe Payers Index) or through reporting the views and experiences of the public (e.g. Global Corruption Barometer). In addition, the NIS approach fills an important gap in the larger field of international governance assessments, which are dominated by cross-country rankings and ratings (e.g. Global Integrity Index, Bertelsmann Transformation Index), donor-driven assessments (which are rarely made public) and country-specific case studies, by offering an in-depth yet systematic assessment of the anti-corruption system which is based on a highly consultative multi-stakeholder approach. This unique combination of being driven by an independent local civil society organisation, involving consultations with all relevant stakeholders in-country, and being integrated into a global project architecture (which ensures effective technical assistance and quality control) makes the NIS approach a relevant and useful tool to assess and, ultimately, further anti-corruption efforts in countries around the world.

Corruption and Integrity

TI has chosen a clear definition of corruption: “the abuse of entrusted power for private gain.” Whereby TI further differentiates between “according to rule”

corruption, where a bribe is paid to receive preferential treatment for something that the bribe receiver is required to do by law, and “against the rule” corruption, whereby a bribe is paid to obtain services the bribe receiver is prohibited from providing. Integrity is a broader concept which goes beyond the mere absence of corruption and can best be described as “morally accepted behaviour”. This can be understood as good governance or the accepted use of power. While corruption is considered to be a criminal act, not all integrity violation are of a criminal nature.

NIS Assessment

The NIS country report aims to assess the performance of the formal legal provisions safeguarding corruption as well as their actual institutional practice, by analysing their strong and weak points. Not only does the study highlight specific areas in which reform is needed, it can also be used to compare performances across institutions or sectors. By identifying key recommendations, the assessment can be a basis for future advocacy activities, further pillar-specific research, political reform and ultimately help with fighting corruption. Officially the NIS methodology (temple) counts 13 ‘pillars’, thought to make up the National Integrity System. One of these pillar is the Anti-Corruption Agency. The Netherlands, however, lacks a relevant, independent body with a specific mission to fight corruption.

Government	Public sector	Non-governmental
<ul style="list-style-type: none"> • Legislature • Executive • Judiciary 	<ul style="list-style-type: none"> • Public Sector • Law Enforcement Agencies • Electoral Management Body • Ombudsman • Supreme Audit Institution 	<ul style="list-style-type: none"> • Anti-Corruption Agency • Media • Civil Society • Political Parties • Business

Further information on the NIS assessment and methodology can be found in Annex II.

2. EXECUTIVE SUMMARY

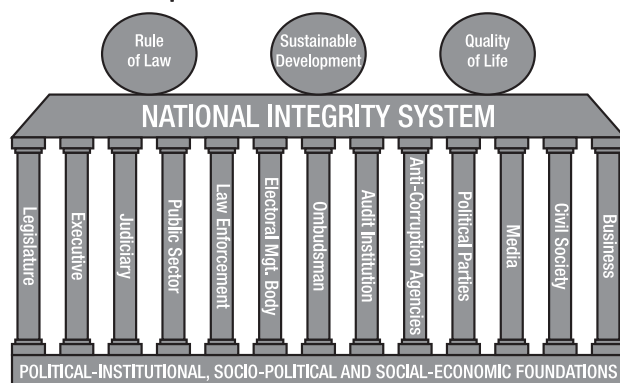
THE VULNERABILITY OF THE NETHERLANDS' NATIONAL INTEGRITY SYSTEM

An assessment of the National Integrity System (NIS) of the Netherlands

Motivation

The occurrence of a great number of cases of corruption² in the private as well as public sector has made it clear that corruption in Europe must be fought unceasingly. Corruption undermines good governance, the rule of law and human rights.³ Research into corruption as a rule is directed at the extent to which incidents of corruption occur in a country, or to what degree corruption is encountered (perception research). When such incidents neither occur nor are encountered, that is not yet sufficient indication that integrity in the given country is adequately ensured. The NIS approach makes it possible to investigate how effective national institutions are in preventing corruption and in stimulating and achieving integrity.

The NIS concept



The NIS concept proceeds from the assumption that integrity can only be realised if the separate elements

of the NIS offer sufficient support to the safeguarding of integrity in the Netherlands. By elements are meant the political-institutional, socio-political, socio-economic and socio-cultural foundations of a society as well as the thirteen central pillars that according to Transparency International collectively form the NIS. The degree to which these pillars provide a contribution to the safeguarding of integrity, is judged according to certain previously-established criteria such as resources, independence, transparency, accountability, integrity and the way in which the pillar fulfils its own role. Here there must be sufficient internal correction of integrity violations within the pillar, or if these internal-correction mechanisms do not function then external correction should take place via other pillars. This internal and external correction should be coordinated.

The NIS report is to a large extent the end-result of qualitative research in which for each pillar or part thereof a qualitative judgement is given to help to bring to the forefront both the strong points as well as those requiring attention. Here we did not only look at formal anti-corruption provisions, but also tried to get a picture of the efficacy of these provisions in practice. In this we made use of primary and secondary literature, international reports, and interviews with a total of 46 persons either active within a pillar or with a proven record of expertise in monitoring one or more of them. We explicitly chose for an indicative and enumerating investigation which strove to make visible the effectiveness of the Netherlands' NIS, but at the same time brought forward those aspects that constitute risks for the prevention of corruption and safeguarding of integrity. The report investigates how strong the Netherlands' safeguarding of integrity is at the national level.

2 For instance: The Philips Poland corruption case, the News of the World United Kingdom corruption case, the Siemens corruption Case, the UN oil for Food cases, the BAE Systems corruption case and the Dutch construction fraud.

3 The report National Integrity System Assessment Netherlands is part of Europe-wide research into the national integrity systems of targeted European countries. This research is conducted on behalf of Transparency International (TI) and is supported by DG Home Affairs of the European Commission and, in the Netherlands, also by the Ministry of Public Security and Justice.

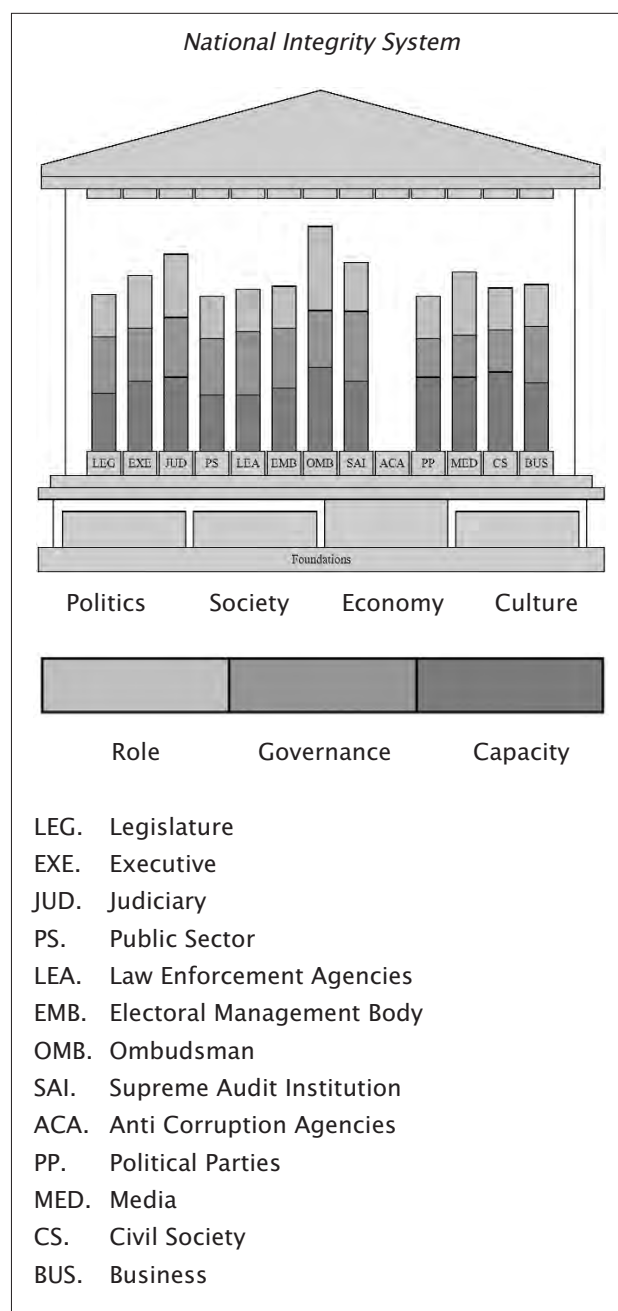
Corruption as virus

It is naturally of interest to ascertain how corrupt a country is before considering focal points and risks in its safeguarding of integrity. After all, if there is no sign of a problem in practice, should provisions for integrity still be established? If cases of corruption such as real-estate fraud become known, then the question invariably follows whether this is one incident or whether one can speak of large-scale, but invisible, corruption. This makes the fundamental question as to the usefulness of and necessity of integrity provisions difficult. In order to answer this question, in analogy with medical science it helps to see corruption as a serious virus. As soon as a serious case of infection is known about, no expense is spared in preventing a large-scale outbreak. Here it is important that expertise is generally available, and that both specialists and the general public know what it is they must do. It is important to locate the source of the virus as well as the factors playing a role in its having arisen. Possible symptoms need to be recognised in a timely manner. At the same time cooperation between specialists must proceed well, while government has the clear task of giving form to proper communication with citizens and organisations. Here there should exist clear protocols, but the effectiveness of the effort will depend above all on how people deal with the problem. A similar system should therefore be in place to prevent and redress corruption infection. From this NIS research it became apparent that the Netherlands does have a relatively strong National Integrity System. But this does not detract from the fact that there are also points of concern that, just as when fighting a nasty virus, need to be improved promptly so that corruption can be detected quickly and countered, and further outbreaks can be prevented. In this summary we will briefly describe the Netherlands' NIS and then provide recommendations concerning the weak points detected in it.

NIS foundations

The political, social, economic and cultural foundations present in the Netherlands turn out to be solid, so that they constitute important support for the effectiveness of the country's NIS. Democratic principles are well-established in Dutch society, and the rule-of-law functions as it should. The presence of trust is an important requirement in striving for integrity. In Dutch society trust in (political) institutions and other

Key findings of the NIS assessment



individuals is relatively high. Nevertheless, this level of trust differs considerably from case to case, so that trust in politicians and political parties is relatively low while the trust in the judiciary is high. There are points of concern, particularly concerning government information management. The Openness of Government Act does not function as it should, while there are also other examples of government falling short in its duty of care with respect to citizens' private information. Despite the fact that there are no more

traces in the Netherlands of the old societal “compartmentalization” per se, characteristics of that structure can clearly still be found in Dutch society. In any case or matter, there is always an attempt to achieve consensus between the various groups in society. It is through this striving for consensus that support for further action is created in the Netherlands. Such an often informal decision-making process also requires an integrity awareness whereby different interests are promoted in an honest and transparent manner. For example, in the Netherlands membership of a political party is still an advantage for appointment to a government post, although this is not always recognised as such. The way political appointments are made is a form of vulnerability within the NIS; the failure to recognise or realise that only worsens that vulnerability. On top of that, the legitimacy of political parties is now under pressure now that they enjoy relatively less confidence and only three percent of the population is a member of a political party. Taken as a whole, a wide variety of groups in society do manage to live peacefully next to each other, with sufficient interaction happening between them. One point of continual worry is ensuring that no further separation arises between e.g. native-born and foreign-born Dutch citizens or between the highly educated and the lesser educated, for this is necessary in order to preserve the social foundation. The Netherlands’ economic foundation is among the strongest in the world, and in general the differences between rich and poor in the country are relatively small. Nonetheless, this foundation will surely be under great pressure in the coming years due to the European economic crisis. It is not yet possible to predict to what degree this crisis will influence the safeguarding of integrity, either at the national or the organisational level. The financial consequences could influence the political and social foundations of Dutch society. Yet the cultural foundation in the Netherlands remains strong, meaning that in the Netherlands societal norms and values are present that support the Integrity System. Dutch people on the one hand are proud of typical Dutch norms and values such as solidarity and tolerance. On the other hand, they also worry about losing these norms and values and about the materialism that in their eyes is steadily increasing. In recent years, the number of Dutch people who believe that corruption has increased in the Netherlands has grown.

Pillars

The “pillars” of the Netherlands’ Integrity System also turn out, individually and collectively, to contribute to ensuring integrity. By ‘pillar’ we understand the institution or institutions that play a key role in preventing corruption. The NIS consists of the following pillars: Legislature, Executive, Judiciary, Public Sector, Law Enforcement Agencies, Electoral Management Body, Ombudsman, the Supreme Audit Institution, Anti-Corruption Agency, Political Parties, Civil Society and Business.

Legislature

The safeguarding of integrity within the Legislature pillar (here we restrict ourselves to the House of Representatives, the Tweede Kamer) is fairly strong. The Tweede Kamer is to a large degree involved in determining its own budget, and the support it should receive to carry out its tasks, is set out in its Rules of Order. In practice, though, the resources made available to it are not always seen as sufficient. Extra support for parliamentary groups, better cooperation, and extra training for new MPs should improve the situation. The independence of the legislature is to a great degree protected by law. The Tweede Kamer can only be dissolved in exceptional circumstances, it chooses its own chairperson and it enjoys a great degree of inviolability. It is also true, though, the fact that there are no rules for dealing with lobbyists constitutes a risk to the independent position of the individual MP. Also, the ideal of a position in the legislature absolutely free from any ‘burden’ in practice fails to be realised due to the party whip system. This was intensified when the new government came to power, which has a minority position (two parliamentary groupings) in the Tweede Kamer but which is supported by a third parliamentary grouping. On top of that, there is even a party (the SP) whereby MPs can be considered to be workers of their party.

The law does provide for measures for watching over the legislature’s transparency. For example, commission meetings, except for closed sessions, are open to the public, (parliamentary) journalists have access to the Tweede Kamer and its official documents are supposed to be published. In practice, MPs frequently take responsibility for their actions via the line of their political party or via the media. Basic integrity provisions are present for the legislature. MPs are

sworn into office, and they are required to register their side-activities, business travel and gifts received. There is no integrity policy or code of conduct. When it comes to ensuring integrity in practice, there is still room for improvement, particularly when it comes to MPs reflecting better on their own and each other's integrity. As to its role, it is notable that the Tweede Kamer can use various instruments through which it can exert its supervisory function, and in practice makes good use of these. One worrisome point, however, is the sometimes deficient or selective information that MPs receive from the Executive. On average, the legislature shows only mild interest in anti-corruption measures and good governance, as is apparent from the limited number of draft legislation initiatives undertaken in this area. It is also difficult to make any sharp distinction between political practice, which necessarily implies trading off interests, and the misuse of a position of power in order to secure one's own political future or to serve other sorts of private interests.

Executive

The safeguarding of integrity within the Executive pillar (restricted here to the government) is strong. Government authorities have sufficient means available, and are to a great extent independent of the legislature, partly due to the dualistic system. The role played by political parties is considerable, and is strengthened further by government-formation on the basis of coalitions. Some coordination between Tweede Kamer parliamentary groupings and their allied ministers/policy-makers in government does take place. It is also true for the Executive that there is no consideration given to the manner in which it deals with information provided by lobbyists. Further, there are no similar sort of 'anti-revolving door' rules in place such as those that apply to the European Commission, whereby former Commissioners are forbidden to lobby for activities they were responsible for during their time in Brussels. The only concrete 'revolving door' rule applies to the Minister of Defence. It is important, in this respect, that former ministers and state secretaries set the example. There is also no transparency as regards the regulatory constructions established to prevent conflict-of-interest on the part of recently-appointed ministers and state secretaries arising out of their financial and business interests. There are no records relating to financial and business interests and

there is no need to provide private financial information. Rather, the 'trust principle' is in effect here, meaning that only when there is a concrete indication that would call that trust into question, the premier is obliged to provide information to the Tweede Kamer. The Executive accounts to a considerable degree for the manner in which it governs. Ministerial responsibility is broadly interpreted, and that brings with it the frequent summoning of ministers to account for the policies they pursue. If the Tweede Kamer no longer has confidence in a minister, it can lead to his or her departure. But the provision of information to the Tweede Kamer remains a point of concern. Sometimes this seems insufficient, or else selective and/or slanted information is provided, which could tend to hinder effective control over the Executive. In addition, the Netherlands Court of Audit (Algemene Rekenkamer) plays an important role in auditing how a minister controls his or her finances. It really cannot be said that there is an integrity policy for the Executive, but there does exist a handbook for incoming ministers and state secretaries in which there are a number of items pertaining to integrity. A number of incidents in which (apparent) conflict-of-interest on the part of (former) policy-makers led to controversy indicates that the way in which individuals think about integrity, varies. This undermines confidence in politics. Usually the media functions as a watchdog in this regard. In general, it can be said that ministries are well managed, even though there have been concerns expressed regarding some departments over how the management will deal with the state budget cuts. The continued absence of effective protection for whistle-blowers, together with the limited rules governing political party financing contained in recently-proposed legislation, do form a risk for the effective fighting of corruption.

Judiciary

The Judiciary (restricted here to the sitting magistrates) is a strong safeguarder of integrity. This pillar has sufficient means available, and judges' salaries are high. Recent budget-cuts have included, among other things, a proposed halving of the number of Raio-places (judiciary training programs) and a shortening of the duration of such programs. It has yet to be seen what the effects of these measures will be on the justice system. The Judiciary enjoys a considerable degree of independence, both in legal and practical terms, in which the appointment of judges for life offers an

important safeguard. The concerns regarding this independence are to be seen in the existence of substitute judges and the increasing involvement (via the media) of politicians and citizens in how the administering of justice should take place. Moreover, a difficult dilemma is involved here: on the one hand, we are glad to have our judges fully involved in society, but on the other hand we want them to be independent, to not even have any appearance of bias. The provisions on recusal and excluding offers good protection when there is a threat to the independence of a judge in a specific case. The number of recusal requests is increasing, but worries have also arisen about the misuse of this right. In general, the Judiciary is fairly transparent in the way that it operates, with perhaps a side-note that the manner in which cases are assigned to judges is not that clear. The existing integrity policy is somewhat fragmented, but will be reviewed in 2011/2012. In general, judges engage rather too little in reflection and peer discussions. Trust in the Judiciary is great. A number of judicial errors (attributable as much to law enforcement agencies as to the Judiciary) have lessened this trust somewhat. There is no clear picture as to the degree to which the Judiciary is committed to fighting corruption.

Public Sector

The Public Sector (interpreted here as ministries together with independent administrative bodies – in Dutch: ZBO – as well as entities with statutory duties – in Dutch: RWT) has a relatively strong safeguarding of integrity although, together with the pillar Political Parties, it does constitute one of the weaker pillars. The Public Sector has sufficient resources available, but is momentarily undergoing large-scale state budget cuts. Government agencies are generally seen as an attractive employer, and in general highly-educated professionals work there. The only risk to the independence of the Public Sector lies, again, in the way civil servants deal with information that is provided by lobbyists. Transparency is assured by, among other means, a law prescribing that top incomes financed by public money should be registered. There is no legal requirement for civil servants to make their business interests known. The Civil Servants Act lists extensive requirements for the establishment of an integrity policy. As such there should be e.g. a code of conduct and a procedure for reporting possible abuses, and the respective authorities are supposed to devote attention

to integrity in their performance reviews. However, implementation in practice leaves much to be desired, and protection for whistle-blowers is inadequate in practice. The number of criminal indictments for punishable conduct by civil servants is low in relation to the number of internal reports of (possible) integrity violations. In 2008 it emerged that there was considerable lack of awareness as to civil servants' duty to report violations, but in the meantime it is unclear whether this lack of awareness has improved or has become worse. Many alleged corruption incidents are settled via labour law provisions. This has its advantages. There one can get to work on the matter swiftly, and no lawsuits are required. A disadvantage is that corrupt incidents do not become visible and the risk arises that the civil servant in question goes on to pursue his activities elsewhere. One point of concern is that the Public Sector barely cooperates with business or with civil society organisations to develop anti-corruption initiatives, even as that was one of the explicit recommendations made by the OECD in 2009. Neither can one really speak of Public Sector that informs and educates the Dutch public about its anti-corruption efforts. There does exist the Office for Promoting Integrity in the Public Sector (BIOS) that stimulates and supports the (semi-)public sector in establishing and implementing integrity policies. The existing regulations governing public contracting and the proven attention for integrity in public contracting are of great importance in reducing the risks of corruption.

Law Enforcement Agencies

The safeguarding of integrity within the Law Enforcement Agencies pillar is fairly strong. In general they have sufficient resources available, although the manner in which resources are allocated to the police has repeatedly given rise to problems. In general these organisations are sufficiently independent. The position of the Rijksrecherche is unique from an international perspective, and offers an important safeguard in ensuring adequate investigation of possible corrupt practices on the part of police and civil servants. In general these organisations operate in a transparent manner. The integrity provisions in place differ according to the organisation. The police, for example, have had for years an office for internal investigations, that addresses and investigates integrity violations, while it is apparent that a similar office for

the Openbaar Ministerie will get its start in 2012. This is partly the result of recently uncovered integrity violations by public prosecutors. At first glance, the number of integrity violations by the police seems high, but this can also be the result of a well-functioning integrity system in which abuses quickly become visible. Investigation and prosecution of corruption is not simple. For example, it turns out that in practice suspected corrupt behaviour is not always reported to the authorities, but is handled instead through disciplinary proceedings, with the effect that visibility as to the extent of corruption remains limited, no lessons can be learned from the incident, and above all the risk arises that the same individual will go on to pursue the same practices elsewhere. Detecting and prosecuting corruption abroad also turns out not to be so simple in practice. Not only does detecting and prosecuting such corruption stand in a conflicted relationship with the economic interests of Dutch business, but the international cooperation that is necessary to fight it turns out to be difficult in practice. In most cases the corrupt practice should be punishable in the Netherlands as well as in the country where the act is committed. Difficulties can arise if persons in the same affair are seen as suspect in one country while in the other they are involved as witnesses. In this connection it can even happen that foreign investigative agencies do not cooperate at all, or do so unwillingly.

Electoral Management Body (Kiesraad)

The safeguarding of integrity within the Electoral Management Body (restricted here to the Dutch Electoral Council – Kiesraad) is fairly strong. The Kiesraad has sufficient resources available and is a well-respected – if rather invisible – institution. A point of concern is its limited independence, now that it falls directly under the Ministry of the Interior and Kingdom Relations (Dutch: BZK). The Kiesraad's independence is actually not based in law in so many words, but is certainly implicit through its allocation of specific competencies in the electoral process; competencies that cannot be exercised by any other administrative organ. In recent years there have been attempts to enlarge this independent stance by allowing the Kiesraad to establish its own work plan and giving it control over its own budget. The selection of the Kiesraad's chairman and members occurs by royal decree. In practice, the Kiesraad (chairman) and the associated secretariat play an important role, including

acting as an independent source of advice when it comes to electoral law. The Kiesraad has no competencies when it comes to subsidy of and supervision over the finances of political parties and/or candidates. In the draft legislation now before the legislature, the Law for the Financing of Political Parties (in Dutch: WFPP), these competencies are conferred on the Minister for BZK. The Kiesraad's role in organising the electoral process is also limited, as this is mostly performed by local governments. There are no instruments currently available that could protect the integrity of Kiesraad members. Neither are there rules for Kiesraad members when it comes to membership in a political party. Despite the lack of such provisions, integrity is a common theme discussed during Kiesraad meetings.

Ombudsman (Nationale ombudsman)

The safeguarding of integrity in the Ombudsman pillar is the strongest of all the pillars. The Nationale ombudsman enjoys a large degree of independence in law and in practice. The Tweede Kamer appoints the Nationale ombudsman on the basis of criteria that are specifically formulated by the Tweede Kamer itself. The Nationale ombudsman's judgements are not enforceable, but in practice they do have a certain authority. The Nationale ombudsman is successful to the degree to which he handles complaints. He also turns out to be active and successful in advising public organisations about how they can improve their quality of service. Legal requirements as to transparency, accountability and integrity are limited. This results in the Nationale ombudsman having wide discretionary powers to make things public, to account for his conduct and design an integrity policy. In practice it turns out that the (current) Nationale ombudsman has gone a step further here than what is prescribed by law.

Supreme Audit Institution (Algemene Rekenkamer)

The safeguarding of integrity of the Supreme Audit Institution (Algemene Rekenkamer) is strong. It has sufficient resources available, but the extent to which it is effective in exercising its tasks, is dependent upon the way internal audits take place within the various ministries. The question is whether this audit structure will remain strong enough now that extensive budget cuts are taking place among the ministries. The Algemene Rekenkamer continually seems to make integrity its priority, both within the organisations

where it carries out its audits as well as within its own organisation. It is to a great extent independent, it investigates what it chooses to investigate, and it always hears both sides (a reaction by the civil service and minister is considered), before publishing its reports. These formal reactions to the audit reports are added to the report and published. The board members of the Algemene Rekenkamer are appointed for life. The selection criteria are of a general nature and are published. In practice membership of a political party plays a role in the decision. The Tweede Kamer also plays an important role in this appointment procedure. The Algemene Rekenkamer generally conducts investigations at the systems level, but in doing so can also look at the spending of individual ministers and state secretaries and top civil servants e.g. secretary generals and director-generals.

Political Parties

The safeguarding of integrity within political parties is fairly strong, but it does belong among the weaker pillars within the NIS. Political parties have sufficient means available, which to a great extent is the consequence of government subsidies that they receive under certain conditions. Around three percent of the Dutch population is a member of a political party, but nonetheless they play an important role in Dutch democracy. All political representatives are in practice chosen via the list of a political party. Those appointed to key positions in public administration and in businesses are also often members of a political party. To some degree this sets the legitimacy of the parties under pressure. The law offers important safeguards to ensure political party independence. The leading risks with regard to their integrity lie in the lack of adequate legislation concerning their financing. In practice, political parties are not very transparent, and the gifts received are only partially registered. At present it is possible to take part in an election as a political movement, without even having members and/or internal party democracy, and thus to make up a part of political representation, without any obligations with regard to financing. Such a lack of transparency in finance makes possible corruption in the interest of external (possibly foreign) contributors. In addition, through murky party financing, which can potentially become quite extensive, there can result a disturbance to effective political competition. The proposed law on the financing of political parties (Wfpp) partly meets with

the GRECO-recommendations. These rules do not apply to local political parties or candidates. The threshold for compulsory registering and disclosing gifts is still relatively high and donations from foreign donors not restricted. The supervision is foreseen to be in the hands of the Ministry of BZK, which is not an independent supervisory body. The themes of corruption and integrity play either a limited or no role within political parties.

Media

The safeguarding of integrity within the media is strong. International treaties and Dutch laws guarantee free and independent media. Censorship hardly ever occurs in the Netherlands, and journalists enjoy great freedom. There are large differences in the degree to which the media organisations make public how their decision-making is conducted and what their policy is. Few media organisations have an integrity policy of their own. If a code of conduct has been established, then it often neglects journalists' integrity and/or the way integrity plays a role in the production of e.g. news reports. A few media organisations, such as the NRC Handelsblad and De Volkskrant, have their own ombudsman available, who critically monitors the role of his own organisation and its reporting and who often steps aside for an outsider's perspective. Additionally, the role that the Netherlands Press Council has played in handling complaints about journalists and media behaviour has been limited. Recently the Council has been further professionalised and criteria have been established on the basis of which it assesses complaints before stating its judgment. The Netherlands Press Council is still not widely accepted by the professional group of journalists and without enforcement instruments its operations are limited. Some concerns have been expressed about the Netherlands Press Council's continued existence, now that its government subsidy is about to be cancelled. The degree to which the media can monitor government is limited now that the Openness of Government Act has turned out not to be effective in practice. For example, governmental authorities frequently invoke the exception grounds available, or information is delivered too late so that judicial intervention becomes necessary. Nonetheless, in general the media are active and successful in their reporting about government and governmental affairs. With some regularity they report about things having to

do with corruption. In some cases it has been the media that were able to bring cases of corruption and fraud to light. Cutbacks and shifting of priorities by the media of research to entertainment also pose a risk for the role of the media as a watchdog with respect to the integrity in other pillars.

Civil Society

Civil Society has a relatively strong safeguarding of integrity. This is especially true due to the great degree of freedom and independence that civil society organisations enjoy. There is also a favourable climate for organisations with a social interest, which under certain conditions enjoy tax advantages. Civil society organisations have sufficient resources available, though they are often dependent on gifts from citizens and/or businesses. In some cases government subsidies are also allotted, although there are also organisations that desire no such subsidies out of principle. If an organisation becomes dependent on such subsidies then this can form a risk to the degree to which they can call the government to account. The extent to which civil society organisations accept responsibility for their policies and are transparent deserves further attention. There is certainly growing pressure out of society for these to show responsibility and be transparent about how they spend their money. Some organisations have even developed an integrity policy, but for the most part civil society organisations are too small and dependent on volunteers to be capable of this. Institutions soliciting funds that desire to display the CBF label (that of the Centraal Bureau Fondsenwerving, which certifies that those funds are actually used for charitable purposes) can freely choose to do so. Their activities will be monitored by a special supervisor: the CBF. It is notable that there are little to no civil society organisations that concern themselves with the themes of corruption and/or integrity. Civil society should become more involved in measures to become more accountable and promote integrity not only regarding themselves but also regarding the public and private sector. They could for instance be enabled to provide their views on newly proposed legislature.

Business

In general, there is reasonable safeguarding of integrity within the Dutch business sector. It is relatively simple to set up a business in the Netherlands, the

requirements are clear and offer little room for e.g. subjective treatment. The legal requirements for setting up a company have also been considerably simplified. There are diverse supervisory bodies that monitor compliance with the rules, but here competencies overlap, which in some individual cases has led to contradictory decisions. For exchange-listed companies there exists extensive legislation largely inspired by EU that obliges such firms to make certain data public and prescribes how companies have to take responsibility for their management. For small- and medium-sized firms there is only the obligation to file annual financial reports. Not all firms comply with these rules or explain why they have not done so, and certain matters regularly fail to be reported. Further, the awarding of bonuses does not always conform to the guidelines of the Corporate Governance Code. Legal requirements and self-regulation when it comes to integrity are extensive, and many companies and industrial organisations have their own codes of conduct. However, in practice it turns out that some organisations cannot implement them effectively and there is no sort of basis for integrity within the organisation. Further, there exists little or no protection for whistle-blowers in the private sector. Dutch business in international (perception) research in corruption turns out to be one of the better, being less guilty of bribe-paying in foreign lands.

On the other hand some businessmen maintain that in some countries (e.g. in Africa or Eastern Europe) it is fairly inevitable to do business with some form of bribery. Certain sectors within the Netherlands can also be singled out, such as the construction and real-estate sector, where relatively more corruption seems to occur. There is only limited cooperation with the Dutch authorities in fighting corruption, and likewise little or no cooperation from Dutch business with non-governmental organisations towards develop anti-corruption initiatives.

Conclusion

The Netherlands has a relatively strong NIS apparently sufficient 'checks and balances' in general. However the national integrity system is incomplete. Currently there is no systematic relationship between the public and private sectors or for that matter civil society for improving integrity and curbing corruption. It is notable that one is quicker to speak of integrity and

transparency than corruption in the Netherlands, and when one does discuss integrity, it seldom has to do with one's own integrity or that of one's direct colleagues. Reference is often made to other pillar's integrity or, better said, behaviour lacking such integrity. For example, the Tweede Kamer points out the unethical behaviour of the Executive, NGOs focus on unethical behaviour within the business sector and the media concentrates on the unethical methods of other media, the business world or politics. The conclusion seems justified that external corrective mechanisms at the "pillar" level generally work well, and unethical behaviour is usually mutually exposed between pillars and corrected. Internal correction mechanisms equally form an important component of the necessary 'checks and balances'; however, these function only partly. This has nothing to do with any shortage of rules or procedures. Other than the several exceptions already described, for most NIS pillars formal provisions are indeed present.

The foremost reason that internal correction mechanisms function in such a limited way is due to the taboo that seems to exist around addressing someone else's acting without integrity. It is precisely in the Netherlands, where the so-called 'polder model' prevails, that it is important that things always be weighed and discussed and that questions of power and influence be dealt with in the right way. The challenge for the Netherlands is to have speaking about integrity, and calling each other out about integrity, becoming a self-evident component of networking, lobbying and doing business. Only when one's own integrity is no longer a taboo subject can there be talk of a NIS that is truly ready for the future. Improvements in the sense of more cooperation between the sectors should be sought for. Another major conclusion that can be drawn is that top level decision makers both in the public and private sector should become more accountable to each other as to their own integrity. The well-known tone from the top should be complemented with the correct tone at the top. This has to coincide with the possibility to safely report abuses within but also outside of an organisation. As such there should be no difference between a governmental or private sector entity. A last major conclusion is that gaps in the existing system of checks and balances regarding promoting integrity and fighting corruption have to be filled.

Recommendations

In the light of the findings of the NIS evaluation, TI-Netherlands will work on the basis of the following recommendations;

General

1. The recommendations of OECD for curbing corruption should be effected in full and as soon as possible. In particular the Netherlands have to take a proactive stance regarding the investigation en prosecution of foreign civil servants involved in corruption in the field of international business transactions. Moreover parent companies have to account for the activities of their subsidiaries. The level of fines for foreign corruption should be raised.
2. The public and private sector and also the civil society organisations are to cooperate to reduce corruption and improve the importance of integrity. Individual cases of corruption should be centrally registered and monitored to enable more effective prosecutions.
3. Despite positive developments in improving integrity and transparency, corruption prevention systems are not widespread enough in either the business or the public sector. Representatives and directors of all pillars of the public sector and its institutions should be made accountable for their own integrity. Civil society has to strengthen its efforts towards more transparency, integrity, and accountability.
4. Integrity and anticorruption are presently not explicitly discussed enough nor are they part of education curricula in schools and universities. A public campaign about the damage caused by corruption in the Netherlands is wrongly lacking. The aim should be to increase citizen awareness of the dangers of corruption, and to make them aware of the possibilities to expose violations of integrity.

Improving the integrity of the public sector

5. There should be a register for all ministers and state secretaries to disclose their business and financial interests. This register should be monitored. The handbook for candidate ministers should be changed into a real code of conduct for the council of ministers including integrity provisions. Former ministers may not accept becoming a partner with their former ministry for two years.

6. The proposed bill on the Financing of Political Parties is aimed at increasing transparency in the finances of political parties. This bill does not entirely meet the GRECO recommendations. To prevent conflict-of-interest, the financing of local political parties should be regulated
7. There is a need for a public registry of lobbyists active within the confines of Parliament and the Ministries. Members of Parliament and civil servants should keep records of contacts with lobbyists and interest groups in their field. Interventions by lobbyists should be made public.
8. A more transparent appointment procedure for senior civil service positions is called for.

Instruments and resources

9. Criminal law should be updated to enable more attention to curbing and penalising private sector corruption and to allow for more effective prosecution policies by police, tax officials and by the public prosecutor. The recent changed UK Bribery Act could be used as a good example.
10. The personnel and financial resources of law enforcement and justice officials should be boosted to be more effective in fighting fraud and corruption. Clearer legal provisions and more efficient legal procedures would be helpful. Quantity and quality of resources of the Dutch prosecution office should be brought into line with their peers from Germany and the United Kingdom. A more active anti-bribery cooperation needs to be sought within the EU and beyond, especially with the USA. Domestic and international cooperation in investigating and prosecution of (international) cases of corruption should be strengthened and existing agreements implemented. The institutions involved should cooperate more effectively. Use should be made of existing best practices for reducing breaches of integrity.
11. The Directive of the Council of Procurators General concerning investigation and prosecution of corruption (of civil servants) abroad should be amended so that economic or competition arguments can no longer be used to justify corrupt business actions.
12. The law enforcement agencies should together with the different tiers of government develop procedures on how to react to individual breaches of integrity within public sector entities. Effective control and monitoring of cases of corruption should be established. The private sector needs to record criminal declarations with respect to corruption similar to corruption cases in the official police and justice databases.
13. The “watchdogs” like the media, the national ombudsman and civil society have to develop a vision concerning their own integrity and to bring this into practice.

Guarding the general interest

14. The way in which cases are being assigned to judges has to be made more transparent. To this end a system has to be developed that guarantees at random allocation.
15. A modernisation of the Openness of Government Act (Wob) is in order, taking into account the need to inform the public about unlawful activities. Guidance should be taken from existing international good practices in Europe.
16. A more protected environment for (potential) whistle-blowers both in the private and the (semi) public sector ought to be assured. Laws on whistle-blower protection in the private sector must be strengthened. Employees should be able to obtain advice and counselling as whistle-blower. A whistle-blower institution should cover all sectors and enable potential whistle-blowers when necessary to breach existing confidentiality and loyalty obligations without being penalised, as part of the necessary documentation of their case.

3. CORRUPTION PROFILE

THE CORRUPTION PROFILE REFLECTS WHAT IS KNOWN ABOUT CORRUPTION IN THE NETHERLANDS BASED ON EXISTING RESEARCH AND REPORTS ON CORRUPTION CASES.

Existing research on corruption and integrity

Most research which is carried out in the Netherlands is concentrated on corruption in public administration. Here the focus is often on the integrity of civil servants (including the police). Little attention is paid to politicians or members of the executive (for example, ministers or mayors) of either central or decentralised governmental agencies. The private or (semi)public sectors do not get much attention in any qualitative or quantitative corruption research. Empirical research into corruption is complex because of the 'dark number'; as with other criminal activities, parties in a corrupt act have an interest in keeping it secret.⁴ The number of reported and acknowledged cases of corruption is therefore believed to be lower than the total number of corrupt practices which are actually taking place. Besides this 'dark number' characterising corrupt conduct, the fact that integrity violations are not or not always properly recorded within the different fields of society probably gives a false or at least a too-positive picture.

Increasingly, research is being done into the integrity of public organisations, from initial assessments on the availability of the integrity provisions in organisations to an increasing focus on the effectiveness of integrity provisions. Also, some public institutions, such as the police, are active in researching their own integrity policies.⁵ Since the last NIS in 2001⁶, the following studies have been carried out.

Figures on civil servant bribery by the Ministry of Security and Justice

In 2010 and 2011 two books were published which provided comprehensive insight into the development of Dutch anti-corruption policies over the last decade(s), real case-studies, and an overview of the research done on corruption in the Netherlands.⁷ The author provides below an overview of the figures for civil servant bribery, as provided by the Ministry of Security and Justice in the period 1994–1998.⁸

Year	Total number of recorded cases of bribery involving a civil servant	Total number of convictions
1998	32	8
1997	40	9
1995	87	35

These figures are rather old, but are often referred to in research because more recent figures on civil servant bribery are scarce. This was the only time that corruption figures were made available by the Ministry of Security and Justice, because figures on corruption cases are not systematically recorded. A more recent report, made available by the OM, showed that in the period 2003–2007 342 cases of corruption in the public sector were reported. In 188 of the cases it concerned one or more civil servants who were believed to have been bribed (180 of which cases concerned bribing in violation of the civil servants' duty).⁹

Private corruption and public corruption which is investigated by regional police are not always reported to the national prosecutor's office (Landelijk Parket), and therefore overall figures on corruption cases are not

4 Heuvel, van den J.H.J., Huberts, L.W.J.C., Wal, van der Z. and Steenbergen, K. (2010). p.21.

5 Tankeren, van M. (2010); Huberts, L.W.J.C. and Naeyé, J. (2005).

6 <http://www.fsw.vu.nl/en/Images/National%20Integrity%20Systems%20Country%20Study%20Report.%20The%20Netherlands.tcm31-41823.pdf>

7 Hulten, van M. (2010); Hulten, van M. (2011).

8 These figures were made available in 1999, at the time the official name of this ministry was Ministry of Justice. Hulten, van M. (2011).

9 Rijksrecherche (2010), footnote 36.

available. The Corruption Public Prosecutor has indicated that the plan for 2012 is to start to register corruption cases.¹⁰

Study on integrity of local government

In 2010 the research group Integrity of Governance of the VU Amsterdam conducted research into the integrity of local government, i.e. the integrity of politicians and civil servants.¹¹ That research was based on a questionnaire among council clerks and municipal secretaries of Dutch municipalities, with a response rate of nearly 60 percent. The secretary manages the entire civil servants' apparatus in municipalities and is responsible for the design and implementation of the entire integrity policy for the municipality. The study provided an overview of the integrity policies in place, their visibility and effectiveness, as well as an account of integrity problems during the last two years. The main conclusion is that the number of investigations into alleged corruption and fraud at municipalities has increased. In 2010 the total number of corruption and fraud investigations was 301 while the total number in 2003 was 135.¹² The total number of alleged integrity violations in 2010 was 1,320. The researchers consider this to be an indication of increased attention to integrity issues. Of the alleged corruption and fraud cases, 88 percent involved a civil servant. Members of the executive and politicians are less likely to be subject to an investigation because they are outnumbered by the totality of civil servants. There is also the fact that the integrity policies aimed at this group have only recently developed and are, in a sense, somewhat behind.¹³ The research indicated that corruption incidents which involve local councillors are rare. More often, other forms of integrity violations are occurring—for instance, preferential treatment, careless treatment of

information and participation in decision-making when personal interest are involved.¹⁴ The research also showed that the formalised regulations are not adequately made operational. Most municipalities have implemented the legally-required policy instruments. Still, four percent of the municipalities have not implemented any integrity policies. The research indicates that, although most municipalities have a code of conduct and other instruments in place, they do struggle with ensuring that integrity receives permanent attention. Municipalities had difficulty in providing the researchers with the total number of integrity investigations.¹⁵ Overall familiarity with the integrity policies differed. Whereby most civil servants are more aware of the legal provisions which are of a regulating character (oath taken by civil servants, rules on gifts and the code of conduct) than the more recently implemented soft instruments (whistle-blower procedure, duty to report and register).¹⁶

Study on fraud and integrity policies of decentralised governments and the police

Deloitte Forensic & Dispute Services has recently carried out research into the fraud and integrity policies of decentralised governments and the police.¹⁷ This research concerned the fraud and integrity policies of provinces, municipalities, water authorities and the police. It showed that, in general, the legally obligatory integrity policies are set up well. Incorporation of integrity policies into the daily operations, organisational culture and leadership is considered to be weak.¹⁸ Overall, 13.8 percent of the organisations have been confronted with corruption in the previous five years. Among other results, in total 30.8 percent of the organisations have been confronted with conflict of interests and 24.6 percent with favouritism.¹⁹

10 Email exchange with Petra Borst, Senior Legal Officer at the National Public Prosecutors Office d.d. the 31st of August 2011.

11 Heuvel, van den J.H.J., Huberts, L.W.J.C., Wal, van der Z. and Steenbergen, K. (2010).

12 Ibid., p.91.

13 Ibid., p.92.

14 Ibid., p.92.

15 Ibid., p.92.

16 Ibid., p.94.

17 The Fraude- en integriteitsbeleid decentrale overheden en politie. Resultaten onderzoek 2010 investigation was carried out by order of Onderlinge Verzekeringen Overheid U.A.

18 Deloitte Forensic & Dispute Services (2010), p.37.

19 Ibid., p.24.

Study on special investigation services reports of alleged corruption by civil servants

In 2010 the Rijksrecherche (National Police Internal Investigations Department) published its results from research into bribery of civil servants in the civil public sector.²⁰ The Rijksrecherche conducted research into the 221 reports and 73 investigations on the alleged corruption of civil servants. The investigations were done using reports made in the period 2003–2007 by the Rijksrecherche and the special investigation services: FIOD (fiscal investigation) and SIOD (investigation regarding work and income). Some have not yet been completed (by October, 2011). This research showed that it is impossible to conclude to what extent bribery is discovered, investigated and reported if only the alleged criminal cases are considered. In practice, alleged integrity violations in the Dutch public sector are often not formally reported but rather investigated internally or with the involvement of a private forensic investigation company. This even applies to integrity violations which are official crimes. This forms a challenge for getting the overall image of corruption in practice. The study showed that from every 6,000 civil servants, one civil servant's behaviour is reported and one of every 19,000 civil servants is subject to investigation by one

of the three investigation services.²¹ Civil servants from the central government were more frequently subjects of reports or investigation than those from municipalities.²²

Of the 69 civil servants subjected to a Rijksrecherche investigation, 63 maintained functional contact with parties outside the government. In 45 of those, there was a connection between these contacts and the facts which were being investigated.²³ The research also indicated that there are specific risks for civil servants who work in hybrid organisations such as public-private cooperation. Here public and private interests need to be considered within one organisation, which can lead to ethical dilemmas. Of the 221 reports, 89 involved businesses being the external party involved in the alleged bribery. In 47 of the 73 investigations that followed, businesses were involved. This makes businesses the largest category involved in the alleged bribery.²⁴

Figures on integrity violations from the ministries

Since 2005 the Ministry of the Interior and Kingdom Relations (BZK – Ministerie van Binnenlandse Zaken en Koninkrijkrelaties) publishes figures on integrity violations for all ministries (except the Ministry of Defence) in its annual social report.²⁵ In 2010, 959

Most of the 171 reports on alleged corruption of civil servants made at the Rijksrecherche involved the following sectors:

Sector involved in report	Number of reports (of a total of 171)
Building and real estate sector	49
Prison system	37
Border control	25
Admittance, residence and naturalisation of aliens	21

Source: *Niet voor persoonlijk gebruik! Omkoping van ambtenaren in de civiele openbare sector, report by the National Police Internal Investigations Department November 2010, p.11.*

20 Rijksrecherche (2010).

21 Ibid., p.9.

22 One out of 4,000 civil servants at national level shows up in reports, and one out of 14,000 is subject to an investigation. One out of 10,00 civil servants at local level shows up in reports, and one out of 24,000 is the subject of an investigation.

23 Rijksrecherche (2010), p.17.

24 Ibid., p.19.

25 Hulten, van M. (2011). p.124.

alleged integrity violations were reported, of which 566 were classified as substantial integrity violations (compared to 530 in 2009). Of the integrity violations, 118 cases involved the misuse of (financial) resources, 27 cases the abuse of power and conflict of interest, and 22 involved abuse of competencies.²⁶ The total number of disciplinary sanctions in 2010 was 346 (compared to 295 in 2009).²⁷

Report by the Netherlands Court of Audit on the implementation of integrity mechanisms within the ministries

The Netherlands Court of Audit (AR – Algemene Rekenkamer) carried out an audit on the implementation of integrity mechanisms within the ministries in 2004 and 2009.²⁸ In 2010 it reported that there were still ministries which did not report integrity violations adequately.²⁹ Also, for 8 ministries the figures on integrity violations differed from the figures in the social annual report of the Ministry of BZK.³⁰

The main outcome of the 2009 research was that, overall, most ministries have improved on the aspect of ‘hard controls’; most integrity instruments are in place. However, the ‘soft controls’ require increased attention. There is too little attention to the organisational culture, moral awareness and ethical leadership.³¹

Research on the size and nature of corruption and how to deal with it

A well-known study into the size, nature and treatment of corruption in internal and criminal investigations³² was conducted in 2005 by the research group Integrity of Governance of the VU Amsterdam, by order of the Research and Documentation Centre (WODC – Wetenschappelijk Onderzoek- en Documentatie-

centrum) of the Ministry of Security and Justice (VJ – Veiligheid en Justitie). The research on criminal cases concerned the tip of the ‘corruption iceberg’ in the Netherlands. It showed that there were a limited number of criminal cases and convictions each year (about 50 criminal cases, 27 convictions, 8 persons imprisoned). Annually 130 internal investigations were conducted in the public sector each year, of which 61 investigations concerned municipalities. National ministries conducted 43 internal corruption investigations yearly.

In the period 1999–2000 1,550 internal investigations were conducted within the police, of which 25 were directly related to corruption. The average number of internal investigations per 1000 employees varied between 0.31 investigations in municipal politics and administration and 0.06 in semi-governmental organisations. A survey among Dutch police officers showed that 4 percent of police officers came across bribery at least once in their team in the preceding twelve months. Around 19 percent of police officers perceived favouritism towards family and friends at least once in their work environment, and 59 percent perceived favouritism by management.

A similar survey among randomly-selected workers in the Dutch labour force showed similar patterns for corruption: 7 percent encountered bribery, 33 percent favouritism towards family and friends, and 73 percent favouritism by management.³³ The research indicated that most processes of becoming corrupt can be characterised as a ‘slippery slope’. Corruption is rarely caused by an official’s personal problems, such as financial problems. Furthermore, important motives for officials becoming corrupt are, next to material gain, friendship/love, status and making an impression on colleagues and friends.³⁴

26 Sociaal Jaarverslag Rijk 2010, p.27.

27 Ibid., p.28.

28 Algemene Rekenkamer (2010).

29 Ibid., p.12.

30 Ibid., pp.13 and 29.

31 Ibid., pp. 32–37.

32 Huberts, L.W.J.C. and Nelen, J.M. (2005).

33 Ibid., pp. 151–154.

34 Ibid., pp. 151–154.

Study concerning corruption and integrity in the business sector

Research concerning corruption and integrity in the business sector has also been conducted. In 2011, Ernst and Young conducted a European Fraud Survey survey among 2,300 employees of large enterprises in 25 countries, concerning whether the financial crisis would have an impact on business fraud. A total of 26 percent of Dutch respondents believed that bribery was taking place in the Netherlands. Around 31 percent of Dutch managers considered it to be normal practice to give a gift while trying to gain an order. Among Dutch managers, 46 percent confirmed having anti-fraud and/or anti-corruption training in place. In total only 9 percent of employees were aware of these training courses.³⁵ In 2011 PricewaterhouseCoopers published its Global Economic Crime Survey 2011.³⁶ Some 250 Dutch business took parts in this survey. Concerning corruption it became clear that there are indications that Dutch businesses face increasing corruption. The percentage of business facing this problem rose from 5 percent in 2007 to 8 percent in 2011. Another 14 percent said they believed that corruption or bribery occurred in their organisation. Some 25 percent of the respondent corporations interviewed were willing to carry out corrupt activities if that would result in profitable transactions. In the previous twelve months 12 percent of the respondents expressed having had the impression that a another party expected bribes.³⁷ Of the businesses that were active abroad, 12 percent expressed the view that it was impossible to do business abroad without facilitation payments. This number was 6 percent when it only involved doing business domestically.³⁸ Around 75 percent of Dutch businesses said they would not make any compromises when corruption was involved, and when necessary would refrain from any profitable deals.³⁹

CORRUPTION CASES

Real Estate Fraud

The Dutch real estate sector has been stirred up by several fraud cases since 2007. Even though this is not something entirely new to that sector, it is notable that even large and well-known real estate companies have recently become subject to fraud.⁴⁰ In November 2007, 600 inspectors and 30 public prosecutors raided 50 different locations in the Netherlands. Criminal investigations revealed what would be known as the Klimop-zaak. Here embezzlement and corruption is believed to have started in 1995, and only came to light in 2007 when it emerged that pension fund bosses enriched themselves, had been taking bribes in return for passing on confidential information, and had bought and sold property at below market-rates. Two men with leading positions in semi-public bodies in the real estate sector developed major building projects all over the Netherlands. They budgeted for far more than was actually needed.⁴¹ The profits, around EUR 200 million, were channelled into secret accounts. Seventy companies and associations were charged with fraud, including the Philips pension fund, project developer Bouwfonds and the building fund of the Association of Netherlands Municipalities. Corruption and bribery are thought to have cost their employers a combined EUR 250 million. Fifty people, most of whom were senior real estate managers, were accused of fraud, forgery, corruption and money laundering.

Several solicitors believed to have been involved they used their offices to carry out the fraudulent transactions. The court proceedings started in 2009 and are on-going in 2011. One of the main suspects

35 http://www.ey.com/NL/nl/Newsroom/News-releases/PR_Nederlandse-bedrijven-treffen-ontoereikende-maatregelen-tegen-fraude-en-corruptie_180511, consulted 24 September 2011.

36 PricewaterhouseCoopers (2011), p. 20.

37 PricewaterhouseCoopers (2011), p. 20.

38 PricewaterhouseCoopers (2011), p. 21.

39 PricewaterhouseCoopers (2011), p. 21.

40 <http://www.volkskrant.nl/vk/nl/2680/Economie/article/detail/871934/2007/12/07/Philips-panden-naar-Kaaiman.dhtml>; http://www.dutchnews.nl/news/archives/2011/04/property_fraud_payments_mount.ph, consulted 20 September 2011.

41 http://www.dutchnews.nl/news/archives/2011/03/massive_property_development_f.php

agreed to a settlement of EUR70 million, of which the major part needs to be paid back to Philips pension fund.⁴² Two journalists have written a book about this 'monster case'.⁴³

Building sector

Eight municipality civil servants and a Limburg province civil servant were convicted in January 2011 of accepting bribes from the Janssen de Jong Infra construction company.⁴⁴ Their sentences varied from 3 months to a year's imprisonment. A wife of one of the civil servants was sentenced to community service of 240 hours. As part of the investigation, in 2007 homes of Maastricht civil servants were searched and inspectors went through their workplaces. Piles of documents related to the projects were taken from the Maastricht offices by investigators. A former company manager was also convicted and received 14 months' imprisonment. These civil servants gave out confidential information to the construction company concerning invitations to tender. The invitations for tendering dealt with infrastructure projects in the municipalities and province, such as reconstruction and hard-surfacing of roads. The civil servants concerned were rewarded considerably for their illegal

services. Among other things, the civil servants got cash, VIP tickets to sport events and concerts, foreign travel, decoration done to their houses and meals in exclusive restaurants, in exchange for confidential information.⁴⁵ The Dutch Competition Authority NMa has been conducting a simultaneous investigation of construction companies in Limburg. The NMa fined three company managers of two companies personally, and these fines varied from EUR 10,000 to EUR 250,000. In total both companies received a fine of EUR 3 million.⁴⁶

Overall individual studies on corruption show that corruption is not a widespread phenomenon in the Netherlands. Still, it is serious enough to require permanent attention, especially when taking into account the extent to which corruption that is committed is unknown. This is largely because of the fact that alleged integrity violations are often not reported to law enforcement agencies, and that those cases which are reported are then not systematically recorded. Various forms of integrity violations take place which could be considered to fall within TI's definition of corruption. The real estate and building sectors appear to be particularly vulnerable to corruption.

42 <http://nos.nl/artikel/233039-klimopzaak-tweederde-terugbetaald.html>; <http://www.vastgoedmarkt.nl/nieuws/2011/09/16/OM-schikt-voor-miljoen-euro-in-Klimop-zaak>, consulted 24 September 2011.

43 Boon, van der V. and Marel, van der G. (2009). They also published *De Ontknoping, De Vastgoedfraude voor de rechter*, The main suspect was sentenced by the Court in First Instance to 4 years of imprisonment for "theft, forgery, money laundering, bribery, possession of weapons and managing two criminal organisations.

44 <http://www.trouw.nl/tr/nl/4324/Nieuws/archief/article/detail/1837226/2011/01/20/Corrupte-ambtenaren-krijgen-celstraf.dhtml>, consulted 20 September 2011.

45 <http://www.nrc.nl/nieuws/2011/01/19/celstraffen-in-zaak-limburgse-bouwfraude/>, consulted 20 September 2011.

46 http://www.nma.nl/documenten_en_publicaties/archiefpagina_nieuwsberichten/nieuwsberichten/2010/22_10_nma_beoet_drie_leidinggevenden_van_limburgse_bouwbedrijven.aspx, consulted 28 October 2011.

4. ANTI-CORRUPTION ACTIVITIES

In this chapter, the actions taken by the government aimed at fighting corruption and promoting integrity are considered. An overview of the anti-corruption and/or pro-integrity activities of the previous five years will be presented. Special attention will be paid to the Dutch NIS study from 2001 to get an idea of what has been done about the loopholes which were identified then in the Dutch NIS.

NIS Report on the Netherlands 2001

The NIS 2001 showed that there was no system of financial disclosure for politicians and civil servants.⁴⁷ In 2012, there is still no comprehensive law on financial disclosure. The income of politicians is made public. In 2006 the 'Act on the disclosure of top incomes financed by public means' (Wet openbaarmaking uit publieke middelen gefinancierde topinkomens) was enacted. Although there is transparency regarding income, the lack of transparency on assets makes it difficult to monitor whether improper interest plays a role in decision-making processes.

The 2001 NIS report also concluded that there was limited protection of whistle-blowers.⁴⁸ In 2010 the 'Decree on reporting suspicions of abuses in the Government and the Police' (Besluit melden vermoeden van misstand bij Rijk en Politie)⁴⁹ entered into force, which is a revised whistle-blower regulation applicable to the entire government sector and the police. An identical decree on reporting suspicions of abuses became effective for the Defence sector in 2011. In some aspects improvements were made: the position of the confidential counsellor was strengthened and the right

to reimbursement of proceedings costs was introduced. However, the whistle-blower regulations are still considered to be ineffective by politicians, the media and academics. The regulations do not contribute to the effective protection of the whistle-blower, with the effect that internal reporting and investigation of integrity violations is not stimulated.⁵⁰ Protection for whistle-blowers in the private sector is basically non-existent; the only procedure which exists is applicable only to exchange-listed companies.

The previous NIS study also indicated that there were clear differences between the availability of an integrity framework for public servants in general and for political and administrative elites.⁵¹ To some extent these functionaries still successfully oppose integrity provisions for themselves. The limited financial disclosure for high-level officials mentioned earlier can be considered an example in this respect. Additionally, there is no code of conduct or rules on conflict-of-interest for ministers and parliamentarians. However, there are also some improvements to consider. There are rules and registries for gifts, hospitality and side-functions for ministers and parliamentarians. There is no oversight enabling these rules to lead to sanctions.

The 2001 NIS study also pointed out that political party funding was not at all transparent. In 2011 the Minister of BZK presented his 'Proposed bill on the financing of political parties' (WFPP – Wetsvoorstel financiering politieke partijen)⁵². Among other provisions, political parties represented in the Tweede Kamer or Senate will be required to register donations made above EUR 1,000

47 Huberts, L.W.J.C. (2001). National Integrity Systems Country Study Report: The Netherlands, p.32.

48 Ibid., p. 33.

49 Besluit van 15 december 2009, houdende een regeling voor het melden van een vermoeden van een misstand bij de sectoren Rijk en Politie.

50 Interview with Mark Bovens, Professor of Public Administration and Research Director at the Utrecht School of Governance, 7 June 2011; Interview with Ronald van Raak, MP for the political party SP, 31 August 2011; Binnenlands Bestuur (2011). Klokkenluiders kaltgesteld.

51 Huberts, L.W.J.C. (2001). p.33.

52 Kamerstukken II, 2010–11 32 752 nr. 2.

and to disclose donations (to political parties and candidates) above EUR 4,500. The proposed bill does not apply to local political parties or local departments of national political parties. Neither is there a set maximum on the amount of donations, and donations from abroad are allowed.

One of the 2001 report's conclusions was that an independent institution with a more general responsibility for corruption information and advice was missing in the Netherlands. The establishment of the National Office for Promoting Ethics & Integrity in the Public Sector (BIOS) can be regarded as the only partly fulfilling this role.⁵³ BIOS was established to support the public sector in the design and implementation of integrity policies. This is the institution to turn to for information and advice. However, BIOS has no competences as to the collection of information about the extent and nature of integrity problems, nor can it investigate reported integrity violations.

The NIS Netherlands 2001 concluded that "it is remarkable that central government has no clear picture of the extent of the corruption and integrity problem. Data were collected by journalists, not by government agencies." The Tweede Kamer has also emphasised the importance of central registration of corrupt practices by the government. However, in 2011 data on corruption were not collected and registered in such a way, and are therefore not available.⁵⁴

Public involvement in ensuring integrity in the private sector was regarded to be very limited in the previous NIS report. The Dutch government still has a tolerant approach when business interests are at stake. Actions have been taken since the implementation of the OECD Convention on Combating Bribery of Foreign Public

Officials. In 2005 the government established the Task Force Anti-Corruption (Task Force Anti-Corruptie). This task force focussed on corruption abroad. Instruments have been developed to strengthen the cooperation between Dutch embassies and companies to prevent corrupt practices. So far no Dutch company has been brought to trial for committing bribery and corruption abroad. According to the 2011 annual report on the enforcement of the OECD Convention against Bribery, the fight against international corruption seems to have insufficient priority in the Netherlands.⁵⁵

International anti-corruption commitment

The Netherlands ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2001. The Netherlands then ratified the UN Convention against Corruption in 2006. The Council of Europe's Criminal Law Convention on Corruption was ratified in 2002, and the Civil Law Convention on Corruption was ratified in 2007.⁵⁶

(Recent) Anti-corruption activities

It should be noted that individual involvement by ministers seems to matter significantly where anti-corruption initiatives are concerned.⁵⁷ In the past, ministers of BZK have made a difference; the current government has not shown an equal commitment in this field.⁵⁸ The minister of BZK is responsible for coordinating integrity policies. This role is not limited to initiating legislation. It is of particular importance that the minister initiate and stimulate integrity agenda-setting. This proactive role should coincide with facilitating integrity initiatives effectively. The same can be said for corruption prevention, for which the minister of VJ is responsible.

53 Huberts, L.W.J.C. (2001), p.33.

54 Ibid., p.119-120.

55 Hulten, van M. (2010), p.52-60; <http://www.transparency.nl/2010/09/voortgangsrapportage-2010-van-transparency-international-over-de-uitvoering-van-het-oeso-verdrag/>, consulted 23 August 2011.

56 <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=174&CM=1&DF=&CL=ENG>, consulted 21 September 2011.

57 Interview with Alain Hoekstra, Coordinating Policy Advisor & Researcher at National Office for Promoting Ethics & Integrity in the Public Sector – CAOP/BIOS, 24 May 2011; interview with Suzanne Verheij, Policy Advisor at National Office for Promoting Ethics & Integrity in the Public Sector – CAOP/BIOS, 24 May 2011.

58 Freedom and Responsibility Coalition Agreement VVD-CDA, September 2010.

A real effort to curb corruption was made in 2005, when the Dutch government announced anti-corruption measures in its 'White Paper Corruption Prevention' (Nota Corruptiepreventie)⁵⁹, which reflected a more comprehensive view on public integrity. In this action-plan, the government presented its priorities:

- The integrity policy should be aimed at the development of rules and awareness and at securing these;
- A uniform registry for internal investigations into integrity violations (including corruption) is to be implemented;
- There is to be increased attention for signalling integrity violations, among which corruption;
- Strict criminal enforcement of anti-corruption measures is to be implemented;
- A 'platform for corruption prevention' is to be established.

In 2006, the Civil Servants Act (Ambtenarenwet) was amended. Since then all governmental organisations are required to pursue an integrity policy, which includes a mandatory integrity code of conduct aimed at stimulating good conduct by civil servants. Attention is to be paid to stimulating integrity awareness and preventing the abuse of competencies, conflict-of-interest and discrimination.⁶⁰ It is mandatory that this integrity policy be integrated in staff policy by calling attention to it during performance reviews and meetings, and by offering integrity education and training.⁶¹ Ministers are required to report on their integrity policy annually to the House of Representatives (Tweede Kamer).⁶² Additionally, the Civil Servants Act prescribes that further procedures need to be in place which involves a procedure on how

a civil servant should deal with the suspicion of abuse within his organisation.⁶³ The obligation to pursue an integrity policy was equally applicable for decentralised governmental organisations. In 2006 the Municipality Act (Gemeentewet), Province Act (Provinciewet) and Water Authorities Act (Waterschapswet) were amended.⁶⁴ Those respective authorities are now required to have an integrity policy in place which includes a code of conduct. In general, most public authorities (both centralised and decentralised) have integrity policies in place.

The Netherlands AR concluded in its 2010 research on integrity at ministries that more attention should be paid to 'soft controls' such as moral leadership and heightening awareness. The Minister of BZK confirmed the importance of these elements and stated they would get more attention.⁶⁵ Another study of integrity at local level indicated that in municipalities integrity policies were developed, but that also here further attention should be paid to 'soft controls'.

In 2008 the government introduced the model Uniform Registry of Integrity Violations (URI – Uniforme Registratie Integriteitsschendingen). In practice, however, there is no uniform registration procedure for national government organisations.⁶⁶ There are still ministries which do not use the model, and some that do record integrity violations do this differently. An overview of quantitative and qualitative data on integrity violations at ministry-level is therefore not available.⁶⁷

In 2008 the maximum fines applicable to corruption offences were increased. The maximum fine for bribing a Dutch or foreign civil servant was increased from the fourth (EUR 19,000) to the fifth category (EUR 76,000). The Platform for Corruption Prevention was established

59 Kamerstukken 2005–2006, II, 30 374 nr. 2 and nr. 6.

60 Art. 125quater sub a and c Ambtenarenwet.

61 Art. 125quater sub b Ambtenarenwet.

62 Art. 125quater sub d Ambtenarenwet.

63 Art. 125quinquies paragraph 2 sub f Ambtenarenwet.

64 Kamerstukken, VII, 32500 nr.99.

65 Algemene Rekenkamer (2010). Stand van zaken Integriteitszorg Rijk 2009, p.16.

66 Ibid., p.12–13.

67 Algemene Rekenkamer (2010). Stand van zaken Integriteitszorg Rijk 2009, p.13.

in 2004, and consisted of, among other things, representatives from ministries, specialised investigation services, police, provinces, municipalities, Chambers of Commerce, the Confederation of Dutch Industry and Employers, academia and Transparency International Netherlands. The Platform came together several times, and the Dutch authorities reported that these meetings provided a much appreciated forum for the exchange of information and knowledge between representatives of the public and private sector and investigative and prosecution services.⁶⁸ In September 2007 the last meeting was held, because by that time the minister of BZK regarded its merit to be limited.⁶⁹ In 2011 the Platform gathered again several times, but this time with a different composition; namely consisting only of representatives from ministries and investigative and prosecution services, whose composition further depended on the subject on the agenda, together with external parties such as Transparency International Netherlands.⁷⁰

Most of the actions announced in the 2005 White Paper on Corruption Prevention have been initiated. The

current Minister of BZK is involved with the progress made with these instruments. However, there is no up-to-date or permanent anti-corruption strategy with a corresponding timetable for its implementation. Most actions resulting from the White Paper on Corruption Prevention have been taken and are currently being assessed, amended and revised. The prevention of corruption is part of the government's programme against financial economic crimes. As such, extra capacity for law enforcement has been made available. Nevertheless, it is important that anti-corruption remain on the agenda. State budget-cuts lead to the reconsideration of tasks assigned to organisations.⁷¹ There is a risk that the results, which have been achieved by paying attention to integrity will come under pressure or are be assigned lesser priority in times of financial distress.⁷² At moments when employees are threatened by potential job loss, and so the prospect of ending up in financial distress, risks to integrity are likely to increase. The opposite happens, too. Employees want to show their good conduct by reporting an abuse that already existed, they now dare to speak up because they are leaving the situation anyway.⁷³

68 GRECO (2007) First Evaluation Round. Addendum to the Compliance Report on the Netherlands. Strasbourg: GRECO. p.2.

69 Kamerstuk 31 700 VI nr. 10.

70 Interview with key figure 2, Senior policy officer at the Rijksrecherche, 24 May 2011; interview with Petra Borst, Senior Legal Officer at the National Public Prosecutors Office, 6 June 2011; interview with Jack van Zijl, National Public Prosecutor for Corruption at National Public Prosecutors Office, 6 June 2011.

71 Algemene Rekenkamer (2010). Stand van zaken Integriteitszorg Rijk 2009, p.13–14.

72 Interview with Alex Brenninkmeijer, National Ombudsman of the Netherlands, 18 April 2011; interview with Wouter Bos, former Vice Prime Minister, 30 August 2011; interview with Alain Hoekstra, Coordinating Policy Advisor & Researcher at National Office for Promoting Ethics & Integrity in the Public Sector – CAOP/BIOS, 24 May 2011; interview with Suzanne Verheij, Policy Advisor at National Office for Promoting Ethics & Integrity in the Public Sector – CAOP/BIOS, 24 May 2011; interview with interviewee 6, Senior Auditor at the Netherlands Court of Audit, 18 April 2011.

73 Zwijgers, M. (2011), p.20.

5. FOUNDATIONS

POLITICAL-INSTITUTIONAL FOUNDATIONS

To what extent are the political institutions in the country supportive of an effective National Integrity System?

In general, democracy is consolidated and stable, most political institutions function effectively, the political and civil rights of citizens receive adequate protection. Some issues have been identified which need attention for these foundations to remain strong.

Status: Strong

The Netherlands is a constitutional monarchy with a parliamentary system. The country's institutions are stable and ensure the rule of law⁷⁴ and the consolidation of democracy. The Failed States Index 2011 ranks the Netherlands 166th out of 177 countries, with an average score of 28.3.⁷⁵

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 and fair political competition for government offices among political parties and individuals.

However, political party membership plays an important role in the appointment to key positions in public administration. This is treated in an informal way whereby political parties which have proven to be stable (i.e. shown to be able to take on responsibility as a coalition party in government) and which have an interest in these positions grant each other these offices.⁷⁶

Highly-qualified candidates with the required expertise and the desired political party membership are then selected and appointed. Transparency regarding selection and appointment procedures is not always provided. Neither are there specific control mechanisms to prevent politicisation of top civil servants.

On the 9th of June 2010, elections to the House of Representatives (Tweede Kamer) took place. These elections were conducted in the context of a high level of confidence in the election administration. The pluralistic political and electoral system provided voters with a broad choice of diverse political options. The (to a large extent unregulated) campaign and media environment gave political parties adequate opportunities to communicate their views to voters.⁷⁷

According to the Dutch Council for Public Administration (Rob – Raad voor het openbaar bestuur) democratic institutions are accepted by most citizens – that is to say, there is no confidence crisis, but there is a legitimacy crisis. People have confidence in the democratic system, but much less confidence in the way political parties and politicians operate.⁷⁸

According to the Rob, political and governmental institutions still operate in a hierarchical and vertical way, while society has increasingly become horizontal. This leads to a gap between political institutions wanting to make decisions because they were given the mandate and citizens' belief that authority is something which needs to be acquired again. There is a growing number of Dutch citizens who express a strong sense of social and political discontent.⁷⁹

74 Nevertheless, the Netherlands has been convicted 73 times for violations of the Convention for the Protection of Human Rights and Fundamental Freedoms. Please refer to European Court of Human Rights (2010). Country Fact Sheets 1959 – 2010.

75 Foreign Policy(2011). "The Failed States Index 2011."

76 Raad voor het openbaar bestuur (Rob; 2006), p.25–26; Baakman, N. (2003), p.173–197; Erasmus Magazine. De kwestie: 'We hebben een politieke elite, en die elite levert onze bestuurders'.

77 http://www.osce.org/odihr/elections/netherlands/early_parliamentary_2010, consulted 13 June 2011.

78 Raad voor het openbaar bestuur (2010), p.3.

79 <http://www.scp.nl/dsresource?objectid=27915&type=org>, consulted 7 August 2011.

Score of the Netherlands in the Economist Democracy Index over the past few years:

Year	Rank (of more than 150 countries)	Overall score (on a scale from 1 to 10)
2011 ⁸⁰	10	8.99
2010 ⁸¹	10	8.99
2008 ⁸²	4	9.53

According to the Sustainable Governance Indicators 2011 (SGI 2011)⁸³, the steadfast quality of Dutch democracy has diminished. Autocratically-led protest parties draw considerable support from the electorate.

In the Netherlands, the controlling power of elected bodies is generally extensive. The Executive is effectively held to account because of the various constitutional rights of the elected bodies, which include the right to investigate.⁸⁴ In the end, the elected bodies at national, regional and local level can dismiss members of the Executive. However, the way the Openness of Government Act (Wob – Wet openbaarheid van bestuur) is applied by governmental organisations has been seriously criticised by the National Ombudsman, journalists and academics.⁸⁵ They criticise the number of times exceptional grounds are invoked to decline requests for information, and maintain that long legal (appeal) proceedings are required to attempt to receive information. The National Ombudsman describes

current practice as misuse by the government; the Wob is used to create legal grounds for refusal and hinders timely information.”⁸⁶ Another concern is that digital information on citizens collected by governmental organisations is not always adequately managed and secured.⁸⁷ Several incidents have occurred in 2011 which showed that government websites were not sufficiently protected and therefore at risk that personal information of citizens can become public.⁸⁸

Civil rights are guaranteed in the Constitution and in other laws. In general, citizens can seek redress for the violation of their rights because of the strong judiciary and sufficient accountability on the part of government and law enforcement agencies. The SGI 2011 awards the Netherlands with an 8 (on a 1 to 10 scale) for judicial review. However, seeking judicial protection in civil and administrative cases has become more expensive⁸⁹, and objection procedures and procedures at administrative courts may be lengthy, while the reasonable time limit is frequently exceeded.⁹⁰ Some conspicuous failures of justice (on the part of law enforcement and judiciary) have recently led to a public debate about the quality of the justice system, and have led to renewed opportunities to re-open tried cases in which questionable convictions have been delivered.⁹¹ In general, democracy is consolidated and stable, while main political institutions function effectively. Overall, political and civil rights of citizens are assured. Risks to political and institutional support to the National Integrity System are posed by the legitimacy of political parties and politicians being under pressure and citizen’s and media’s inadequate access to government documents.

80 The Economist Intelligence Unit (2011). Democracy index 2011. Democracy under stress, p.3.

81 Ibid., p. 3.

82 The Economist Intelligence Unit (2008). Democracy index 2008. p.4.

83 <http://www.sgi-network.org/index.php?page=category&category=SA>, consulted 13 June 2011.

84 Leijenaar, M. and Niemöller, K. (2003), p.259–277.

85 Radio-broadcast of VPRO’s Argos ‘De WOB op de schop’ of 1 October 2011.

86 Ibid.

87 Klingenberg, A.M. (2011).

88 <http://www.automatiseringgids.nl/nieuws/2011/5/promovendus-geeft-digitale-overheid-onder-uit-de-zak>;

<http://www.nrc.nl/tech/2011/09/03/digitaal-certificaat-het-krakend-slot-op-de-browser>

89 <http://www.rijksoverheid.nl/onderwerpen/rechtspraak-in-nederland/vraag-en-antwoord/hoeveel-griffierecht-moet-ik-betalen.html>, consulted 14 October 2011.

90 <http://fra.europa.eu/fraWebsite/attachments/access-to-justice-2011-country-NL.pdf>.

91 http://www.sgi-network.org/index.php?page=indicator_quali&indicator=S4_2, consulted 13 June 2011.

SOCIO-POLITICAL FOUNDATIONS

To what extent are the relationships among social groups and between social groups and the political system in the country supportive of an effective National Integrity System?

While there are some divisions among social groups, the country lacks significant social conflicts and divisions. Civil society is rather vibrant although its intermediary role between society and the political system varies.

Status: Strong

The social-political foundations in the Netherlands still bear features of pillarisation.⁹² In the first half of the 20th century, Dutch society was vertically'' divided into several segments or pillars'' according to different ideologies (Catholic, Protestant, Social-democratic and Liberal). These pillars all had their own social institutions: their own newspapers, broadcasting organisations, political parties, trade unions, banks, schools, hospitals, and sports clubs. In order to ensure decision-making on important issues, elites of these pillars negotiated and tried to achieve consensus. Although these ideologies have lost a large part of their significance in Dutch society, this striving for consensus is still an important principle in Dutch decision-making. The division between religious believers and the secularised part of the population still exists, but the latter have come to outnumber the former. Ethical issues like abortion, euthanasia, ritual slaughter of animals and Sunday rest lead to discussions in politics and society. The decisions made regarding these issues depend to a large extent on the elected political parties in local and/or national representative bodies.

The Netherlands is a peaceful country, where various groups have been able to get along well for decades.

Notwithstanding that, since the beginning of this century, and in a similar way to other European countries, the country is faced with a rising hostility towards the Muslim minority, even though many of them were born in the Netherlands and/or hold Dutch nationality.⁹³ A considerable part of the Dutch population considers integration to have failed, and the division between Muslims and non-Muslims has increased. This has led to concerns about levels of immigration and integration.⁹⁴ There are various reasons for this, for instance the higher number of crime suspects originating from non-Western countries, the global 'war on terrorism', ethnic segregation in schools and in cities and the rise of a (far) right wing political party. Many senior positions within public administration are still filled by white Dutch citizens, who determine policies without realising the reality of the lives of these citizens of non-Western origin. Public organisations have policies to increase diversity in human resources.⁹⁵

It seems that more divisions have arisen, one of these is between higher-educated people and lower-educated people. In the Netherlands, this phenomenon is referred to as the 'diploma democracy'.⁹⁶ In practice, these two groups exist separately from each other; there is little or no communication between them and overall little understanding of each other's lives. Another dichotomy which is slowly developing is that of the younger (working) part of the population and an older (retired) part. This separation is dictated by the proportional increase of the ageing population and the fear that this will lead to inadequate pensions.⁹⁷ Another division concerns that between men and women in the labour market. Despite major improvements in women's labour market participation, women still earn considerably less than men.⁹⁸ On average, women in the Netherlands earn 18 percent less than men, 7 percent of which cannot be explained on the basis of objective differences such as

92 Lijphart, A. (1990).

93 <http://www.nytimes.com/2005/10/16/world/europe/16iht-islam1.html?pagewanted=all>, consulted 20 September 2011

94 <http://vorige.nrc.nl/international/article2560403.ece>; <http://www.nrcnext.nl/blog/2011/07/11/gezinshereniging-komt-uit-de-rechtse-kerk/>, consulted 20 September 2011.

95 <http://www.inoverheid.nl/artikel/nieuws/1949913/nog-te-weinig-allochtone-managers-bij-overheid.html>

96 Bovens, M.A.P., Wille. A.C. (2010).

97 http://www.scp.nl/english/Publications/Publications_by_year/Publications_2010/Wellbeing_in_the_Netherlands, consulted 20 September 2011.

98 <http://www.eurofound.europa.eu/eiro/2007/02/articles/nl0702029i.htm>, consulted 20 September 2011.

the part-time factor or the fact that a limited number of women are in management.⁹⁹ Social, ethnic, religious and other conflicts rarely occur in the Netherlands. Minority rights are adequately protected in the country, but they have come under pressure because of the anti-Muslim sentiments in Dutch society. In 2010 the Council of Europe Commissioner for Human Rights expressed his concerns about increasing racist, anti-Semitic and other intolerant tendencies in the Netherlands. In June 2010, legislation was passed obliging municipalities from the 1st of January 2010 to collect data about discriminatory incidents, and to provide access to a support services for those who wished to report discrimination.¹⁰⁰

There is a stable, moderate, socially-rooted party system to articulate and aggregate societal interests. There is also a network of cooperative associations or interest groups which mediate between society and the political decision-makers. The Netherlands is also known for its large civil society, but not all civil society organisations (CSO) are equally strong and vibrant. There are no typical 'patron-client relationships' in society. The political elite still exists but is less exclusive than it used to be. In the context of the Civil Society Index (CSI), the World Alliance for Citizen Participation (CIVICUS) reports that Dutch civil society is active and operates in a well-organised, enabling environment. However, a number of negative trends were also identified. In recent years a shift was noticed concerning the government's less-accommodating style towards interaction with CSO. Additionally, civil society's role in maintaining social cohesion in the light of growing social tensions is lacking.¹⁰¹ In general, social divisions do exist in the Netherlands but the country lacks significant social conflicts. Dutch civil society is strong, but it barely plays a role in ensuring social cohesion. The political culture is open and inclusive.

SOCIO-ECONOMIC FOUNDATIONS

To what extent is the socio-economic situation of the country supportive of an effective National Integrity System?

In general, the country is rather rich without major social inequalities. Social safety nets for the poor exist and are generally effective. The country's economy and business sector have proven to be very sustainable.

Status: Very strong

The Netherlands is regarded by the International Monetary Fund as an advanced economy.¹⁰² The Netherlands numbers among the top six SGI countries in terms of the highest per-capita GDP.¹⁰³

The country's overall economy performs very well. The Netherlands emerged from a deep recession in mid-2009 and the recovery is still frail.

In 2010 the Dutch economy recorded a positive GDP growth of 1.8 percent. Net exports proved to be one of the main drivers of economic growth, as the very open Dutch economy benefited from the strong recovery in world trade.

The business sector is strong and willing to become sustainable. However, according to the Dutch Central Bank (DNB – De Nederlandsche Bank) the overall picture of financial stability in the Netherlands is diffuse, where a cautious recovery is offset by major uncertainties.¹⁰⁴

In the Global Competitiveness Index 2011–2012 of the World Economic Forum, the Netherlands is ranked 7th out of a total of 142 states (8th position in 2010–2011).¹⁰⁵

99 <http://www.eurofound.europa.eu/eiro/2008/04/articles/nl0804029i.htm>, consulted 20 September 2011.

100 <http://www.amnesty.org/en/region/netherlands/report-2010>, consulted 12 June 2011.

101 <http://www.civicus.org/news-and-resources/reports-and-publications/csi-reports/europe-country-reports/372-the-netherlands>, consulted 13 June 2011.

102 <http://www.imf.org/external/np/ms/2011/032811.htm>, consulted 20 September 2011.

103 Sustainable Governance Indicators (2011). Economy and Employment. p. 8.

104 http://www.dnb.nl/en/binaries/Overview%20of%20Financial%20Stability%20in%20the%20Netherlands%20-%20November%202010_tcm47-242463.pdf

105 The Global Competitiveness Report 2011–2012 p.15.

In the WEF's Global Enabling Trade Report 2010¹⁰⁶ the obstacles to trade are assessed and a reminder of the fundamental attributes that govern a nation's ability to fully benefit from trade are provided. This report ranks 125 economies on different aspects of trade and provides the following picture of the Dutch economy:

Overall index	Market access	Border administration	Transport and communications infrastructure	Business Environment
Rank: 10	Rank: 85 ¹⁰⁷	Rank: 4	Rank: 4	Rank: 17

The Dutch attempt to simplify administrative procedures¹⁰⁸ could help to strengthen the economy by reducing the administrative burden for businesses.¹⁰⁹

In 2009, the unemployment rate increased slightly to 3.7 percent and further to 4.5 percent in 2010, which is still rather modest given the size of the contraction in output during the economic and financial crisis. The tight labour market from before the crisis played an important role, as employers were reluctant to fire staff given the difficulties of attracting and retaining qualified workers before the crisis. The government played an important role. A special subsidy to keep

staff employed was offered to companies that had severe problems due to the crisis. The unemployment rate is expected to increase in 2014 to 7.25 percent.¹¹⁰ The Netherlands ranks 7th in a global comparison of equality between wealth and poverty.¹¹¹ In 2006, 8 percent of the population was living in poverty, with children comprising a large portion (11 percent) of this figure.¹¹² The risk of poverty is higher for single-parent households, the elderly and non-western immigrants. Although the number of rich people and the number of relatively poor people have both increased, wealth is fairly evenly distributed among the population. A large majority (86 percent) of the Dutch people assess their financial situation as 'good' or 'very good'.¹¹³ The Netherlands has a comprehensive welfare state. The Netherlands ranks in the top 5 for overall social spending in Europe.¹¹⁴ Basic necessities of life, including adequate food, shelter, clean water and access to primary health care are effectively guaranteed in the Netherlands. Adequate social safety nets exist to compensate for unemployment and retirement and other risks such as illness and disability.¹¹⁵

In the economic sphere, performance largely remains stable at moderately high levels, although the crisis has constrained economic policy and the fiscal situation. Major reforms, especially in health care and the pension system, suggests that changes in social affairs are under way.¹¹⁶ The coverage ratio for many pension funds is under pressure and it is likely that pensions will be much lower in practice than expected. This brings along with it the risk that citizens' trust in

106 The Global Enabling Trade Report 2010.

107 The Netherlands, similar to all other European Union (EU) member-states, owes this low position to the highly complex common external tariff schedule of the EU and the frequent recourse to non-tariff measures.

108 http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2010/12/29/000334955_20101229040043/Rendered/PDF/586970NEWS0Box1etherlands001PUBLIC1.pdf

109 http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2011/01/19/000356161_20110119020959/Rendered/PDF/589580AR0Doing1Box0358368B01public1.pdf

110 <http://www.cpb.nl/cijfer/kerngegevens-2011-2015-voor-het-concept-cep-2012>

111 <http://hdrstats.undp.org/en/indicators/67106.html>

112 http://www.sgi-network.org/index.php?page=countries_status&country=NLD&pointer=11#point_1, consulted 20 September.

113 http://ec.europa.eu/public_opinion/archives/eb/eb74/eb74_nl_nat.pdf

114 <http://www.cbs.nl/nl-NL/menu/themas/arbeid-sociale-zekerheid/publicaties/artikelen/archief/2011/2011-3472-wm.htm>, consulted 20 September.

115 <http://www.eurofound.europa.eu/emire/NETHERLANDS/SOCIALSECURITY-NL.htm>, consulted 20 September 2011.

116 http://www.sgi-network.org/index.php?page=countries_keyfindings&country=NLD

institutions will be harmed. In the meantime, new tensions have arisen because the government wants to transfer responsibilities to the municipalities, while these municipalities have to contribute their share to budget cuts at the same time, mainly in care and welfare. A majority of municipalities are against these changes.^{117, 118}

In general, the country is rather rich, without major social inequalities. Social safety nets for the poor exist and are generally effective. The country's economy and business sector have proven to be very sustainable.

SOCIO-CULTURAL FOUNDATIONS

To what extent are the prevailing ethics, norms and values in society supportive of an effective National Integrity System?

Society is characterized by high levels of interpersonal trust, public mindedness and support for norms of integrity and ethical conduct. While there are some concerns on the deterioration of norms and values, these are being challenged by the public.

Status: Strong

The general level of trust in the Netherlands is relatively high.¹¹⁹ According to data from 2010, 67 percent of the Dutch population believed that other persons could be trusted. The level of trust is higher among those who are highly-educated compared to those who are lower-educated. Democratic values are respected within society, but trust in political institutions is lower; as

around 50 percent of respondents trust political parties and politicians.¹²⁰ In 2012 the marks given for trust in politicians and political parties were 5.2 and 5.3.¹²¹ Confidence in the judiciary in the Netherlands, compared to other EU member states, is high.¹²² In the period 2002–2008 the social and institutional trust increased slightly, reflecting individuals' sentiments that they can be less cautious in their contact with others.¹²³ Similar to previous years, 96 percent of the Dutch population is 'satisfied' or even 'very satisfied' with the life they lead (average satisfaction rate in Europe is 78 percent).¹²⁴

A survey from 2009 on the way children are raised, showed that 47 percent of Dutch citizens are critical about the way the sense of values are transferred by parents to their children.¹²⁵ A quarterly survey among Dutch citizens shows that in the last quarter of 2011 'living together' and 'norms and values' are perceived to be the number-one biggest problems in the country ('living together' and 'norms and values', 19 percent, compared to second major concern: income and economy', 16 percent).¹²⁶ The same survey also indicated that 'living together' and 'norms and values' is also mentioned as the things, which Dutch citizens are most proud of ('living together' and 'norms and values' 17 percent, compared to the second thing most proud of: 'freedoms', 11 percent).¹²⁷ In some cases a mixed picture arises. When referring to it as the 'biggest problem', Dutch citizens specified a lack of norms and values, intolerance, mentality, complaints culture and materialism. When referring to it as the 'most proud', Dutch citizens specify this solidarity, helpfulness, tolerance, openness and mentality.¹²⁸

117 <http://www.vng.nl/eCache/DEF/1/02/637.html>, consulted 10 September.

118 <http://fd.nl/Archief/2011/05/09/steeds-meer-gemeenten-tegen-bestuursakkoord>, consulted 18th of June 2011.

119 <http://www.cbs.nl/nl-NL/menu/themas/bevolking/publicaties/artikelen/archief/2012/2012-3551-wm.htm>, consulted 14 January 2012.

120 Raad voor het openbaar bestuur (2010).

121 <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=80518NED&LA=NL>, consulted 14 January 2012.

122 <http://www.scp.nl/dsresource?objectid=19561&type=org>, consulted 18 June 2011.

123 Centraal Bureau voor de Statistiek. (2010). Vertrouwen in medemens en instituties toegenomen aan het begin van de 21^e eeuw, p.44.

124 http://ec.europa.eu/public_opinion/archives/eb/eb74/eb74_nl_nat.pdf

125 Motivaction (2009). p. 3.

126 Continu Onderzoek Burgerperspectieven. Burgerperspectieven 2011/4, p.7.

127 Ibid., p.8.

128 Ibid., p. 19–20.

Since 2007, a growing number of Dutch believe that corruption is widespread in their country. In 2010 51 percent of the respondents believed that the level of corruption had increased (compared to the EU average of 73 percent).¹²⁹

The private/business sector is believed to be the most affected by corruption (3.1 on a scale from 1 being not at all corrupt to 5 being extremely corrupt), which is followed by political parties and public officials/civil servants (both 3 on the scale from 1–5).¹³⁰

The education system is believed to be the least corrupt (2.4 on the scale from 1–5). In a 2009 survey, 56 percent of Dutch respondents agreed with the statement that there is corruption in the country's national institutions (EU mean 83 percent). When the same statement concerned regional and local

institutions, practically the same figures were produced (56 and 59 percent).¹³¹ Officials issuing building permits are believed to be involved in bribery and corruption.¹³²

Corruption is believed to be caused by the lack of transparency in public spending.¹³³ It is difficult to explain this increase. This might be related to the few corruption cases which got a lot of attention in the media, but it can equally be caused by other factors such as the number of times respondents were confronted with corrupt practices themselves.

Dutch society is characterised by relatively high levels of trust, public mindedness and support for norms and values. While mistrust or lack of norms and values are not uncommon, they are being challenged in public.

129 Transparency International (2010). Global Corruption Barometer 2010I, p.41.

130 Ibid., p.44.

131 Attitudes towards corruption. Eurobarometer (2009), p.14.

132 Ibid., p.29.

133 Ibid., p. 34–35.

6. PILLARS

6.1 LEGISLATURE

Role in the NIS

The legislature is considered an independent and co-equal branch of government along with both the judiciary and the Executive. The purpose of this separation of powers is to prevent tyranny, which is arbitrary or unfair government action that can result when one person has all the power to make, enforce, and interpret the laws. Each branch's power is to be separate, but not absolute. The legislature has the exclusive power to pass, amend, and repeal laws, and it has the exclusive authority to adopt the budget. A strong NIS consists of adequate checks and balances. These are powers that each branch has for limiting the power of the other branches. In this NIS the three branches of government will be assessed. In this chapter the legislature will be understood as the representative deliberative assembly with the power to adopt laws, i.e. parliament. Parliament members have been voted in by the people through election. In a parliamentary system of government, the legislature is formally supreme and appoints the Executive. Besides its role in enacting legislation, the legislature has the task of controlling the Executive. It plays an important role in scrutinising the Executive's conduct and addressing those situations in which the Executive has not carried out its task appropriately. In doing so, this institution is likely to monitor whether the Executive acts with integrity. If this is not the case, then the legislature will have to hold the Executive accountable via one of its many constitutional rights. For the pillar to be strengthening the NIS, it not only monitors the Executive's conduct, but it also has to show its proactive role in the legislation process; i.e. laws aimed at ensuring integrity need to be enacted. Additionally, the legislature has to act with integrity itself and lead by example, since it represents the people. In order to ensure these three tasks are fulfilled, basic conditions need to be fulfilled. For instance, the legislature has to have adequate resources for carrying out its tasks and be independent in practice of the other branches of government. In this chapter the legislature at national level will be considered (Tweede Kamer der Staten Generaal).

Sources

The desk research for this pillar was carried out by analysing the constitutional and statutory provisions regarding the Tweede Kamer. The 2009 Parliamentary self-reflection was a valuable source because here the issues concerning the Tweede Kamer were mentioned from its own perspective. Academic articles and media coverage provided an outsider's perspective on the way the Tweede Kamer carries out its tasks, as well as an external observer's perspective. In-depth interviews were held with a current MP, a former MP and a member of staff of one of the parliamentary groupings. To get an outsider's perspective on the Tweede Kamer a lobby advisor, among others, was interviewed. One interview was done by telephone.

- Ferd Crone, Mayor, City of Leeuwarden and former MP for the political party PvdA, interview held the 17th of March 2011;
- Anton Jansen, Partner and senior consultant at EPPA Politiek en Lobby Consultants, interview held the 19th of May 2011;
- Ronald van Raak, MP for the political party SP, interview held the 31st of August 2011 via telephone;
- Joost Sneller, Policy Coordinator of Tweede Kamer parliamentary grouping D66, interview held the 21st of April 2011;
- Guusje ter Horst, President of the Netherlands Association of Universities of Applied Sciences (HBO-raad), member of the Senate for the political party PvdA and former Minister of the Interior and Kingdom Relations, interview held the 2nd of May 2011;
- Ivo Thomassen, Senior Policy Advisor, Directorate of Public Administration at the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.

LEGISLATURE

Status: Strong**Summary**

The legislature is a key actor in the Dutch National Integrity System due to its role in overseeing the activities of the Executive. The Tweede Kamer plays an important role in deciding its own budget. There is a rapid turnover of MPs. The assessment also found that the workload of the legislature is high, which is largely due to the limited human resources for parliamentary groupings. Parliamentary self-reflection showed that extra resources and support are required. These will not only be gained by allocating extra resources but also by strengthening cooperation within the Tweede Kamer.

The Tweede Kamer's independence is safeguarded through constitutional and statutory provisions. The fact that there are no rules on lobbying could potentially harm the independence of the Tweede Kamer. The assessment finds that the oversight powers set in law are under pressure in practice, mainly because of the limited possibilities to scrutinise the financial interests of members of the Executive and the fact that the quality of information provided by the Executive is not always guaranteed. The fact that the Executive is normally made up of a coalition of the larger parties in the legislature means that the legislature is rather dominated by the Executive. This sometimes leads to tensions which limit the ability of the legislature to hold the Executive to account. On a positive note, the legislature plays a determining role regarding the state budget and appointments of key positions within NIS institutions. Although a variety of provisions have been introduced to help safeguard the integrity of the legislature (for example the duty to register gifts, side-functions and travels), most members of the legislature have been reactive rather than proactive in addressing corrupt and unethical practices. Accountability is ensured through the lines

of accounting to the respective political parties and by means of the media, which play an important role in holding MPs accountable for their conduct.

Structure and Organisation**Legal and Regulatory Framework**

An important principle of the Dutch system of government is the mixture of separation and sharing of powers between the legislative, executive, and judicial branches. The legislative power is shared by the government and both chambers of Parliament.¹³⁴ The government also constitutes the executive branch, and it initiates most legislation. However, the Parliament as the legislative branch passes or rejects legislation, including bills proposed by the government. In addition, any member of the Tweede Kamer is entitled to propose a bill (called: an initiative bill) which becomes an act if it is adopted by Parliament and after ratification by the government.¹³⁵ General acts are usually followed by an execution decision or order called a 'general administrative order' (AMvB – Algemene Maatregel van Bestuur), royal decree (KB – Koninklijk Besluit) or 'ministerial order' (Ministeriële Regeling).¹³⁶ Both of these are enacted by the government; there is no role for the Tweede Kamer. The government ensures that legislation which is approved by Parliament is put into practice, while Parliament scrutinises whether and how this is done.

Bicameral Parliament

The Dutch bicameral Parliament consists of the Tweede Kamer, which consists of 150 Members of Parliament (MPs), and the Senate (Eerste Kamer der Staten-Generaal) which consists of 75 Senators.¹³⁷ The Tweede Kamer is voted directly by the Dutch citizens, while the Senate is voted indirectly via the provincial elections. Elections take place every 4 years except in the case of the dissolution of the Tweede Kamer.¹³⁸ Political parties make available their candidate lists and, after elections, the new MPs form separate parliamentary

¹³⁴ Art. 81 Grondwet

¹³⁵ Art. 87 Grondwet

¹³⁶ http://eur-lex.europa.eu/n-lex/info/info_nl/index_en.htm

¹³⁷ Art 51 Grondwet; <http://www.overheid.nl/english/aboutgov/democracy/representation>, consulted 23 February 2011.

¹³⁸ Art. 52 and 64 paragraph 1 Grondwet

groupings (based on political parties). These parliamentary groupings play a decisive role in the Tweede Kamer. When votes are cast in the Tweede Kamer, it is generally only recorded which parliamentary groupings were in favour or against.¹³⁹

MPs

Individual membership can end in the case of the death of a MP, when the MP resigns, if one of the constitutional requirements for MPs is no longer met or when a MP takes on a position which is incompatible with his position in the legislature.¹⁴⁰ The Tweede Kamer has the right to adopt or reject a bill or to make amendments and motions to pending bills (introduced by the government). The Council of State (RvS – Raad van State) provides the government with independent advice on all bills introduced in Parliament by the government.¹⁴¹ If MPs propose their own initiative bill, the RvS will also provide independent advice. The Senate lacks the right of amendment. After legislation has been approved by the Tweede Kamer, the Senate can either accept or reject the proposal.¹⁴² The Tweede Kamer has the important task of scrutinising the decisions made by the government and the individual ministers.¹⁴³

ASSESSMENT

Resources (law)

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

Budget

The Standing Orders of the Dutch House of Representatives (Reglement van Orde van de Tweede Kamer der Staten-Generaal) prescribe that the Presidium (the President of the Tweede Kamer and the Vice Chairmen of the parliamentary groupings) sends an overview of the estimated costs for the coming year to the Tweede Kamer and to the minister of the Interior and Kingdom Relations (BZK – Minister van Binnenlandse Zaken en Koninkrijksrelaties).¹⁴⁴ The Tweede Kamer verifies and decides on this proposed budget. Part of this estimation is the state funding of the parliamentary groupings.¹⁴⁵

The 'Regulation covering financial support to parliamentary groupings of the House of Representatives' (Regeling financiële ondersteuning fracties Tweede Kamer) prescribes how the budget for each parliamentary grouping should be determined. A formula is used in which the total number of seats is a determining factor. After the government agrees to the proposed budget, it becomes part of the general budget. The Presidium has the overall responsibility for allocating the budget. The registrar, who is appointed and dismissed by the Tweede Kamer, is in charge of budget supervision and for appointing civil servants to the Tweede Kamer.¹⁴⁶

Human resources

The Tweede Kamer often meets in (standing) committees. Each committee is supported by a clerk and one or more deputy clerks.¹⁴⁷ The Standing Orders prescribe that Parliament is to establish further rules on assuring support from the 'Bureau Reports and Editors' (Dienst Verslag en Redactie). Standing orders have been made on support for the Tweede Kamer.¹⁴⁸

¹³⁹ Hout, van der E., Voerman, G. and Woude, van der W. (2007), p.128.

¹⁴⁰ Art. 57 paragraph 2 Grondwet.

¹⁴¹ Art. 82 Grondwet; http://www.raadvanstate.nl/the_council_of_state/

¹⁴² Art. 85 Grondwet and http://www.houseofrepresentatives.nl/how_parliament_works/how_a_bill_becomes_law/index.jsp, consulted 29 April 2011.

¹⁴³ <http://www.houseofrepresentatives.nl>

¹⁴⁴ Art 10 paragraph 1 of the Reglement van Orde van de Tweede Kamer der Staten-Generaal.

¹⁴⁵ Regeling financiële ondersteuning fracties Tweede Kamer.

¹⁴⁶ Articles 10, paragraph 2 and 13 and of the Reglement van Orde van de Tweede Kamer der Staten-Generaal.

¹⁴⁷ Art.15 of the Reglement van Orde van de Tweede Kamer der Staten-Generaal.

¹⁴⁸ Reglement voor de Dienst Verslag en Redactie.

Support is ensured in several ways: through stenographic summaries and minutes-taking, the recording of meetings, editing of research reports, safeguarding the storage of documents and assuring the required information from the Tweede Kamer is made public.¹⁴⁹ The Registry and Legislation Bureau (Griffie/Bureau Wetgeving) is required to assist MPs in drafting initiative law proposals or amendments. An MP can request legal and technical assistance from civil servants from the ministries if they want to make an amendment or initiative law proposal.¹⁵⁰ The President of the Tweede Kamer is responsible for order and the practical aspects of the parliamentary process (e.g. the voting, sending law proposals to the Senate).¹⁵¹

There are sufficient provisions in place to ensure that the Tweede Kamer has adequate resources to effectively carry out its duties. These provisions are formalised, and the Tweede Kamer has a formal right to decide on its own budget and the appointments of its key positions.

RESOURCES (IN PRACTICE)

To what extent does the legislature have adequate resources to carry out its duties in practice?

Budget and Parliamentary Committees

In the Sustainable Governance Indicators, the Dutch legislature currently has the 18th position of a total of 31 countries on the aspect of resources available and the functioning of the committee system.¹⁵² The Netherlands is considered to be part of the 'lower middle group' on the aspect of the legislature's resources. The parliamentary committees have become less efficient compared to 2009 and although staff resources are relatively plentiful compared to 'group

members', attention needs to be given to the Tweede Kamer's resources in order for the legislature to stay efficient in the way it carries out its task.¹⁵³ The Tweede Kamer's budget for 2011 is approximately EUR 113 million (EUR 21.4 million compensation for MPs, EUR 90.4 million on legislative and controlling tasks and EUR 1.5 million on legislation and controlling for the Tweede Kamer and Senate). This is somewhat less than the estimate for 2010: EUR 116 million (EUR 21.4/EUR 93.0/EUR 1.5 million) and then spending in 2009: EUR 114 million (EUR 21.5/EUR 91.2/EUR 1.2 million).¹⁵⁴

Workload

One development which needs to be regarded in this respect is the increase in the information Dutch MPs receive. This varies from governmental documents to letters and emails from institutions, organisations and citizens. Additionally, they have to read several newspapers, magazines and reports to keep up with societal developments and current affairs. MPs also need to be present at the meetings of their parliamentary grouping and attend the plenary and committee meetings.¹⁵⁵ This results in workload being high for an individual MP. The increasing influence of (social) media on MPs' duties has had an effect: such media are widely used by MPs to show how closely they scrutinise the decisions of the government. This increase in information to process and the intensive-communication with media put MPs under constant time constraints. For most MPs this means that they increasingly depend on their staff members for preparing and carrying out their work.

Parliamentary self-reflection

In 2009 the Tweede Kamer presented a report on parliamentary self-reflection.¹⁵⁶ In 2007 an MP had asked for it in a motion because the position, reputation and ways of working of the Tweede Kamer

149 Art.24 of the Reglement van Orde van de Tweede Kamer der Staten-Generaal and art. 1–4 Reglement voor de Dienst Verslag en Redactie.

150 Aanwijzingen voor de regelgeving (294 and 298).

151 Art. 90 to art. 117 of the Reglement van Orde van de Tweede Kamer der Staten-Generaal.

152 <http://www.sgi-network.org/index.php?page=criteria&criteria=M10>, consulted 1 May 2011.

153 Ibid.

154 Kamerstuk 32370 nr.2.

155 Enthoven, G.M.W. (2011), p. 47.

156 Tweede Kamer (2009). "Confidence and self-confidence: Parliamentary self-reflection: findings and follow-up 2009."

were the subject of a public debate.¹⁵⁷ In its self-reflection, the Tweede Kamer concluded that extra resources and support are a necessity. It would like to receive more personnel and other support for MPs. Means suggested were hiring additional staff for the parliamentary groupings and using interactive methods involving new media. It was also suggested that MPs could use the support of organisations and services more often to assess the value of the information they receive or could call upon the parliamentary bureaucracy more often for assistance. The rapid turnover of MPs and their short time in office (in 2010 on average 3.8 years) require extra training and guidance for new MPs. One expert argued that the lack of 'collective memory' in the Tweede Kamer was noticeable when talking with new MPs on long-standing topics.¹⁵⁸ He explained how it all depends on the individual more-experienced MPs to assist new MPs getting acquainted with the way the Tweede Kamer works and sharing their collective memory on complex themes.¹⁵⁹

As of 2010, parliamentary groupings receive an additional budget (EUR 23.4 million in 2011, compared to EUR 22.2 million in 2010) and training is provided to increase MPs' knowledge of government and rules of procedure.^{160, 161} The Tweede Kamer considers that this should not only be done by means of rules, procedures, extra staffing and money. Also, effective and efficient cooperation between people can make a difference. The Tweede Kamer is also called upon to make more selective use of emergency debates; as their rise in number creates problems for the Parliamentary calendar.¹⁶²

Human resources

The total employment of civil servants in the Tweede Kamer has decreased slightly, from 560.7 in 2010 to 553.5 full-time equivalent in 2011. The figures on the number of staff for parliamentary groupings show a mixed image: 368 members of staff in 2004, 436 in 2009 and 377 in 2010.¹⁶³ The real figures from 2007 onwards are considered to be higher; one political party does not provide its staffing information.

The experts explain that on average an MP has one member of staff at his disposal and some support from a secretary.¹⁶⁴ Staff members are often young people who have recently graduated.¹⁶⁵

According to one of the experts, the budget for parliamentary groupings does not allow you to hire more senior members of staff.¹⁶⁶ Otherwise, these younger staff members are often ambitious and very professional in their work. The workload is described as 'enormous' because MPs have broad portfolios, receive a huge amount of information from ministries and also consider it important to communicate with other MPs, citizens and interests groups.¹⁶⁷

The expert considers limited support also to have an advantage: MPs need to do their work themselves and therefore have to read and write the information themselves. However, there does not seem to be an even balance between the number of civil servants who deal with a certain topic within a ministry and the number of staff members which assist an MP with an even-larger topic.¹⁶⁸

157 Kamerstuk 30996, nr. 9 Motie van het lid Schinkelshoek C.S.2 July2007.

158 Interview with Ferd Crone, former MP for the political party PvdA, 17 March 2011.

159 Ibid.

160 Tweede Kamer. (2009), p.22.

161 http://www.tweedekamer.nl/images/artikel_ND_24_juni_118-215706.pdf

162 Tweede Kamer (2009), p.17 and following; Bandelow, N.C., Hoppe, R., Hoppe, T. and Woldendorp, J. (2011), p.33.

163 Tweede Kamer der Staten-Generaal, Jaarcijfers 2010.

164 Interview with Joost Sneller, Policy Coordinator of the House of Representatives' parliamentary grouping D66, 21 April 2011; interview with Ferd Crone, former MP for the political party PvdA, 17 March 2011.

165 Luyendijk, J. (2010), p.49.

166 Interview with Joost Sneller, Policy Coordinator of the House of Representatives' parliamentary grouping D66, 21 April 2011.

167 Interview with Ferd Crone, former MP for the political party PvdA, 17 March 2011.

168 Luyendijk, J. (2010), p.49; Enthoven, G.M.W. (2011), p. 644.

As an exception, support can be provided by civil servants from the ministries if MPs are drafting an initiative bill. This support is available to all parliamentary groupings. One expert described this as a complicated and long process. He experienced himself the excellent support of civil servants from the Ministry of Finance in drawing up his proposal. Civil servants are said to be very professional and to help MPs with considering the practical implications and the legal wording of the initiative bill. Nevertheless, this takes up a lot of money and capacity.¹⁶⁹

Generally speaking, the basic resources for the legislature are present; the dynamics involved with the rapid turnover of MPs require extra resources. The current available resources lead to a certain degree of ineffectiveness in the way the legislature carries out its duties.

INDEPENDENCE (BY LAW)

To what extent is the legislature independent and free from subordination to external actors by law?

Constitutional safeguards

The Tweede Kamer can be dissolved by royal decree¹⁷⁰ in the following circumstances: if a proposed constitutional reform¹⁷¹ is accepted or in the exceptional case where the King/Queen dies and there is no successor to the Crown.¹⁷² The Tweede Kamer can also be dissolved if the government resigns after the Tweede Kamer has expressed its lack of confidence, or if there is a serious internal conflict in the government. In these circumstances it is common to hold new elections. The Constitution states that one cannot simultaneously be a member of the Tweede Kamer and the Senate. The office of MP is also incompatible with

that of: minister, state secretary, member of the AR, National Ombudsman or that of Procurator-General or Advocate-General at the Supreme Court.¹⁷³

Appointments

The President of the Tweede Kamer is voted during the first plenary meeting of the newly-elected Tweede Kamer. The candidates for this position are MPs.¹⁷⁴ If the presidency becomes vacant in-between elections, the same procedure is followed, but then the profiling and the actual election are done by the Tweede Kamer in the same composition. One of the vice-presidents of the Tweede Kamer (part of the Presidium) will take on the interim presidency.

Standing Committees

At the start of the installation of the newly-elected Tweede Kamer, it sets up standing committees for each ministry except for General Affairs, but with the addition of a Committee for European Affairs and Kingdom Relations.¹⁷⁵ The President of the Tweede Kamer decides on the number of MPs per standing committee and appoints the members and their substitutes, but the parliamentary groupings can decide differently.¹⁷⁶ The Tweede Kamer can also set up general committees (for highly-important topics related to several ministries) and temporary committees. Additionally, the Tweede Kamer sets its own agenda for the plenary meetings as proposed by the President of the Tweede Kamer or by an MP.¹⁷⁷ The Tweede Kamer is summoned for a plenary meeting as frequently as the President of the Tweede Kamer considers this to be necessary. The President of the Tweede Kamer can also summon the Tweede Kamer 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 for it.¹⁷⁸

169 Interview with Ferd Crone, former MP for the political party PvdA, 17 March 2011.

170 Art. 64 Grondwet.

171 Art. 137 paragraph 3 Grondwet.

172 Art. 30 Grondwet.

173 Art. 57 Grondwet.

174 Art. 61 paragraph 1 Grondwet and art.4 of the Reglement van Orde van de Tweede Kamer der Staten-Generaal.

175 Art. 15 and following, Reglement van Orde van de Tweede Kamer der Staten-Generaal.

176 Art. 25 Reglement van Orde van de Tweede Kamer der Staten-Generaal; Hout, van der E., Voerman, G. and Woude, van der W. (2007), p.128.

177 Art. 54 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

Liabilities

MPs vote without 'burden' which means their voting is based on their own insights and consideration, and no discussion with their supporters is required.¹⁷⁹ MPs have immunity from criminal prosecution and/or civil litigation for everything they say during plenary and committee meetings and for their written statements in the Tweede Kamer. This parliamentary immunity is a constitutional right to safeguard the freedom of speech and to prevent an MP from refraining from speaking out of fear of legal proceedings.¹⁸⁰ This immunity does not comprise things said outside the meetings (during breaks and suspensions). The President of the Tweede Kamer can decide to deprive MPs of their right to speak when they are insulting, or to exclude MPs from the plenary debate if they misbehave.¹⁸¹

There is a right to have MPs removed from the Parliament premises if the misbehaviour is very serious. It is at the discretion of the President of the Tweede Kamer when to act in such way.¹⁸²

Lobbying

There are no statutory provisions concerning public affairs and/or public relations officials' presence in the Tweede Kamer premises. In order to obtain an entrance pass for the parliamentary premises, officials need to show their ID and show, by means of a written declaration, for which institution or organisation they work.¹⁸³ A permanent entrance pass can be granted which is valid for two years.

There are comprehensive provisions in place aimed at safeguarding the independence of the legislature. However, what is lacking is adequate regulation of lobbying on Tweede Kamer premises.

INDEPENDENCE (IN PRACTICE)

To what extent is the legislature free from subordination to external actors in practice?

Initiative bills

The number of bills which originate from the Tweede Kamer compared to the number which originate from the government is notable.

Year	2008	2009	2010
Total no. bills submitted	285	184	256
Total no. initiative bills submitted	14	6	8

Source: *Jaarcijfers Tweede Kamer 2010 p.17*

On average, one or two initiative bills are accepted and become effective each year.¹⁸⁴ The executive dominance in the number of proposed laws is profound and is likely to relate to the high number of civil servants from ministries who are involved in the law making process. According to one of the experts, an initiative bill involves a lengthy process which requires adequate resources. It is easier to influence the legislative process via motions and amendments.¹⁸⁵ The expert maintains that MPs often use an initiative bill as a means to put pressure on ministers if they do not take action. MPs first ask the minister to solve an issue via a bill, and after a certain amount of time has gone by they put some more pressure on by referring to their plans to submit an initiative bill.¹⁸⁶ Some initiative bills are advised against and are still passed by the Tweede Kamer and the Senate. For instance, an initiative bill¹⁸⁷ related to the applicability of Competition Law to smaller firms was

178 Art. 46 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

179 Hout, van der E., Voerman, G. and Woude, van der W. (2007), p. 146.

180 Art. 71 Grondwet.

181 Art. 59 and 60 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

182 Morree, de P.E. (2009).

183 Gedragsregels voor Lobbyisten.

184 <http://www.parlement.com/9353000/1f/j9vwhy5i95k8zx1/vh8lnhrqlyx1>

185 Interview with Ferd Crone, former MP for the political party PvdA, 17 March 2011.

186 Ibid.

187 Kamerstuk 31531 nr. 1.

advised against by the Ministry of Economic Affairs yet passed the Tweede Kamer and Senate.¹⁸⁸ Another initiative bill¹⁸⁹ to lift the bar on the constitutional review of acts of Parliament was approved by the Tweede Kamer and Senate, even though the Minister of BZK advised against it.¹⁹⁰ *For more information, please refer to Accountability.*

Interference

There have been a few incidents in which the Tweede Kamer made allegations to the government about interference in its activities. One recent example occurred after the government had collapsed for the fourth time and the caretaker¹⁹¹ Prime Minister sent a letter to the President of the Tweede Kamer in which he invited the Tweede Kamer to have a dialogue on what topics were of a pressing nature and therefore still to be handled by the care taker government. The President of the Tweede Kamer reacted that this was an interference with the right of the Tweede Kamer to set and determine its own agenda.¹⁹²

Although MPs are legally obliged to vote without ‘burden’, the party whip system is widely acknowledged in the Netherlands. Many political parties have a regulation which determines that their MPs are to be loyal to the decisions taken in the meetings of parliamentary groups. Often there is a right for an MP to set a precondition to the decisions taken by the parliamentary grouping, but this is rather formalised and, for instance, needs to be put on the official agenda of the parliamentary grouping. Some of the parliamentary groupings require the MPs to share

their speeches and the oral or written questions with the parliamentary grouping, or forbid their MPs to sign amendments and motions without explicit approval.¹⁹³ Information about MPs who have voted or acted contrary to their parliamentary grouping is difficult to obtain. There is no overview available of an individual MP’s voting.¹⁹⁴

Liabilities

The topic of parliamentary immunity has attracted more attention since the criminal prosecution of the party leader Wilders of the Party for Freedom (PVV – Partij voor de Vrijheid) for his alleged discrimination against Muslims and Islam and promotion of hatred outside the Tweede Kamer.¹⁹⁵ A Dutch court has found him not guilty of inciting hatred against Muslims.

The judge said his comments on Islam were acceptable as part of a legitimate political debate.¹⁹⁶ In Dutch society this led to a serious debate on whether or not to broaden parliamentary immunity to such an extent that MPs also have immunity outside formal meetings as long as they speak out in the function of a politician. This discussion is on-going among politicians, academics and scholars, the media and citizens in general.

Lobbying

Lobbying is a widely accepted practice in the Netherlands. In a GRECO evaluation the Dutch authorities stated that certain forms of influence (whether financial or not) over the decisions of public officials or politicians may be lawful, for instance where

188 <https://zoek.officielebekendmakingen.nl/dossier/31531>, consulted 2 May 2011.

189 Kamerstuk 32334 nr.1.

190 http://vorige.nrc.nl/binnenland/article2079798.ece/Emotie_in_senaat_over_Grondwet, consulted 1 May 2011.

191 Here used to describe the government that operates in the interim period between the normal dissolution of parliament for the purpose of holding an election and the formation of a new government. This was the result of a crisis in the coalition (government) which led to the subsequent resignation.

192 <http://www.ad.nl/ad/nl/1000/Nieuws/article/detail/465809/2010/02/24/Geen-gesprek-Balkenende-en-Kamervoorzitters.dhtml>, consulted 29 April 2011.

193 Hout, van der E., Voerman, G. and Woude, van der W. (2007), p. 128–152.

194 Andeweg, R.B. and Thomassen, J.J.A.; <http://www.trouw.nl/tr/nl/5133/Media-technologie/article/detail/1853942/2011/03/01/Duizenden-Kamerstukken-verdwenen-uit-overheidsportaal.dhtml>

195 Nieuwenhuis, A.J. (2010); <http://www.trouw.nl/tr/nl/4324/Nieuws/article/detail/1842571/2011/01/12/Halsema-pleit-voor-opreken-onschendbaarheid-Kamerleden.dhtml>

196 <http://www.nrc.nl/nieuws/2011/06/23/wilders-vrijgesproken-van-groepsbelediging/>

representatives of interest groups perform lobbying activities.¹⁹⁷ 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.¹⁹⁸

In a recent European survey on lobbying carried out by Burton Marsteller, the Dutch respondents (MPs, MEPs and senior officials of national governments and European institutions) rated the effectiveness of the main lobby groups 'extremely low'.¹⁹⁹ They claimed to get most of their information by doing research themselves, or else receive information via their colleagues, staff and network.²⁰⁰ Only 13 percent saw lobbying as having undue influence over the democratic process. They scored the effectiveness of lobbying as low, because of the lack of transparency and failure to provide neutral information, and 67 percent said that lobbying takes place either too early or too late in the decision-making process.²⁰¹ More than half of the respondents argued that lobbying is a constructive part of the decision-making process.²⁰²

There are no clear figures on the extent to which the Tweede Kamer is influenced by lobbyists. One MP explained that MPs often receive conflicting information and corresponding arguments from interest groups and lobbying firms. According to the experts it is up to the individual MP to do his own research and double-check the information

received.²⁰³ From the interviews with key figures (from different pillars) held so far, the shared opinion seems to be that lobbying is an important way to exchange all sorts of important information, to influence the decision-making process and to increase public support for decisions. The interviewees said that it is the individual themselves (whether MP or other actor) who are to scrutinise information and to be transparent about who they see and talk to. MPs who ignore lobbyists from the beginning will not be of interest to the lobbyists.²⁰⁴ Another expert stressed the fact that the Dutch Association for Public Affairs (BVPA – Beroeps-vereniging voor Public Affairs)²⁰⁵ is becoming more and more professional, and that the BVPA recently presented its own code of conduct to the members of the Tweede Kamer, Senate and top officials.²⁰⁶ In 2010 a Dutch journalist provided a 'behind the scenes' picture through his book in which he reported for one month from the Binnenhof (the premises of the Tweede Kamer). He described how lobbyists, politicians, press officers and journalists all depended on each other and tried to influence one another. Here a picture arises that lobbying is part of Dutch political decision-making.²⁰⁷ The extent to which MPs are influenced varies from one individual to the other.²⁰⁸

Other actors occasionally interfere with the activities of the legislature. These instances of interference are usually not severe, and mainly relate to lobbying activities.

197 Third Evaluation Round Evaluation Report on the Netherlands on Incriminations. (2008) (ETS 173 and 191, GPC 2) (Theme I) 200 paragraph 61.

198 Ibid.

199 Burson-Marsteller (2009), p.14

200 Ibid., p. 23.

201 Ibid., p. 40.

202 Ibid., p. 40.

203 Interview with Ronald van Raak, MP for the political party SP, 31 August 2011; interview with Ferd Crone, former MP for the political party PvdA, 17 March 2011.

204 Interview with Ronald van Raak, MP for the political party SP, 31 August 2011.

205 <http://bvpa.nl/english>, consulted 18 December 2011.

206 Interview with Ivo Thomassen, Senior Policy Advisor, Directorate of Public Administration at the Social and Economic Council of the Netherlands (SER), 15 March 2011.

207 Interview with Anton Jansen, Partner and Senior Consultant at EPPA Politiek en Lobby Consultants, 19 May 2011; Luyendijk, J. (2010).

208 Interview with Ronald van Raak, MP for the political party SP, 31 August 2011.

TRANSPARENCY (BY LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

Tweede Kamer plenary and committee meetings

The Constitution states that all plenary and committee meetings of the Tweede Kamer are to be open to the public.²⁰⁹ The public do not have to announce their visit in advance but they do need to bring their ID and respect the applicable rules (e.g. refrain from interference with MPs and ministers, take no pictures). The Tweede Kamer can decide that a plenary meeting is to be closed if the President of the Tweede Kamer or one-tenth of the MPs present ask for it.²¹⁰ In addition, a committee can decide that a meeting is closed on the initiative of a member of that committee or a minister.²¹¹ There is no special requirement other than the wish of the committee or a minister. The agenda of the Tweede Kamer is drawn up several times a week during the so-called 'arrangement of business' and is published weeks in advance on the Tweede Kamer's website. There is no statutory deadline for this, and the agenda is subject to change. The agenda of general meetings of the committees are decided by the committee and have to be published on the Internet. There is no specific deadline for that.²¹²

Documents

All official documents which are exchanged between the Tweede Kamer and the government have to be published as soon as possible, except for those which are confidential.²¹³ There is a provision which obliges

the registrar to make a stenographic report of every meeting or gathering of the Tweede Kamer, in which the names of members present are listed, as well as the names of those who declare themselves in favour or against the proposed law and amendments.²¹⁴ In the exceptional case of voting by a show of hands, the President of the Tweede Kamer presumes that MPs are voting on behalf of their parliamentary grouping. However, every MP has the right to request that the vote be taken by roll call, which means that all MPs present have to cast their votes individually by saying 'in favour' or 'against'.²¹⁵ In a roll-call vote, members of the same parliamentary grouping may cast different votes. The voting list shows whether a bill has been adopted, rejected, repealed, delayed or lapsed. The items to be voted on are tabled on the voting list, which is published in advance. If a draft bill is accepted by the Senate, the bill has to be published in the Netherlands Bulletin of Acts and Decrees (Stb. – Staatsblad) or the Dutch Government Gazette (Stc. – Staatscourant).²¹⁶ Voting in secret is mandatory in the case of nominations or appointments, for example, the election of the President of the Tweede Kamer.²¹⁷

Journalists

Journalists are free to report on the legislature and its members. Parliamentary journalists can obtain a permanent admission pass (max. 2 year duration) to the Tweede Kamer.²¹⁸ Parliamentary journalists are considered to be those who are in the Tweede Kamer for their work on a daily base. A temporary admission pass (one day) can be made available to journalists who need to be in the Tweede Kamer only occasionally.²¹⁹ They can freely attend plenary and committee meetings and walk around the premises of the Tweede Kamer.

209 Art. 66 Grondwet and articles 37 and 152 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

210 Art. 88 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

211 Art. 37 paragraph 3 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

212 Art. 41 paragraph 2 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

213 Art. 151 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

214 Art. 87 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

215 Art. 70 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

216 Articles 3–5 Bekendmakingswet.

217 Art. 74 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

218 http://www.tweedekamer.nl/over_de_tweede_kamer/persinformatie/index.jsp#TitleLink2

219 Ibid.

The Tweede Kamer has its own 'Guidelines for Image and/or Sound Recordings on the Tweede Kamer Premises'. Third parties who order audio-visual content of a certain debate in advance are also allowed to enter the plenary meeting room for their own recordings (only by shoulder-camera).²²⁰

The main public news channel, NOS, is required to provide 15 hours of reporting on political issues every week. On the radio, the First Channel is tasked with providing primary information.²²¹ There is no specific rule which prescribes broadcasting the meetings of the Tweede Kamer. *For more information, please refer to the Pillar report on Media.*

Comprehensive provisions are in place to ensure that the public can access the parliament and obtain information on the organisation and functioning of the legislature, on decisions that concern them and how these decisions are made.

TRANSPARENCY (IN PRACTICE)

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

Tweede Kamer plenary and committee meetings

Information on public meetings (plenary and committee) of the Tweede Kamer is published on teletext and on the website of the Tweede Kamer. This information is usually published four weeks in advance, and although the agenda is subject to change, it is updated accordingly on the website. It is very rare for plenary meetings to be closed. On the other hand, in practice quite a large number of committee meetings are not open to the public because of the sensitivity of

the topic. The website provides a list of committee meetings and their time and location, and whether they are open or closed to the public.

Documents

There is a well-known public website for all official documents.²²² It is a time-consuming activity to find an official document, especially when you are not well-acquainted with the system. There have been a few private initiatives by citizens to address this issue. According to many, documents may be formally open and available to the public, but in practice they are rather inaccessible. Via websites and corresponding weblogs, these citizens try to bring this to the attention of the Tweede Kamer and the general public.²²³ In 2011 the media (and thereafter an MP) addressed this issue once again after the transformation of the old website into a new website had the effect that thousands of official documents were not to be found on the new website.²²⁴ The Minister of BZK responded by saying that this technical failure would be addressed and the documents would be published on the website as soon as possible. It is not clear whether this was done. The Minister of BZK did not agree with the criticism regarding the website's inaccessibility and informed the MP that some actions had already been taken, for instance making the official document searchable via Google.²²⁵ On the Tweede Kamer's website voting records (results and voting breakdown) on bills, amendments and motions are published. Nevertheless, it is difficult to get an easy overview on voting by roll call by topic, portfolio or MP. Again, there have been initiatives by citizens who recorded the voting record for each MP, but this turned out to be a time-consuming activity and the websites are no longer up-to-date.²²⁶ Only when it concerns a very sensitive issue will it be made public through the media which MP has voted in favour or against a certain bill.

220 Guidelines for Image and/or Sound Recordings on the Tweede Kamer Premises.

221 Bandelow, N.C., Hoppe, R., Hoppe, T. and Woldendorp, J. (2011), p. 50.

222 <http://www.officielebekendmakingen.nl>

223 <http://www.trouw.nl/tr/nl/5133/Media-technologie/article/detail/1853942/2011/03/01/Duizenden-Kamerstukken-verdwenen-uit-overheidsportaal.dhtml>, consulted 3 March 2011

224 Ibid.

225 <https://zoek.officielebekendmakingen.nl/ah-tk-20102011-2061.html>

226 <http://www.politix.nl>

Recently the media provided coverage of the way MPs had voted on the decision to have a police mission in Afghanistan.²²⁷

Legislation

The state of affairs concerning a draft bill can be found on the Internet. On the Tweede Kamer's website a step-by-step guide helps the public with their search for information on the bill proposal. An official bill proposal is available from the moment it is submitted to the Tweede Kamer. Every Monday the website of the RvS provides an updated overview of the advice it has given, but the advice itself is not yet available. The advice on bill proposals is sent to the Tweede Kamer along with the government's response and in some cases an amended bill proposal. Advice on AMvB is published in the Government Gazette, along with the texts which were submitted to the RvS. Information on discussions in meetings of the Council of Ministers is not available to the public, only the outcome is known via press release. Pending legislation can be found on the Tweede Kamer's website. On the Senate's website a description is provided of each draft bill along with a time path. Bills which are approved by the Senate and ratified by the government are published in the Netherlands Bulletin of Acts and Decrees, and their date of entry into force will be stated. Since July 2009 the Government Gazette and Netherlands Bulletin of Acts and Decrees are no longer offered in print but are put up on websites. Bill proposals from before the year 1995 can be found at the Central Information Point of the Tweede Kamer, the Royal Library and at legal libraries.²²⁸

Journalists

The Tweede Kamer produces recordings of all plenary debates, in cooperation with the public (NOS) and regional Dutch broadcasters and RTL, the Dutch commercial channel. They provide these recordings to

third parties for journalistic purposes, for market-related prices. Parliamentary debates and committee sessions are no longer publicly broadcast on Dutch television. Nonetheless, the Tweede Kamer website provides live-streams of all plenary debates and most commission meetings. Also, the NOS broadcasts Politiek 24, a digital television channel on the Internet that contains live-streams of all plenary debates and most commission meetings. Further, it offers analyses, background information and a daily political show.²²⁹ It is also broadcast on TV but this depends on the subscription package provided whether citizens can view it. Parliamentary journalists do need to ask permission to walk in or record in the sections of the Tweede Kamer premises where political parties or individual MPs have their offices. A specific 'media tower' is present in the Tweede Kamer's building where there are press rooms and computers available which journalists can rent.

While the public can access the legislature and obtain relevant information on its organisation and functioning, on decisions that concern them and how these decisions are made, it is usually a time-consuming process. It is particularly difficult to get an easy overview of voting by roll call by topic, portfolio or MP.

ACCOUNTABILITY (BY LAW)

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

Constitutional review

The Dutch Constitution prohibits the constitutional review of acts of parliament.^{230, 231} The courts have interpreted this as not only referring to the substantive quality of acts of parliament in light of the bill of rights

227 <http://www.volkskrant.nl/vk/nl/4905/VK-Dossier-De-missie-naar-Kunduz/article/detail/1828891/2011/01/28/Politiemissie-naar-Kunduz-gaat-door.dhtml>

228 <http://www.rijksoverheid.nl/documenten-en-publicaties/vragen-en-antwoorden/hoe-komt-een-wet-tot-stand.html>, consulted 1 May 2011.

229 Bandelow, N.C., Hoppe, R., Hoppe, T. and Woldendorp, J. (2011), p.50.

230 Art.120 Grondwet.

231 Schyff, van der G. (2010).

in the first chapter of the Constitution, but also relating to formal aspects of the Constitution such as legislative procedure. This bar includes the prohibition on examining whether acts are in accordance with the Charter of the Kingdom of the Netherlands (Statuut voor het Koninkrijk der Nederlanden) or unwritten principles of higher law.²³² In 2008 an initiative bill by MP Halsema which allows limited constitutional review was approved by the Senate. Its second reading has still to take place.²³³

The legal order of the Netherlands is characterised by monism; as national and international law together form one legal order. The effect is not only that international legal norms form part of the Dutch legal order without the need for incorporation, but also that such norms are hierarchically superior to national legal norms.²³⁴ To that extent there is currently a certain sort of constitutional review.²³⁵

Consultation

The Netherlands is known for its consensus democracy. Consultation is one of the deeply-rooted values aimed at creating wide public support.²³⁶ The Framework Bill for Advisory Councils (Kaderwet Adviescolleges) has been amended several times (from 1996–2010) to such an extent that the obligation to consult advisory councils (often institutionalised) in the legislative process has been minimised. The number of standing advisory councils has decreased over the years, and in 2009 there were 33 (compared to 119 in 1995).²³⁷ In doing this, the legislature has tried to sober down the advisory phase, to increase

transparency and to distinguish advice from experts from the consultation of interest groups.²³⁸ Although there is no codified legal provision specifically prescribing public consultation on relevant issues, legislative authorities are subject to the ‘duty to give reasons’, the ‘duty to consult or involve interested parties’, be it directly or indirectly, and the ‘duty to inform’ (transparency and accessibility) during the course of legislative processes resulting in primary legislation.²³⁹

Contact with citizens

The public has the right to submit a petition to the Tweede Kamer.²⁴⁰ It needs to describe which specific rule or policy it criticises and explain what the submitters want to accomplish by the petition and who its organisers are.

Petitions are allowed to be offered on the condition that a written request is sent. Acknowledgement of the petition is published on ‘the list of items received’ of the Tweede Kamer. There is also the possibility to send a petition to the Tweede Kamer Committee on Petitions in case a citizen is of the opinion that he has been treated improperly by the national government. This has to involve an individual situation/case for which there is no right to object/appeal before the judiciary. There is no right to appeal against national laws. One can object to decisions arising from these laws before the Commission on Petitions for each ministry. Here appeals from individuals are considered. *For more information, please refer to the Executive pillar.*²⁴¹

232 Ibid., p.3.

233 <http://vorige.nrc.nl/binnenland/article2079790.ece/>, consulted 1 May 2011; <https://zoek.officielebekendmakingen.nl/dossier/32334/kst-32334-3?resultIndex=2&sorttype=1&sortorder=8>, consulted 1 May 2011; http://www.eerstekamer.nl/wetsvoorstel/32334_initiatiefvoorstel_halsema?zoekrol=vgh5mt4dsdk1, consulted 21 February 2012.

234 Schyff, van der G. (2010) p.3.

235 Art.94 Grondwet.

236 Lijphart, A. (1990).

237 <https://zoek.officielebekendmakingen.nl/dossier/24503/kst-24503-42?resultIndex=4&sorttype=1&sortorder=4>, consulted 1 May 2011.

238 Aeken, van K., Gestel, van R., Humbeeck, van P., Popelier, P., and Verlinden, V. (2007). p. 17.

239 Voermans, W. (2009).

240 Art. 5 Grondwet.

241 <http://www.rijksoverheid.nl/documenten-en-publicaties/vragen-en-antwoorden/hoe-kan-ik-mijn-mening-geven-over-de-politiek.html>, consulted 1 May 2011.

In 2006 the ‘citizen’s initiative’ was introduced.²⁴² This consists of an elaborate proposal to improve a certain policy or law, for instance regarding the environment or elderly care. It can also be used to suggest making a piece of legislation less complex, or to suggest abolishing a certain rule. Through this initiative a citizen requests that the Tweede Kamer discuss his proposal and state a formal opinion on it. A citizen needs to collect 40,000 signatures of enfranchised citizens to submit such an initiative.²⁴³

In summary: while a number of laws and provisions exist, they do not cover the aspect of constitutional review of legislative activities.

ACCOUNTABILITY (IN PRACTICE)

To what extent do the legislature and its members report on and answer for their actions in practice?

Consultation

In the Netherlands elaborate consultations are held before a bill proposal is sent to the Tweede Kamer. There is a rather systematised consultation system. All kinds of semi-public boards exist consisting of experts or representatives of interest- or political groups. Dutch decision-making is characterised by a common striving for broad consensus on important issues. This leads to broad consultation, often lengthy and tiresome. Public consultations on law proposals take place, and these are usually done by the ministries. *For more information, please refer to the Pillar report on the Executive/Accountability.*

MPs’ accountability

Although parliamentary immunity is considered to be an important guarantee safeguarding the Tweede

Kamer’s independence, the individual statements and behaviour of MPs are still scrutinised. MPs account for their conduct via their political parties and the media.

The media plays an important role in addressing MPs’ behaviour and statements. They do not only report on the activities of MPs since their being in office, but also examine their conduct in previous positions. In 2011 the media reported on an individual MP who had allegedly received unlawful allowances in her previous position as chief of the police force (korpsschef). The media also reported about an MP accused of assault, and another MP involved in a conflict-of-interest in her previous position as diplomat at an embassy.²⁴⁴ Cases such as these often receive attention by the various media and are often dealt with via the line of the political parties.

Contact with citizens

MPs’ responses to citizens’ emails and letters are quite diverse. There are MPs who do provide a response, often with the help of their assistant, and there are MPs who simply do not reply. The researcher experienced this with her request to MPs to be interviewed for this research.

In 2010 a total of 99 petitions were offered, in 2009 this number was 108. These petitions are believed to have limited effect in practice.²⁴⁵ Since 2006, 9 citizen’s initiatives have been submitted, of which one was discussed in the Tweede Kamer, three were declared inadmissible and the other four are still being considered by the Tweede Kamer’s commission.²⁴⁶

Most existing provisions are effective in ensuring that members of the legislature have to report and be answerable for their actions in practice, although petitions are an exception as they do not have any perceptible effect.

242 Art. 132a Reglement van Orde van de Tweede Kamer.

243 http://www.tweedekamer.nl/hoe_werkt_het/uw_mening_telt/burgerinitiatief/index.jsp, consulted 1 May 2011.

244 <http://www.nrc.nl/nieuws/2011/03/26/d66-kamerlid-kreeg-ton-aan-ten-onrechte-uitgekeerde-toelagen/>; <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/1024340/2010/09/30/PVV-Kamerlid-nacht-in-cel-om-mishandeling.dhtml>; <http://www.nrc.nl/nieuws/2011/09/06/mariko-peters-zegt-het-nu-zelf-ik-ga-verder-als-kamerlid/>, consulted 29 October 2011.

245 http://vorige.nrc.nl/binnenland/article1849869.ece/Effect_petities_op_politiek_is_nul

246 <http://www.tweedekamer.nl/kamerstukken/dossiers/burgerinitiatief.jsp#0>, consulted 18 October 2011.

INTEGRITY (BY LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

Oath/Pledge

At the inauguration ceremony, new MPs each have to take the oath or pledge in order to be appointed as a member of the TK, in which they promise (among other things) not to have given or promised any gift or favour, either directly or indirectly, under any name or pretence. They declare and promise that no direct or indirect promises were taken on or will be taken on. They solemnly swear fealty to the Queen, the Charter for the Kingdom of the Netherlands and the Constitution.²⁴⁷ They have to swear that they will fulfil all duties faithfully.²⁴⁸

Integrity provisions

MPs are required to abide by the following rules of behaviour: careful dealing with confidential information, registering their paid and unpaid side-functions²⁴⁹, only claiming costs necessary for carrying out their office, holding no additional activities with reward for any council or province. The Standing Orders of the Tweede Kamer prescribe that a registry be kept in which the MPs provide notification of their side-activities and the income which they expect from them, no later than one week after accepting such activity.²⁵⁰ The Regulation on Compensation for members of the Tweede Kamer states that this outside compensation can constitute up to a maximum of 14 percent of their total compensation, otherwise half of

that additional compensation will be deducted from their general compensation.²⁵¹ This provision also obliges the registrar to keep a registry in which an overview of the trips abroad taken by MPs at the invitation of a 3rd party is maintained.²⁵² MPs are obliged to notify the registry no later one week after returning. In addition, gifts over EUR 50 received by MPs have to be registered no later than one week after being received.²⁵³ Twice a year the registrar publishes an overview of these side-functions.²⁵⁴ These rules are in place to prevent conflict-of-interest situations involving MPs. There is no institution which is responsible for its enforcement.

In 2006 the legislature amended the Civil Servant Act (Ambtenarenwet) and the acts applying to the municipalities, provinces and water authorities to include the obligation for the competent authorities to design and implement an integrity policy for civil servants.²⁵⁵ There is an obligation for these competent authorities to have a code of conduct in place. However, so far such a code has not been drafted for the Tweede Kamer itself. In 2006 MP Depla proposed a motion to design a code of conduct for MPs. The motion was voted in favour, yet there is still no code of conduct.²⁵⁶ Nor are there post-government service employment restrictions for MPs.

Criminalisation

MPs can be sentenced to a maximum prison sentence of four to six years or get a fine of the fifth category if they commit bribery.²⁵⁷ This maximum prison sentence is two to four years more than the maximum sentence

247 Note that this Constitution applies to both the Kingdom of the Netherlands and the Dutch Antilles.

248 http://www.tweedekamer.nl/hoe_werkt_het/verkiezingen_en_kabinetsformatie/nieuwe_kamerleden_/index.jsp, consulted 1 May 2011.

249 Art.150a paragraph 1 Reglement van Orde van de Tweede Kamer.

250 Article 150a paragraph 1 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

251 Paragraph B of the Overzicht van de regeling schadeloosstelling van de leden van de Tweede Kamer der Staten-Generaal (versie januari 2010).

252 Art.150a paragraph 2 Reglement van Orde van de Tweede Kamer.

253 Article 150a paragraph 3 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

254 Article 150a paragraph 5 Reglement van Orde van de Tweede Kamer der Staten-Generaal.

255 For example art. 125quater Ambtenarenwet.

256 <https://zoek.officielebekendmakingen.nl/dossier/30181/h-tk-20052006-3058-3059?resultIndex=0&sorttype=1&sortorder=4>, consulted 1 May 2011.

257 Art. 362 and 363 paragraph 3 Wetboek van Strafrecht.

given to civil servants who committed the same act. Additionally, there is a special statutory provision which obliges civil servants and members of public bodies to report crimes which they have become aware of while carrying out their official duties. MPs fall within the criminal definition of civil servants. This means that if an MP becomes aware of another MP's criminal conduct, he is obliged to immediately report this to the law enforcement agencies.²⁵⁸

The basic mechanisms in place to ensure the integrity of MPs are present. However, there is no comprehensive integrity policy for MPs.

INTEGRITY (IN PRACTICE)

To what extent is the integrity of legislators ensured in practice?

Integrity provisions

The registries recording the side-functions, gifts and travels of MPs are open to the public at the Tweede Kamer premises and can also be found on the Internet. However, the duty to acknowledge side-functions, gifts and travels abroad is not applied consistently by all MPs. Recent research by one newspaper indicated that some MPs have not registered their side-functions as municipal councillor, and some of the information has not been updated.²⁵⁹

Incidents

The lack of integrity of MPs has led to some Dutch MPs having to resign. In these cases, the grounds for doubts regarding the integrity of the MP were usually related to wrongdoing in the past (before taking on

office). This has led to a discussion as to whether there should be stricter monitoring of newly-elected MPs by e.g. the General Intelligence and Security Service (AIVD – Algemene Inlichtingen en Veiligheidsdienst). However, the general opinion is that it remains the responsibility of the political parties to screen candidates before drafting candidate lists for the elections.²⁶⁰

The media has also highlighted the lack of integrity on the part of MPs and parliamentary groupings. There has been coverage of MPs begging for reductions in the price of airplane tickets from Martinair or KLM.²⁶¹ The media also published the conclusions of a report on fraudulent expense-claims made by some of the parliamentary groupings. These included claiming traffic fines, media training and gifts.²⁶² In 2009 Deloitte Accountants discovered that three major parliamentary groupings had asked for and received a certain subsidy. However, these subsidies were to be used for parliamentary activities, while these groupings used them for political activities. Political activities are to be financed by political parties themselves and not by state subsidies available for legislators to carry out their official duties.

According to experts, the absence of a code of conduct for MPs can be explained by the widely-held feeling among MPs that they are not appointed in a general employer/employee way. They often refer to the fact that they are voted in by the public and do not have a boss to be responsible to. In addition, the Tweede Kamer is the highest institution of the state. Making another institution responsible for enforcing a code of conduct would undermine this constitutional position.²⁶³

258 Art.162 Wetboek van Strafvordering.

259 Stokmans, D. (2011). "Ze zijn nu even met hun nevenfuncties bezig." NRC Handelsblad, p.10.

260 <https://www.aivd.nl/algemene-onderdelen/uitgebreid-zoeken/@1905/integriteit>, consulted 2 May 2011.

261 "Luchtvaart moet namen bedelende politici noemen", Telegraaf April 2005.

262 <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/315134/2009/02/24/Partijen-vragen-onterecht-subsidies-aan.dhtml>; http://www.rtl.nl/actueel/rtlnieuws/components/actueel/rtlnieuws/2006/01_januari/24/binnenland/0124_1930_sjoemelende_kamer.xml, consulted 2 May 2011.

263 Interview with Ferd Crone, Mayor of the city of Leeuwarden and former MP for the political party PvdA, 17 March 2011; interview with Ronald van Raak, MP for the political party SP, 31 August 2011.

According to one expert, the real change in the extent to which MPs act with integrity has been that nowadays more MPs intentionally misinterpret scientific facts to get their political message heard.

This is a shift from the original consensus-model in which all MPs agreed on the scientific facts before bringing their political appreciation into the discussion. Now facts are being twisted according to the political agenda.²⁶⁴

Lobbying

Although the effectiveness of the main lobby groups was rated as exceptionally low in the Burton Marsteller research, there is a general belief that many lobbyists are active on the Tweede Kamer premises. The Tweede Kamer's Department of Communication determines which lobbyist receives a permanent pass to the premises. The criteria they apply are not disclosed.²⁶⁵

The 'Nieuwspoort Association' is the informal and exclusive meeting place for politicians, press officers, lobbyists and journalists, and here information is shared and influencing takes place.²⁶⁶ There is a 'Nieuwspoort Code', which requires those present not to inform anyone about what they have seen or heard in Nieuwspoort. There are no data on the influence gained via lobbying MPs. One expert noticed that complete motions and amendments are delivered by lobbyists, which MPs can then use to advance their opinion.²⁶⁷

There is a piecemeal and reactive approach to ensuring the integrity of legislators, including inquiries into alleged misbehaviour. However, those provisions which seek to prevent conflict-of-interest are not adequately enforced.

EXECUTIVE OVERSIGHT

To what extent does the legislature provide effective oversight of the Executive?

Appointments of key figures

In principle, most key figures within the auxiliary institutions are appointed by the government. The Tweede Kamer plays a role in three of the major appointment procedures, two which concern institutions which help the Tweede Kamer in carrying out its supervisory task: the Netherlands Court of Audit (AR – Algemene Rekenkamer) and the National Ombudsman. The board of the AR is appointed via a public application procedure. If a vacancy arises, the AR notifies the Queen and the Tweede Kamer and suggests a list with 6 qualified candidates. The Tweede Kamer Committee on Government Expenditure conducts interviews with these six persons. The Tweede Kamer then votes (independently of the AR's advice) by secret ballot and proposes a three-candidate short-list.²⁶⁸ The government thereupon appoints one of these candidates by royal decree for life.²⁶⁹ The Tweede Kamer plays a decisive role in the appointment of the National Ombudsman. It decides which candidate is to be appointed, for a period of 6 years.²⁷⁰ It does so on the basis of three candidates recommended by the Vice-President of the RvS, the President of the Supreme Court and the President of the AR.²⁷¹ If the Tweede Kamer wants to reappoint the National Ombudsman for another term, this can be decided without the selection procedure.²⁷² The third appointment procedure in which the Tweede Kamer plays a role is the appointment of members of the Supreme Court of the Netherlands (HR – Hoge Raad der Nederlanden). The reasoning behind this is that it is the HR which can

264 Interview with Ferd Crone, Mayor of the city of Leeuwarden and former MP for the political party PvdA, 17 March 2011.

265 Luyendijk, J. (2010). p. 36.

266 http://www.nieuwspoort.nl/en_US/faciliteiten/societeit/

267 Interview with Ronald van Raak, MP for the political party SP, 31 August 2011.

268 Art. 77 Grondwet.

269 http://www.courtfaudit.com/english/Organisation/What_is_the_Court_of_Audit/Board_and_staff#internelink3, consulted 2 May 2011.

270 <http://www.nationaleombudsman-nieuws.nl/benoeming-nationale-ombudsman>, consulted 2 May 2011.

271 Art. 2 paragraph 1 and 2 Wet Nationale ombudsman.

272 Art. 2 paragraph 4 Wet Nationale ombudsman.

sentence ministers convicted of committing a crime linked to the exercise of their public duty. Here, the members are appointed by the government from a list of three nominations which are submitted from the Tweede Kamer.²⁷³ The Tweede Kamer does not play a role in the appointment of the members of the Electoral Council (KR – Kiesraad).²⁷⁴ Neither does the Tweede Kamer play a role in the appointment of members/state councillors of the RvS.²⁷⁵

Budget

The Tweede Kamer and Senate have the full authority to decide publicly about their budget (right of budget). The Constitution states that the budget for government income and expenditure is set by law.²⁷⁶ Budget law proposals are drafted by the government on a yearly basis and must be approved by the Tweede Kamer and Senate. The Tweede Kamer can propose and approve amendments and motions to the budget. Gradually the Dutch budget processes has focussed more on accountability. The Tweede Kamer, the Senate and the AR have become the internal watchdogs for the taxpayers.²⁷⁷ Since 2000 the third Wednesday in May is declared to be 'Accountability Day. Parliament had asked for such a day to receive a goal-oriented set of statements from the ministries so that the effectiveness and efficiency of governmental policies could be discussed.²⁷⁸ The Minister of Finance has to introduce his 'Annual Financial Report' to the Tweede Kamer then, and at the same time the President of the AR presents the AR's report to the Tweede Kamer. This has to be done in such way that the Tweede Kamer gets a clear picture of those aspects which have improved

and which need further improvement. The remarks and judgments of the Tweede Kamer have to be taken into account by the government before it decides on the budget for the following year.

Right to information

Ministers and state secretaries²⁷⁹ shall provide the Tweede Kamer and the Senate, orally or in writing, either separately or in joint session, with any information requested by one or more members, provided that the provision of such information does not conflict with the interests of the state.²⁸⁰ Although these are often summoned to the Tweede Kamer to provide the information, the quality of the information provided (both written and oral) has been criticised in a recent PhD research.²⁸¹ According to this research, the right to information is not always effective because ministers are not adequately informed by their civil servants, and therefore the Tweede Kamer is not adequately informed by the minister.²⁸² *Among other reasons, discussed in Pillar Report Executive/Accountability*, the right to information is limited by the so-called Oekaze Kok, which imposes a limitation on individual civil servants contact with MPs in the light of ministerial responsibility.²⁸³ The Tweede Kamer receives official information from the government and can request additional information. This information often does not include all relevant judgments, risks and alternative policies which MPs would like to have as well, but which they are not allowed to obtain via civil servants. In 2011, PM Rutte informed the Tweede Kamer that the Oekaze Kok should be interpreted less strictly to allow civil servants

273 Art. 118 Grondwet and article 2 paragraph 1 Wet Rechtspositie Rechterlijke Ambtenaren.

274 http://www.kiesraad.nl/nl/English/About_us/Kiesraad_members.html, consulted 2 May 2011.

275 Art. 74 Grondwet and art.27 Wet op de Raad van State.

276 Art. 105 Grondwet.

277 Jensen, L., Vries, de J. and Wanna, J. (2010). p.223.

278 <http://www.verantwoordingsdag.nl/>, consulted 2 May 2011.

279 A state secretary in the Netherlands functions as a deputy minister. Some ministers are accompanied by a state secretary who also is politically responsible for his policies.

280 Art.68 Grondwet.

281 Enthoven, G.M.W. (2011).

282 Ibid.

283 Aanwijzing inzake externe contacten van rijksambtenaren; Leidraad voor de Toepassing van de Aanwijzing Inzake Externe Contacten van Rijksambtenaren bij Functionele Contacten met de Staten-Generaal en Individuele Kamerleden.

to answer questions from individual MPs, which are of a more factual and technical nature, on the condition that the respective minister is aware of the request.²⁸⁴ One expert also argued that the Oekaze Kok might be restricting MPs too much in their right to obtain relevant information from the Executive, and referred to the municipal situation where members of local councils can contact the official registry and civil servants for information.²⁸⁵ Nevertheless, in reality the executive does not share this renewed perception. In April 2011 a case concerning the biometric passport made clear that important information had been withheld from the Tweede Kamer. During a roundtable meeting organised by one of the parliamentary groupings, it became clear that some external experts and civil servants who were critical about the risks to safety and privacy from the biometric passport had been put under pressure by an agency of the Ministry of BZK (Agentschap Basisadministratie Persoonsgegevens en ReisdOCUMENTEN) to not express their criticism. The minister of BZK did not allow them to attend this meeting. Two parliamentary groupings then decided to conduct an integrity investigation of this specific agency.²⁸⁶ In the meantime, the support of other parliamentary groupings for such a passport is decreasing.

Right to investigate

Bureau Onderzoek en Rijksuitgaven (BOR) supports the Tweede Kamer with its investigations and oversight of state spending. The Tweede Kamer's Standing Orders list the types of investigations which the Tweede Kamer has at its disposal. These are regulated by separate rules.²⁸⁷ The Tweede Kamer has the right to make

arrangements for external investigation.²⁸⁸ Staff members of the Tweede Kamer or external organisations/institutions can carry out an investigation on behalf of the Tweede Kamer. The Tweede Kamer also has the right to appoint a temporary committee to carry out an investigation. In addition, there is the right to set up a parliamentary investigation if a majority of the Tweede Kamer is in favour.²⁸⁹ Here a temporary commission is installed composed of MPs. There is no further legislative provision concerning this right. Since 2000 nine parliamentary investigations have been carried out.²⁹⁰ Often this sort investigation proves to be sufficient to discover the required information, but on some occasions a stronger investigative instrument is required. One of the recent investigations concerned an examination of the developments and problems in the financial system (globally and nationally). In January and February 2010 the Commission questioned, over some 40 hearings, almost 40 bankers, financial service regulatory officials, politicians and academics. The inquiry was concluded by a report which made 27 recommendations also offered two case studies (one involving ABN AMRO and the other the case of Icesave/Landsbanki) to illustrate for the sake of future regulation and supervision.²⁹¹ In 2010 this parliamentary investigation on the financial system was concluded with report entitled Credit Lost.

Right to inquiry

The Tweede Kamer and the Senate (individually or jointly) can also set up a parliamentary committee of inquiry. This right to parliamentary inquiry is the most far-reaching type of investigation available to the Tweede Kamer.²⁹² It is initiated as a last resort.

284 Kamerstuk II, 32500 VII, nr. 105 and <http://www.parool.nl/parool/nl/224/BINNENLAND/article/detail/1054862/2010/11/17/Rutte-voor-contact-tussen-ambtenaren-en-Kamer.dhtml>, consulted 5 May 2011.

285 Interview with Guusje ter Horst, President of the Netherlands Association of Universities of Applied Sciences (HBO-raad), member of the Senate for political party PvdA and former Minister of the Interior and Kingdom Relations, 2 May 2011.

286 <http://www.trouw.nl/tr/nl/4324/Nieuws/article/detail/1878125/2011/04/20/Paspoort-weer-middelpunt-van-discussie.dhtml>, consulted 3 May 2011.

287 Chapter XII of the Reglement van Orde van de Tweede Kamer der Staten-Generaal.

288 Art. 140 sub b Reglement van Orde van de Tweede Kamer der Staten-Generaal.

289 Art. 140 sub a Reglement van Orde van de Tweede Kamer der Staten-Generaal.

290 <http://www.denederlandsegrondwet.nl/9353000/1/j9vvihlf299q0sr/vh8lnhrptxwz>, consulted 21 February 2012.

291 http://www.houseofrepresentatives.nl/news/newspage_report_committee_research_financial_system.jsp#0, consulted 2 May 2011.

292 Art. 70 Grondwet, Wet op de parlementaire enquête and Chapter XII of the Reglement van Orde van de Tweede Kamer der Staten-Generaal.

Witnesses called by such a committee are under obligation to appear before it, and the committee is entitled to hear them under oath. The significance of this goes beyond the governmental supervision since anyone can be called upon.²⁹³

According to the Parliamentary Inquiry Act (*Wet op de parlementaire enquête* 2008) every citizen is obliged to cooperate if requested to do so by such a committee. This includes the duty for ministers and state secretaries to cooperate.²⁹⁴ Ministers and state secretaries are obliged to provide documents or testimony relating to their time in office, providing the PM has intervened to require them to do so.²⁹⁵ There are no limitations regarding the subject of inquiry, so misbehaviour by the Executive can also be investigated.²⁹⁶

In 2011/2012 a parliamentary inquiry was conducted which was considered to be the second phase of the recent parliamentary investigation into the financial system. The focus was more on the measures taken by the government from 2008 onwards aimed at supporting the banks during the credit crisis.

As of the beginning of 2012 this parliamentary inquiry is not yet completed. This right to inquiry has been used three times since the year 2000: indeed, in 2002/2003 two such parliamentary inquiries took place. One inquiry dealt with the presence of the Dutch military at Srebrenica (Balkan Wars) and the other concerned fraud and corruption in the Dutch construction industry.²⁹⁷ The general conclusions which were drawn from the latter report were that public procurement in the construction industry was especially sensitive to irregularities, cartel practices were structural and there was collusion between public authorities and business. Recommendations were, among other things, to strengthen public procurement regulation and supervision.²⁹⁸ The outcome of that

inquiry led to criminal convictions, changes in legislation and media attention for as well as public awareness of fraudulent practices.

Duty to report

A special statutory provision obliges civil servants and members of public bodies to report crimes which they have become aware of while carrying out their official duties. This means that if an MP becomes aware of criminal conduct by a minister or state secretary, that MP is obliged to immediately report this to law enforcement agencies.²⁹⁹

Disapproval

There are two types of motions which MPs can use to express their disapproval of the government or a minister. Both can be considered to be mainly customary law. First there is the 'motion of disapproval'. Here MPs express their disapproval of the policy of a minister, state secretary or government. The seriousness of the words used determines whether resignation is called for. By using a 'motion of no-confidence', the MPs express that they no longer trust the minister, state secretary or the government. If this motion is approved, it will result in the specific resignation. Although individual parliamentary groupings have used the right to a motion of disapproval and no-confidence, this rarely results in a majority voting in favour of the motion. In 2006 a motion of disapproval towards the Minister of Asylum and Integration Verdonk was accepted and led to another minister taking over the part of her portfolio which concerned asylum.

The legislature possesses most of the tools for executive oversight commonly found in democratic parliamentary systems. However, restrictions on contacting a civil servant from a ministry limit to some extent the legislature in collecting the information required for its executive oversight.

293 Kortman, C.A.J.M. (2008). p.251.

294 Art. 14 *Wet op de Parlementaire enquête* 2008.

295 Art. 16 *Wet op de Parlementaire enquête* 2008.

296 Art. 2 *Wet op de Parlementaire enquête* 2008.

297 Heuvel, van den G. (2005). p.133–151.

298 <http://www.om.nl/onderwerpen/bouwfraude/>, consulted 2 May 2011.

299 Art. 162 *Wetboek van Strafvordering*.

LEGAL REFORMS

To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

The Netherlands has ratified all important anti-corruption conventions. Following the government's White Paper on Corruption Prevention (Nota Corruptiepreventie) of 2005, several legal reforms took place. For more information, please refer to the Pillar report on the Executive. The greater part of this reform was initiated by the Executive. The priority given by the Dutch legislature to anti-corruption instruments is difficult to determine.

The Tweede Kamer played an important role in amending and approving these laws. However, there is little evidence that the Tweede Kamer has prioritised anti-corruption by initiating legal reform. In the last two years little priority has been given to anti-corruption and governance.

This might be due to the fact that between 2005 and 2009 anti-corruption legislation and integrity policies became effective and so there was a lesser need for more. Nevertheless, there are still loopholes in the Dutch anti-corruption legislation. Some of these have been addressed by the legislature.

Two initiative bills

The legislation on financing of political parties is not up-to-date or in accordance with international obligations. In 2010 two MPs, Dibi of the Green Party (Groen-Links) and Schouw of the Liberal Democrats (D66) put forward an initiative bill for changing the law on the subsidising and financing of political parties.³⁰⁰ That initiative sought to increase transparency of political party financing by setting a threshold of EUR 1,500 above which all donations and gifts to a political party or a

representative of the party must be made public. Additionally an administrative fine of EUR 20,000 was to be paid in case of a violation. In February 2011, the AR sent its report on the financing of political parties to the Tweede Kamer and the minister of BZK, in which it urgently advised the enacting of appropriate legislation in line with GRECO recommendations.³⁰¹

In April 2011 the minister of BZK presented his draft law proposal³⁰² on the financing of political parties. It did not refer to the initiative law proposal of the two MPs. The two MPs thereupon submitted an amendment to this law proposal in which they proposed lowering the threshold for transparency as proposed by the minister from EUR 4,500 to EUR 1,500.³⁰³ This law proposal is currently being discussed in the Tweede Kamer, and it is yet to be seen what the provisions regarding the financing of political parties will be. Nevertheless, these two MPs have shown transparency in the financing of political parties to be a priority.

In 2010 a revised Whistle-Blower Regulation³⁰⁴ entered into force. It is widely perceived to be ineffective because it did not provide effective protection to the whistle-blower.³⁰⁵ *For more information, please refer to the Pillar Public Sector/Accountability Practice.*

One of the MPs of the Socialist Party (SP), Van Raak, is planning to submit an initiative draft bill to establish an institute for whistle-blowers, supported by public funding, to the Tweede Kamer in 2012. A majority of the Tweede Kamer wants an independent commission with thorough procedures and the power to conduct independent investigations.³⁰⁶ It is yet to be seen whether this draft bill will be supported.³⁰⁷ This institute will be based at the National Ombudsman's office and should provide adequate legal and financial

300 <http://www.binnenlandsbestuur.nl/vakgebieden/publieke-zaken/wetsvoorstel-alle-politieke-giften-openbaar.819262.lynkx>

301 Algemene Rekenkamer (2011). Financiering politieke partijen.

302 Kamerstukken II, 2010–11, 32 752, nr. 2.

303 Kamerstukken II, 2010–11, 32 752, nr. 6.

304 Besluit melden vermoeden van misstand Rijk en Politie.

305 <http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Publicaties/Downloads/Klokkenluidersregeling.pdf>, consulted May 2011; Bovens, M. and Pikker, G. (2010) p. 38–47, Binnenlands Bestuur (2011). Klokkenluiders kaltgesteld.

306 Binnenlands Bestuur (2011). Kamer blokkeert plan klokkenluiders.

307 Interview with Ronald van Raak, MP for the political party SP, 31 August 2011.

protection for whistle-blowers from the private and public sectors. The National Ombudsman is of the opinion that the current legal provisions do not provide effective protection to whistle-blowers and that an institute for whistle-blowers could be part of his organisation.³⁰⁸

While a number of legal reforms to counter corruption and promote integrity have been initiated by the

legislature, these are the results of individual MP's efforts, and do not reflect the general attitude of the legislature.

Recently a member of the Royal family prof. mr Van Vollenhoven has argued that whistle-blowers should have part of the money confiscated by the authorities for infringements of integrity. His ideas follow the line of reasoning of the Dodd-Frank Whistle-blower Rules in the USA.³⁰⁹

308 TV broadcast from Uitgesproken, VARA from 18th February 2011.

309 P. van Vollenhoven in a television program "Een Vandaag" on 16 June 2011.

6.2 EXECUTIVE

Role in NIS

The Executive gains its legitimacy by receiving a mandate from the people to govern via their transfer of sovereignty. It is the government which exercises control over political decision-making. It is supposed to create and administer laws which are fair and equitable. It decides on policies as to what expenditures are to be made for the common needs. It is generally accepted today that modern government requires accountability. Without it, no system can function in a way which promotes the public interest rather than the private interests of those in control. The shift is thus from a system of vertical responsibility – be it the tyrant or the leadership of the one party state – to one of horizontal accountability, whereby a system of agencies of restraint and watchdogs is designed to check abuses of power by other agencies and branches of government. This system manages conflicts-of-interest in the public sector, effectively disperses power and limits situations in which conflicts-of-interest arise or have a negative impact on the common good. In addition to the mere absence of corruption from the government, the government has an important role in designing and enforcing laws and policies aimed at preventing corruption and promoting integrity. An integrity system embodies a comprehensive view of legal and administrative reforms.³¹⁰

Sources

The desk research for this pillar report started with broad research on the topic of integrity in the Dutch government and current affairs involving the government. Literature was examined as well as the applicable legal provisions. Additionally, an analysis was made of documents from the legislature and the government, followed by a media scan. In-depth interview were held with key figures and experts from the Executive, or with a good knowledge of the Executive. This led to a more in-depth view on the

Executive's integrity in practice. In order to assess the topic from different points of view, current ministers were approached as well as former ministers. For the outsiders view on the Executive's integrity, an academic expert was contacted as well as a policy advisor from the National Office for Promoting Ethics & Integrity in the Public Sector. All interviews were held face-to-face.

Interviews held:

- Wouter Bos, Partner and Head of the public sector and health service division of KPMG, and former Vice Prime Minister, interview held the 30th of August 2011.
- Mark Bovens, Professor of Public Administration and Research Director at the Utrecht School of Governance, interview held the 7th of June 2011.
- Ferd Crone, Mayor, City of Leeuwarden and former MP for the political party PvdA, interview held the 17th of March 2011.
- Eduard Nazarski, Director of Amnesty International Netherlands, interview held the 1st of June 2011.
- Henk Nijhof, Chair of the board of the political party GroenLinks, interview held on the 21st of June 2011.
- Guusje ter Horst, President of the Netherlands Association of Universities of Applied Sciences (HBO-raad) and member of the Senate for the political party PvdA and former Minister of the Interior and Kingdom Relations, interview held the 2nd of May 2011.
- Ivo Thomassen, Senior Policy Advisor, Directorate of Public Administration at the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.

310 Transparency International, "Pillars of Integrity: Confronting Corruption. The Key Elements of a National Integrity System.", March 2003 p.4.

- Alexander Rinnooy Kan, President of the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.
- Jack van Zijl, National Public Prosecutor for Corruption at National Public Prosecutor's Office, interview held the 6th of June 2011.
- Suzanne Verheij, Policy Advisor at the National Office for Promoting Ethics & Integrity in the Public Sector – CAOP/BIOS, interview held the 24th of May 2011.
- Interviewee 5, Senior auditor at the Netherlands Court of Audit, interview held the 18th of April 2011.³¹¹
- Interviewee 6, Senior auditor at the Netherlands Court of Audit, interview held the 18th of April 2011.³¹²
- Interviewee 7, Senior auditor at the Netherlands Court of Audit, interview held the 18th of April 2011.³¹³

strengthened by active reporting by the media on the conduct of individual ministers. On a lesser note, the Executive's transparency and integrity are a concern. Although the Executive provides the legislature with enormous amounts of information, there are some concerns about how this information is selected and what the exact scope is of the Tweede Kamer's limitations in contacting civil servants from the ministries for further information. Additionally, the duty to provide adequate information under the Wob (Openness of Government Act) is not always safeguarded in practice. The National Ombudsman, journalists and academics all see the Wob as a failure because it hasn't increased transparency regarding the Executive's activities. A comprehensive handbook for new members of the Executive seeks to inform them what is considered to be proper conduct. The fact that no private financial information has to be disclosed by ministers, and that the legislature is not informed on the financial and business arrangements made by ministers regarding their appointments, weakens the possibilities of parliamentary representatives to monitor conflicts-of-interest. Additionally, there are no post-government employment restrictions for members of the Executive. There is a concern about the lack of priority which the Executive devotes to anti-corruption efforts.

EXECUTIVE

Status: Strong

Summary

The Executive has sufficient resources. In the Netherlands it is made up of a coalition of political parties. This automatically leads to a certain amount of dependence on the legislature. It is the Executive that, in the main, determines the extent to which it will act on motions from Parliament or from public consultation. Overall, the Executive's independence is adequately ensured. Ministerial responsibility is an important safeguard in ensuring the Executive's accountability. It has proven to be effective in holding ministers responsible for bad policies. This has been

Structure and Organisation

The government is the supreme executive body and is formed by the Queen and ministers.³¹⁴ It is the hierarchical top of a large administrative apparatus. In practice, the Queen does not participate in the daily decision-making of government, she is merely informed about relevant issues by the Prime Minister (PM) during his weekly visit. The Queen plays a limited role in the procedures around government formation. Because of the Dutch system of proportional representation and the large number of political parties, the government is a coalition government supported by the coalition parliamentary groupings in the Tweede Kamer (House of Representatives). The government governs on the basis of a coalition agreement.³¹⁵ The Dutch Constitution does

³¹¹ This expert requested anonymity.

³¹² This expert requested anonymity.

³¹³ This expert requested anonymity.

³¹⁴ Art. 42 paragraph 1 Grondwet. Note: the Constitution refers to a King but the Netherlands currently has Queen Beatrix as its monarch.

not mention any cabinet, but only the government and council of ministers.³¹⁶ The Dutch council of ministers is the executive council of Dutch government, formed by all the ministers and chaired by the PM.³¹⁷ This executive council initiates laws and decides on general government policy.³¹⁸ The government carries out the most important administrative acts by itself; all the other administrative tasks are carried out at a lower level by the administrative apparatus for which the government is responsible. There are currently 11 ministries in the Netherlands. The Ministry of the Interior and Kingdom Relations (BZK – Ministerie van Binnenlandse Zaken en Koninkrijksrelaties) is the only ministry containing two ministers: the Minister of the Interior and Kingdom Relations and the Minister for Immigration and Asylum.³¹⁹ Politically, a ministry is led by the Minister and State Secretary.³²⁰ The management of civil servants is in the hands of a secretary-general and director-general(s).³²¹ The secretary-general directly manages the director-general(s) and directors of the ministry.³²²

Parliament checks whether the government carries out its work properly (*Pillar Legislator/Executive Oversight*). A decision by the government is called a royal decree (KB – Koninklijk Besluit) and its content can either be

administrative or legislative. The council of ministers is distinct from the cabinet, which also includes state secretaries. A state secretary takes over part of the minister's portfolio and falls within the responsibility of the minister, but is separately responsible to parliament. Some state secretaries have clearly defined portfolios, while others' portfolios overlap with that of the minister. State secretaries do not attend the council of minister meetings unless they are requested to do so, and they do not have voting rights.³²³

In practice, the cabinet is referred to as 'the government', because the ministers are responsible for the government's conduct.³²⁴ This responsibility of ministers is both criminal and political. Political responsibility is grounded in the Constitution.³²⁵ Criminal responsibility is regulated by the Act on Ministerial Responsibility (Wet ministeriële verantwoordelijkheid), which dates back to 1855. There are no examples of prosecutions which have been based on this act. The extent of political responsibility depends on the confidence rule (vertrouwensregel), which is entirely a matter of unwritten law.^{326, 327} The King³²⁸ is immune and cannot be held accountable for the government's policies.³²⁹

315 The coalition usually reflects the majority in the House of Representatives. The current government is the first exception to this practice since the Second World War. Since 2010 there has been a minority government supported by the anti-Islam party of Geert Wilders. For more info, please visit <http://www.government.nl> or the short article via <http://www.guardian.co.uk/world/2010/sep/28/dutch-coalition-geert-wilders>, consulted 3 August 2011.

316 Art.45 Grondwet.

317 Art. 43 Grondwet.

318 Art. 4 Reglement van orde voor de ministerraad.

319 Art.44 paragraph 2 Grondwet.

320 A state secretary in the Netherlands functions as a deputy minister. Some ministers are accompanied by a state secretary.

321 Art. 44 Grondwet.

322 <http://www.rijksoverheid.nl/documenten-en-publicaties/vragen-en-antwoorden/welke-ministeries-zijn-er-en-hoe-wordt-een-ministerie-geleid.html>, consulted 8 August 2011.

323 For more information about the Dutch Government visit: <http://www.government.nl/Government>

324 Art. 42 paragraph 2 Grondwet.

325 Ibid.

326 Lange, de R. (2002).

327 The pillar 'Public Sector' forms a separate pillar of the National Integrity System; it will therefore be assessed in a separate report. In the NIS the ministries fall within the definition of public sector and are therefore discussed in that report. In this report referral to ministries is made to explain the tasks and provisions of the Executive.

328 Note: the Constitution refers to a King but the current Dutch monarch is Queen Beatrix.

329 Art. 42 paragraph 2 Grondwet.

ASSESSMENT

Resources (in practice)

To what extent does the executive have adequate resources to effectively carry out its duties?

The availability of adequate resources can be assessed according to different budgets. The Ministry of General Affairs (AZ – Ministerie van Algemene Zaken) is responsible for the coordination of general government policy and communication. It spent EUR 68.6 million in 2010.³³⁰ The draft budget for 2011 is approximately EUR 65 million.³³¹ This budget-cut is part of the overall state budget cuts in order to reduce the Netherlands's budget deficit. The number of personnel is to be reduced between 2007–2015 from 500 full-time equivalent to 400. The cabinet of the PM advises and supports the PM, and includes the secretariat of the council of ministers; this takes up approximately 20 percent of the total budget of the Ministry of AZ. The budget for the operation of the cabinet of the Queen for 2011 is approximately EUR 2.4 million.³³² These costs involve, among other things, the exchange of legal documents and communication between the Queen and other members of the government. Over the last years this budget was quite stable.³³³

As part of the budget cuts, the current government has decided to create a smaller government. The current government now has fewer ministries and ministers than the previous ones.³³⁴ In its coalition agreement, the government refers to a 'smaller and stronger government' and includes a budget-cut for the

government itself of EUR 6.14 billion in 2015 and a structural budget cut of EUR 6.56 billion.³³⁵ This involves a smaller number of civil servants and politicians at all levels of government (state, provinces, local and water authorities).³³⁶

According to recent research, civil servants have expressed their fear that this overall saving will be less effective than saving on particular expenses through clear policy choices.³³⁷ However, it is still to be seen in what way the ministries decide to cut their budgets and what the net result of these savings will be.³³⁸ (*For more information, please refer to Executive/Public Sector Management.*)

Overall, there is little to suggest that the executive does not have adequate resources to effectively carry out its tasks or which makes it particularly vulnerable to dishonest behaviour within the Executive.

INDEPENDENCE (BY LAW)

To what extent is the executive independent by law?

Dualism

The Netherlands does not have a strict separation of powers, but the relation between the Executive and parliament can be regarded as dualistic now that ministers and state secretaries cannot be members of parliament.³³⁹ An exception to this rule is when a minister or state secretary puts up his position for disposal votes in parliament until a decision is made

330 http://www.prinsjesdag2010.nl/miljoenennota/huishoudboekje_van_nederland, consulted 3 August 2011.

331 http://www.rijksbegroting.nl/2011/voorbereiding/begroting,kst148570_4.html, consulted 3 August 2011.

332 Kamerstuk 32780 III nr. 1; <http://www.kabinetderkoningin.nl/nl/kdk114.html>, consulted 3 August 2011.

333 http://www.rijksbegroting.nl/2010/voorbereiding/begroting,kst132819b_5.html; http://www.rijksbegroting.nl/2009/verantwoording/jaarsverslag,kst139620_3.html, consulted 3 August 2011.

334 Freedom and Responsibility Coalition Agreement VVD–CDA, September 2010 p.6 and 7.

335 The Dutch government announced in 2011 that it wants to save a total of 18 billion euros. That means deep budget-cuts, for instance at the Ministry of Defence but also, for instance, for the culture and art sectors and savings on the budget for the disabled and those receiving benefits. Around half of the savings should be realised through this compact government.

336 Brief Ministerie van Binnenlandse Zaken en Koninkrijksrelaties Uitvoeringsprogramma Compacte Rijksdienst, 14 February 2011.

337 Binnenlands Bestuur 29th of April 2011, 17, 32 p.26–27.

338 The Netherlands Court of Audit will monitor the realization of the overall budget-cuts in the coming years.

339 Art. 57 paragraph 2 Grondwet.

on his dismissal or reappointment.³⁴⁰ According to the Constitution, parliament and the government share the legislative power, while the Executive power at the national level lies with the government.³⁴¹ The government and individual ministers are competent to make other general government regulations, while parliament monitors and supervises the government as it is doing so.³⁴² The council of ministers makes decisions on its own as part of general state policy.³⁴³ The general principle of ‘ministerial responsibility’ is always applicable: ministers are responsible for the set of policy issues and associated legislation coming from their ministries. In carrying out both tasks, the government is dependent on parliament. The government and individual ministers are accountable to parliament for their actions and must have the confidence of parliament.

Lobbying

There are no provisions concerning lobbying. Nor is there a registry of lobby firms.

The independence of the Executive is safeguarded to some extent: on the one hand, the government is allowed to operate freely and independently, but on the other hand it is dependent on the legislature via ‘checks and balances’.

INDEPENDENCE (IN PRACTICE)

To what extent is the executive independent in practice?

Dualism

The criticism of the interdependence found in practice between the government and the parliamentary groupings is recurring, and is the result of the complex customs and conventions which came into being over the last centuries.³⁴⁴ The formation of coalition governments is particularly an example of a custom where different political actors play a role and the dualistic system becomes blurred. Here the chairs of the parliamentary groupings play an advisory role in their talks with the Queen and the ‘informateur’³⁴⁵, and in a later stage with the ‘formateur’³⁴⁶. There are examples in which the coalition parliamentary groupings in the Tweede Kamer were bound by the coalition agreement, and therefore could not actively carry out their role in supervising the government. In the previous coalition agreement, the Dutch Labour Party (PvdA – Partij van de Arbeid) had agreed not to ask for a parliamentary inquiry or investigation into the Dutch support in Iraq if one of their political priorities was also included.³⁴⁷ In practice this led to the PvdA grouping ‘being bound’ to the coalition agreement and restricted in using their right to ask for a parliamentary inquiry or investigation. Nevertheless, this dependency is inherent in a political system based on proportional representation. Here an important safeguard for the fairness of the formation process is that the agreement to form a coalition is made in complete freedom and independence. The current government is a minority government. One parliamentary grouping, the populist Party for Freedom (PVV – Partij voor de Vrijheid), supports the government through a Parliamentary

340 Art. 57 paragraph 3 Grondwet.

341 Art.81, 89 and 42 Grondwet.

342 Art.89 Grondwet.

343 Art. 4 Reglement van orde voor de ministerraad.

344 <http://www.volkskrant.nl/vk/nl/2824/Politiek/archief/article/detail/555215/2000/02/19/Nederland-wil-helemaal-geen-dualisme.dhtml>; Radio broadcast of the 11th of March 2009 via <http://www.radio1.nl/contents/4444-heeft-het-dualisme-in-nederland-haar-laatste-adem-uitgeblazen?autostart=4901>

345 An informateur explores the various options for a new government. After either a general election or the collapse of a previous government, he/she examines which parties are able to and ready to form a new government and which obstacles have to be overcome.

346 A formateur is a politician who is appointed by the Queen to lead the formation of a coalition government after the informateur has recommended a coalition and the key themes of the shared policies have been set out in a coalition agreement. The formateur often becomes the new PM.

347 <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/833704/2007/02/20/Onderzoek-naar-steun-Irak-oorlog-nog-ver-weg.dhtml>, consulted 8 August 2011.

Support Agreement, although it is not represented in the council of ministers. In practice, the government can rely on this grouping's support on those topics which are in the agreement. However, for other topics the government is dependent on the support of opposition groupings. So the construction of a minority government has led to a particular kind of interdependence between the Tweede Kamer and the government.³⁴⁸ Another example which shows that the independence of the Executive is not absolute, is the so-called 'bewindspersonenoverleg' in which each of the parliamentary groupings meet with their own ministers (usually every Thursday) to prepare for the meeting of the council of the ministers on Friday. There is a general agreement that coalition parliamentary groupings have close contact with the government, but this coincides with a risk of the independence of both institutions being thereby harmed (for instance, effective supervision by the Tweede Kamer).³⁴⁹ On the other hand, trying to create a certain degree of agreement and support (at least informally) between the government and some of the Tweede Kamer's parliamentary groupings seems almost essential for effective political decision-making. *(For more information, please refer to Legislative/Independence.)*

Lobbying

There recently was a Dutch journalist who reported for a period of one month from the Binnenhof (the premises of the HoR) and provided a 'behind the scenes' picture, described how lobbyists, politicians (MPs, ministers and state secretaries), press officers and journalists all depended on each other and attempted to influence one another. Here a picture arises of lobbyists also influencing members of the cabinet and civil servants from the ministries.³⁵⁰ One

interviewee maintained that businesses regard the civil service at the ministries to be the most effective means to influence decision-making.³⁵¹

Overall, the extent to which the Executive is dependent on the legislature does not undermine its functioning in practice. There is, however, interference in the Executive's activities by lobbyists.

TRANSPARENCY (BY LAW)

To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

Duty to provide information

The general obligation in the Constitution which requires ministers and state secretaries to provide the information they are being asked for by the Tweede Kamer and/or Senate, except if it would violate state interests, is a cornerstone provision.³⁵² This broadly formulated provision can include any topic and is an important provision to assure the transparency of the Executive. However, meetings of the council of ministers are not open and there is an obligation of secrecy regarding topics discussed at these meetings.³⁵³ The idea behind this is that the council of ministers should support the unity of government policy, which would be undermined if individual points-of-view of the respective ministers were out in the open. Also, the ministers are supposed to be able to speak out freely during these meetings. All associated documents – for example, the agenda and minutes – are considered to fall within the scope of this secrecy and therefore are not made available to the public.³⁵⁴ The minutes of the council of ministers normally remain secret for 20 years.³⁵⁵ Through the

348 Parliamentary Support Agreement VVD–PVV–CDA, September 2010.

349 Radio broadcast of the 11th of March 2009, <http://www.radio1.nl/contents/4444-heeft-het-dualisme-in-nederland-haar-laatste-adem-uitgeblazen?autostart=4901>

350 Luyendijk, J. (2010).

351 Interview held with Remco Nehmelman, Senior lecturer State and Administrative Law, University of Utrecht, 17 May 2011.

352 Art. 68 Grondwet.

353 Art. 26 Reglement van orde voor de ministerraad.

354 Art. 11 paragraph 1 Wet openbaarheid van bestuur.

355 Art. 14 Algemene aanwijzingen inzake aangelegenheden van de ministerraad en onderraden; and <http://www.rijksoverheid.nl/regering/het-kabinet/ministerraad/werkwijze>, consulted 12 August 2011.

use of the Openness of Government Act (Wob – Wet openbaarheid van bestuur) this can be overruled. Via a Wob-verzoek anyone can request information from ministers regarding their policies. However, the law provides an exception clause which allows the Executive to refuse these requests if, among other things, the unity of the Crown (government), safety of the state or relations with other states or international organisations are at stake.³⁵⁶ There is a right to appeal if this request is rejected.³⁵⁷

Disclosure of financial information

There is a long-standing obligation to publish the incomes of ministers and state secretaries. This duty was supplemented in 2006 when other top officials' income was also required to be made public.³⁵⁸ There is a duty for ministers– and state secretaries–to–be to be open about their private financial and business interests in their talks with the formateur. The ministers and state secretaries are required to make arrangements to place these interests out of their control while they are in office. However, there are no regulations covering the disclosure of personal, financial and/or business interests for ministers and state secretaries.³⁵⁹

The provisions ensuring transparency of the activities of the Executive are not complete and could be improved. Some restrictions to the transparency of the Executive allow it to effectively discuss and decide on the directions of its policies, so more transparency could harm effective decision-making.

This secrecy can be lifted in the case of a national interest. However, some provisions related to the transparency of ministers and state secretaries are absent or contain loopholes and therefore depend to a large extent on a given individual's attitude.

TRANSPARENCY (IN PRACTICE)

To what extent is there transparency in the relevant activities of the Executive in practice?

Duty to provide information

The meetings of the council of ministers are not open to the public. The PM does give press conferences after these meetings, in which he presents the plans of the government and/or looks back at decisions made and actions taken. Journalists can ask the PM questions and the public can follow the press conference via a special TV channel or via Internet or in the daily news. The written texts and video recordings can be found on the Internet. In practice, the scope of what is considered as policy' and therefore can be requested via a 'Wob-request' is broad. In the past, expense claims and invoices from individual ministers were considered to fall within its scope as part of research into the declarations which were made by ministers.³⁶⁰ On the other hand, the scope of what is considered to be internal documents of council of ministers meetings, and which therefore fall within the scope of what is considered secret, is broadly interpreted as well and can include documents exchanged between ministries.³⁶¹

The National Ombudsman, journalists and academics consider the current Wob to be a failure. There has been no implementation trajectory or training for civil servants. All ministries together have 100 full-time equivalents responsible for Wob-information (compared to 3000 full time equivalents in the United Kingdom). Since 2003 Wob-requests have been declined more often and jurisprudence has no longer been considered to change Wob-policies, nor has the Wob been evaluated.³⁶² Additionally, governmental archives in the Netherlands are not well-managed, which makes it difficult for a civil servant to find the information requested.³⁶³

356 Art. 10 Wet openbaarheid van bestuur.

357 Art. 8:1 Algemene wet bestuursrecht.

358 Wet openbaarmaking uit publieke middelen gefinancierde topinkomens, Bezoldigingsbesluit Burgerlijke Rijksambtenaren 1984.

359 Secretariaat Ministerraad (2010). Handboek voor aantredende bewindspersonen. p.26 paragraph 8.4.

360 Damman, M. (2010). p.17.

361 Ibid.,p.22.

362 Wob-expert Roger Vleugels in an Radio-broadcast of VPRO's Argos of 1st of October 2011.

363 Ibid.

There are several examples of requests for information rejected by the government, as well as requests which have been approved. A list of Wob-requests and the information provided by the Executive in return can be found on the government website.³⁶⁴ In this way the information is made available to the public at large, and unnecessary identical request are prevented. It is difficult to get an overview of requests which have been refused by the ministries.³⁶⁵ A Wob-request which got quite some attention in 2009 was when RTL Nieuws requested the minutes of the meetings of the councils of ministers in which Dutch support to the invasion of Iraq was discussed. The then-PM Balkenende refused to provide this information and, in an appeal case, the court ruled that the information requested was considered as internal deliberation, generally containing individual views of the ministers. It further ruled that the importance of protecting relations with other states outweighed the importance of making the information available to the public.³⁶⁶ In the end, the highest general administrative court (the ABRvRS) ordered the then-PM to provide the requested information after all.³⁶⁷

Generally speaking, the Wob has not been very effective in increasing the transparency of the Executive's activities. The exception clauses are frequently used by the Executive, and the fact that deadlines for providing information regularly not met also undermines its effectiveness. A study into Wob-requests by journalists showed that there was one case in which the information was provided after three years, while on average information is provided within 3 months. If this one

extreme exception is left out, the average duration of waiting for information is 6 weeks, but if a request is declined it can take another year before an appeal is considered before a court.³⁶⁸ Journalists and citizens have complained about this, while civil servants and ministers on the other hand complain about the overkill of requests, which take up a lot of their time and capacity.³⁶⁹ Recently the Minister of BZK announced that the authorities should be granted more leeway to turn down improper Wob-requests.³⁷⁰ *(For more information, please refer to the Pillar Executive/ Legal Reform.)*

Disclosure of financial information

The functional income of ministers, state secretaries and other top officials can be found in the respective laws, and are also published on the website of the government.³⁷¹ However, it is difficult to find information on the arrangements made by ministers and state secretaries regarding their private income and financial and business interests. MPs have used their constitutional right to information to receive information on the arrangements made for the members of cabinet.³⁷² The minister responded in that case by saying that this right to information is restricted to information which is related to the public activities of a minister or state secretary, and that private activities only fall within the scope of this right to information if these influence the public functioning of the minister or state secretary.³⁷³ According to the minister, Dutch state law is based on trust and therefore there is no duty to provide detailed information on the business and financial arrangements made by the members of the Executive

364 <http://www.rijksoverheid.nl/documenten-en-publicaties/wob-verzoeken>, consulted 5 August 2011.

365 Damman, M. (2010). p.37.

366 <http://vorige.nrc.nl/article2295753.ece>, consulted 3 August 2011.

367 http://www.raadvanstate.nl/uitspraken/zoeken_in_uitspraken/zoekresultaat/?zoeken_veld=rtl%20nieuws&verdict_id=0fdeYU8jZhM%3D, consulted 3 August 2011.

368 Klingenberg A.M., Herweijer M., Spanninga K. (2011) p.6 and <http://www.trouw.nl/tr/nl/4324/Nieuws/article/de-tail/1884060/2011/05/03/Wet-Openbaarheid-van-Bestuur-werkt-veel-te-traag.dhtml>, consulted 20 September 2011.

369 Damman, M. (2010). p. 105–109.

370 <http://www.freedominfo.org/2011/05/dutch-minister-proposes-cutbacks-to-openness-law/>, consulted 16 September 2011.

371 <http://www.rijksoverheid.nl/documenten-en-publicaties/vragen-en-antwoorden/wat-is-het-salaris-van-een-minister-staatssecretaris-of-burgemeester.html>, consulted 8 August 2011.

372 Art. 68 Grondwet.

373 Kamerstuk 32500 nr. 8.

to prove there is no conflict-of-interest. Only in case of an alleged conflict-of-interest is there a duty on the part of the Executive to provide information. There are on-going discussions about this in the Tweede Kamer, but also the media and society generally take part in broader discussions as to whether or not to formalise provisions aimed at increasing transparency and the integrity of office holders.

While one can obtain relevant information on the organisation and functioning of the Executive, certain information from the Executive can be difficult to gain access to. Dutch state law is based on the principle of trust, and some pieces of information are only made available if there is a serious suspicion of wrongdoing. That is why the Dutch Executive does not always show a proactive approach in making information available without there being an obvious reason for it.

ACCOUNTABILITY (BY LAW)

To what extent are there provisions in place to ensure that members of the Executive have to report and be answerable for their actions?

Ministerial responsibility and the rule of trust

Overall the accountability provisions of the Executive are adequate to ensure the responsibility of the government towards parliament. The cabinet and its individual members have a general duty to report on their relevant executive activities. Most principal provisions concerning the accountability of the Executive rest with parliament and are either based on written or unwritten state law. The principle of ministerial responsibility (ministeriële verantwoordelijkheid) means that ministers are responsible to parliament.³⁷⁴ This responsibility implies that ministers bear full responsibility for their own acts and for their collective acts as the government.³⁷⁵ Ministerial responsibility also implies

that acts carried out by the ministry fall within the responsibility of the minister. Additionally, there is a limited responsibility for autonomous administrative authorities (ZBOs – Zelfstandige Bestuursorganen) and for some of the so-called ‘statutory persons with a legal task’ (Rechtspersonen met een wettelijke taak), which are institutions with a public task which have been set at a distance from government. However, the principle of parliamentary primacy ultimately determines the scope of this ministerial responsibility.³⁷⁶ The unwritten ‘rule of trust’ upholds an important condition for the legitimacy of government and individual ministers: both must have the confidence of both the Tweede Kamer and the Senate. State secretaries require the confidence of the minister and parliament.

Information provision

The procedure through which a minister is called to account starts with his general duty to provide information to parliament.³⁷⁷ Civil servants have a duty to inform the minister. This minister’s duty to provide information is related to the parliament’s right to ask questions, the right to interpellation (debate) and its right to set up a parliamentary inquiry or investigative committee. Parliamentary written questions have to be answered within three weeks.³⁷⁸ *(For more information, please refer to Legislative/ Executive Oversight.)*

Secondly, a minister is obliged to discuss, clarify and defend the policy pursued. This includes indicating why, of all options available, he chose for this particular policy, and to what extent he is willing to take on the proposed amendments and motions. As a means of last resort, parliament can hold the minister or government accountable by using its right of a motion of no-confidence, thereby forcing an individual minister or the whole government to resign. If a minister leaves, the state secretary also puts his position for disposal.³⁷⁹

374 Art. 42 paragraph 2 Grondwet.

375 Vries, de M.B.F.D. (2004).

376 Kamerstukken Hoofddossier 26806 via <https://www.officielebekendmakingen.nl/>, consulted 1 August 2011.

377 Art.68 Grondwet.

378 Art.135 Reglement van Orde van de Tweede Kamer.

379 Nieuwenkamp, R. (2001). p. 18–23.

Accounting for budget and spending

Apart from the general obligation of accounting for its decisions, the Executive has to account for the way it carries out a public task and the way public money is spent, through its duty to publish budget and annual reports which are audited by the Netherlands Court of Audit (AR – Algemene Rekenkamer).³⁸⁰ The Queen is obliged to present annually, in September, the government's policy plans for the coming year.³⁸¹ This duty coincides with the duty of the Minister of Finance to propose a budget for the coming year.³⁸² The cabinet accounts for the budget via discussions with the Tweede Kamer and subsequently with the Senate. The Tweede Kamer has the right to amend these budget proposals. Senators can only accept or reject each department's proposed budget. There is a duty for the cabinet to send all annual reports of the previous financial year to the Tweede Kamer.³⁸³ In this way the cabinet accounts for the finances, the money spent and the carrying out of its policies. Through the involvement of the AR, the Tweede Kamer can get a better understanding of the things which have gone well and the things which have not. *(For more information on Accountability Day, please refer to Supreme Audit Institution/Structure and Organisation or/Transparency.)*

Comprehensive checks and balances are in place for the Executive to account for its conduct. Regular reporting on relevant executive activities to other state bodies is required.

ACCOUNTABILITY (IN PRACTICE)

To what extent is there effective oversight of executive activities in practice?

Ministerial responsibility and the rule of trust

The Tweede Kamer holds individual ministers responsible for the policies and incidents falling within their portfolio. This often leads to heated debates, and

in some cases the Tweede Kamer takes on a motion of either 'regret' (treurnis), 'disapproval' (afkeuring) or 'no-confidence' (wantrouwen). The seriousness of the words used determines whether resignation should occur. By using a 'motion of no-confidence', the Tweede Kamer expresses that it no longer trusts the minister, state secretary or the government. If the motion is approved, this will result in the specific resignation. Although individual parliamentary groupings have used the right to a motion of disapproval and no-confidence, it rarely results in a majority voting in favour of the motion. In 2006 a motion of disapproval towards the Minister of Asylum and Integration Rita Verdonk was accepted and led to a transfer of the Asylum portfolio to another minister. *(For more information on the number of times a motion of no-confidence towards a minister has been accepted, or the number of times a parliamentary investigation and/or inquiry took place, please refer to Legislator/Executive Oversight.)*

Information provision

Although ministers and state secretaries must provide parliament with any information requested, provided that the provision of such information does not conflict with the interests of the state, the pace with which the information is provided and the quality of the information (both written and oral) is not sufficient, according to a recent PhD research.^{384, 385} This PhD research provided various explanations for this. First, this duty to provide information is part of the ministerial responsibility, i.e. providing the Tweede Kamer with the opinions of consulted external experts could lead to holding the minister responsible for external experts' statements. This would lead to the Tweede Kamer monitoring all thoughts and ideas shared in the preparation phase of a decision; this bears with it the risk of the minister being held accountable for all things said and done in the preparation phase. Secondly, there are the limitations on individual civil servants' contacts

380 Art. 105 paragraph 3 Grondwet.

381 Art. 65 Grondwet.

382 Art. 12 paragraph 4 and art. 13 Comptabiliteitswet 2001.

383 Art. 63 Comptabiliteitswet 2001.

384 Enthoven, G.M.W. (2011). p. 32-96 and 371-433.

385 Art.68 Grondwet.

with MPs; official information is supposed to be provided only by the government.³⁸⁶ Thirdly, the research carried out by research and academic institutions on behalf of ministries is not automatically made available to the Tweede Kamer. It is at the discretion of the ministries to determine whether a research report is sent to the Tweede Kamer. If the ministry does not want to publish a report, the researchers can request that they publish the results on their own account. The permission for this can be given under appropriate conditions, and can only be refused on reasonable grounds.³⁸⁷ Although receiving timely, sufficient and correct information is essential for the Tweede Kamer to effectively supervise the government, it is also important to consider the amount of information already received by the individual MPs and the risks involved in increasing their workload.³⁸⁸ The minister for BZK indicated that he could not acknowledge the conclusion that there is a recurring pattern of poor information provision to the Tweede Kamer.³⁸⁹ (*Please refer to the Report on Legislature.*)

Accounting for budget and spending

In 2011, the cabinet made its annual reports available a week before Accountability Day. From these reports it became clear that ministries were poor at paying invoices, and that less money was spent on hiring external personnel.³⁹⁰ The AR was very critical of the Ministry of Defence (poor management of equipment) and the Ministry of Health, Welfare and Sport (issues regarding the control of subsidies submission).

Additionally, the AR concluded that the Dutch government was falling behind with its stated budget-cuts.³⁹¹ This will be closely monitored by the Tweede Kamer and the AR, and in practice this is sufficient for holding a minister responsible.

Accountability and the public

There are various ways in which the Executive discusses its activities both informally and formally. Individual ministers speak with various organisations such as CSOs.³⁹² The cabinet exchanges ideas and receives information both at its request and at the initiative of various organisations, for instance, from the Social and Economic Council of the Netherlands (SER) on the social and economic policies. Additionally, most Dutch ministries start public consultation for some specific concept law proposals.³⁹³ Reactions from the public will be included in the proposal in a separate paragraph, and then a general reaction by the ministry will be given. Reactions will also be published on the website with consent from the specific person. From 2009 to 2011 a pilot took place called 'Internet consultation'. Although extra time and capacity was required, the government regarded the pilot to be successful because it effectively increased the public's involvement, increased the transparency of the legislation process and improved the quality of legislation.³⁹⁴ Therefore, Internet consultation is now a permanent method of consulting the public.³⁹⁵ A special website provides an overview on bills which are currently being prepared by the government and for which the public is consulted. At least 10 percent of all

386 Aanwijzing inzake externe contacten van rijksambtenaren; Leidraad voor de Toepassing van de Aanwijzing Inzake Externe Contacten van Rijksambtenaren bij Functionele Contacten met de Staten-Generaal en Individuele Kamerleden.

387 Kamerstukken 2010–2011 Aangangsel van de Handelingen 2717.

388 Interview with Guusje ter Horst, Former Minister of the Interior and Kingdom Relations, 2 of May 2011; Interview with Ferd Crone, former MP, 17 March 2011.

389 Kamerstukken 2010–2011 Aangangsel van de Handelingen 1826 and 2717.

390 <http://www.binnenlandsbestuur.nl/home/all/rijk-betaalt-1-op-5-facturen-te-laet.1126171.lynkx>

391 Kamerstuk 32 758 nr. 2; <http://www.volkskrant.nl/vk/nl/3598/Binnenland/article/detail/2433081/2011/05/18/Het-is-vandaag-gehaktdag-in-de-Tweede-Kamer.dhtml>, consulted 5 August 2011.

392 Interview with Eduard Nazarski, Director of Amnesty International Netherlands, 1 June 2011.

393 Some examples: <http://www.rijksoverheid.nl/nieuws/2011/03/04/consultatie-wetsvoorstel-bijzondere-maatregelen-financiële-ondernemingen-interventiewet.html> or <http://www.internetconsultatie.nl/wettopinkomens/berichten>

394 Kamerstukken I, 32 500 VI, K en Kamerstukken II, 29 515, nr. 330. Kabinetsstandpunt internetconsultatie wetgeving 17th of June 2011 via <https://zoek.officiëlebezoekingen.nl/>

395 Website for internet consultation: <http://www.internetconsultatie.nl>, consulted 1 May 2011.

legislation is to be published for Internet consultation. The reactions from the public are now being considered for possible changes to the bill. There are no figures available on the total percentage of laws which are subject to public consultation. When the minister presents the final law proposal, it is complemented with a report, made available on the website, with the results from the consultation. The impact of public consultation in general varies depending on the party being consulted. In general, advice from formal advisory bodies and the well-known and well-organised bigger interest groups has a bigger influence on the legislation.³⁹⁶

The existing provisions to ensure the accountability of the executive are partly applied in practice. When the executive accounts for its conduct, it provides the legislature with information, but the discussion between the Tweede Kamer and the government on whether the information is complete and accurate is a recurring one.

INTEGRITY (BY LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the Executive?

Handbook

The central element of integrity-ensuring provisions for members of the Executive is the 'Handbook for members of government to be appointed' (Handboek voor aantredende bewindspersonen), often informally referred to as the 'blue book'. This handbook provides an overview of state laws and customs regarding, for example, the position and interaction of the different political institutions and the rights and duties of ministers. This comprehensive handbook can be used by members-to-be of the Executive as a preparation for their new position. Furthermore, several provisions are incorporated which deal with safeguarding the

integrity of ministers (including the PM) and state secretaries. The handbook itself is an internal document without formal status, although most documents which can be found in there have legal effect because they confirm existing convention.

Appointments

All candidate ministers are subject to three 'paper assessments'. The justice documentation registry and the registries of the intelligence and security services and fiscal authority will be searched to ensure there are no aggravating circumstances surrounding the candidate. The 'formateur' will discuss with the candidates if there are objections arising out of these inquiries and whether these can be resolved. The handbook explicitly refers to preventing the appearance of conflict-of-interest for a minister, and includes a directive from 2002 which describes the assessment of candidate ministers and state secretaries.³⁹⁷ It is established there that all candidates must give up all other paid and unpaid functions and additional activities before their swearing-in as ministers. This is interpreted in a broad sense, including voluntary functions for associations, part-time academic positions and membership of recommendation committees. The prolongation of such a position is only allowed in highly exceptional situations, and after receiving the written approval of the PM. During this talk the zeggenschapsrechten (capital shares and stock) in relevant financial and business interests are also discussed.³⁹⁸ Candidates are required to part entirely with their interests or else make arrangements through which they can no longer have any say in them for the duration of their being in office.³⁹⁹ There are no registries of declarations of financial interests.⁴⁰⁰ It is therefore not possible to monitor conflict-of-interest. Another provision explicitly referring to the integrity of the executive is the directive on gifts. Gifts which are received by ministers or their partner while carrying out

396 Aeken, van K., Gestel, van R., Humbeeck, van P., Popelier, P., and Verlinden, V. (2007), p. 108–109.

397 Secretariaat Ministerraad (2010). Handboek voor aantredende bewindspersonen p.26 paragraph 5.1.4.

398 Annex 1 of Secretariaat Ministerraad (2010) Handboek voor aantredende bewindspersonen, provides a non-limitative summary of categories of interests: 'no risk of (appearance of) conflict-of-interest', 'risk of (appearance of) conflict-of-interest' and 'accepted solutions to clearing the risk of (appearance of) conflict-of-interest'.

399 Secretariaat Ministerraad (2010). Handboek voor aantredende bewindspersonen p.7.

400 Demmke, C., Bovens, M., Henökl, T., Lierop, van K., Moilanen, T., Pikker, G. and Salmine, A. (2007). p.80.

their function are considered to be ‘government gifts’ and need to be registered if they have a value of EUR 50 or above. Gifts in the form of a service, money, or any gift in order to get a return favour are not accepted.⁴⁰¹ There are no rules about registering contacts with lobbyists.

Integrity provisions

Some provisions do not refer to integrity explicitly but do regulate situations which might otherwise lead to the appearance of conflict-of-interest. Among these are the rules on government communication, declarations, business trips, attending official events and commercial/sports events, and on the use of representative real estate.⁴⁰² In the KB concerning the replacement of ministers who are temporarily absent, a provision is included which assures that one of the other ministers takes over a specific task if the official minister is directly and personally involved, so as to prevent conflict-of-interest.⁴⁰³ There is no code of conduct for the cabinet or council of ministers, although the handbook is by some referred to as the code of conduct. The Ministry of BZK is responsible for integrity policy. It has developed a ‘Model Integrity Political Office Holders for local councils, provinces and water authorities’, but as the title suggests, the model is not applicable to the Executive at the national level.⁴⁰⁴ The legal framework for whistle-blower protection is weak. Little legal protection exists apart from the general statement that ‘it is prohibited to hinder the whistle-blower in his/her legal position.’ This formal protection clause does not coincide with concrete forms of protection.⁴⁰⁵ *(For more on whistle-blower provisions, please refer to Pillar Report Public Sector.)*

Disclosure of financial information

Although the main provisions aimed at safeguarding the integrity of the members of the Executive seem to be formalised, a growing number of MPs have expressed their dissatisfaction with the fact that the current provisions do not allow MPs to effectively monitor ministers to prevent conflicts-of-interest, especially in the case of the financial and business interests of (candidate) ministers.⁴⁰⁶ There is no information made available about the way in which (financial and business) conflicts-of-interest are resolved. The PM does send a letter to the Tweede Kamer in which he indicates that arrangements have been made related to financial and business interests and which additional functions for ministers have been accepted.⁴⁰⁷ If MPs use their constitutional right to information to request further information regarding the financial and business interests of ministers, this information won’t be provided because of privacy concerns.⁴⁰⁸ The only exception to withholding this information is when serious concerns are raised regarding a minister or state secretary.⁴⁰⁹

Provisions for former ministers

A short paragraph in the handbook mentions the ‘integrity of former-ministers’. A rather broad description is used to refer to obligations relating to the integrity of former-ministers. It is desired that former ministers, when accepting new positions, act in such a way that they do not give the appearance that while in office their actions were inappropriate or that they incorrectly dealt with the knowledge gained while in office. However, this description lacks clear criteria on what is considered to be accepted conduct and what is considered to be unacceptable conduct. The former

401 Demmke, C., Bovens, M., Henökl, T., Lierop, van K., Moilanen, T., Pikker, G. and Salmine, A. (2007). p.31 paragraph 5.4.3.

402 Secretariaat Ministerraad (2010). Handboek voor aantredende bewindspersonen, p.33 paragraph 5.8, 5.5.4 and 5.5.5.

403 Besluit houdende de vervangingsregeling in geval van tijdelijke afwezigheid van een minister, 14th of October 2010 Stc. 2010, nr. 16543, article 5.

404 Interview with Susanne Verheij, Senior Policy Advisor at the Dutch National Office for Promoting Ethics and Integrity in the Public Sector CAOP/BIOS, 24May 2011.

405 Bovens, M. and Pikker, G. (2010). p.42.

406 Kamerstuk 32 500 II nr. 14.

407 Secretariaat Ministerraad (2010). Handboek voor aantredende bewindspersonen p.62.

408 Art. 68 Grondwet.

409 Kamerstuk 32 500 II nr. 14.

Minister of Defence is not accepted as a business partner by the Ministry of Defence for a period of two years after leaving office because of the major interest of the weapons industry.⁴¹⁰ Other than this, there are no restrictions on professional commitments or the holding specific posts after leaving office.⁴¹¹

Criminalisation

The final element of integrity provisions is the criminalisation of bribery. Ministers and state secretaries can be sentenced to a maximum prison sentence of four to six years or get a fine of the fifth category. This maximum prison sentence is two to four years more than the maximum prison sentence which can be given to civil servants for the same offence.⁴¹²

Other than the criminalisation of bribery, there are no laws concerning the integrity of the Executive. Overall there are integrity provisions in place which seek to prevent mainly (the appearance of) conflict-of-interest by ministers and state secretaries, but these take the form of 'soft law'.⁴¹³

These provisions are fragmented, can be found in various chapters of the Handbook, and appear to be part of the practical and procedural approach chosen in this Handbook. Its wording, and the number of times referral is made to integrity, is rather limited and therefore the priority given to the integrity by the Executive seems to be undermined.

Additionally, some aspects related to the integrity of members of the Executive are described in such a general way that its effect entirely depends of the interpretation of the individual involved, e.g. the restrictions on post-ministerial employment and on 'revolving door appointments'.

INTEGRITY (IN PRACTICE)

To what extent is the integrity of members of the Executive ensured in practice?

Provisions for former ministers

The issue of (alleged) integrity violations by members of the Executive is increasingly being discussed by the Tweede Kamer, the government, academics and the media. The media is active in its reports on the conduct of individual (former) ministers. In 2011 the Tweede Kamer and the government exchanged views on best way to prevent conflict-of-interest by (candidate) ministers and state secretaries and former ministers and state secretaries.⁴¹⁴ This discussion is still on-going, and initially erupted after some incidents occurred in which there allegedly was a conflict-of-interest involving (former) members of the Executive. One of those involved the former Transport Minister Camiel Eurlings, who had taken up a senior position at Royal Dutch Airlines KLM in 2011 right after he stepped down as a minister: a potential conflict-of-interest. Mr. Eurlings moved to 'an area that came under his former ministerial responsibility', and one analyst suggested it was quite possible that Mr. Eurlings prepared a 'nice soft landing' for himself while he was still Transport Minister.⁴¹⁵ However, Mr. Eurlings did not violate any legal provision, as there were none in place. The Tweede Kamer voted in favour of a motion expressing the need to come up with clearer rules on conduct to prevent the (appearance) of abuse of confidential information by former ministers and state secretaries. The cabinet, represented by the minister of BZK, objected to carrying out this motion as it considered the current provisions to be adequate safeguards to prevent integrity violations by former members of the

410 "Donner ziet af van nieuwe regels ex-politici. Het kabinet vertrouwt op de integriteit van oud-ministers," NRC Handelsblad 29th of April 2011; <http://www.volkskrant.nl/vk/nl/2824/Politiek/article/detail/2446057/2011/06/16/De-Vries-mag-niet-lobbyen-bij-Defensie.dhtml>, consulted 12 August 2011.

411 Demmke, C., Bovens, M., Henökl, T., Lierop, van K., Moilanen, T., Pikker, G. and Salmine, A. (2007). p.59.

412 Art.362 and 363 paragraph 3 Wetboek van Strafrecht.

413 Demmke, C., Bovens, M., Henökl, T., Lierop, van K., Moilanen, T., Pikker, G. and Salmine, A. (2007).

414 Kamerstuk 31 500 III nr. 8 and nr. 14.

415 In this article Professor (emeritus) of policy sciences Hans van den Heuvel from the VU Amsterdam is cited: <http://www.volkskrant.nl/vk/nl/2844/Archief/archief/article/detail/1836018/2011/02/18/We-hoeven-Eurlings-echt-niet-op-zijn-blauwe-ogen-te-geloven.dhtml>

Executive.⁴¹⁶ The Minister was referring to the provisions which allow former politicians to be prosecuted if they expose state secrets and/or official secrets.⁴¹⁷ In a recent documentary in which (former) ministers and MPs are interviewed, the general opinion expressed is that there should be stricter and clearer rules on post-government employment of ministers and state secretaries to prevent doubts arising about the integrity of Executive officials while they are in office and after they leave office.⁴¹⁸

Disclosure of financial information

Another case involved the arrangements made in order to distance Asylum and Integration Minister Gerd Leers' financial and business interests before his appointment. Minister Leers had recently resigned from his position as Mayor of Maastricht because of his alleged abuse of power in a case concerning private real estate in Bulgaria. A couple of months later he became minister and established a foundation which was put in charge of his business interests in Bulgaria. According to two analysts, this arrangement to prevent conflict-of-interest is not satisfactory since it is not in accordance with the directive of 2002 (part of the Handbook) which explicitly requires ministers to part entirely with their business interests before being appointed.⁴¹⁹ It is still the minister who determines who the board members of his foundation are. The PM reacted by saying that 'he ensures that financial and business interests are set aside by ministers, but that it is the ministers themselves who determine how this is done'.⁴²⁰ Other analysts have reacted by saying that the current Dutch debates on the integrity of politicians are too often of a theoretical nature. In most cases a real integrity violation is not found, all were instead

mere cases of risking the appearance of integrity violations.⁴²¹ Both recent examples and the discussion following them show that the Handbook leaves too much space for interpretation and differing views. What is considered as ethical behaviour is perceived differently by members of the Executive and members of the legislature. Although in none of the cases was a concrete integrity violation established, the appearance of conflict-of-interest can have negative consequences, such as on the trust of citizens in honest politics and good governance.

Other integrity incidents

Other integrity incidents by members of the Executive related to their using their positions for (party) political activities. One incident which led to a 'motion of regret' (motion of treurnis) from the Tweede Kamer involved the Minister of Agriculture, Gerda Verburg, who celebrated the anniversary of the ministry with a glossy magazine (under her name) with her image on the front page and a story about her. The total costs for the magazine were EUR 405,000 and the magazine was enclosed with women's magazines. After the resulting legislative motion and debate, the minister and the PM agreed that this glossy magazine was a mistake and that 'personal profiling cannot be the aim of government communication'. MPs criticised the fact that tax money was paid on a glossy magazine, in violation of the communication rules, and before the elections in order for the minister to promote herself. The apologies from the minister and the PM turned out to be satisfactory to the Tweede Kamer.⁴²² In March of 2011 the Tweede Kamer asked for an emergency debate to discuss a civil servant's allegation that the Minister of Economic Affairs, Agriculture and Innovation and vice PM Maxime

416 "Donner ziet af van nieuwe regels ex-politici. Het kabinet vertrouwt op de integriteit van oud-ministers," NRC Handelsblad 29 April 2011.

417 Art. 98 and art. 272 Wetboek van Strafrecht.

418 Documentary of the 9th of August 2011 can be found via <http://tvblik.nl/kijken-in-de-ziel/de-minister>

419 The analysts referred to are Professor of Company Law Steef Bartman from the University of Leiden and Professor of State and Administrative Law Margriet Overkleef from the Erasmus University of Rotterdam via http://www.limburger.nl/article/20101103/REGIONIEUWS01/101109904/1056#%E2%80%98Leers_schendt_ministerscode%27, consulted 2 August 2011.

420 Ibid.

421 The analysts referred to are Professor of Governance Leo Huberts and Professor (emeritus) of policy sciences Hans van den Heuvel, VU in <http://weblogs.nrc.nl/expertdiscussies/een-morele-afstraffing-van-gerd-leers-is-onterecht>, consulted 2 of August 2011.

422 http://vorige.nrc.nl/binnenland/article2501697.ece/Motie_van_treurnis_om_glossy_Gerda, consulted 2 August 2011.

Verhagen had civil servants of his ministry working on his speeches for meetings of his political party. Verhagen denied engaging his civil servants for party political purposes, but confirmed that civil servants had helped with parts of his speeches which involved only factual information.⁴²³ In April the Minister of BZK sent a letter to the Tweede Kamer in which he clarified that the conduct fell within the principles of government communication and the engagement of civil servants in election campaigns.⁴²⁴ In principle, the speeches held during election campaigns are not considered to be different from other speeches because in both situations the government standpoint is to be reflected and the minister speaks in his official capacity. Therefore civil servants can be asked to assist in writing these speeches. Only those parts of a speech which are of a party political nature have to be done by the minister himself. In July a second letter was sent in which the Minister of BZK described in general terms what the internal inquiry of the secretary-general of the ministry had resulted in. Here the alleged integrity violation in itself was not further referred to, only the formal steps which the civil servant should have taken to register the presumed integrity violation were discussed. This civil servant had brought the presumed wrongdoing out in the open through the media instead of following the whistle-blower procedures.⁴²⁵

The most recent discussion about the Executive's integrity emerged just before the provincial elections. These elections indirectly determine the composition of the Senate. PM Mark Rutte was summoned to the Tweede Kamer to explain why he and Geert Wilders, leader of the PVV, had held a private meeting in his offices with a non-aligned provincial councillor. This councillor's support

was crucial for the cabinet, which hoped to win a majority in the Senate with his support. The criticism voiced here was that Rutte and Wilders allegedly had made a promise regarding a provincial issue if in return the councillor would vote differently.⁴²⁶ Rutte denied making any such promises.⁴²⁷ The opposition parties in the Tweede Kamer were very critical about Rutte's action, but it did not lead to a motion of no-confidence. There have not been major integrity violations by ministers or state secretaries in recent years, but the topic of conflict-of-interest, which takes on different forms, is a recurring one. In one interview it was regarded as a good sign that these situations led to commotion.⁴²⁸ The Handbook does form a basic point of reference on what is regarded as acceptable and non-acceptable behaviour. Nevertheless, the provisions do not assure the common understanding of what is considered ethical behaviour on the part of the Executive. The general approach of the Executive itself is reactive; in the case of alleged misbehaviour, the PM or the minister or state secretary involved react but do not proactively communicate about their own integrity or show the willingness to improve and formalise the current provisions.

PUBLIC SECTOR MANAGEMENT (IN LAW AND PRACTICE)

To what extent is the Executive committed to and engaged in developing a well-governed public sector?

The extent to which the Executive is committed to and engaged in developing a well-governed public sector

423 <http://www.rijksbegroting.nl/2011/kamerstukken,2011/3/30/han8730a05.html>, consulted 8 August 2011.

424 Letter from the Minister of the Interior and Kingdom relations from 19th of April 2011, "Betreft Ambtelijke bijstand in het kader van een verkiezingscampagne."

425 <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2011/07/08/kamerbrief-over-vermeende-inzet-ambtenaren-voor-cda-campagne.html>, consulted 8 August 2011.

426 <http://www.volkskrant.nl/vk/nl/2824/Politiek/article/detail/2841970/2011/08/08/Robesin-claimt-bemoeienis-met-regeerakkoord.dhtml>, consulted 12 August 2011.

427 <http://www.nrc.nl/nieuws/2011/04/26/rutte-vindt-debat-over-torentjesdeal-overbodig/>;
<http://www.trouw.nl/tr/nl/4500/Politiek/article/detail/1881251/2011/04/27/Spoeddebat-neemt-schijn-van-een-deal-niet-weg.dhtml>, consulted 2 August 2011.

428 Interview with Alexander Rinnooy Kan, President of the Social and Economic Council of the Netherlands and Ivo Thomassen, Senior policy officer Directorate of Public Administration at the Social and Economic Council of the Netherlands, 15 March 2011.

depends to a large extent on the individual person in office as a minister or state secretary. It is equally of importance whether the secretary-general and director-general are strong leaders; here a certain hierarchy is considered of strong and weak secretary-generals.⁴²⁹ The political and top civil servants both need to possess the required political, management and communication skills to make cooperation successful.⁴³⁰ The Minister of BZK is responsible for the effective functioning of the civil service as a whole. Overall, the Executive shows its commitment to improved transparency, accountability and integrity in the public sector. However, one interviewee noticed that for some ministers this is easier than for others. The Minister of Health, Welfare and Sport has a 'system responsibility'; most organisations this minister is responsible for are private organisations, for example hospitals, which make it less easy to direct them than for e.g. the Ministry of Defence, which is a 'core department' and highly centralised.⁴³¹ The ministries of Defence and Health, Welfare and Sport are mentioned by the AR to be weaker and not so responsive to the advice provided by the AR.⁴³² In a recent investigation by the newspaper NRC Handelsblad these findings of the AR were confirmed. The top military staff complains about the lack of quality in the management".⁴³³ *(For more information, please refer to Report Public Sector/Accountability and/or Integrity.)*

In practice, the management of the civil service in 2010 and 2011 was marked by the greatest concern, i.e. by September 2011 at the latest each ministry had to indicate in what ways they would realise the required government budget-cuts. Recent research revealed

that only 33 percent of civil servants were confident that the leadership/management of their organisation was suitable for implementing the budget-cuts. Here the confidence in leadership at state level was lower than at local level.⁴³⁴ In the government's coalition agreement there is a clear focus on creating a small, strong and service-oriented government with less taxpayers' money, fewer civil servants, fewer rules and less administration.⁴³⁵ No direct referral is made to the transparency or integrity of this government.

Overall, the Executive is active in developing a public sector which is governed by high levels of transparency, accountability and integrity. However, the extent to which this is achieved does vary depending on the ministry concerned.

LEGAL SYSTEM

To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?

The coordination of integrity policy for the public sector is in the hands of the Minister of BZK. The Minister of Security and Justice (VJ – Veiligheid en Justitie) is responsible for policy aimed at preventing corruption. Additionally, both ministries work together with the Ministry of Finance in the field of financial economic crimes, which include corruption.

The 2005 Nota Corruptiepreventie

The Executive prioritised the fight against corruption and the promotion of integrity in 2005. The then-Minister of Justice and the then-Minister of BZK presented on behalf of the cabinet the Nota

429 <http://www.volkskrant.nl/vk/nl/2844/Archief/archief/article/detail/735017/2003/06/07/Blaffen-tegen-de-secretaris-generaal.dhtml>, consulted 8 August 2011; interview with interviewees 5, 6 and 7, all Senior Auditors from the Netherlands Court of Audit, 18 April 2011.

430 Nieuwenkamp, R. (2001).

431 Interview with interviewees 5, 6 and 7, all Senior Auditors from the Netherlands Court of Audit, 18 April 2011.

432 Algemene Rekenkamer (2011). Uitgavenbeheersing in de zorg.o.a. p.27, http://www.rekenkamer.nl/Nieuws/Persberichten/2011/05/Compacte_Rijksdienst_biedt_kansen and Interview with interviewees 5, 6 and 7, all Senior Auditors from the Netherlands Court of Audit, 18 April 2011.

433 'Bestuur en administratie bij Defensie niet op orde' in NRC Handelsblad of the 13th of August 2011.

434 Binnenlands Bestuur 29th of April 2011 week 17 jaargang 32 p.26-27.

435 Freedom and Responsibility Coalition Agreement VVD-CDA, September 2010 p. 6.

Corruptiepreventie, which presented a comprehensive action plan to tackle corruption and promote integrity along five lines:

- The integrity policy was to be focussed on the development of rules and awareness and on securing these;
- The uniform registration of internal inquiries into integrity violations, among which corruption, was held to be necessary;
- The need for increasing attention on pointing out integrity violations, among which corruption, was emphasised
- Strict criminal enforcement of corruption was promised;
- The Platform for Corruption Prevention was to be established.⁴³⁶

The government named corruption as one of its main priorities.⁴³⁷ Several legal and administrative reforms were presented, some more successful than the others. Ever since, several steps have been taken as part of this action plan. The main actions taken were:

- The 'Uniform registry for integrity violations in the public sector and police' became available in 2008 for all ministries, local councils, provinces and water authorities.⁴³⁸
- Increasing awareness of supervisors and inspectors for specific forms of corruption in their area was emphasised, through experts meetings and designing a manual.
- The coming into existence of a Dutch National Office for Promoting Ethics and Integrity in the Public Sector (BIOS) was announced, which stimulates and supports other governments in their development of integrity policies through

making available instruments (e.g. manuals, codes of conduct and monitors) which allow public organisations to screen their organisations for integrity risks.⁴³⁹

- The Ambtenarenwet (Civil Service Act) was amended to include the duty for public organisations to have their own integrity policy and a code of good conduct.⁴⁴⁰
- The legal obligation to report was evaluated, along with the whistle-blower provisions.⁴⁴¹ 'Meld Misdaad Anoniem', a national disclosure office for criminal offences and integrity violations, was established.⁴⁴²
- The orders were promulgated of 'Aanwijzingen opsporing en vervolging ambtelijke corruptie in Nederland en het buitenland' (Instructions for the Investigation and Prosecution of Corruption offences Netherlands and abroad), which are directions for law enforcement agencies on how to detect and prosecute corruption. The focus is on prosecuting public corruption in the Netherlands.⁴⁴³ A multidisciplinary 'Platform Corruption Prevention' was created to exchange ideas and knowledge on effective ways to fight corruption.
- A strategic analysis (CBA – Criminaliteitsbeeldanalyse) was produced of bribery of civil servants in the public sector by the Rijksrecherche (2010).⁴⁴⁴ A review mechanism was designed to monitor UNCAC provisions.⁴⁴⁵

In 2006 a law amendment extended the provision which excludes the tax-deductibility of bribes; no longer is a court verdict or a settlement by payment of a fine a prerequisite. The exception of the tax

436 Kamerstukken 2005–2006, II, 30 374, nr. 2. and nr. 6.

437 Ibid.

438 <http://www.integriteitoverheid.nl/kenniscentrum/kenniscentrum-vervolg/thema/evaluatie-en-rapportage/entiteit/instrumenten/de-tails/uniforme-registratie-integriteitsschendingen-openbaar-bestuur-en-politie.html>, consulted 8 August 2008.

439 <https://integriteitoverheid.nl>, consulted 8 August 2011.

440 Art. 125quater Ambtenarenwet.

441 Cornelissens, A., Ferwerda, H. and Vries Robbé, de E. (2008).

442 <http://www.meldmisdaadanoniem.nl>, consulted 8 August 2011.

443 Bijlage bij Kamerstuk 29911 nr. 10, Het beleid ter zake van financieel-economische criminaliteit. p.17.

444 <https://www.om.nl>

445 Kamerstuk 30374 nr. 6.

deductibility of bribes is also applicable if it becomes apparent that the costs are bribes. However, the burden of proof for tax inspectors is heavy. They are required to ‘convincingly prove’ that the bribes are related to a criminal offence. This law is not perceived as being very effective because it does not expressly deny tax deductibility of bribes paid; they have to be directly related to a crime.⁴⁴⁶ Dutch law prohibits the paying of bribes to authorities. Dutch authorities can only prosecute the paying of bribes abroad if the bribes are paid by or to a Dutch citizen.⁴⁴⁷

In 2007 the government announced that financial/economic crimes (fraud, money laundering and corruption) would receive more attention.⁴⁴⁸ Its main priority was to ensure that law enforcement remained at a high level by extending the capacity of the Rijksrecherche and OM to strengthen their informational abilities to carry out extra investigations.⁴⁴⁹ In 2010 the CBA pertaining to bribery of civil servants in the public sector was finalised. In 2009 the Rijksrecherche’s capacity was extended with 13 full-time equivalent.⁴⁵⁰

Lacking or ineffective provisions

Although these actions demonstrate the priority given to anti-corruption measures by the Executive, some plans turned out to be more difficult to accomplish.

The Act on the Financing of Political Parties, first announced in 2006, was delayed for years and was finally sent to the Tweede Kamer by the Minister of BZK in 2011; it was only at the beginning of 2012 that the Tweede Kamer debate started. The current law

proposal does not meet the recommendations from GRECO: there is no independent monitoring body, the threshold for gifts are still high and can easily be evaded, no uniform standard for financial reports from political parties is provided, and no duties or supervision over local political parties and gifts from abroad is included.⁴⁵¹ The financial interests of political parties are believed to hinder this law from becoming effective, but it is also thought to be a complex piece of legislation now that the definition of ‘gift’ is difficult to determine and can be any favour.⁴⁵² *(For more information, please refer to the Report Legislator/Legal Reforms, Report Electoral Management Body/Campaign Regulation and Report Political Parties.)*

The current whistle-blower provisions are widely regarded as weak and ineffective. They do not form effective protection for those who want to inform about alleged dishonest behaviour within an organisation.⁴⁵³ The few well-known whistle-blowers in the Netherlands have been treated badly by the governments; some still seek redress after decades.⁴⁵⁴ *(For more information, please refer to the Report on Public Sector/Integrity.)*

The policies resulting from the ‘Openness of Government Act’ are likely to be amended. According to the minister, this right to information is too often misused by the public or journalists looking for a scoop, and therefore too much time and capacity is spent on irrelevant requests. Now proportionality criteria will be used to allow authorities to determine

446 Hulten, van M. (2010). p.49–50; and

http://www.eerstekamer.nl/nieuws/20060413/senaat_kruist_degens_over, consulted 5 August 2011.

447 <http://www.rnw.nl/nederlands/article/shell-dichtbij-schikking-omkopingszaak-nigeria>, consulted 5 August 2011.

448 Brief minister van Justitie ‘Veiligheid begint bij Voorkomen’ of 6 November 2007.

449 Ibid., p.27.

450 Tweede voortgangsrapportage ‘Veiligheid begint bij Voorkomen’ p. 61.

451 http://www.kiesraad.nl/nl/Actueel/Nieuwsberichten/Actueel-Nieuwsberichten-2011/Wetsvoorstel_financiering_politieke_partijen.html, consulted 13 August 2011; interview with Remco Nehmelman, Senior lecturer State and Administrative Law University of Utrecht, 17 May 2011.

452 This explanation was given in different words in an interview with Guusje ter Horst, former Minister of the Interior and Kingdom Relations, 2 May 2011; interview with Henk Nijhof, Chairman of the Board of the political party GroenLinks, 21 June 2011.

453 Bovens, M. and Pikker, G. (2010). p.38–47.

454 http://www.eenvandaag.nl/binnenland/38078/van_vollenhoven_moet_bemiddelen_in_zaak_spijkers, consulted on the 8th of August 2011.

whether the information is really required and so make it possible to decline the request.⁴⁵⁵ This has led to serious debates in society and in the media, because the act is already considered to provide a minimum of transparency because of the time public organisations take to provide requested information.⁴⁵⁶ It is still to be seen, what the practical outcome will be and how this will affect executive oversight by the public and journalists.

The Platform Corruption Prevention came together several times, but the minister regarded its merit to be limited at a certain moment and it did not meet again until 2011.⁴⁵⁷

The Platform met again several times in 2011⁴⁵⁸ (but generally without its civil society representatives), and depending on the topic on the agenda, civil society representatives have been invited. Transparency International Netherlands was invited to the meeting in October 2011. During this session asset recovery was on the agenda, among other topics.⁴⁵⁹

The Dutch National Office for Promoting Ethics and Integrity in the Public Sector (BIOS) has developed integrity instruments to support public organisations. However, BIOS does not meet the requirements of an anti-corruption agency since its emphasis is purely on promoting integrity and not on investigating and tackling corruption. It is still to be seen whether the current Minister of BZK is equally involved in the topic of integrity and makes capacity and money available, especially considering the state budget-cuts.⁴⁶⁰

Follow-up report on the implementation of the phase 2 recommendations, OECD Anti-Bribery Convention.⁴⁶¹

In the report it was recognised that the Netherlands had made significant efforts to implement many of the 18 recommendations made during the Phase 2 examination.

In total, three recommendations had been only partly implemented or not at all. Some concerns raised involved the wording used in the Instructions for the Investigation and Prosecution of Corruption Offences in Public Office Committed Abroad, which could be interpreted as being contrary to a provision of the Convention.⁴⁶² *For more information, please refer to Pillar Law Enforcement Agencies/ Corruption Prosecution.*

OECD Anti-Bribery Recommendation

The 2009 OECD Anti-Bribery recommendation⁴⁶³ to strengthen the OECD framework for fighting foreign corruption should be implemented by the Netherlands as well, such as, inter alia:

- Adopting best practices for making companies liable for foreign bribery;
- Periodically reviewing policies and approaches to small facilitation payments;
- Improving cooperation between countries for the sharing of information and evidence in foreign bribery investigations and prosecutions;
- Working with the private sector to adopt more stringent internal controls, ethics and compliance programmes and measures to prevent and detect bribery.

455 Letter on Wet openbaarheid van bestuur from the Minister of the Interior and Kingdom relations 31 May 2011.

456 <http://www.trouw.nl/tr/nl/4324/Nieuws/article/detail/1884060/2011/05/03/Wet-Openbaarheid-van-Bestuur-werkt-veel-te-traag.dhtml>; <http://www.trouw.nl/tr/nl/4324/Nieuws/article/detail/1884060/2011/05/03/Wet-Openbaarheid-van-Bestuur-werkt-veel-te-traag.dhtml> both consulted 20 September 2011.

457 Kamerstuk 31 700 VI nr. 10p; Interview with Jack van Zijl, National Public Prosecutor for Corruption at National public prosecutor's office, 6 June 2011.

458 Interview with Jack van Zijl, National Public Prosecutor for Corruption at National public prosecutor's office, 6 June 2011.

459 Information provided via email exchange with the board of Transparency International Netherlands, d.d. 7 February 2012.

460 Interview with Suzanne Verheij, Senior Policy Advisor at the National Office for Promoting Ethics and Integrity in the Public Sector CAOP/BIOS, 24 May 2011.

461 OECD (2008). Follow-up Report on the Implementation of the Phase 2 Recommendations.

462 Ibid., p.3/4.

463 OECD (2009). Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

Priority given to anti-corruption measures vs. pro-integrity measures

Corruption is not a separate theme on the websites of the government or that of Ministry of VJ. The integrity of financial markets and of government are what is found discussed there. Other themes are: BIBOB (the Public Administration (Probity in Decision-making) Act), corporate government, good public governance, good governance in the care sector and public procurement. The current government only refers to corruption in its coalition agreement in the context of development policy with regard to the Schengen evaluation of Romania and Bulgaria.⁴⁶⁴ It does not refer to integrity.⁴⁶⁵ Examples of recent actions are the renewed ‘Aanwijzing opsporing en vervolging ambtelijke corruptie in Nederland en het buitenland’ (separate), the directions for law enforcement agencies on how to detect and prosecute corruption.⁴⁶⁶

A sign of the government’s renewed attention for anti-corruption measures is the signing of a Memorandum of

Understanding by the Minister of VJ with the World Bank on the 21st of February 2012. Both organisations agreed to cooperate in support of criminal and administrative investigations and proceedings by national and international authorities. There are no concrete examples from which the priority given to anti-corruption or pro-integrity measures from the current government becomes apparent. The number of actions taken by this government since coming into office in 2010 is limited. Apart from the Platform Corruption Prevention, there is little engagement in joint anti-corruption initiatives from the Executive with the legislature, civil society or business.

While there have been a number of reforms initiated and promoted by the Executive to counter corruption and promote integrity, these have not all been effective. Also, most actions were taken years ago. The current government has not brought forward any legal reforms concerning anti-corruption efforts.

464 Freedom and Responsibility Coalition Agreement VVD-CDA, September 2010 p. 10 and 33.

465 Ibid., p.7.

466 Aanwijzing opsporing en vervolging ambtelijke corruptie in Nederland (2011A014), Aanwijzing opsporing en vervolging ambtelijke corruptie in het buitenland (2011A015) of 26th July 2011.

6.3 JUDICIARY

Role in NIS

A judiciary must be independent of the Executive if it is to perform its constitutional role of reviewing actions taken by the government and public officials to determine whether or not they comply with the standards laid down in the Constitution and with the laws enacted by the legislature. The concepts of independence and accountability of a judiciary within a democracy actually reinforce each other. Judicial independence relates to the institution – independence is not designed to benefit an individual judge, or even the judiciary as a body. It is designed to protect the people. The duty of a judge is to interpret the law and the fundamental principles and assumptions which underlie it. While a judge must be independent in this sense, he or she is not entitled to act in an arbitrary manner. The right to a fair trial before an impartial court is universally recognised as a fundamental human right.

This pillar is important because it is the final institution which determines whether a certain conduct is lawful or unlawful. It is therefore of utmost importance that individuals selected for judicial office have integrity, ability, and the appropriate training and qualifications in the field of law. The ways in which judges are appointed and subsequently promoted are crucial to their independence. They must not be seen as political appointees, but rather solely for their competence and political neutrality. The public must be confident that judges are chosen on merit and for their individual integrity and ability, and not for partisanship. Finally, the judiciary has an important role in punishing corrupt behaviour.⁴⁶⁷

Sources

The desk report for this pillar started with a general research into the topic of the judiciary's integrity and current affairs taking place which concerned the judiciary. The applicable legal provisions and literature were examined as well as parliamentary documents concerning the judiciary. Additionally, a media scan

was made. In-depth interviews were held with key figures from the judiciary and experts with a good knowledge of the judiciary. This provided insight into the integrity of the judiciary in practice. All interviews were conducted face-to-face.

Interviews held:

- Alex Brenninkmeijer, National Ombudsman of the Netherlands, interview held the 18th of April 2011.
- Ernest Groener, Judge at the Court of First Instance, Almelo (sector civil and criminal), interview held the 11th of May 2011.
- Philip Langbroek, Professor of Justice Administration (and court system) at the Department of Law, Utrecht University, interview held the 31st of May 2011.
- Henk Moorman, Judge at the Court of First Instance, Zwolle-Lelystad, interview held the 13th of May 2011.
- Jos Schipper, Information Detective at the Rijksrecherche, interview held the 21st of April 2011.
- Frans Jozef van der Vaart, Lawyer/Partner at Kienhuis Hoving, interview held the 28th of April 2011.
- Jack van Zijl, National Public Prosecutor for Corruption at the National Public Prosecutor's Office, interview held the 6th of June 2011.
- Gert Vrieze, Judge at the Court of First Instance, Zutphen, and Project Coordinator for integrity of the Judiciary and former President of the Court of First Instance, Zutphen, interview held the 15th of June 2011.

467 Transparency International. (2003). Pillars of Integrity: Confronting Corruption. The Key Elements of a National Integrity System. p.8–12.

JUDICIARY

Status: Strong**Summary**

The judiciary is very supportive to the Dutch NIS. The Dutch judiciary is well-resourced and the salaries of judges are high. The judicial organisation has undergone major developments. State budget-cuts have led to a decrease in the number of positions available in the education programme for young lawyers wanting to become a judge, and additionally the programme will be shortened. There are concerns this might lead to a shortage of judges in the future. The relatively new financing system introduced (based on output) has made judges worry about the effect this could have on the legal quality of jurisprudence. In practice it is not that the financing system itself was the issue, but rather that it required a change in the management of courts and the attitude of judges towards planning and calculating workload. The Dutch judiciary has a long tradition of independence and accountability. Judges are appointed for life, and there are limited grounds for suspension or dismissal. Among others, there are legal provisions which judges themselves or parties to a proceeding can refer to if there is a risk concerning the independence of the judge in a specific case. In some civil, criminal and administrative courts the decision is made by a multiple-judge court. This statutory provision is aimed at ensuring independence of the judiciary, and forbids the judges to express dissenting opinions in the verdict. This provision has been scrutinised by academics because of the lack of transparency. This report offers no final conclusion on the effect this secrecy surrounding dissenting opinions has on the integrity-safeguarding. Regarding the transparency of the judiciary, it is worth mentioning that it is not entirely clear how cases are assigned to judges. It is believed to be done differently at each court, since there is no statutory provisions which prescribe how this should be done via a system which ensures random assignment. The legislature considers the bribery of judges to be the worst form of corruption, with overall the highest penalty among corruption crimes. The Dutch judicial system performs well on the aspect of impartiality and accountability, but the increase in opinions put forth by the legislature, Executive and the public about how a judge should rule in a case can be

considered to constitute interference with the judiciary. Although there are isolated examples of alleged conflicts-of-interest by individual judges, the overall integrity of the judiciary is ensured in practice. There are various integrity provisions in place or likely to be implemented in 2012. The extent to which judges reflect on their own and their peers' conduct can be improved. The public trust in the judiciary is generally high, although it has decreased because of incidental injustices and poor motivation by judges in criminal case verdicts. What remains a concern is the extent to which the judiciary is effective in fighting corruption. This is largely dependent on the prosecution of corruption by law enforcement agencies.

Structure and Organisation

Each of the 19 judiciary districts in the Netherlands has its own court. Each Court of First Instance (district court) is made up of a maximum of five sectors, which always include administrative law, civil law, criminal law and sub-district law sectors. Appeals against judgements in civil and criminal law cases passed by the district court can be lodged at the competent Court of Appeal (there are five Courts of Appeal in total); appeals against administrative law judgements to the competent specialised administrative law tribunal: the Administrative Jurisdiction Division of the Council of State (ABRvS – Raad van State Afdeling Bestuursrechtspraak), the Central Appeals Tribunal or the Trade and Industry Appeals Tribunal, also known as Administrative High Court for Trade and Industry, depending on the type of case. Appeals in cassation in civil, criminal and tax law cases are lodged at the Supreme Court of the Netherlands. The Netherlands does not have a Constitutional Court. Additionally, there are different possibilities for gaining legal redress at an international court, e.g. the European Court for Human Rights. Additionally, the European Court of Justice can deal with cases or provide preliminary rulings for states. This report, however, will focus on the Dutch judiciary.

The Council for the Judiciary (Rvdr – Raad voor de Rechtspraak) is part of the judicial system, but does not administer justice itself. At its establishment in 2002 it took over responsibility for a number of tasks from the Minister of Security and Justice (VJ – Minister van Veiligheid en Justitie). These tasks are operational in nature and include the allocation of budgets, supervision of financial management, personnel policy,

ICT and housing. The Rvdr supports the courts in executing their tasks in these areas. Another central task of the Rvdr is to promote quality within the Judiciary system and to advise on new legislation which has implications for the administration of justice. The Rvdr also acts as a spokesperson for the judiciary on both national and international levels.⁴⁶⁸

ASSESSMENT

RESOURCES (BY LAW)

To what extent are there laws seeking to ensure appropriate salaries and working conditions for the judiciary?

Salaries

The salaries of judges, public prosecutors and registrars are entirely regulated in the Act on Legal Position Judicial Civil Servants (Wet rechtspositie rechterlijke ambtenaren) and the Decree on Legal Position Judicial Civil Servants (Besluit rechtspositie rechterlijke ambtenaren).⁴⁶⁹ This decree provides the overview of salary scales which are based on the different positions within the judiciary and on seniority, varying from the position of Judicial Civil Servant in training (Raio – Rechterlijk ambtenaar in opleiding) to the position of President of the Supreme Court of the Netherlands (Hoge Raad der Nederlanden).

Additionally, there is a Collective Labour Agreement for the judiciary in which the terms of employment are determined. The average income of the Judiciary is by far the highest of the public sector of the Netherlands. The average monthly wage in the judiciary is EUR 5,568, compared to the average monthly wage in the

Public Administration of EUR 3,202. This can partly be explained by the higher number of higher-educated and older employees working for the judiciary. Each year the salaries are increased based on inflation; in 2009 salaries were increased by 2 percent.⁴⁷⁰

There are comprehensive laws in the Netherlands which ensure appropriate judicial salaries, working conditions and pension schemes.

RESOURCES (IN PRACTICE)

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Salaries

In 2006 the Minister of VJ⁴⁷¹ and the Dutch Association for the Judiciary (NVvR – Nederlandse Vereniging voor Rechtspraak, which is an independent trade union for judges and public prosecutors) agreed to amend the Income and Position Matrix (Loon- en Functiegebouw) for the judiciary. It was agreed to do research on the lifetime salaries of the judiciary and to compare those with salaries for legal experts in the private sector. The aim was to attract and keep the best legal professionals for the judiciary in order to keep continuity and quality of jurisdiction. The conclusion was that the salaries were comparable except for the higher categories. Here the exceptional increase in the weight of the duties of the judiciary was not reflected in the salary development, if compared to the private sector.⁴⁷² The Dutch NVvR refers to its involvement in achieving 'appropriate reward for the judiciary's duties' in order to safeguard their independence.⁴⁷³ From interviews with different judges, it has become clear that they are quite satisfied with salaries for the judiciary.⁴⁷⁴

468 <http://www.rechtspraak.nl/english/Pages/default.aspx>, consulted 15 June 2011.

469 Art.117 paragraph 4 Grondwet, Articles 6 and following of Wet rechtspositie rechterlijke ambtenaren; Articles 4–7 and Appendix of Besluit rechtspositie rechterlijke ambtenaren.

470 <http://www.inoverheid.nl/artikel/artikelen/1352179/wat-is-het-salaris-van-ambtenaren.html>, consulted 7 December 2011.

471 Since 2010 the ministry is named: Ministry of Security and Justice. Before 2010 it was named: Ministry of Justice.

472 Logger, E., Willekens, R. and Zelm, van E. (2009). p.6.

473 http://www.nvvr.org/view.php?Pagina_Id=11, consulted 15 June 2011.

474 Interview with Henk Moorman, Judge at the Court of First Instance Zwolle–Lelystad, 13 May 2011.

System for financing

Since 2005 courts receive financial resources at a ratio of the output realised the year before.⁴⁷⁵ There is a calculation in which factors such as type of case, average handling time and quality of jurisprudence are considered in order to determine the total budget needed.⁴⁷⁶ The draft annual budget for the judiciary (courts) is determined by the Minister of VJ, who receives a draft annual budget from the Rvdr.⁴⁷⁷ Budgets are based on the output of all courts in the previous year. In practice, this can have an unwanted effect. In particular, in criminal cases it often turns out that the cases which are planned do not take place because the prosecutor decides to withdraw the case, or witnesses do not show up, or additional investigation needs to take place – but the judges are present and need to be paid. This results in a lower-than-expected output because there won't be a verdict, so the overall total of verdicts will be lower than foreseen. This will determine the budget for the coming year. If next year's budget is smaller this will mean fewer judges will have to be scheduled, which can lead to increased workload and the quality of the jurisdiction can be put under pressure. This is something which is believed to be widely felt in the criminal law sector.⁴⁷⁸ In a 2007 survey courts indicated they had serious concerns regarding the quality of the administration of justice due to the new method of financing. The survey also showed that courts had not taken adequate initiatives such as educating judges to resist the temptations the financing system brought with it.⁴⁷⁹ One analyst argued that when this system of financing was introduced, judges became responsible (in part) for managing their tasks. According to the analyst, few judges possess this management competence.⁴⁸⁰

Additionally, the norm for cases to be dealt with by a plural chamber of judges (in order to increase the quality of jurisdiction) is not met in the civil, family and juvenile sectors due to financial restraints; operating with plural chamber is not compensated differently from single cases, although the costs made are higher.⁴⁸¹

Human resources

In general there is stability of human resources. From 2008 the total number of full-equivalent members of staff (judges, civil servants and indirect personnel) has increased annually. In 2010 the total full-time equivalent was 8,949 (compared to 8,780 in 2008 and 8,884 in 2009).⁴⁸² In 2011 it was announced that due to the government's budget-cuts the total number of available positions for young lawyers wanting to become a judge or public prosecutor's would be cut by half. The Rvdr announced that it was designing a new education programme in order to compensate for this, and to compensate for the high number of judges likely to become pensioners in the near future.⁴⁸³ In 2012 a last group of 25 young lawyers will start in the old education programme.⁴⁸⁴ Procurator-General Fokkens of the Supreme Court recently made it known in a newspaper that the total number of 2,400 judges should be increased by a couple hundred in order for judges to be able to have enough time and space to carry out their duties adequately.⁴⁸⁵

Generally speaking, there is adequate staff support and facilities available. However, one expert expressed the view that in some sectors, for instance sub-district, judges have been involved too much in administrative tasks which gave them less time to spend on their proper judicial tasks. Therefore the courts have started to train

475 Besluit Financiering Rechtspraak 2005.

476 Langbroek, P. (2007). p.161.

477 Art. 91 paragraph 1 sub a and art. 98 Wet op de Rechterlijke Organisatie. The budget is part of the Begrotingswet Veiligheid en Justitie.

478 Interview with Henk. Moorman, Judge at the Court of First Instance Zwolle-Lelystad, 13 May 2011.

479 Boone, M., Langbroek, P.M., Kramer, P., Olthof, S., Ravesteyn van, J. (2007). p. 233.

480 Interview with Philip Langbroek, Professor of Justice Administration (and court system) at the Department of Law, Utrecht University, 31 May 2011.

481 Jaarverslag Rechtspraak 2010 p. 11.

482 Ibid., p.64.

483 Persbericht Raad voor de rechtspraak en het College van procureur-generaals of the 31 January 2011.

484 <http://www.rechtspraak.nl/Werken-bij/rechter-worden/2-6-jaar-ervaring/Pages/default.aspx>, consulted 7 December 2011.

485 <http://www.nrc.nl/nieuws/2011/03/12/toets-politieke-kleur-rechters-onwenselijk/>, consulted 17 June 2011.

their staff members to become more supportive to judges.⁴⁸⁶ The permanent education norm prescribes that judges and members of staff have to attend a minimum of 30 training hours per year to broaden and deepen their specialised knowledge and skills. The training offered focuses on quality as an offset to the focus on quantitative results. Across different courts, the average percentage of judges and staff members who realised this minimum norm was between 74 percent and 98 percent in 2010. In general, tribunals performed somewhat better than the courts. In some cases the norm was not met because of a subnormal capacity or workload.⁴⁸⁷ An increasing number of people have attended training at SSR (Studiecentrum Rechtspleging – Justice Study Centre), where topics vary from among forensic expertise and balance reading, to ‘Moroccans and Turks in justice’.⁴⁸⁸

Overall, the judiciary has sufficient resources to operate effectively in practice. The salaries paid are by far the highest in the Dutch public sector but somewhat behind compared to the salaries paid to legal experts in the private sector. The budget of the judiciary is sufficient to perform its duties; however, the fact that the financing of the Dutch courts is based on a system of output and efficiency financing has led to some concerns.

INDEPENDENCE (BY LAW)

To what extent is the judiciary independent by law?

Constitutional and statutory provisions

The independence of the judiciary is one of the core elements found in the doctrine of separation of powers. The Dutch Constitution contains a few provisions regarding the judiciary’s independence. Its

independence is safeguarded by a provision which prescribes that members of the judiciary who are responsible for jurisdiction and the Procurator General of the Supreme Court be appointed for life by royal decree.⁴⁸⁹ Here the independence of the individual judges is indirectly safeguarded. The Constitution does not refer to the independence of the judiciary as a whole, nor does it refer to the impartiality of the judiciary. However, there are laws in which the independence is specifically stated. There is a statutory provision that judges are obliged to take the oath/pledge.⁴⁹⁰ There is the prohibition for judges to get involved with parties to a case, or their lawyers or authorised representatives, if they know or suspect that that case will be brought before them.⁴⁹¹ Another statutory safeguard for the independence of judges is the provisions on ‘recusal’ (wraken) and ‘excluding’ (verschonen) judges. One of the parties in a case can disqualify a judge if there are facts or circumstances which could potentially harm his independence.⁴⁹² Judges can decide to use their ‘right of exclusion’ not to be appointed to a specific case if they consider that there are facts or circumstances which potentially could harm their independence. A last statutory provision aimed at ensuring an individual judge’s independence is that damages caused by a judge while carrying out his official duties (interpretation of the law, assessment of facts or weighing of evidence to determine cases) should not give rise to civil liability.⁴⁹³ Only the state has civil liability towards a third party, except in cases of malice and gross negligence by the judge. This way a judge can decide a case independently without having to worry about possible liabilities. Other than that, the principle of judicial independence is guaranteed in Article 6 of the European Convention of Human Rights, which is binding for the Netherlands.

486 Interview with Henk Moorman, Judge at the Court of First Instance Zwolle–Lelystad, 13 May 2011.

487 Jaarverslag Rechtspraak 2010 p.9 and 10.

488 Ibid., p.10.

489 Art. 117 paragraph 1 Grondwet.

490 Articles 5g, Wet rechtspositie rechterlijke ambtenaren; art. 48a paragraph 5, 66 paragraph 5, and 67 paragraph 5 Wet op de rechterlijke organisatie.

491 Art. 12 Wet op de Rechterlijke Organisatie.

492 Articles 512 to 518 Wetboek van Strafvordering; Articles 36 to 41 Wetboek van Burgerlijke Rechtsvordering; articles 8:18 to 8:20 Algemene wet bestuursrecht; Aanbeveling wrakingsprotocol gerechtshoven en rechtbanken 2006 via <http://www.rechtspraak.nl>

493 Art. 42 paragraph 1–3 Wet rechtspositie rechterlijke ambtenaren.

The Supreme Court and the Administrative Jurisdiction Division of the Council of State are both anchored in the Constitution.⁴⁹⁴ Since the constitutional provisions are so concise, the possibility of amending them so as to limit judicial independence is purely theoretical. The Constitution may be amended after the act for constitutional amendment is acknowledged and the House of Representatives (Tweede Kamer) is dissolved and at least two-thirds of the newly elected MPs in the Tweede Kamer and the Senate vote in favour of such amendment.⁴⁹⁵

Rvdr

The establishment of the Rvdr in 2002 increased the independence of the judiciary. Before its establishment, the Minister of VJ was directly responsible to the Tweede Kamer for the administration of courts. This direct responsibility created tensions with the judiciary's independence. The Rvdr represents the common interests of all courts and monitors their management and operations. It is considered to be the link between the courts and the Minister of VJ, thereby safeguarding the judiciary's independence.⁴⁹⁶

Appointments

If a vacancy arises, the judiciary itself is involved in the appointments of judges as represented by the Rvdr. In that case, the board of the respective court recommends three candidate judges which are not already appointed at the court. The Rvdr presents this list to the Minister of VJ, who can appoint the judge by royal decree for life.⁴⁹⁷ Judges from the Supreme Court are appointed for life by

the Minister of VJ after the Tweede Kamer has nominated three persons out of a list of six candidates recommended by the Supreme Court itself.⁴⁹⁸ State councillors of the highest administrative court, the ABRvS, are appointed for life by royal decree after candidates are nominated by the Ministers of BZK and VJ at the recommendation of the Council of State.⁴⁹⁹

In law, criteria for candidate judges are scarce and rather represent a set of formal qualifications. Judges shall be Dutch citizens who have a master's degree in law.⁵⁰⁰ The law does prescribe which positions are incompatible with the office of judge. These are: lawyer, notary public, or any other position which includes legal assistance.⁵⁰¹ Additionally, there are specific criteria set by the Rvdr⁵⁰² and the Board of Procurator Generals in order to become a judge or public prosecutor. State councillors are to be appointed on the basis of their expertise and experience in legislative, administrative or judicial matters.⁵⁰³

Raio education

Annually the Judiciary Selection Commission (SRM – Selectiecommissie rechterlijke macht) selects annually around 60 young lawyers for the 'Raio education programme', which provides around 20 percent of the total of newly-appointed judges, while individuals who have 6 years of work experience outside the Judiciary and are appointed to the rio-traject (rechter in opleiding) make up around 80 percent of the total of newly-appointed judges.⁵⁰⁴ The Raio programme is a 6 year programme which an individual needs to complete successfully in order to become a judge or public

494 Articles 118 and 73 paragraph 3 Grondwet.

495 This procedure is somewhat simplified for the purpose of this report. In the Netherlands, the Constitution is only rarely revised. For a full description of the constitutional amendment process, please refer to articles 127 to 142 of the Grondwet.

496 <http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/OverDeRvdr/Pages/default.aspx>

497 Articles 2 paragraph 1 and 5b and 5c Wet rechtspositie rechterlijke ambtenaren.

498 Articles 117 and 118 paragraph 1 Grondwet and 2 paragraph 1 and art. 5c paragraph 6 Wet rechtspositie rechterlijke ambtenaren.

499 Art.30 paragraph 2 and art. 2 and 8 and 10 Wet op de Raad van State.

500 Articles 4 Wet rechtspositie rechterlijke ambtenaren and art. 5 Wet op de Raad van State.

501 Art.44 paragraph 1 Wet rechtspositie rechterlijke ambtenaren; art. 7 Wet op de Raad van State.

502 Raad van State. Notitie kwaliteiten waarmee rekening moet worden gehouden bij werving en selectie van staatsraden en staatsraden in buitengewone dienst.

503 Art. 4 paragraph 2 Wet op de Raad van State.

504 <http://www.rechtspraak.nl/Werken-bij/rechter-worden/selectiecommissie-rechterlijke-macht/Pages/default.aspx>, consulted 14 June 2011; Persbericht Raad voor de rechtspraak en het College van procureur-generaals 31 January 2011.

prosecutor. (Four years paid education and two years practice in a related position outside the judiciary, for example at a law firm.) The selection process consists of, among other things, analytical and cognitive tests, interviews and assessments to determine whether one possesses basic skills and personality features. In the final phase of the procedure, there is an interview with four members of the Judiciary Selection Commission, which consists of representatives of the judiciary, a representative of the Ministry of VJ and/or a representative who is not a member of the judiciary, for example a lawyer or journalist. Additionally, one's societal interest and involvement, as well as motivation for and vision about the respective position will be assessed and references will be considered. Candidates who have been nominated by SRM are appointed by the Minister of VJ as 'Raio'. All in all, detailed professional criteria are set for new judges and an independent judicial body has the possibility of turning down candidates who do not demonstrate sufficient qualifications.⁵⁰⁵

Suspension and dismissal of judges

Once judges have been appointed for life, they can only be suspended or fired by the Supreme Court on precisely specified grounds.⁵⁰⁶ These limited grounds for suspension or dismissal prevent other parties (such as the Executive) from influencing the judiciary by use of threat to fire or suspend a judge if a verdict is not delivered as desired. Reasons for suspending or firing a judge are: being held in detention or convicted for a crime, being put under ward, declared bankrupt, incurring debt remission, receiving suspension of payments or being held hostage because of debts when the verdict is (not yet) absolute.^{507, 508} If State councillors are suspended or dismissed by the Council

of State, this should be on the basis of a well-reasoned decision. The grounds for dismissal are limited, as they are equal to the grounds for dismissal for other members of the judiciary.⁵⁰⁹

Multiple-judge court

Another statutory provision aimed at ensuring independence of the judiciary in civil, criminal and administrative court cases is the set number of judges which deal with a case. It is either a single or multiple-judge court, the latter implying three judges or five judges if it is the Supreme Court.⁵¹⁰ This way the government cannot simply increase the number of judges with their own judges to have a majority and thereby influence the decision-making.⁵¹¹

Criminalisation

An important provision to protect judges against interference in adjudication, namely, criminal liability is prescribed for influencing a judge in any manner in order to compromise legal adjudication or attain the adoption and promulgation of an illegal judgment or decision. Equal, the provision which entails the criminal liability of judges who are influenced in this way helps protect their independence.⁵¹² A judge who received bribes in return for a conviction can get a maximum of twelve years in prison. The maximum penalty for a minister who is bribed is six years in prison.⁵¹³ The person who has bribed a judge in return for a conviction can get a maximum of nine years in prison compared to a maximum penalty of four years if it concerns any other public official.⁵¹⁴

Altogether, the entire constitutional and statutory framework offers solid safeguards to ensure the independence of the judiciary. The fact that judges and

505 <http://www.rechtspraak.nl/Werken-bij/rechter-worden/3-6-jaar-ervaring/Pages/de-selectieprocedure.aspx>, consulted 14 June 2011.

506 Art. 117 lid 3 Grondwet.

507 Art. 46f Wet rechtspositie rechterlijke ambtenaren.

508 Art. 46h, i and m Wet rechtspositie rechterlijke ambtenaren.

509 Art. 3 paragraph 2 Wet op de Raad van State and chapter 6a of Wet rechtspositie rechterlijke ambtenaren.

510 Articles 15–18 Wetboek van Burgerlijke Rechtsvordering; art. 268 Wetboek van Strafvordering; art. 8:10 Algemene wet bestuursrecht.

511 Verheugt, J.W.P. (2009). p.96.

512 Articles 178 and 364 Wetboek van Strafrecht.

513 Art. 364 paragraph 3 and art. 363 paragraph 3 Wetboek van Strafrecht.

514 Art. 177 Wetboek van Strafrecht.

Procurator Generals of the Supreme Court are appointed for life is an important safeguard for the independence of the judiciary, and is essential to the rule of law. The judicial system was further strengthened in 2002 when the Rvdr assumed some responsibilities previously carried out by the Minister of VJ. The Judiciary hereby acquired more responsibility for its own organisation, and the independence of judges was strengthened.⁵¹⁵ This was a response to the increasing demands of society on the way the judiciary was carrying out its tasks.

INDEPENDENCE (IN PRACTICE)

To what extent does the judiciary operate without interference from the government or other actors?

Interferences

The Dutch judicial system performs well compared to other countries in the aspect of impartiality and accountability.⁵¹⁶ Nevertheless, there is increasing concern about the public debates in which politicians, media and the public discuss cases while these are still being dealt with by a court.⁵¹⁷ Increasingly judges are being scrutinised or told by these parties through the media what the verdict should be or what sentence should be given.⁵¹⁸ In this way, the authority of the judiciary is challenged. There is always a risk of judges being influenced by the opinions stated and thereby moving over their general duty of responsiveness to societal developments.

Recent research reveals that most judges still regard their independence to be safeguarded but also express that they did regard this as extra pressure.⁵¹⁹ An

important principle is the 'sub judice principle' which implies that government, judges, parties to the court proceedings and third parties have to be silent about a legal issue which is directly related to a case in which proceedings are still on-going and to which there has not been a verdict. This principle has been debated by the Tweede Kamer, but no formal agreements were made regarding its enforceability.⁵²⁰ In practice, many parties, especially MPs, actively and publicly debate cases. This appears to be related to the extent to which there is public distrust in the judiciary and the extent to which a politician wants to attract extra attention from the media and the public.⁵²¹ The President of the Supreme Court has firmly expressed his disapproval towards those politicians who have expressed their opinion on individual criminal cases.⁵²²

Appointments

In practice, the Minister of VJ is in charge of appointment policies for judges, and it is the Tweede Kamer's Permanent Commission on VJ which is in charge of preparing appointment decisions for the Supreme Court. Judges are appointed for reasons of competence, although for the Supreme Court there is an informal practice that seeks to prevent a unilateral composition of political interests. Normally this does not lead to any conflicts. In spring 2011, one of the candidates for a position at the Supreme Court was a well-known professor of Criminal and Criminal Process Law, Ybo Buruma. He was known to be a member of a political party, and according to some MPs he had criticised their political party in a newspaper.

Nevertheless, Buruma received enough votes in favour and is to be appointed as judge.⁵²³ In August 2011 Buruma announced that he had terminated his

515 <http://www.rechtspraak.nl>

516 http://www.sgi-network.org/index.php?page=indicator_quali&indicator=S4_2

517 Episode of Nieuwsuur from the 9th of June 2011 and Episode of Netwerk from 6th of March 2008.

518 Bunt, van de H.G., De Keijser, J.W. and Elffers, H. (2004). p.10–33.

519 Ibid.

520 Kroes, C.A.H. (2011).

521 Gommer, H., Lammers, J. and Woerdman, E. (2008). p.35–43; <http://www.nrc.nl/nieuws/2011/03/12/toets-politieke-kleur-rechters-onwenselijk/>, consulted 17 June 2011.

522 Episode of Buitenhof of the 24th of October 2010.

523 <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/1860527/2011/03/15/Buruma-treedt-toe-tot-Hoge-Raad-PVV-stemt-blanco.dhtml>; <http://www.nrc.nl/nieuws/2011/03/15/buruma-treedt-toe-tot-hoge-raad/>, consulted 17 June 2010.

membership of the political party to take away the concerns part of the population might have about his not being a good judge because of that membership.⁵²⁴

After this appointment issue an even more serious attack on the independence of the judiciary arose when a Parliamentary Committee under pressure from the PVV party declined the proposition of the Supreme Court and made it to change its own proposal in favour of another candidate. True, the Parliament has that right but so far that was never exercised, certainly not for plainly political reasons.

The ABRvS is independent and impartial but is also believed to be under fairly strong political influence, mainly expressed in a considerable number of double appointments (in total 10 members can be involved in advising on legislation and jurisdiction).⁵²⁵

State councillors working in the ABRvS are required to hold an academic degree in law, although a few exceptions have been made.⁵²⁶ Judges in civil, criminal and in administrative courts are appointed by different, though primarily legal and political, bodies in formally cooperative selection processes without special majority requirements. In the case of criminal, civil or lower administrative courts, judges are de facto appointed through peer co-optation.⁵²⁷

Raio education

In 2011 a state budget-cut of EUR 10 million was made on the 'Raio programme'. The programme is to be shortened by two years. From 2012 only 25 Raio's will be appointed annually, they will only have four years of

education and will no longer have the two years of practical experience. The Rvdr is currently designing a completely new educational programme for judges.⁵²⁸

The judiciary has expressed its concerns because it predicts that there will be a shortage of judges in the near future since a large portion of current judges will soon retire. Additionally, it fears that this will have a direct effect on the overall quality of the education.⁵²⁹

Suspension and dismissal of judges

There are no examples of judges being removed or transferred due to the content of their decisions. It is highly exceptional for judges to be removed before the end of their term. If judges are discredited because of their own conduct, they usually resign.⁵³⁰

The few cases in which judges were fired do end up in the newspaper and appear to be cases in which judges have functioned poorly over a long period of time without any signs of improvement. The justifications provided by the Supreme Court for these dismissals are credible, and the dismissals have seemed to be the last resort after years of trying to help judges improve their performance.⁵³¹ The right of exclusion is occasionally used.

Overall, there is little interference in the operations of the Dutch judiciary. The main risks are the criticism voiced by politicians, the media and the public on verdicts and the fact that appointments of judges are subjects for debate by politicians. However, there is no evidence which suggests that either has led to real interference with the judiciary's activities.

524 <http://www.nrc.nl/nieuws/2011/08/27/ybo-buruma-geen-lid-meer-van-pvda/>, consulted 20 September 2010.

525 Art. 2 paragraph 3 Wet op de Raad van State.

526 http://www.sgi-network.org/index.php?page=indicator_quali&indicator=S4_3, consulted 17 June 2010.

527 Ibid., consulted 19 June 2011.

528 <http://www.mr-online.nl/nieuws/juridisch-nieuws/mes-in-raio-opleiding.html>, consulted 14 June 2011.

529 Episode of Nieuwsuur of the 9th of February 2011; <http://www.mr-online.nl/nieuws/juridisch-nieuws/zorgen-over-toekomst-raio-opleiding.html>

530 <http://www.rechtspraak.nl/Organisatie/Hoge-Raad/Supreme-court/The-Procurator-General-of-the-Supreme-Court/Pages/default.aspx>

531 http://vorige.nrc.nl/binenland/article2441038.ece/Te_laag_werktempo_rechter_ontslagen, consulted the 17 June 2010.

TRANSPARENCY (BY LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information about the activities and decision-making processes of the judiciary?

Court proceedings

There are many different types of information which are required to be made publicly available. The Constitution prescribes that court proceedings should be open to the public, except for a few statutory exceptions (e.g. in family cases or when young children are involved).⁵³² The verdicts should be stated in public.⁵³³ The proceedings at the Supreme Court almost entirely take place in writing. Only the calendar hearings are open to the public. The discussion over whether the public should also be able to follow proceedings via the use of cameras is recurring. Due to criticism from academics, the press directive was amended in 2008. It is considered to be a compromise between, on the one hand, ensuring the transparency of court proceedings and, on the other hand, seeking to protect the privacy of those involved, and tries to ensure proceedings are undisturbed.⁵³⁴ Journalists can attend all court proceedings and report on these (exceptions include family and juvenile cases). Journalists need to make a request of the court not later than 24 hours before a proceeding starts if they want to record the sitting (audio-visual or audio) or want to report online.⁵³⁵ The current norm is that a limited part of the sitting can be filmed, but a judge can still decide to prohibit the use of cameras. Additionally, there are rules on anonymity. If a judge decides to deviate from the directive he is required to provide reasons for this deviation.⁵³⁶

Circulation policy and case assignment

Judges are appointed to a specific court, but by legal provision they also function as substitute judges in all the other courts at the same level. There is a statutory provision which prescribes that the management of the board is to distribute the work which is to be carried out by the judges.

The actual internal case assignment process is not prescribed by law, so that the random assignment of cases is not safeguarded.⁵³⁷ Case assignment to the various sectors is a responsibility of the management board, but within each division the sector chair is responsible.⁵³⁸ If there are facts or circumstances known through which the distribution of a case to one or more judges could harm judicial independence, one will refrain from this distribution.

Multiple-judge court

The statutory provision that the more complex cases should be dealt with by a multiple-judge court is aimed at ensuring independence of the judiciary in civil, criminal and administrative court cases.⁵³⁹

However, here the rule about the 'secrecy of courts' deliberations' (geheim van de raadkamer) applies. The decision-making is secret, and therefore it is not known how the decision was made and whether the judges came to their verdict via consensus or majority.⁵⁴⁰

If a judge violates this secrecy he will receive one warning, and after a second violation the judge will be dismissed and runs the risk of being criminally prosecuted.⁵⁴¹

Disclosure of financial information

There is no obligation to disclose financial or business interests.

532 Art. 27 Wetboek Burgerlijke Rechtsvordering; art. 269 Wetboek van Strafvordering; art. 8:62 Algemene wet bestuursrecht; interview with Ernest Groener, Judge at the Court of First Instance Almelo (sector civil and criminal), 11 May 2011.

533 Art. 6 European Convention on Human Rights; art. 121 Grondwet.

534 Art. 6, 8 and 10 European Convention on Human Rights; art. 121 Grondwet.

535 Persichtlijn rechtspraak 2008.

536 Ibid., p.3.

537 Fabri, M., Langbroek, P.M. (2007). p.24.

538 Ibid., p.14.

539 Articles 15–18 Wetboek van Burgerlijke Rechtsvordering; art. 268 Wetboek van Strafvordering; art. 8:10 Algemene wet bestuursrecht.

540 Art. 7 paragraph 3 Wet op de rechterlijke organisatie.

541 Art. 46 c Wet Rechtspositie rechterlijke ambtenaren and art. 12 Wet op de rechterlijke organisatie.

TRANSPARENCY (IN PRACTICE)

To what extent does the public have access to judicial information and activities in practice?

Information

There is substantial public access to judicial information in practice, including a website where judicial decisions can be found for free.⁵⁴² This website, administered by the Rvdr, was launched in 1999 and at first there were a limited number of verdicts to be found.

There is no information available on the exact percentage of case law which is published in this integrated database. The selection criteria refer to the societal importance, a new line of jurisprudence, its importance to interests groups and media.

Cases which are not to be found are, for instance, those which were declared inadmissible or which are first instance family law cases.⁵⁴³ This lack of transparency regarding how this selection takes place has been criticised by academics and journalists, and the government has expressed the need to publish all verdicts.⁵⁴⁴

However, an expert argued that 80 percent of the verdicts are similar and publishing these would not lead to any interesting insights.⁵⁴⁵ The verdicts of cases can be found on different website and academic journals.⁵⁴⁶

Websites such as www.rechtspraak.nl provide a broad range of information on the Dutch judiciary, including the names of the judges, their positions and to some extent their side-functions. National directives and guidelines, the court structure, annual reports and the integrity instruments can also be found.

Circulation policy and case assignment

The board of a court decides on the circulation of judges and hereby takes into account many factors such as: available and required knowledge and experience, age, interests of the judges in work on a different team or sector, and the good distribution of human resources in the different courts. Individual agreements are made between the boards and judges on career plans; these will form the basis for circulation in practice. Cases are assigned by a court clerk under the supervision of a coordinating judge based on the following criteria: the kind of procedure, specialisation and skill of the judge, judicial continuity and then randomness.⁵⁴⁷ It is possible to informally exchange cases between judges.⁵⁴⁸ Overall, there is little to no transparency on the way cases are assigned in practice. Many courts have delegated case assignment in criminal cases to the OM, and some courts of first instance (civil sector) have a system where assignment is done on the first letter of the family name of the defendant. The latter can lead to manipulation by repeat players when this method becomes known if it has not been changed for some time.⁵⁴⁹ This method of distribution of cases is believed to be the reason why it is seldom necessary for judges to use the right of exclusion. One judge does notice that during the process of assigning, some judges are too afraid to appear biased and refer to their 'right of exclusion' even in cases when there is no real and concrete linkage with the person involved.⁵⁵⁰

Multiple-judge court

The decisions of the Court of First Instance are of a factual nature, whereby the unified decision is believed to assure the persuasiveness of the judgment. Here a distinction can be made between the parties in a

542 <http://www.rechtspraak.nl/Uitspraken-en-Registers/uitspraken/Pages/default.aspx>

543 <http://www.rechtspraak.nl/Uitspraken-en-Registers/uitspraken/Selectiecriteria/Pages/default.aspx>, consulted 19 June 2011.

544 Hoogen, van den R.H. (2007). Chapter 5.

545 Interview with Ernest Groener, Judge at the Court of First Instance Almelo (sector civil and criminal), 11 May 2011.

546 Websites such as www.rechtspraak.nl or www.jure.nl

547 Fabri, M., Langbroek, P.M. (2007). p.15–16.

548 Ibid., p.17.

549 Email exchange with Gert Vrieze (d.d. 7 November 2011), Judge at the Court of First Instance Zutphen and Project coordinator for integrity of the Judiciary and former President of the Court of First Instance Zutphen.

550 Interview with Henk Moorman, Judge the Court of First Instance Zwolle–Lelystad, 13 May 2011; Chrit, M. and Venneman, R. (2011). p.21.

proceeding which want an unambiguous verdict and on the other hand, for example, academics who have an interest in the way law is developing and what the judge's rationale was.⁵⁵¹

One analyst maintained that for effective corruption prevention, there should be transparency regarding the majority or consensus leading to the verdict, whereby a major and minor conclusion can be brought equally as convincingly and uniform.⁵⁵²

One should be informed as to which arguments have led to the decision and how the decision-making took place. Other analysts have noted how the 'secrecy of the judges' council chamber' in practice has led to a minimum of statement of reasons.

Sometimes the reasons for giving the specific penalty are poorly motivated. There have been politicians and analysts who have called for a less strict interpretation of this rule, but so far this has not had effect.⁵⁵³

Disclosure of financial information

Lastly, judges' salaries are made public.⁵⁵⁴ No asset declarations are made by the judiciary.

The public is able to readily obtain relevant information on the organisation and functioning of the judiciary on decisions that concern them. However, the fact that the 'dissenting opinion' of a multiple judge court is not made public is a loophole.

ACCOUNTABILITY (BY LAW)

To what extent are there provisions in place to ensure that the Judiciary has to report and be answerable for its actions?

Annual plan and annual report

The Rvdr has to make one combined annual plan for all courts which consists of, at minimum, the budget for the following year and a description of all planned activities.⁵⁵⁵ Additionally, judicial accounts for expenditure and income are revealed via an annual report. The Rvdr has to send both documents to the Minister of VJ, who is then obliged to send it to parliament.⁵⁵⁶

Reasoning

Judges are required by law to give reasons for their decisions. A verdict which does not provide sufficient reasons and/or the legal grounds is void or will be annulled.⁵⁵⁷ In 2005 an extra paragraph was included in the statutory provision. Not only does a verdict in a criminal case have to coincide with the reasons for the decision, if the judge deviates from the statements of the public prosecutor and/or suspect, he also have to provide the reasons for doing so.⁵⁵⁸

Complaints

There is a statutory provision for the board of a court to set up a complaints procedure.⁵⁵⁹ Internal accountability is promoted by the possibility of complaining about the conduct of judges and by the right to appeal against judicial decisions. If persons

551 Email exchange with Gert Vrieze (d.d. 7 November 2011), Judge at the Court of First Instance Zutphen and Project coordinator for integrity of the Judiciary and former President of the Court of First Instance Zutphen.

552 Interview with Philip Langbroek, Professor of Justice Administration (and court system) at the Department of Law, Utrecht University, 31 May 2011.

553 <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/2537390/1998/04/21/Raadkamergeheim-moet-minder-geheim-worden.dhtml>; <http://nos.nl/artikel/77795-hirsch-ballin-raadkamergeheim-blijft.html>

554 <http://www.inoverheid.nl/artikel/artikelen/1352179/wat-is-het-salaris-van-ambtenaren.html>, consulted 15 June 2011.

555 Art. 102 Wet op de rechterlijke organisatie.

556 Art. 104 Wet op de Rechterlijke Organisatie.

557 Art. 121 Grondwet; Art. 359 paragraph 2–8 Wetboek van Strafrecht; art. 30 Wetboek Burgerlijke Rechtsvordering; art. 8:69 Algemene wet bestuursrecht.

558 Art. 359 paragraph 2 Wetboek van Strafrecht.

559 Art. 26 paragraph 1 Wet op de Rechterlijke Organisatie.

consider themselves to be incorrectly treated by a court or its member of staff, they can file a formal complaint. The complaint will be dealt with by the board of the court.⁵⁶⁰ Complaints about individual judges are dealt with by the Procurator General of the Supreme Court.⁵⁶¹ Information about the number and type of complaints as well as the outcome must be reported annually in the general report of the Supreme Court.⁵⁶² According to a new law proposal, currently at the Senate, the law will be amended to include a duty for the Procurator General and the Supreme Court to publish annually a report on the activities and the investigations carried out as part of this complaints procedure.⁵⁶³

Suspension and dismissal of judges

A judge can be suspended on limited grounds, for instance, detention, conviction for a crime, being sentenced to imprisonment, or put under ward, or declared bankrupt.⁵⁶⁴ There is a compulsory retirement age for judges set at 70 years. Judges can be dismissed at their own wish or because of health reasons that preclude them from continuing the job or if they are convicted for a crime, sentenced to imprisonment, or put under ward, declared bankrupt, subject to debt remission and the verdict is absolute.⁵⁶⁵ Judges who commit a criminal offence may be subjected to an investigation by the police. Because of the sensitivity of such a case, the National Police Internal Investigations Department (Rijksrecherche) becomes involved.⁵⁶⁶ Extensive provisions are in place to ensure that judges have to report and be answerable for their actions.

ACCOUNTABILITY (IN PRACTICE)

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

Annual plan and annual report

The annual plan and annual report are sent to the Minister for VJ. In some cases this has led to the respective minister using his right to give general directions to the Rvdr on its tasks, for instance to provide additional information on the hiring of external staff.⁵⁶⁷

Reasoning

The Rvdr does state that an improvement has to be made in the way judges provide reasons for their decision in criminal cases. This is one of the quality norms the Rvdr has established.⁵⁶⁸ It states that this is partly due to the increasing demands from society desiring to be able to gain insight into the foundations which determine judicial decisions.⁵⁶⁹ Improved communication about judges' reasons for their verdicts should improve transparency and opportunities for the parties and the public to scrutinise those verdicts.⁵⁷⁰ This should strengthen public trust in the judiciary. In 2004 criminal courts started the 'Project for Improving Reasoning in Criminal Verdicts' (Project Motiveringsverbetering in Strafvonnissen). The Promis-method was used, which provides a standard model which judges have to follow in their reasoning; they have to explain why they considered certain

560 <http://www.rechtspraak.nl/Procedures/Landelijke-regelingen/Algemeen/Landelijk-model-klachtenregeling/Pages/default.aspx>, consulted 18 June 2011.

561 Klachtenregeling van het parket van de Procureur-Generaal bij de Hoge Raad der Nederlanden; art. 13a and 13b lid 1 onder c Wet op de Rechterlijke Organisatie.

562 Art. 12 Klachtenregeling van het parket van de Procureur-Generaal bij de Hoge Raad der Nederlanden.

563 Hoge Raad der Nederlanden, verslag over 2009–2010 p.96.

564 Art. 46f Wet rechtspositie rechterlijke ambtenaren.

565 Art. 46h, i and m Wet rechtspositie rechterlijke ambtenaren.

566 http://www.om.nl/vast_menu_blok/english/the_national_police, consulted 18 June 2011.

567 Bijlage bij brief van de minister van BZK aan de Tweede Kamer met kenmerk 2009 – 336490.

568 [http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Kwaliteit-van-de-Rechtspraak/Pages/Project-Motiveringsverbetering-in-Strafvonnissen-\(PROMIS\).aspx](http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Kwaliteit-van-de-Rechtspraak/Pages/Project-Motiveringsverbetering-in-Strafvonnissen-(PROMIS).aspx)

569 <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/2537390/1998/04/21/Raadkamergeheim-moet-minder-geheim-wor-den.dhtml>

570 Jaarplan Rechtspraak 2010 p.10.

aspects to be proven or not and how they came to decide on the penalty and the severity of the penalty.⁵⁷¹ In 2010 40 percent of criminal cases handled by multiple-judge courts had to be motivated according to this method and 15 percent in the courts of appeal. In 2011 the norm was increased to 50 percent for courts⁵⁷², while the percentage in courts of appeal remained unchanged. This norm is determined based on resources available.⁵⁷³ In its annual plan it demonstrates the importance of systematically comparing verdicts from courts and courts of appeal in order to get a better understanding of their differences. This means future errors can be prevented.⁵⁷⁴

Complaints

The total number of complaints filed at the courts has increased in recent years from a total of 1094 in 2008 and 1093 in 2009 to 1208 complaints in 2010.⁵⁷⁵ In 2009 a digital form to file a complaint was made available. In total, 38 percent of complaints in 2010 were found to be grounded, while more than half of complaints were inadmissible because they concerned a judge's decision. Other than these figures, very little information is provided on complaints which were found grounded and no mention is being made on actions taken by the courts following these grounded complaints. The Rvdr and the meeting of court presidents have asked for a specific commission to come up with recommendations on how to better record and deal with complaints.⁵⁷⁶ In 2010 43 complaints were received by the Supreme Court, compared to 54 in 2009 and 52 in 2008.⁵⁷⁷ Most were

declared inadmissible because they concerned complaints about a verdict; these are exempt from the complaint procedure. According to the Supreme Court, none of the complaints about a judge's conduct was of a serious nature and therefore none were dealt with by the Supreme Court.⁵⁷⁸ In this period only one judge was fired as a disciplinary measure. Another judge would have been fired had he not reached retirement age, and in two other cases the Supreme Court did not agree with applying disciplinary sanctions towards judges.⁵⁷⁹

Trust

Although general confidence in the judiciary used to be relatively high compared to the public's trust in government or the Tweede Kamer, it is now less than the confidence the public has in media and newspapers.⁵⁸⁰ Recently, public doubts over the quality of justice in the Netherlands have been raised when the judiciary (judges but also law enforcement officials) made the press because of some glaring miscarriages of justice.⁵⁸¹ These, along with the concerns for argumentation of verdicts in criminal cases, demonstrated that legal certainty was in fact at risk. The judicial mistakes made in the past and the developments in forensic technology have led to renewed opportunities to re-open tried cases in which questionable convictions were delivered or which resulted in release from prosecution.⁵⁸²

Existing provisions are reasonably effective in ensuring that members of the judiciary have to report and be answerable for their actions in practice.

571 [http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Kwaliteit-van-de-Rechtspraak/Pages/Project-Motiveringsverbetering-in-Strafvonnissen-\(PROMIS\).aspx](http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Kwaliteit-van-de-Rechtspraak/Pages/Project-Motiveringsverbetering-in-Strafvonnissen-(PROMIS).aspx)

572 Jaarplan Rechtspraak 2011 p.11.

573 Ibid., p.19.

574 Ibid., p.9-13.

575 Ibid., p.13.

576 Email exchange with Gert Vrieze on the 7th of November 2011.

577 Hoge Raad der Nederlanden Verslag over 2009-2010 p.96.

578 Ibid., p.96-97.

579 <http://www.mr-online.nl/nieuws/juridisch-nieuws/rechters-zeer-zelden-echt-de-fout-in.html>, consulted 18 June 2011.

580 <http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Visie-op-de-rechtspraak/Pages/Hoe-staat-de-rechtspraak-er-voor.aspx>, consulted 20 September.

581 http://www.sgi-network.org/index.php?page=indicator_quali&indicator=S4_1&pointer=NLD#NLD

582 http://www.sgi-network.org/index.php?page=indicator_quali&indicator=S4_2

INTEGRITY (BY LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

Current integrity provisions

First there is the Manual on Impartiality of the Judge 2004 (Leidraad onpartijdigheid van de rechter 2004), which was drafted by the NVvR and by the presidents of several courts and courts of appeal. This manual has a dual aim: it provides recommendations on how a judge should deal with cases in which family, relatives or acquaintances are involved. It is also designed to raise a judge's awareness of his impartiality and be a reference tool in those cases. It also has the function of allowing the public to get a better insight into what the point of reference is for a judge, how a judge resolves his integrity dilemmas.⁵⁸³ Secondly, the law prescribes position incompatibilities for judges and state councillors: they cannot take on positions such as that of lawyer, notary or provide any legal advice outside their job.⁵⁸⁴ Judges and state councillors are required to make public their side-functions or activities.⁵⁸⁵ The board of a court is required to keep a registry of side-functions and activities of judges.⁵⁸⁶ The 'Manual Side-Functions of Judges and Civil Servants to the Judiciary 2009' (Leidraad nevenfuncties voor rechterlijke en gerechtsambtenaren 2009) contains recommendations explicitly aimed at safeguarding this integrity.⁵⁸⁷ It seeks to provide a framework for judges and society for assessing whether a certain side-function is compatible with the office of judge. Among other things, a judge is not allowed to receive remuneration as a legal advisor.⁵⁸⁸ Thirdly, in 2010 a framework code of conduct for the

Judiciary was designed.⁵⁸⁹ This code, which applies to all employees working within the Judiciary, refers to both manuals and seeks to provide eleven rules for behaviour regarding impartiality, independence, professionalism and fairness. However, the code is not very comprehensive and was designed in such way that specific codes were to be followed. For instance, a specific code of conduct for judges was published in September 2011 by the NVvR.⁵⁹⁰ Values such as independence and integrity are made concrete. Fourthly, integrity dilemmas are being discussed during training sessions in which members of staff of the courts participate.⁵⁹¹ Fifthly, the 'right of recusal' is an instrument which can be used to challenge the impartiality of a judge.

Future integrity policies

In 2010 the Council appointed a former president (now judge) of a Dutch court to be responsible for further designing a framework for integrity for the judiciary. Although promised for end 2011 this will be presented in the course of 2012. The initial plan is to design a comprehensive Integrity Handbook in which codes of conduct designed for the different positions within courts (for example registrars, judges, IT personnel). The ambition is to make it an interactive and digital handbook.⁵⁹²

The integrity provisions for the judiciary are currently 'under construction'. There are a few basic provisions aimed at ensuring the judiciary's integrity which ensure its independence. There are a few provisions specifically aimed at safeguarding integrity.

The comprehensiveness of the integrity provisions could be improved and is currently being considered.

583 Leidraad onpartijdigheid van de rechter.

584 Art. 44 paragraph 1 and 2 Wet rechtspositie rechterlijke ambtenaren; art. 7 Wet op de Raad van State.

585 Art. 44 paragraph 2 Wet rechtspositie rechterlijke ambtenaren; art. 7 paragraph 6 Wet op de Raad van State.

586 Art. 44 paragraph 3 Wet rechtspositie rechterlijke ambtenaren.

587 Leidraad nevenfuncties voor rechterlijke en gerechtsambtenaren.

588 Chrit, M. and Venneman, R. (2011). p.22.

589 Gedragscode Rechtspraak.

590 NVvR-Rechterscode.

591 Interview with Henk. Moorman, Judge at the Court of First Instance of Zwolle-Lelystad, 13 May 2011.

592 Jaarplan Rechtspraak 2011 p.10; Interview with Gert Vrieze, Judge at the Court of First Instance Zutphen and Project coordinator for integrity of the Judiciary and former President of the Court of First Instance Zutphen, 15 June 2011.

INTEGRITY (IN PRACTICE)

To what extent is the integrity of members of the judiciary ensured in practice?

Recusal of judges

Although the figures on the total number of requests for ‘recusal’ are not complete, a general image arises that this number is on the increase.⁵⁹³ The available figures show that in 2005 a total of 159 requests for recusal of a judge from hearing a case were made, compared to a total of 288 in 2009.⁵⁹⁴ This number of requests for recusal is not thought to be increasing only because of integrity violations, but due to various reasons such as the fact that judges’ authority is decreasing.⁵⁹⁵ In a few well-known cases in which judges had made mistakes, citizens have become more assertive,⁵⁹⁶ and in some cases the independence of the judge was doubted. The grounds for ‘recusal’ are also diverse but include, among others, the additional functions of the judge involved with the possible risk for his independence.⁵⁹⁷ One analyst argued that this right to recusal is increasingly being abused. He refers to lawyers who use this right to thereby gain extra time to prepare their criminal case.⁵⁹⁸

Additional functions

In the Netherlands the fact that a judge is actively involved in society is considered to be a positive thing.

Having other additional functions and activities is considered to be an asset when applying for a ‘Raio position’.⁵⁹⁹ It is believed that this allows judges to be aware of what happens in society. Nevertheless it is also considered to be essential that the public know what these other functions (paid and unpaid) are so that conflict-of-interest can be prevented. However, not every judge obeys this duty to register side-functions and activities after they are approved. These should be published in the digital registry on the website of the Rvdr.⁶⁰⁰ Several judges have not published their side-functions, for instance, board membership of a local foundation which stands up for ex-detainees, and another judge is involved in commercial training for law proceedings.⁶⁰¹ One judge reacted by stating that even though this registration is important, it does not show whether one has an antipathy towards something which can equally be a risk to a judge’s independence.⁶⁰² The unrest regarding these side-functions is often caused by substitute judges who can attribute to the societal orientation of the judiciary but because they are substitute judges their combination of functions raise concerns of a possible conflict-of-interest.

Integrity provisions

The Rvdr has listed integrity as one of the four core values of the judiciary.⁶⁰³ From the various interviews, it has become clear that the Dutch judiciary considers

593 <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/1827371/2011/01/24/Rechters-worden-steeds-vaker-gewraakt.dhtml>

594 Chrit, M. and Venneman, R. (2011). p.28.

595 Ibid., p.30.

596 Ibid., p.30–31.

597 Ibid., p.36–40.

598 Interview with Philip Langbroek, Professor of Justice Administration (and court system) at the Department of Law, Utrecht University, 31 May 2011.

599 Interview with Gert Vrieze, Judge at the Court of First Instance of Zutphen and Project coordinator for integrity of the Judiciary and former President of the Court of First Instance Zutphen, 15 June 2011.

600 www.rechtspraak.nl

601 Eikelenboom, S. and Groot, J. (2011). ‘Rechters mogen niet zeggen: gaat u rustig slapen, we weten wat we doen. Ze moeten zich verantwoorden.’ *Het Financieele Dagblad*.

602 Interview with Gert Vrieze, Judge at the Court of First Instance of Zutphen and Project coordinator for integrity of the Judiciary and former President of the Court of First Instance Zutphen, 15 June 2011.

603 <http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Visie-op-de-rechtspraak/Pages/Kernwaarden-van-de-rechtspraak.aspx>, 18 June 2011.

itself to act with integrity. Interviews with experts from outside the judiciary confirm that they have the impression that, overall, Dutch judges are highly professional and very cautious and ethically aware.⁶⁰⁴ There is no evidence that the few cases in which judge's integrity is believed to have been harmed are more than isolated incidents. However, most interviewees do state that the independence of the judiciary can result in a form of autonomy for judges; judges are considered not to be open to (peer) criticism.⁶⁰⁵ This attitude of judges is described to be part of a 'non-intervention culture'⁶⁰⁶ within the judiciary and does bring with it the risk of integrity dilemmas not being explicitly discussed and judges refraining from reflecting upon themselves and each other. It is unclear to what extent and how Dutch judges provide critical and supportive feedback or reflect on their own conduct.

Investigations

Although the overall integrity of the judiciary seems to be adequately safeguarded in practice, there have been incidents in which individual judges were suspected of not being impartial or independent, or were even considered to be corrupt. One case which was investigated in 2011/2012 concerned two former vice-presidents of a district court. In the 1990s, one judge allegedly arranged for the other judge to handle a dispute between a project developer and a minority shareholder in the company. This shareholder was a friend of one of the judges. The other judge is believed to have favoured this minority shareholder in his verdict. The allegations concern conflict-of-interest and corruption committed by the judges. The Public Prosecutor's Service (OM)

announced in January 2012 that both judges would be prosecuted for committing perjury.⁶⁰⁷ One former judge is believed to have committed perjury three times while the other former judge is believed to have committed perjury twice. The allegations that one of the former judges was involved in forgery and conflict-of-interest were believed to be precluded or could not be proven. In February 2012 a newspaper reported that two other judges were recently taken off a case until the outcome of an investigation into serious integrity violations on their part was complete. The suspicion is that these judges have had impermissible contact with a public prosecutor as part of a criminal case.⁶⁰⁸

Overall, the integrity of members of the judiciary appears to be sufficiently safeguarded in practice, although incidents are known. The independence and integrity of judges have come under scrutiny in recent years, and the judiciary initially did not show a proactive approach towards ensuring that integrity provisions are enforced in practice.

Executive oversight

To what extent does the judiciary provide effective oversight of the Executive?

Reviewing state authorities' actions and decisions

The powers of the judiciary to review the actions of the Executive are powers given by the multiple system of administrative jurisdiction. The political review of actions of the government is done by parliament. The specialised administrative courts have jurisdiction to review actions and decisions of state authorities.⁶⁰⁹ In

604 Interview with Philip Langbroek, Professor of Justice Administration (and court system) at the Department of Law, Utrecht University, 31 May 2011.

605 Interview with Gert Vrieze, Judge at the Court of First Instance of Zutphen and Project coordinator for integrity of the Judiciary and former President of the Court of First Instance Zutphen, 15 June 2011; Interview with Alex Brenninkmeijer, National Ombudsman of the Netherlands, 18 April 2011; Interview with Frans Jozef van der Vaart, Lawyer/Partner at Kienhuis Hoving, 28 April 2011.

606 Interview with Ernest Groener, Judge at the Court of First Instance of Almelo (sector civil and criminal), 11 May 2011.

607 <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/1875767/2011/04/15/Was-rechter-Kalbfleisch-corrupt.dhtml> and http://www.nisnews.nl/public/230411_2.htm, consulted 14 June 2011 and <http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/3155602/2012/02/04/OM-vervolgt-ex-rechters-wegens-meineed.dhtml>, consulted the 23rd of February 2012.

608 <http://www.nrc.nl/nieuws/2012/02/11/rechters-om-strafzaken-gehaald-vanwege-onderzoek-integriteit/>, consulted the 23rd of February 2012.

609 Chapter 8 of the Algemene wet bestuursrecht is the general legal provision for appealing state authorities' decisions. Additionally there are specific law provisions for appealing specialised decisions e.g. social security, tax and asylum cases.

2010 the general administrative courts had under their consideration more than 113,000 administrative cases, which is a decline in number of cases of 4 percent compared to 2009.⁶¹⁰ There is a set norm for the duration of these administrative proceedings.

Duration of administrative proceedings and enforcement of verdicts

However, this norm is not met by these courts.⁶¹¹ For example, the norm for cases involving general administrative decisions is that 70 percent should be dealt with within one year; the actual percentage in 2010 was 49 percent.⁶¹² For proceedings concerning state tax decisions, the norm is that 90 percent of these should be completed within one year and in 2010 the percentage was 53 percent.⁶¹³

According to the RvdR the main reason for the duration of administrative procedures is that the law on administrative procedures gives parties several options along the way which slow down the process.⁶¹⁴

Recent research showed that the decision making process following the judgment of an administrative court is slow and that few administrative courts enforce their judgments.⁶¹⁵ If applicants do not agree with the verdict they have to appeal, which will become a lengthy process. If the judge overturns the authority's decisions, the authority has to decide all over again without being given a deadline for it. In 2010 the administrative law was amended whereby a judge can allow and in some cases force the government agency involved to restore its decisions, within a specified time, which otherwise would be annulled.⁶¹⁶ The effect this amendment has had on administrative cases is not yet known. Administrative courts and the government

agencies are believed to hold the key to a more effective resolution of disputes. A study suggests that administrative judges should more often use dispute resolution instruments. When this turns out to be ineffective, the administrative court needs to guide the decision-making process of the government agency.

For instance, by giving the government agency a set time-limit for making a new decision and impose a fine if the governmental agency does not comply.⁶¹⁷ This should be considered within the competence of the judiciary, whereby a judge should refrain from becoming the executive.

ABRvS

The ABRvS is the highest general administrative court in the Netherlands. It advises government on law proposals, and it also acts as an administrative judge of last appeal (involving the same laws).

Here it hears appeals lodged by members of the public or companies against decisions or orders given by municipal, provincial or the national government. Disputes may also arise between two public authorities. The decisions or orders on which the ABRvS gives judgments include decisions in individual cases and orders of a general nature.⁶¹⁸

There is a division of labour between an advisory chamber and a judiciary chamber; this has to do with the fact that several members have double appointments.⁶¹⁹

Overall the judiciary provides strong oversight of the executive and the public administration at large, but its effectiveness is obstructed by the length of proceedings and the challenges faced in the enforcement of its judgments.

610 Jaarverslag Rechtspraak 2010 p.51.

611 Ibid., p.61.

612 Ibid., p.17.

613 Ibid., p.17.

614 Ibid., p.17.

615 Veer, van der A. (2011). p.137–139.

616 Art. 8:51 a and following, Algemene wet bestuursrecht.

617 Veer, van der A. (2011). p. 235.

618 http://www.raadvanstate.nl/the_council_of_state/, consulted 19 June 2011.

619 http://www.sgi-network.org/index.php?page=indicator_quali&indicator=S4_2, consulted 19 June 2011.

PROSECUTION OF CORRUPTION

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

Corruption legislation is built around a few provisions in the Criminal Code.⁶²⁰ There are no regular and comprehensive court statistics on criminal corruption cases. Several academics have done research into the scale on which corruption takes place, hereby differentiating the figures for prosecution and actual convictions. The latest research, however, is from 2005.⁶²¹ From 1994 to 2003, in total 304 corruption cases have been brought to a court in first instance. In this period 9 out of 10 indictments resulted in a conviction.⁶²² The Rijksrecherche has conducted in-depth research into bribery of civil servants in the public sector based on reports (total 221) and subsequent investigations (total 73) between 2003–2007.⁶²³ Not every report is investigated. This is to a great extent related to the ‘principle of opportunity’: bribery is difficult to prove and is often accompanied by other crimes which are easier to prove. The judiciary’s commitment to fight corruption depends largely on the prosecutions instigated by law enforcement agencies. *(For more information on this research, please refer to the ‘Law Enforcement Agencies’)* Under this pillar, only adjudication of corruption cases is considered, with prosecutions left to the Law Enforcement Agencies pillar. The media regularly reports on cases in which individuals are convicted for taking or offering bribes.⁶²⁴ The database

on the website of the Rvdv does not provide insight into the number of corruption convictions, however. The interviewees considered the total number of corruption cases and convictions to be low.⁶²⁵ There is no evidence that the cause of this small number is reluctance on the part of the judiciary. In general, many cases are not prosecuted because it remains difficult to prove bribery.⁶²⁶ Also, it is believed that in many alleged corruption cases conviction take place on grounds of ‘false accounting’ or ‘fraud’ because it turns out to be too difficult to prove elements of corruption.⁶²⁷ Internationally, the Dutch judicial authorities try to cooperate and offer mutual assistance when it comes to corruption-related crimes; however, this is not always done to full satisfaction of both parties. Poland has recently criticised the Netherlands for not responding to its international request for legal aid in the investigation of the Philips corruption case. According to Polish authorities, the Dutch authorities did not respond when asked for information on one of the Philips offices in the Netherlands. At a later stage, the Dutch Public Prosecution Service was willing to participate in a joint criminal investigation, but this never became reality. When the Dutch authorities did respond and conducted a search, the investigations in Poland had already been finalised.⁶²⁸ *(For more information on the Public Prosecution, please refer to the ‘Law Enforcement Agencies’)*

While the judiciary does seek to penalise offenders in corruption-related cases, it is dependent on the public prosecutor to bring a case to court. The judiciary is not proactive in suggesting anti-corruption reforms.

620 Articles 177, 177a, 178, 178a, 328ter, 362, 363, 364, 364a Wetboek van Strafrecht.

621 Huberts, L.W.J.C. and Nelen, J.M. (2005).

622 Ibid., p. 125.

623 Rijksrecherche (2010). Niet voor persoonlijk gebruik! Omkoping van ambtenaren in de civiele openbare sector.

624 <http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/1847910/2011/01/19/Elf-veroordelingen-voor-bouwfraude-in-Limburg.dhtml>; <http://www.volkskrant.nl/vk/nl/2664/Nieuws/article/detail/336735/2009/07/20/Ex-medewerkers-UWV-veroordeeld-wegens-steekpenningen.dhtml>, <http://www.transparency.nl/2010/09/corrupte-justitiemedewerker-veroordeeld/>; <http://rechten-nieuws.nl/29738/aannemen-van-steekpenningen-door-voormalig-werknemer-holland-casino.html>, consulted 19 June 2011.

625 Interview with Jack van Zijl, National Public Prosecutor for Corruption at National public prosecutor’s office, 6 June 2011.

626 Rijksrecherche (2010). p.6; http://www.om.nl/algemene_onderdelen/uitgebreid_zoeken/@18094/integriteit_binnen/, consulted 25th September 2011.

627 Interview with Jack van Zijl, National Public Prosecutor for Corruption at National public prosecutor’s office, 6 June 2011; interview with Jos Schipper information detective at the Rijksrecherche, 21 April 2011.

628 <http://nos.nl/artikel/247938-traag-optreden-justitie-bij-philips.html>, consulted 17 June 2011.

6.4 PUBLIC SECTOR

Role in NIS

The public sector in the Netherlands includes a diverse array of different organisations and institutions in both national and local government, as well as autonomous administrative authorities (ZBOs – Zelfstandige Bestuursorganen). Several of those public institutions are assessed in separate chapters of this study. The main focus of this chapter is on the civil service. Civil servants assist the government in formulating policies, carrying out decisions and administering public service. The civil service is an important pillar in ensuring integrity and fighting corruption. The government disposes of exclusive competencies which have a direct influence on the lives of citizens; citizens are to a large extent dependent on the government. In the end it is the civil servant who acts on behalf of the government by serving the public interest. In doing so, civil servants should conduct themselves with integrity, impartiality and honesty, and deal with the affairs of the public sympathetically, efficiently, promptly and without bias or maladministration. They should also endeavour to ensure the proper, effective and efficient use of public money. If the civil service's integrity is adequately safeguarded by law and in practice, this will strengthen public confidence in government.⁶²⁹

Sources

The desk research for this pillar report started with broad research into the topic of integrity in the public sector, current affairs in the public sector and its delimitation taking into account the other NIS pillars. Literature and legal provisions were examined, documents of the House of Representatives and the Government were analysed, as well as policy documents. Additionally, a media scan was made. In order to assess the topic from different points of view, several organisations and persons were approached for face-to-face interviews. In total, ten in-depth interviews were held with key figures and experts who are either from the public sector itself or who have a

good understanding of it. On the basis of the desk research, more in-depth knowledge was gained on the public sector's integrity in practice. Nine out of the total of ten interviews were held face-to-face; one was conducted via telephone. The senior auditors of the Netherlands Court of Audit (AR – Algemene Rekenkamer) expressed their wish to be paraphrased anonymously. The names of the other key figures will be made available after they give final approval.

Interviews held:

- Mark Bovens, Professor of Public Administration and Research Director at the Utrecht School of Governance, interview held the 7th of June 2011.
- Alain Hoekstra, Coordinating Policy Advisor & Researcher at the National Office for Promoting Ethics & Integrity in the Public Sector – CAOP/BIOS, interview held the 24th of May 2011.
- Anton Jansen, Partner and Senior Consultant at EPPA Politiek en Lobby Consultants, interview held the 19th of May 2011.
- Ronald van Raak, MP for the political party SP, interview held the 31st of August 2011 via telephone.
- Guusje ter Horst, President of the Netherlands Association of Universities of Applied Sciences (HBO-raad) and member of the Senate for the political party PvdA and former Minister of the Interior and Kingdom Relations, interview held the 2nd of May 2011.
- Suzanne Verheij, Policy Advisor at the National Office for Promoting Ethics & Integrity in the Public Sector – CAOP/BIOS, interview held the 24th of May 2011.

629 Transparency International. (2003). *Pillars of Integrity: Confronting Corruption. The Key Elements of a National Integrity System*. p.15–17.

- Henk Wijnen, project manager at PIANOo, the Public Procurement Expertise Centre, which is part of the Dutch Ministry of Economic Affairs, Agriculture and Innovation, interview held on the 16th of May 2011.
- Interviewee 5, Senior auditor at the Netherlands Court of Audit, interview held the 18th of April 2011.⁶³⁰
- Interviewee 6, Senior auditor at the Netherlands Court of Audit, interview held the 18th of April 2011.⁶³¹
- Interviewee 7, Senior auditor at the Netherlands Court of Audit, interview held the 18th of April 2011.⁶³²

PUBLIC SECTOR

Status: strong

Summary

Budget-cuts and corresponding reorganisations and the high number of civil servants retiring in the coming years mark the major developments in the public sector, and it is yet to be seen what the net results of these developments will be. The public sector has always been, and still is, an attractive sector attracting highly-qualified personnel. Public satisfaction with public services is still relatively high. The independence of the public sector is ensured through effective dismissal protection and vacancies being open to anybody. At the same time, the independence of civil servants in practice is moderate now that lobbyists are free to engage with them, and membership of a political party is believed to play a role in the appointments of senior civil servants. The transparency and corresponding control mechanisms to prevent politicisation of civil servants is lacking. There is sufficient transparency of top incomes of (semi) public

officials, and a new government proposal seeks to standardise these top incomes to a certain maximum. There is no statutory provision on asset declaration. There is a concern regarding information management by public sector organisations and whether the privacy of citizens is sufficiently protected. The integrity framework in the public sector is comprehensive. However, its implementation in practice is not yet adequate, and this is to a large extent determined by poor whistle-blower protection in practice. Also, the differences in implementation of integrity provisions at ministries require further attention. The civil servant's awareness of the duty to report crimes was low in 2008, and it is unclear whether this has changed much. The total number of abuse reports submitted by the ministries is low, but it is unclear in how many cases of integrity violations a report should have been made because it was not already part of a criminal investigation and yet concerned a crime. The public sector does not presently engage in any significant efforts towards educating the general public on corruption and does not actively collaborate with civil society or the private sector in this area. Finally, the existing system for public procurement contains important legal anti-corruption safeguards, but in 2006 the number of tenders offered via an open procedure was still relatively low.

Structure and Organisation

Public services are provided by the ministries and other national executive bodies (agencies and inspectorates), by the bodies of local governments, and by branches of national executive bodies at local and regional levels. In addition, some 118 autonomous administrative authorities (ZBOs – Zelfstandige Bestuursorganen) and semi-public organisations carry out a part of the government's decisions and administration.⁶³³ An extended public sector also covers the numerous public educational institutes, academic hospitals and museums, as well as dozens of oversight bodies and inspectorates, such as the Authority for the Financial

630 This expert requested anonymity.

631 This expert requested anonymity.

632 This expert requested anonymity.

633 http://almanak.zboregister.overheid.nl/overzicht_op_alfabet

Markets and Competition (AFM – Autoriteit Financiële Markten) or the Inspectorate for Education (Inspectie voor het Onderwijs).⁶³⁴ At the end of 2010 a total of 122,600 people worked at the national government level (excluding Ministry of Defence and the ZBOs).⁶³⁵ Ministries (currently numbering 11) and their subordinate agencies form the core of the state public sector. This pillar report focuses mostly on the national administration, i.e. the ministries and their subordinate agencies, ZBOs and the respective civil service. Local government is not dealt with.

ASSESSMENT

RESOURCES (IN PRACTICE)

To what extent does the public sector have adequate resources to effectively carry out its duties?

Budget

In general, the public sector has access to sufficient resources. However, the current government's efforts to reduce the budget deficit has led to a substantial reduction in public sector funding which is leading to concerns about the ability of some parts of the public sector to produce effective services.⁶³⁶ Most of the public sector already suffered major budget-cuts in 2009 and 2010. The current government wants to save EUR18 billion, EUR 6.5 billion is to be saved from the governmental agencies, of which EUR 800 million will have to come from the ministries.⁶³⁷ This is being done

through a large re-organisation resulting in a smaller government. Already the number of ministries has gone down from 13 to 11.

Civil servants

It is impossible to get an overview of the number of civil servants who are likely to be forced to leave because of the state budget-cuts.⁶³⁸ The full-time equivalent of civil servants in 2011 was reduced by 1.5 percent.⁶³⁹ According to the government there will be the threat of a shortage of well-qualified staff between 2010–2020 as a result of two developments. First, there will be a big 'exodus' caused by the large group of civil servants who will retire during this period. Secondly, the reorganisations which are a result of the cuts in the state budget will lead to jobless but qualified civil servants on the one hand and vacancies on the other hand. It is not likely that the qualifications of these unemployed civil servants will match the required staff, i.e. a large scale mismatch is likely to be the result.⁶⁴⁰

Civil servants' labour conditions are good and include, among other things, an appropriate salary, excellent arrangements for leave, holidays and dismissal protection. There is an initiative law proposal aimed at making the legal position of a civil servant similar to that of an employee, *for more information please refer to 'Independence/Law'*. The attractiveness of the public sector is also reflected in the high number of graduates who apply annually for the two-year trainee programme which is offered by the ministries.⁶⁴¹ In

634 Bandelow, N.C., Hoppe, R., Hoppe, T. and Woldendorp, J. (2011); http://www.sgi-network.org/index.php?page=indicator_quali&indicator=M6_2c, consulted 21 May 2011.

635 Sociaal Jaarverslag Rijk 2010 p.7; <http://www.rijksoverheid.nl/onderwerpen/overheidspersoneel/overheid-en-arbeidsmarkt/person-eelsbeleid-rijksoverheid>, consulted 3 September 2011.

636 <http://www.volkskrant.nl/vk/nl/3598/Binnenland/article/detail/1835791/2011/02/17/Tienduizend-demonstranten-tegen-bezuiniging-publieke-sector.dhtml>; <http://www.rijksoverheid.nl/nieuws/2011/05/17/ministerie-van-eli-wordt-kleiner-en-slagvaardiger.html>; http://www.defensie.nl/actueel/nieuws/2011/04/08/46180709/defensie_hard_getroffen_door_bezuinigingen_video, all consulted 11 September 2011.

637 <http://www.inoverheid.nl/artikel/nieuws/2358819/jonge-ambtenaar-slachtoffer-van-bezuinigingen.html>, consulted 11 September 2011.

638 <http://www.binnenlandsbestuur.nl/vakgebieden/sociaal/goochelen-met-rijksambtenaren.1187530.lynkx>, consulted 12 September 2011.

639 Bijlage Kerngegevens arbeidsmarkt 1996–2011.

640 Trendnota Arbeidszaken Overheid 2011 p.19–31 (Kamerstuk 32501 nr. 2).

641 <http://www.inoverheid.nl/artikel/artikelen/1095509/carrere-maken-binnen-de-overheid-word-trainee.html>, consulted 14 September 2011.

2009 more than 2000 applications were received for the then available 169 traineeships.⁶⁴² In 2011, 88 positions were available, compared to 155 in 2010 due to the drastic cuts in the state budget.⁶⁴³ The Dutch government wants to have a competitive position on the labour market and has recently assessed the competitiveness of wages. The way the overall wages in the public sector have developed is similar to that in the private sector, with the average wages in the private sector being slightly above that of the public sector.⁶⁴⁴ However, the wages of the higher-educated civil servants have fallen behind in the period of 1996–2010. Wages of higher-educated civil servants increased by 39 percent during this period while the increase in the private sector was 58 percent.⁶⁴⁵ Transparency in the remuneration system is ensured with the applicable collective agreements being available to the public.

Satisfaction with public services

Although the government has tried to increase citizens' satisfaction with the services it provides, research shows that citizens are satisfied with the public services with a 6.9 rating (scale 1–10), and when several organisations are involved (a chain) the satisfaction level is slightly lower with a rating of 6.7. This appreciation has not gone up or down significantly over the years. According to the respondents, these low levels of satisfaction are caused by the complex cooperation between government organisations and the effects this has on the quality of service.⁶⁴⁶

Thus the public sector has adequate financial, infrastructural and human resources to effectively carry out its duties. It remains to be seen what the impact of the budget-cuts and the ageing of the civil service will

be on public services. Due to the attractive employment conditions for civil servants, the public sector is likely to remain an attractive employer. The adequate salary is an important safeguard in preventing civil servants from making a little on the side.

INDEPENDENCE (LAW)

To what extent is the independence of the public sector safeguarded by law?

Professional impartiality of civil servants

The Civil Servants Act (Ambtenarenwet) explicitly refers to the civil servant's duty to refrain from any form of expression which could, in all fairness, harm the proper fulfilment of his position or the good fulfilment of public service. The law allows a civil servant to be a member of a political party or a professional association.⁶⁴⁷ Each civil servant is required to take the pledge or the oath.⁶⁴⁸ By this pledge or oath, the civil servants promise, among other things, that by being a 'good civil servant' they will be careful, upstanding and reliable and will not do anything which could harm the prestige of the post.⁶⁴⁹

Appointments and dismissals

Generally speaking, vacancies for civil servant's positions must be open to anybody.⁶⁵⁰ The uniform legal provisions and policies regarding the recruitment and appointment of civil servants seek to ensure their independence. The constitutional and practical role of the public service is to assist the government in formulating policies, carrying out decisions and administering public services for which they are responsible. Therefore, all administrations form part of

642 <http://www.profnews.nl/937691/rijkstraineeprogramma-is-een-blijvertje>, consulted 14 September 2011.

643 <http://www.republic.nl/nieuws/2011/13/Traineeship-rijk-gehalveerd.htm>, consulted 21 July 2011.

644 Trendnota Arbeidszaken Overheid 2011 p.24–25 (Kamerstuk 32501 nr. 2).

645 Ernest Berkhout, E., Heyma, A. and Werff, van der S. (2010).

646 Bijlstra, H. Kanne, P. and Zonjee, M. (2010).

647 Art.125a paragraph 1 and 2 Ambtenarenwet.

648 Art.51 Algemeen Rijksambtenarenreglement 25th of June 2010.

649 <http://www.rijksoverheid.nl/onderwerpen/integriteit-overheid/integriteit-ambtenaren-en-bestuurders#anker-de-eed-of-belofte>, consulted 7 September 2011.

650 Art. 1 and 3 Grondwet and art. 4–14 Algemeen Rijksambtenarenreglement 25 June 2010.

the state and civil servants owe their loyalty to the minister they serve. The provision for ZBOs only refers to incompatibilities of additional functions which are undesirable considering the proper fulfilment of their tasks or the enforcement of (and confidence in) their independence. A civil servant falling within the responsibility of a specific minister cannot be a member of a ZBO.⁶⁵¹

Due to their status, civil servants enjoy adequate dismissal protection. Civil servants do not have an agreement with an employer but are appointed. This appointment is considered an administrative decision, which means that the ministry needs to take the same sort of decision to dismiss a civil servant. This is a form of dismissal protection, which was implemented to protect the civil servant from the arbitrary rulings of newly-appointed ministers. Its aim was to assure an impartial and professional civil service by preventing civil servants having to adapt too much to changing political views.^{652, 653} It might be that the special legal status of 'civil servant' will soon be something of the past. A bill proposed by two MPs aims to amend the Civil Servants Act to the extent that the legal position of civil servants is to become equal to that of employees who have a labour contract according to private law.⁶⁵⁴ The aim of this bill is to increase mobility of employees between the public and private sector and within the (semi) public sector. It was discussed in the Tweede Kamer in June 2011 and is now in its consultation-phase, it remains to be seen whether it will be accepted.⁶⁵⁵ In the current situation, a civil servant can appeal a dismissal decision to the District Court and, as a last resort, appeal to the Central Appeals Tribunal (Centrale Raad voor Beroep) to review the decision of the District Court.⁶⁵⁶

Lobbying

There are no provisions concerning lobbying. There is no public registry of lobbyists who are active in the premises of the Tweede Kamer or the ministries. Neither is there an obligation for civil servants to keep a record of whom they have spoken to.

There are broadly formulated laws seeking to ensure the independence of the public sector. However, they do not cover all aspects of this independence. There is no duty to register as a lobbyist.

INDEPENDENCE (IN PRACTICE)

To what extent is the public sector free from external interference in its activities?

Professional impartiality of civil servants

Civil servants are allowed to be member of a political party. In practice, one-third of all civil servants are a member of a political party, while approximately only three percent of the Dutch population is member of a political party. There is some criticism from the academic world about the politicisation of public institutions, but this has not led to any broad political or societal debate.⁶⁵⁷ There have been cases which involved civil servants' professional (im)partiality. One case, exposed by Wikileaks, concerned how senior officials at Dutch ministries and ministers used their power for political purposes. In this case a senior civil servant of the Ministry of Foreign Affairs and the Ministry of General Affairs tried to convince American diplomats that they had to put pressure on the Dutch Vice-PM to prolong the Dutch military mission in Afghanistan.⁶⁵⁸ In reality, the government collapsed

651 Art. 9 and 13 Kaderwet zelfstandige bestuursorganen.

652 <http://www.binnenlandsbestuur.nl/vakgebieden/sociaal/overheden-willen-makkelijker-ontslag-ambtenaren.114882.lynx>, consulted 4 September 2011.

653 Kamerstuk 32 550 nr.4 The Raad van State (Council of State) has, among other things, stressed the importance of ensuring the independence and impartiality of the civil servant. It advises MPs to pay attention to this aspect, which should not easily be overlooked. It explicitly refers to the effect this special status has on the integrity of civil servants and the importance to assure public confidence in governmental organisations.

654 Kamerstuk 32 550 nr.1.

655 Kamerstuk 32 550 nr.7.

656 <http://www.rechtspraak.nl/Organisatie/CRvB/OverDeCRvB/Pages/English-review.aspx>, consulted 12 September 2011.

657 <http://www.depers.nl/binnenland/531101/Zonder-partijkaart-kom-je-er-niet.html>, consulted 3 September 2011.

over the prolongation of that military mission. Another recent case involved a senior official of the Ministry of Infrastructure and Environment who publicly announced her resignation because she felt she could no longer work on policies which were partly steered by the populist party PVV. However, it is rare in the Netherlands that a civil servant resigns because of the political direction of a (new) government.⁶⁵⁹

Appointments and dismissals

In practice, appointments are generally believed to be fair but not always transparent. The appointments of senior officials are believed to depend to a certain extent on political party membership (*Please refer to Transparency/Practice.*) It is considered to be quite difficult to dismiss a civil servant. The costs involved are high. The Central Appeals Tribunal annually deals with around 1,000 civil servants' cases. The government is said to be spending approximately EUR 426 million annually on dismissal costs.⁶⁶⁰ There are a few known cases in which civil servants were replaced after a change in government. One case (1999) involved the secretary-general of the Ministry of Economic Affairs, Van Wijnbergen, whose critique of tax plans was not welcomed by the then-Minister of Economic Affairs Jorritsma.⁶⁶¹ The minister considered him to be a political obstacle and advised Van Wijnbergen to call in sick. The secretary-general considered this situation to be unworkable and 'resigned'. He stated that if senior civil servants are considered to be a burden by the ministers, ministers make sure the civil servant leaves.⁶⁶²

Lobbying

The ministries are closely monitored by lobbyists. Through informal networks they are kept up-to-date about issues such as the stage a law proposal is in or

what developments in policy making are. From the lobbyists' point of view, its best shot is to influence policy officers because this is the start of the law and policy making process. This is where they can have key influence. Once a law proposal is sent to the Tweede Kamer, it's much harder to influence.⁶⁶³ Most interviewees reaffirmed that lobbying is taking place on a large scale and is done predominantly in Brussels and at the ministries. Some consider lobbying to be a bad thing under all circumstances, while others expressed the view that the information provided by lobbyists can be valuable.⁶⁶⁴

Overall, civil servants and the public sector maintain a professional rather than political profile, but their capacity to withstand political pressures or business interests is seriously tested. Other actors, for example lobbyists and interest groups, continuously try to interfere with the activities of civil servants. It is difficult to determine the extent to which this influences the actual independence of the public sector.

TRANSPARENCY (BY LAW)

To what extent are there provisions in place to ensure transparency in financial, human resource and information management in the public sector?

Appointment procedure

There are provisions regarding the selection and appointment procedures for senior officials. The 'Top Management Group' (TMG – includes secretary-generals, director generals and inspector-generals of ministries) are appointed, dismissed and reappointed

659 <http://www.volkskrant.nl/vk/nl/2824/Politiek/article/detail/2440679/2011/06/03/Topambtenaar-neemt-ontslag-uit-schaamte-over-invloed-PVV.dhtml>, consulted 10 September 2011.

660 <http://www.inoverheid.nl/artikel/nieuws/1839440/ambtenaar-steeds-vaker-in-beroep-tegen-ontslag.html>, consulted 4 September 2011.

661 <http://retro.nrc.nl/W2/Nieuws/1999/09/27/Vp/03.html>, consulted 30 September 2011.

662 <http://retro.nrc.nl/W2/Nieuws/1999/09/27/Vp/03.html>, consulted 30 September 2011.

663 Interview with Anton Jansen, partner and lobby advisor at EPPA Politiek en Lobby Consultants, 19 May 2011; Heck, W., Luyendijk, J. and Verkade, T. (2010). p.4–5.

664 Interview with Ronald van Raak, MP for the Socialist Party, 31 August 2011; Interview with Anton Jansen, partner and lobby advisor at EPPA Politiek en Lobby Consultants, 19 May 2011; Hulten, van M. (2011) p. 155–163.

by the Minister of BZK for a period of seven years. They are officially employed by this minister.⁶⁶⁵ According to a former minister, the quality criteria have to be determined and made public beforehand, 'political appointments do not play a role' and vacancies are widely published and open to candidates with different backgrounds.⁶⁶⁶ The Framework Act ZBOs (Kaderwet zelfstandige bestuursorganen) provides basic provisions regarding the selection and appointment of members of the autonomous administrative authorities (ZBOs). The minister who is responsible for the specific ZBO appoints, suspends and dismisses its board members.⁶⁶⁷ The term for appointment of ZBO members is usually between four and six years, with the possibility of one reappointment, although there are exceptions applicable for some ZBOs.⁶⁶⁸ Because of the wide variety of these ZBOs, the law prescribes that specific selection criteria for board members are to be found in the laws establishing the specific ZBO.⁶⁶⁹

Disclosure of financial information

The 'Law on the disclosure of top incomes financed by public means' (Wopt – Wet openbaarmaking uit publieke middelen gefinancierde topinkomens) and corresponding ministerial regulations determine which incomes have to be disclosed. The top incomes earned within legal entities or organisations which are financed entirely or for a large part with public means, or which are assigned, have to be disclosed if they exceed the average taxable annual income of a minister (the Wopt-norm). In 2010 the Wopt-norm was EUR 193,000, and public institutions (ministries and decentralised authorities) and semi-public institutions

(e.g. housing corporations, schools and hospitals) have to include these top incomes in their financial annual report and report, these digitally to the Ministry of BZK.⁶⁷⁰ The minister sends an overview of these top incomes to parliament annually before 31 December regarding the previous year.⁶⁷¹ Part of the recommendations stemming from the evaluation of the Wopt have resulted in the law proposal on the standardization of incomes of top officials.⁶⁷² In December 2011 this law proposal⁶⁷³ from the government was adopted by the Tweede Kamer. In this proposal it is stated that the salary of these top officials in the (semi)public sector can at maximum be 130 percent of the salary of a minister. This norm is considered to balance what is regarded as acceptable by the public and what is high enough to attract qualified persons for these top positions in e.g. ministries, education, public service broadcasting and building cooperatives.⁶⁷⁴ These (semi) public institutions each fall within one of the three regimes for which a specified threshold is determined. Another provision prescribes the maximum-allowed dismissal payment of EUR 75,000 in the (semi)public sector. All (semi) public institutions have to disclose the salaries of top officials with final responsibility. In 2012 the law proposal will be taken up by the Senate. If it is adopted, it will become effective in January 2013 for contracts signed after its entry into force, and the Wopt will be incorporated into this new Act.⁶⁷⁵ The law gives the Minister of BZK the competence to enforce the legal income agreements. As a last resort, payments which are prohibited according to this law can be taken from the employee.

665 Art.7 paragraph 4 Algemeen Rijksambtenarenreglement 25 June 2010.

666 Raad voor het openbaar bestuur (Rob). (2006). p.22.

667 Art.12 Kaderwet zelfstandige bestuursorganen.

668 Raad voor het openbaar bestuur (Rob). (2006). p.51.

669 By law 'soft law' is meant, hereby refering to Aanwijzing 124i paragraph 1 of Aanwijzing voor de regelgeving Staatscourant 2005, 87; Raad voor het openbaar bestuur (Rob). (2006). p.52.

670 Rijksoverheid. (2011). Topinkomens overheid.

671 Art.9 Wet openbaarmaking uit publieke middelen gefinancierde topinkomens.

672 Brief van het ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2 september 2009. Kabinetsstandpunt inzake de evaluatie van de WOPT.

673 Wetsvoorstel Normering bezoldiging topfunctionarissen publieke en semipublieke sector Kamerstuk 32600 nr.2.

674 Nota naar aanleiding van het verslag Kamerstuk 32600 nr.8.

675 Rijksoverheid. (2011). Topinkomens overheid.

Other than the regulations concerning the disclosure of income and additional functions, there are no regulations requiring the disclosure of personal assets, financial or business interests for senior officials in public sector agencies.

Record-keeping and information management

The Archive Act (Archiefwet) prescribes that governmental organisations are responsible for the management of their own records and archives. Information should be easily accessible to civil servants, citizens, journalists, politicians and historians.⁶⁷⁶

There are comprehensive provisions on protecting the privacy of personal data kept by the government. The Dutch Data Protection Act (Wbp – Wet bescherming persoonsgegevens) prescribes that personal data can be kept for as long as required to fulfil the goal for which they were collected. The Dutch Data Protection Authority (CBP – College Bescherming Persoonsgegevens) supervises the fair and lawful use and security of personal data to ensure privacy. The Police Data Act (Wpg – Wet politiegegevens) and the Municipal Database Personal Files Act (Wet GBA – Wet gemeentelijke basisadministratie persoonsgegevens) all seek to protect the privacy of personal data kept by governmental organisations.

Public Procurement

There is not one integrated national framework for public procurement in the Netherlands. Since 2006 the legislature has been working on a Public Procurement Act (Aanbestedingswet). The new law proposal prescribes that a contracting authority is required to publish notices both before carrying out procurement

and about the results of procurement procedures. The contracting authority shall also motivate its decisions and has to report each case in which an assignment is granted.⁶⁷⁷ The contracting authority either makes use of the public or non-public procedure.⁶⁷⁸ A contracting authority presents the government's assignments and includes information regarding the requirements and criteria of the assignment.⁶⁷⁹ When the non-public procedure is chosen, selected candidates are invited to take part in the bidding process. The contracting authority has to make all relevant documentation available.⁶⁸⁰

There are provisions in place which allow the public to obtain information on relevant activities in the public sector.

TRANSPARENCY (IN PRACTICE)

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

Appointment procedure

The Minister of BZK has firmly stated that 'political appointment does not take place'.⁶⁸¹ In 2005 the minister of BZK asked the Public Administration Council (Rob – Raad voor het openbaar bestuur) to do research into the transparency of appointment procedures in public administration.⁶⁸² This research concluded that recruitment and appointment procedures for TMG are uniform and transparent. Vacancies and profiles are made public as soon as they are ready, and in principle they are open to anybody. The Rob did advise that the departments and management try to prevent a too -homogeneous

676 Art. 14 Archiefwet 1995.

677 Art. 1.17 and chapter 1.4 of the 'Nieuwe regels omtrent aanbestedingen' (Aanbestedingswet 20..);Nota van Wijziging; art. 6 Wet implementatie rechtsbeschermingsrichtlijnen aanbesteden.

678 Art. 28 Besluit aanbestedingsregels voor overheidsopdrachten.

679 Art. 29 paragraph 3 Besluit aanbestedingsregels voor overheidsopdrachten.

680 Art. 40 Besluit aanbestedingsregels voor overheidsopdrachten.

681 Raad voor het openbaar bestuur (Rob). (2006). p.25.

682 Letter from Minister of the Interior and Kingdom Relations dated 13 January 2005. In this letter the minister remarks that the request for an investigation is also the result of a motion of two MPs (Van Gent and Eerdmans) who asked for greater transparency in appointment procedures as well and Kamerstukken II 2003-2003, 28600 VII, nr. 27.

composition of the top of the civil service (religious, ideological and political interests).⁶⁸³ The government decided not to take up this recommendation exactly because political party membership is not considered to be a criterion.⁶⁸⁴ Although officially political positions are said not to be a matter in the selection and appointment of senior officials, some professors have expressed their conviction that the membership of a political party does play a role in the appointments of senior officials in practice. It is said to be a determining factor for the appointment of civil servants at the level just below these senior officials as well.⁶⁸⁵ Another academic maintained that political appointments are still very common in public administration.⁶⁸⁶

In 2006 the National Ombudsman scrutinised the appointment to the chair of the Committee on Tariffs in Healthcare (CTG – College Tarieven Gezondheidszorg) after he had received a complaint about this appointment.⁶⁸⁷ The Minister of Healthcare, Welfare and Sport allegedly had brought the vacancy for this position to the attention of a candidate prior to the official procedure. According to the National Ombudsman, the minister should have prevented this appearance of partiality since the minister is also in charge of appointment to the chair. The fact that they

were both member of the same political party did not help either.⁶⁸⁸ The National Ombudsman called for a code of conduct for appointment to public functions. Members of ZBOs are appointed by the Crown at the recommendation of the minister.⁶⁸⁹ In some of the laws establishing the specific ZBO more specific selection criteria for board members can be found.⁶⁹⁰

Disclosure of financial information

In 2011 and 2010, 97 percent of institutions indicated whether they had officials employed in the previous year whose income had to be disclosed under the Wopt. For 2010, 470 organisations reported a total of 2,165 officials, of which 51 were government officials.⁶⁹¹ The average income was EUR 234,191. For 2009, 503 organisations reported a total of 2,232 officials, of which 49 were government officials who earned a top income exceeding that of a minister.⁶⁹² The media regularly reports on high incomes of managers and senior officials in the (semi)public sector.⁶⁹³ In practice, many senior officials of (semi)public organisations earn more than the Dutch Prime Minister. These high incomes are regularly the subject of parliamentary debates and are a topic of public debate.⁶⁹⁴ The 2009 evaluation of the Wopt indicated that it has been effective in reaching its goal.⁶⁹⁵

683 Raad voor het openbaar bestuur (Rob). (2006). p.27.

684 Kamerstukken II 2006–2007, 30800 VII, nr.25.

685 The professors cited on p.25 and 26 of Raad voor het openbaar bestuur (Rob). (2006) are Daalder and others. Niessen states that the appointments procedures do not exclude political appointments.

686 The professor referred to is Baakman in <http://www.depers.nl/binnenland/531101/Zonder-partijkaart-kom-je-er-niet.html> and in Baakman, N. (2003). *De Nomenklatoera in Nederland*.

687 In October 2006 the CTG became part of the Dutch Healthcare Authority (NZa – Nederlandse Zorgautoriteit).

688 <http://www.nationaleombudsman-nieuws.nl/nieuws/2006/gedragregels-voor-benoeming-publieke-functies>, consulted 10 September 2011.

689 Raad voor het openbaar bestuur (Rob). (2006). p.50.

690 Raad voor het openbaar bestuur (Rob). (2006). p.52.

691 Rijksoverheid (2011) Wopt Rapportage 2011 over 2010. P.2.

692 Rijksoverheid (2010) Wopt Rapportage 2010 over 2009.

693 'Beloningscode zorg mislukt; Salarissen ziekenhuisbestuurders ondanks afspraken nog altijd ver boven eigen norm' (2011). *Het Financiële Dagblad*, p.1; 'Lager inkomen voor bestuurders in het onderwijs' in *de Volkskrant* 16 June 2011 p.11.

694 Vragen van het lid Arib (PvdA) aan de minister van Volksgezondheid, Welzijn en Sport over het topinkomen van de bestuursvoorzitter van Sanquin Bloedbanken (2009Z13915) of the 14th of July 2009 and Vragen van het Kamerlid Leijten (SP) over topsalarissen van ziekenhuisbestuurders (2010Z11428) of the 3rd of August 2010.

695 Brief van het ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2 september 2009. Kabinetstandpunt inzake de evaluatie van de WOPT.

A recent study has shown that transparency does not automatically lead to a greater trust of citizens in the government. It is of foremost importance that information be up-to-date, easy to understand and complete.⁶⁹⁶

Besides transparency regarding the income of senior officials, there is no disclosure in practice of personal assets or financial or business interests of senior officials in public sector agencies because they are not obliged to do so.

Record-keeping and information management

The amount of governmental information has increased over the years. The way governmental information is archived is not as effective as the government would like to see. There is a serious backlog in the selection of information and the management of the archives.⁶⁹⁷ According to the AR, the government has not been successful in developing an effective approach towards the valuing and selection of information which would contribute to its sustainable management.⁶⁹⁸ Increasingly, information is becoming digitally available, and therefore a fundamental change in the approach of selecting and managing information needs to be put in place. In December 2010 the Minister of Education, Culture and Science (OCW – Onderwijs, Cultuur en Wetenschap) presented a new selection approach for governmental information through which archiving should be improved and information should become available faster.⁶⁹⁹ In June 2011 the 'Archive Vision' (Archiefvisie) was presented, which addressed the way information is

dealt with and archived in the digital era.⁷⁰⁰ Among other things, a selection list was to be developed to ensure effective selection and archiving.

There is an increase in data on citizens held by the government, for instance regarding medical information, finger prints, CCTV recordings and passenger information. This has led to public debate on whether this information should be kept and whether it is kept safely.⁷⁰¹ In 2009 the CBP concluded that governmental organisations trifle with personal data of citizens in their attempt to be transparent and customer-friendly by making information readily-available.⁷⁰² On Data Protection Day in 2011, the CBP called upon government organisations and businesses to put more efforts into the protection of privacy.⁷⁰³

Public Procurement

According to one of the interviewees, contracting authorities are still hesitant to openly justify the considerations which are part of their decisions in public procurement procedures. They fear that the more grounds they provide for granting or not granting an order, the more these arguments can be challenged in legal proceedings.⁷⁰⁴ In particular for large projects the criteria to award a project until recently discriminated against small and medium companies. Size of the company and the quality required were used at their detriment.

Transparency on top incomes is assured. Nearly all institutions which were asked to report on their top incomes responded by reporting the salaries paid to

696 Trouw. (2012). 'Openheid kan averechts werken als burger ziet wat er fout gaat'.

697 Bijlage bij Nota Waarden en selecteren van archieven in het informatietijdperk (NA/10/6.639) 17 December 2010 p.2.

698 Kamerstukken II, 2009–2010, 32 307, nrs. 1–2, Algemene Rekenkamer, Informatiehuishouding van het Rijk (2010) p.33.

699 Brief van de staatssecretaris van Onderwijs, Cultuur en Wetenschap en de minister van Binnenlandse Zaken en Koninkrijksrelaties 'Selectieaanpak archieven' 17 December 2010.

700 Brief van de staatssecretaris van Onderwijs, Cultuur en Wetenschap en de minister van Binnenlandse Zaken en Koninkrijksrelaties 'Arhiefvisie' 30th of June 2011.

701 <http://www.bndestem.nl/nieuws/algemeen/binnenland/8384590/Overheid-moet-beter-omgaan-met-privacy-burger.ece>, consulted 30 September 2011.

702 Het Parool. (2009). 'Overheid is laks met privacy.'

703 CBP (2011). Beveiliging persoonsgegevens vergt grotere inzet bedrijfsleven en overheid.

704 Interview with Henk Wijnen, projectmanager at PIANOo, Public Procurement Expertise Centre part of the Dutch Ministry of Economic Affairs, Agriculture and Innovation, 16 May 2011.

these officials. Transparency of human resources and information management in the public sector is not entirely adequate. In practice, there is no clear picture of the extent to which political party affiliation of (senior) civil servants plays a role in their appointment. However, the current system for record-keeping is not efficient and is therefore less accessible to the public. Companies do not always receive adequate information on the decision in a tender because of contracting parties' hesitancy to provide a clear motivation.

ACCOUNTABILITY (BY LAW)

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

Whistle-blower regulations

The Civil Servants Act prescribes that further procedures need to be in place which detail how a civil servant should deal with the suspicion of abuses within his organisation.⁷⁰⁵ In 2010, the 'Decree on reporting suspicions of abuse at the Government and the Police' (Besluit melden vermoeden van misstand bij Rijk en Politie)⁷⁰⁶ came into force, which is a revised whistle-blower regulation, applicable to the national government sector and the police. Its aim is to promote the reporting and detection of abuses in the public sector. It is also aimed at preventing any damaging effects or disadvantages following reporting abuse.⁷⁰⁷ A whistle-blower can turn to the external Commission on Integrity (CIO – Commissie integriteit overheid).⁷⁰⁸ This commission can investigate reports, and it advises the competent authority as to its findings.⁷⁰⁹ Its

members are appointed by royal decree by the Minister of BZK for a period of four years. A whistle-blower will first have to report the issue to his manager, and if he/she feels that the concern is not being taken seriously or is not adequately dealt with, the whistle-blower can turn to the CIO. If necessary, a civil servant can also report directly to the CIO.⁷¹⁰ The CIO will normally organise a hearing between the whistle-blower and his employer to exchange views, after which CIO will give an ruling.

A majority of the Tweede Kamer wants an independent commission with thorough procedures and independent investigations.⁷¹¹ One MP has drafted an initiative law proposal of a Whistle-Blower's Act (Klokkenluiderswet) which will be voted on in 2012. This proposal includes the establishment of an independent whistle-blowers institute. In this proposal, the institute will be a 'House for Whistle-Blowers' and it is to be based at the bureau of the National Ombudsman. It is supposed to be a 'refuge' for whistle-blowers from the public and private sectors, and financial means would be available for all costs arising out of the reporting, e.g. costs for legal proceedings, costs resulting out of the loss of income.⁷¹²

Complaint procedures

The General Administrative Law Act (Awb – Algemene wet bestuursrecht) provides the general statutory provision to complain about the conduct of a *bestuursorgaan*.⁷¹³ Ministers and ZBOs are considered to be such a *bestuursorgaan*, and complaints about their conduct can be based on this provision. The complaint should be dealt with within six weeks, or –

705 Art. 125quinquies paragraph 2 sub f Ambtenarenwet.

706 Besluit van 15 december 2009, houdende een regeling voor het melden van een vermoeden van een misstand bij de sectoren Rijk en Politie.

707 Chapter 4 of the Besluit melden vermoeden van misstand bij Rijk en Politie.

708 Chapter 2 and art. 17 of the Besluit melden vermoeden van misstand bij Rijk en Politie.

709 <http://www.integriteitoverheid.nl/kenniscentrum/kenniscentrum-vervolg/entiteit/bios-nieuws/details/nieuwe-klokkenluider-sregeling-rijk-en-politie.html>, consulted 25 August 2011.

710 Art. 9 paragraph 1 of the Besluit melden vermoeden van misstand bij Rijk en Politie.

711 Binnenlands Bestuur. (2011). Kamer blokkeert plan klokkenluiders.

712 Interview with Ronald van Raak, MP for the Socialist Party, 31st August 2011.

713 Art. 9:1 Algemene wet bestuursrecht.

as an exception – within ten weeks.⁷¹⁴ Both sides should be heard.⁷¹⁵ Also, most ministries and ZBOs have their own regulations in place regarding the handling of complaints.⁷¹⁶ Complaints should first be filed at the administrative body which made the decision.⁷¹⁷ The bestuursorgaan is obliged to register the written complaints it received and to publish figures concerning complaints annually.⁷¹⁸ General complaints about governmental organisations can be made at Postbus 51, which is a governmental information and complaints desk. If the complaint has not been adequately dealt with by the administrative body, it can then be made before the National Ombudsman. (For more information, please refer to the Report on the National Ombudsman.)

Criminalisation

As far as criminal liability is concerned, the scope of who is considered to be ‘civil servant’ is broader than the definition used in the Civil Servants Act. The criminal definition of civil servant also includes e.g. members of representative organs (for example, MPs) of national and local government, and the armed forces.⁷¹⁹ Civil servants can be charged with bribery, abuse of office, embezzlement and violation of official secrecy.⁷²⁰ There is a legal duty for civil servants to immediately report a crime which they become aware of while carrying out their job. If there is relevant documentation regarding this crime, it is to be handed over to the public prosecutor.⁷²¹ This duty does equally exist for legal persons (organisations).⁷²²

Audit

Ministries are required to have an internal audit regarding, among other things, their management of

finances and materials, the accounting records kept for that management and the financial information in the annual reports.⁷²³

Adequate provisions are in place seeking to ensure that civil servants have to report and be answerable for their actions, although the current provisions for whistle-blowers seems to be meagre.

Members of the CIO are appointed by the Minister of BZK, making it not entirely independent, and the protection offered to whistle-blowers also seems to be not safeguarded now that whistle-blowers have to report integrity violations internally before seeking refuge externally, whereupon the CIO seeks to invite both parties in case of a report of an integrity violation.

ACCOUNTABILITY (IN PRACTICE)

To what extent do public sector employees have to report and be answerable for their actions in practice?

Whistle-blowing in practice

A 2010 government report stated that the 2010 Whistle-Blower Regulation was more accessible to whistle-blowers. Protection is offered from damages arising out of their reporting, and reporting can be done confidentially.⁷²⁴

However, the Whistle-Blower Regulation is considered to be ineffective by academics, the media and the public. The Expert Group of Whistle-Blowers believes that persons wanting to report do not have confidence in the CIO. This group of experts says it has received 6 reports itself, among which are fraud cases which

714 Art. 9:11 Algemene wet bestuursrecht.

715 Art. 9:10 Algemene wet bestuursrecht.

716 <http://www.rijksoverheid.nl/contact/een-klacht-indienen>, consulted 12 September 2011.

717 Art. 6:4 Algemene wet bestuursrecht.

718 Art. 9:12a Algemene wet bestuursrecht.

719 Art. 84 Wetboek van Strafrecht.

720 Art. 362, 363, 365, 359 and 272 Wetboek van Strafrecht.

721 Art. 162 paragraph 1 Wetboek van Strafvordering.

722 Art. 162 paragraph 4 Wetboek van Strafvordering.

723 Art. 66 Comptabiliteitswet 2001.

724 Trendnota Arbeidszaken Overheid 2011 p.42 (Kamerstuk 32501 nr. 2).

concern tens of millions of euros.⁷²⁵ During 2002–2007 43 reports of abuses were made to the CIO, 33 of which were rejected right away, 10 cases of which have been taken on, and 7 of which were investigated further, but none resulted in the whistle-blower being vindicated.⁷²⁶ In practice, this new regulation does not seem to be an improvement compared to previous ones. Several researchers have pointed out the weaknesses in Dutch whistle-blower regulations.⁷²⁷ The CIO is believed to play no role whatsoever in investigating abuses or providing adequate protection against reprisals.⁷²⁸ Civil servants are not familiar with the CIO and do not have confidence in it. Only civil servants who are still employed or who left no longer than 2 years ago can report abuses.⁷²⁹ Additionally, the regulation only applies to the public sector, while abuses often involve the public and private sectors. The guarantee that the whistle-blower's identity is not disclosed is not always enforced in practice.⁷³⁰ *(For an example, please refer to Report on Law Enforcement Agencies/Integrity Practice.)* In the Netherlands there are a few well-known whistle-blowers. However, the price they had to pay was high: they were fired and some have been unable to find a new job.⁷³¹ Recently compensation was paid by the government to some of them.

Complaint procedures

An overview for each ministry as to the number of complaints received is not easily found except for that of the Ministry of Foreign Affairs (BuZa – Buitenlandse

Zaken).⁷³² The total number of complaints received by the National Ombudsman which concerned ministries was 294 in 2010, compared to a total of 187 in 2009.⁷³³ *(For more information, please refer to Report on National Ombudsman/Practice.)*

Criminalisation

It is impossible to paint an overall picture of the extent to which civil servants have been reported for wrongdoing, the overall figures regarding disciplinary action taken or the number of convictions. In 2008 research was carried out into civil servants' duty to report crimes. It was concluded that in practice it is not clear for which crimes this duty is applicable. Neither is it clear in practice who is considered to be a 'civil servant' and which actions are considered to be a 'civil servant crime' (ambtsmisdrijf). According to the statutory provision, this is meant to include members of ZBOs and/or external staff hired by the (semi)public sector. In practice, these persons do not consider themselves to be civil servants, let alone know about this duty to report crimes.⁷³⁴ At the time of this research 80 percent of civil servants were unaware of this duty to report. The awareness differed among public sector organisations; those involved in law enforcement were more aware, as were the larger national governmental organisations. Civil servants in charge of management were also better informed than those involved with executive tasks.⁷³⁵ According to the research, there is uncertainty about whether organisations will report a crime once internal

725 <http://nos.nl/artikel/161572-betere-bescherming-klokkenluiders-door-expertgroep.html>, consulted 12 September 2011; Interview held with Mark Bovens, Professor of Public Administration and Research Director at the Utrecht School of Governance, 7 June 2011.

726 Evaluatie klokkenluidersregelingen publieke sector, Universiteit Utrecht, Departement Bestuurs en organisatie wetenschap, April 2008. p.74.

727 Interview held with Mark Bovens, Professor of Public Administration and Research Director at the Utrecht School of Governance, 7 June 2011 and Binnenlands Bestuur (2011). Klokkenluiders Kaltgesteld.

728 Bovens, M. and Pikker, G. (2010). p.41–42.

729 Ibid., p.41; art. 9 and 10 Besluit melden vermoeden van misstand bij Rijk en Politie.

730 Ibid., p.41; art. 11 Besluit melden vermoeden van misstand bij Rijk en Politie.

731 Episode of Zembla of the 23rd of December 2009; <http://www.rnw.nl/english/video/seeking-security-dutch-whistleblowers-speak-out>, consulted 19 August 2011; <http://euobserver.com/843/16823>, consulted 12 September.

732 Rijksoverheid. (2010). Publicatie klachtenoverzicht Buitenlandse Zaken 2010.

733 De Nationale Ombudsman. (2010). Jaarverslag 2010 p.149.

734 Cornelissens, A., Ferwerda, H. and Vries Robbé, de E. (2008). p. 89.

735 Ibid., p.90.

investigation confirms that there is ‘crime of office’. The research suggests that there is a large ‘dark number’ concerning ‘crimes of office’.⁷³⁶ This was somewhat confirmed by the Dutch news broadcasting programme RTL Nieuws, which sent a Wob-request to 19 governmental organisations (ministries and local municipalities) to ask for the figures on integrity violations in 2009 and 2010. Of the total of 934 serious integrity violations (among which were fraud, theft and corruption), 411 concerned serious violations and possible criminal offences, of which only 36 were reported.⁷³⁷ It is unclear how many of the 411 cases were clearly criminal offences, for which there is a duty to report and which were not already part of a criminal investigation.⁷³⁸ The disciplinary procedures which were taken varied from a dismissal to a reprimand. According to the Ministry of Defence, it would be too time-consuming to review all documents in order to provide information on the actions taken following these violations.⁷³⁹

Other data available are the figures on integrity violations in ministries (excluded are the Ministry of Defence and the ZBOs). In 2010, 959 alleged integrity violations were reported, of which 566 were confirmed (compared to 530 in 2009). Of the integrity violations, 118 cases involved the misuse of (financial) resources, 27 cases concerned the abuse of power and conflict-of-interest and 22 involved the abuse of competencies. One case was reported as being an ‘abuse according to the Whistle-Blower Regulation’, referring to an abuse which posed a serious risk to public health, the environment or safety or else knowingly withholding

vital information from or misleading law enforcement officials.⁷⁴⁰ The total number of disciplinary sanctions in 2010 was 346 (compared to 295 in 2009), of which 57 were conditional sanctions.⁷⁴¹ The disciplinary sanctions taken were:

Type of disciplinary procedure	Number
Written reprimand	132
Criminal dismissal	97 (of which 20 were conditional)
Reduction of holiday leave	40
Financial redress	48
Transfer	14
Other	15

Source: *Sociaal Jaarverslag Rijk 2010* p.28

The separate figures for the Ministry of Defence in 2010 are: 168 cases of alleged integrity violations, of which 107 were confirmed. In 2009 there were 113 cases of alleged integrity violations, of which 72 were confirmed. In 2010, 50 were of a financial nature and 45 concerned the abuse of resources and violating internal rules.⁷⁴²

The assessment of the Rijksrecherche of the occurrence of bribery among officials of government and public administration (CBA) indicated that the highest number of reports and investigations of bribery in the public sector are at national governmental level.⁷⁴³

736 Ibid., p. 91–92.

737 [http://www.rtl.nl/\(/actueel/rtlnieuws/binnenland/\)/components/actueel/rtlnieuws/2011/06_juni/25/binnenland/integriteit-overheid-aangifte-ambtenaren.xml](http://www.rtl.nl/(/actueel/rtlnieuws/binnenland/)/components/actueel/rtlnieuws/2011/06_juni/25/binnenland/integriteit-overheid-aangifte-ambtenaren.xml), consulted 24 December 2011 and <http://www.nrc.nl/nieuws/2011/06/25/overheid-doet-amper-aangifte-van-interne-integriteitsschendingen/>, consulted 24 December 2011.

738 Brief van de minister van Binnenlandse Zaken en Koninkrijksrelaties van 13 december 2011 over ‘informatie over onderzoek RTL Nieuws naar integriteitsschendingen’.

739 [http://www.rtl.nl/\(/actueel/rtlnieuws/binnenland/\)/components/actueel/rtlnieuws/2011/06_juni/25/binnenland/integriteit-overheid-aangifte-ambtenaren.xml](http://www.rtl.nl/(/actueel/rtlnieuws/binnenland/)/components/actueel/rtlnieuws/2011/06_juni/25/binnenland/integriteit-overheid-aangifte-ambtenaren.xml); [http://www.rtl.nl/\(/actueel/rtlnieuws/binnenland/\)/components/actueel/rtlnieuws/2011/06_juni/25/ver-rijkingsonderdelen/integriteitsbeleid-overheidsinstanties.xml](http://www.rtl.nl/(/actueel/rtlnieuws/binnenland/)/components/actueel/rtlnieuws/2011/06_juni/25/ver-rijkingsonderdelen/integriteitsbeleid-overheidsinstanties.xml), both consulted 11 September 2011.

740 Sociaal Jaarverslag Rijk 2010 p.27; Binnenlands bestuur (2010). Veel ambtenaren zwijgen over veiligheidsrisico.

741 Sociaal Jaarverslag Rijk 2010 p.28.

742 <http://media.rtl.nl/media/actueel/rtlnieuws/2011/integriteit/defensie.pdf>

743 Rijksrecherche (2010). Niet voor persoonlijk gebruik! Omkoping van ambtenaren in de civiele openbare sector. p.29.

Audit

Until 2008, every ministry had its own auditing service. From that moment on the auditing services became more centralised. Now five ministries and a ZBO are affiliated with the Central Audit Service (RAD – Rijksauditedienst) and this government audit service carries out their internal audits.⁷⁴⁴ Overall, the audit system (internal and external) functions well. In the opinion of auditors from the AR, internal auditors seems to be less critical in their judgments compared to judgments used by the AR because the internal auditors are closer to the ministries. According to the experts, ‘the glass is half full, while the AR considers it to be half empty’.

The experts believe that a completely different message is delivered from the judgments given in an internal audit.⁷⁴⁵ A ministry’s first reaction is that there is no need to take further action. The AR then has to convince that ministry that it has to make sure to put its affairs in order.⁷⁴⁶

The extent to which civil servants have to report and be answerable for their actions is moderate. Although there is a Whistle-Blower Regulation in place, which establishes that reports about integrity violations can be done at the CIO, it is weak and has proven to be ineffective to protect whistle-blowers, and so it has not stimulated the reporting of abuses. The same can be said about the legal duty to report abuses; in practice the number of reports remains low. Nevertheless, the ministries do take disciplinary actions in case of integrity violations, and most ministries were able to provide the figures on that. Internal audit and corresponding review by external audit seems to be working well.

INTEGRITY (BY LAW)

To what extent are there provisions in place to ensure the integrity of public sector employees?

Integrity provisions

Apart from the Criminal Code, which criminalises both active and passive bribery, the central piece of integrity-ensuring legislation for the public sector is the Civil Servants Act (Ambtenarenwet), which prescribes that civil servants have to act as a ‘good civil servant’.⁷⁴⁷

From this ‘good civil servanthship’ neglect of duty is derived and includes violations of any regulation and the doing or refraining from doing something which a good civil servant under similar circumstances is supposed to do or refrain from doing.⁷⁴⁸

Since 2006 a ‘good employer’ has had to ensure that conditions are created which stimulate acting with integrity by pursuing an integrity policy, which includes a mandatory integrity code of conduct, which aims at stimulating good conduct on the part of civil servants.⁷⁴⁹ At the minimum, such an employer should pay attention to stimulating integrity awareness and preventing the abuse of competencies, conflict-of-interest and discrimination.⁷⁵⁰ Civil servants are required to take an oath or pledge when they are appointed.⁷⁵¹

Additionally, side-functions of civil servants need to be reported and registered.⁷⁵² In 2008 a model for the uniform registration of integrity violations became effective.⁷⁵³ There also exists a whistle-blower regulation for the governmental and police sectors.⁷⁵⁴ *(For more information on this regulation, please refer to Accountability.)*

744 <http://www.rad.nl/000167/Organisatie/>, consulted 11 September 2011.

745 Interview with interviewees 5, 6 and 7, all Senior auditors at the Netherlands Court of Audit, 18 April 2011.

746 Interview with interviewees 5, 6 and 7, all Senior Auditors at the Netherlands Court of Audit, 18 April 2011.

747 Lamboo, T. and Hoekstra, A. (2009) p.36.

748 Ibid.

749 Ibid.

750 Art. 125quater sub a and c Ambtenarenwet.

751 Art. 125quinquies paragraph 1 sub a Ambtenarenwet; art. 51 Algemeen Rijksambtenarenreglement 25th of June 2010.

752 Art. 125quinquies paragraph 1 sub f and paragraph 3 Ambtenarenwet.

753 Lamboo, T. and Hoekstra, A. (2009) p.39.

754 Art. 125quinquies paragraph 1 sub b, c and d Ambtenarenwet; Besluit melden vermoeden van misstand bij Rijk en Politie.

All civil servants are subject to a restriction on accepting gifts. A civil servant fulfilling the duties of office is only permitted to accept a gift or reward if explicit approval is given by the minister.⁷⁵⁵ It is mandatory that this integrity policy be integrated into staff (HR) policy by using it during performance reviews and meetings, and by offering integrity education and training.⁷⁵⁶

The Minister of BZK, as coordinating minister, is also responsible for those aspects of management and personnel policies which are applicable to the entire government sector. The minister has to account annually for the integrity policy he pursues to the Tweede Kamer.⁷⁵⁷ The Minister of BZK has a systemic responsibility for the quality of public administration. The primary responsibility for achieving results lies with (lower) authorities or the ZBO. ZBOs are required to take care of their own integrity policy. The Minister of BZK should be able to provide insights into the operational management of these organisations, which includes integrity policy.

Members of ZBOs are required to report and disclose their side-functions to the ZBO and to the responsible minister.⁷⁵⁸ In 2011 the Code of Good Governance for Public Services Providers (Code Goed Bestuur Publieke Dienstverleners) was revised.⁷⁵⁹

Provisions now seek, among other things, to create more transparency about the salaries of ZBO's board members, to identify situations of conflict-of-interest by board members, and to specify financial reporting provisions.

This instrument is self-regulatory, and is mainly used for stimulating good governance. There are no specific enforcement mechanisms.

There are adequate provisions in place or in preparation to ensure the integrity of civil servants. These provisions are aimed at ensuring the integrity of civil servants, but do not focus as much on preventing corruption.

INTEGRITY (IN PRACTICE)

To what extent is the integrity of public sector employees ensured in practice?

BZK research

Every other year the Ministry of BZK carries out research among the civil servants of thirteen governmental branches. In 2006 and 2008, one out of seven civil servants indicated that they did not trust the integrity of their own organisation.

This research showed that, with regard to the aspects of open culture and expressing criticism, the situation had not improved. Civil servants did indicate that integrity concerns could be addressed without negative consequences.⁷⁶⁰

Audit by AR

In 2009 the AR audited the concern for integrity at the (then) thirteen ministries and six governmental agencies.⁷⁶¹ The AR concluded that nine out of the thirteen ministries showed progress in their concern for safeguarding integrity, though in general risk analysis was still a weak spot and there were gaps in the uniform registration of integrity violations. Part of its audit was a survey on the perception of integrity. Many civil servants claimed not to be familiar with the integrity provisions. In particular, they were unfamiliar with the procedures on 'revolving door' employment and the rules on dealing with company resources.

755 Art. 64 paragraph 1 Algemeen Rijksambtenarenreglement 25 June 2010.

756 Art. 125quater sub b Ambtenarenwet.

757 Art. 125quater sub d Ambtenarenwet.

758 Art. 13 paragraph 2 and 3 Kaderwet zelfstandige bestuursorganen.

759 Code Goed Bestuur Publieke Dienstverleners. Among the members of the Handvestgroep Publiek Verantwoorden are: Centrum Indicatiestelling Zorg, Immigratie en Naturalisatie Dienst, Prorail and UWV. The Handvestgroep Publiek Verantwoorden explicitly calls upon other ZBO's to apply the Code as well.

760 Lamboo, T. and Hoekstra, A. (2009) p.39.

761 Algemene Rekenkamer. (2010). Stand van zaken Integriteitszorg Rijk 2009.

The following figures (in percentages) from the AR report show the extent to which civil servants were familiar with integrity provisions:

Procedure	Procedure is not known	It is known that procedure exists	Procedure exists and is complied with	Procedure is complied with and is effective
Additional functions/ financial interests	11	48	31	10
Gifts and invitations	6	41	39	15
'Revolving door' employment	49	30	17	4
Declarations	4	34	44	18
Dealing with company resources	35	32	27	6

Source: Algemene Rekenkamer (2010). *Stand van zaken Integriteitszorg Rijk 2009*. p.36

The audit showed that, besides the 'hard controls' (e.g. rules and codes of conduct), it is important that further attention be paid to so-called 'soft controls'. It is important for the public sector be active as a 'good employer' (goed werkgeverschap). Such exemplary conduct involves dilemma training and continuous and visible investment in the organisational culture.

This focus is supposed to be a prerequisite for a culture in which it is common to discuss alleged integrity violations, for adequate protection of whistle-blowers, and for a working environment in which integrity is integrated into all aspects of ministry operations. A minority of civil servants regarded the exemplary conduct and ethical steering of their manager to be positive. In one out of three civil servants cases subject to the 2010 assessment by the Rijksrecherche, the culture within the organisation played a role in the alleged integrity violation/corruption.⁷⁶²

Concerns

A few experts have noted that it is important for public sector organisations not to focus too much on compliance with rules and regulations. Focussing on 'hard controls' brings with it the risk of provisions becoming 'tick boxes' and attention shifting from considering whether there is a real conflict-of-interest to comply with the rules.⁷⁶³ Instead of formal provisions, there should be a focus on integrity strategies regarding moral leadership and professional ethics.⁷⁶⁴ The AR stated in its audit that upholding integrity will come under pressure as a consequence of reorganisations and changes in the tasks of public institutions.⁷⁶⁵ Especially when integrity policies are considered not to directly contribute to primary service-providing, it is easy to justify budget-cuts being made.⁷⁶⁶ Experts from the AR expressed their concern about the large state budget-cuts and the effect these might have on the implementation of integrity policies, because these

⁷⁶² Rijksrecherche (2010) p.18.

⁷⁶³ Interview with Mark Bovens, Professor of Public Administration and Research Director at the Utrecht School of Governance, 7 June 2011.

⁷⁶⁴ Ibid.

⁷⁶⁵ Algemene Rekenkamer. (2010). *Stand van zaken Integriteitszorg Rijk 2009* p.9.

⁷⁶⁶ Hoekstra, A. and Kaptein M. (2011) p.18.

are then considered to be less of a priority.⁷⁶⁷ Another expert maintained that more and more civil servants are advised not to take on new additional functions or to continue with their current ones, because of the appearance of conflict-of-interest. This expert considers this to be a negative development because society is in need of well-qualified individuals active in civil society.⁷⁶⁸ These effects go beyond the original aim of integrity policy, and have the risk of even undermining it.

Integrity violations

The figures provided in *'Accountability/Practice'* show that integrity is not entirely ensured in practice because incidents do occur. On the other hand, a well-functioning integrity system ensures that incidents do become known. Research has indicated that the awareness of integrity policies and of the duty for civil servants to report abuses is low.⁷⁶⁹ However, it is difficult to conclude from this whether the integrity of civil servants has increased or decreased. If a public sector organisation becomes more aware of integrity, this can automatically lead to more reporting of integrity violations, and thereby the number of integrity violations will increase. Such an organisation will seem to be more sensitive to integrity violations than organisations where less attention is paid to the topic of integrity. This phenomenon is referred to as the 'integrity paradox'.⁷⁷⁰

Taking this into account, there are regular reports in the media about integrity violations committed by civil servants. Some seem to concern individual misconduct, and in other cases the integrity violations seem to have

a more systemic character. In July 2011 an investigation was started into the alleged public corruption committed by an employee of a foundation in the education sector. The alleged corruption concerned public procurement for the construction of a school.⁷⁷¹ In that same month a senior official of UWV (the executive agency for employees' insurance) allegedly earned several hundred thousands of euros by hiring staff from his own company, thereby creating a conflict-of-interest.⁷⁷² Many alleged integrity violations concern civil servants in the Ministry of Defence. Here corruption incidents concerning abuse of power and sexual harassment were reported.⁷⁷³

In October 2011 the media reported on civil servants of the Ministry of Housing, Spatial Planning and Environment (VROM – Volkshuisvesting Ruimtelijke Ordening en Milieubeheer) who had intentionally provided inaccurate information about the quantity of asbestos on board the contaminated Mexican chemical tanker Otapan, which had been towed to Turkey to be dismantled there.⁷⁷⁴ In 2006 these civil servants had deliberately falsified the formal paperwork to prevent an expensive clean-up by indicating that the amount of asbestos was 1,000 kilograms, while the actual amount of asbestos was 77,000 kilograms. Nevertheless, the OM decided not to prosecute these civil servants because they had not committed this in return for private gain, and because they acted as a collective. The Dutch state could not be prosecuted either because of its immunity.⁷⁷⁵ The state secretary of Environment was called to the Tweede Kamer and stated that it was irrelevant whether the former state secretary of Environment knew about the misleading information. It

767 Interview with interviewees 5, 6 and 7, all Senior Auditors at the Netherlands Court of Audit, 18 April 2011.

768 Interview with Mark Bovens, Professor of Public Administration and Research Director at the Utrecht School of Governance, 7 June 2011.

769 Evaluatie klokkenluidersregelingen publieke sector, Universiteit Utrecht, Departement Bestuurs en organisatiewetenschap, April 2008; Cornelissens, A., Ferwerda, H. and Vries Robbé, de E. (2008) p. 89.

770 Huberts, L.W.J.C. (2005). Integriteit en Integritisme. Wie de schoen past... p.21.

771 http://www.om.nl/organisatie/item_144364/item_147886/nieuwsberichten/@155964/onderzoek-corruptie/, consulted 12 September.

772 <http://www.binnenlandsbestuur.nl/vakgebieden/sociaal/bijklassende-topambtenaar-uwv-verdient-tonnen.1298212.lynkx>, consulted 12 September.

773 http://www.refdag.nl/nieuws/binnenland/krijgsmacht-nooit-vrij-van-misstanden_1_572401, consulted 12 September.

774 <http://www.trouw.nl/tr/nl/4332/Groen/article/detail/2973320/2011/10/18/Ambtenaren-die-fraudeerden-met-gifschip-Otapan-komen-er-te-makkelijk-vanaf.dhtml>, consulted 25 October 2011.

775 <http://www.trouw.nl/tr/nl/4332/Groen/article/detail/2973320/2011/10/18/Ambtenaren-die-fraudeerden-met-gifschip-Otapan-komen-er-te-makkelijk-vanaf.dhtml>, consulted 25 October 2011.

is not yet known whether disciplinary actions have been taken towards these civil servants. The public sector has taken on a rather adequate approach towards ensuring the integrity of its civil servants. However, the poor Whistle-Blower Regulation (Accountability) on the one hand and the lack of attention to organisational culture and moral leadership on the other hand create a situation which is not yet comprehensive. In practice, the prosecution of civil servants who commit crimes is not always adequately ensured. Additionally, the risk that integrity policies will become less of a priority because of state budget-cuts and reorganisation make the situation more vulnerable.

PUBLIC EDUCATION

To what extent does the public sector inform and educate the public about its role in fighting corruption?

Public education

Government institutions do not run any educational activities for the general public about corruption-related issues. This might be due to the fact that there is no general impression to be found in academic literature, or expressed by the experts interviewed, about whether corruption is viewed as a widespread or isolated phenomenon in the Netherlands,⁷⁷⁶ although there are researchers who believe that the Netherlands is underestimating the size and nature of corruption.⁷⁷⁷ (For more information, please refer to *Corruption Profile*.) However, the government prefers to focus on the preventive approach instead of the repressive approach, i.e. on integrity rather than on corruption.⁷⁷⁸ There is a widely-shared belief that integrity is

important. The Minister of BZK is responsible for coordinating and promoting integrity policies in the public sector. Strictly speaking, there is no public education on corruption. The initiatives to raise awareness about integrity are mostly focussed on the public sector and to a lesser extent on corruption; the Minister of VJ is responsible for the latter.

BIOS

The Dutch National Office for Promoting Ethics and Integrity in the Public Sector (BIOS) supports and assists public sector organisations with developing and implementing their integrity policies and ethics.⁷⁷⁹ This is done via workshops, conferences and free provision of integrity instruments, e.g. a manual about conflict-of-interest. BIOS, the Integrity Office of the Municipality of Amsterdam and the AR have jointly developed the Self-Assessment INTeegrity (SAINT) Monitor', a self-assessment instrument for integrity for public sector organisations.⁷⁸⁰ BIOS actively monitors national and international developments in the area of integrity, tracks national and international best practices, and participates in research projects. In doing so, it strives to provide all governmental organisations with useful knowledge. Until recently BIOS' focus was on the integrity of the civil service, but it is now considering the integrity of public officials (e.g. mayors and municipal councillors) as well.⁷⁸¹ BIOS is entirely subsidised by the Ministry of BZK. It is yet to be seen what the future of BIOS will be. Between 2004–2007 the topic of integrity was a priority of the ministry, partly due to the individual minister's commitment. The current government has set other priorities in its coalition agreement, and it is therefore uncertain what the long-term future for BIOS looks like.⁷⁸²

776 Huberts, L.W.J.C. and Nelen, J.M. (2005).

777 Hulten, van M. (2002).

778 Interview with Alain Hoekstra, Coordinating Policy Advisor and Researcher and Suzanne Verheij, Senior Policy Advisor both at CAOP/BIOS, the National Office for Promoting Ethics & Integrity in the Public Sector, 24 May 2011; Hulten, van M. (2011) p. 146–150.

779 <http://www.integriteitoverheid.nl/storage/nav-menu-top/english.html>, consulted 13 September 2011; Lamboo, T. and Hoekstra, A. (2009) p.42.

780 <http://www.integriteitoverheid.nl/toolbox/instrumenten/saint.html>, consulted 13 September 2011.

781 <http://www.integriteitoverheid.nl/kenniscentrum/kenniscentrum-vervolg/thema/algemeen-integriteitsbeleid/entiteit/bios-nieuws/details/bestuurders-maken-integriteitdilemmas-besprekbaar.html>, consulted 13 September 2011.

782 Interview with Alain Hoekstra, Coordinating Policy Advisor and Researcher and Suzanne Verheij, Senior Policy Advisor both at CAOP/BIOS, the National Office for Promoting Ethics & Integrity in the Public Sector, 24 May 2011.

Agentschap NL

Agentschap NL is an agency which falls under the Dutch Ministry of Economic Affairs, Agriculture and Innovation (EL&I – Economische Zaken, Landbouw en Innovatie) and it is the point of contact for businesses. It advises, among other things, about international business.⁷⁸³ Only very briefly does it refer to corruption practices abroad which Dutch entrepreneurs have to be aware of when trading and/or investing there.⁷⁸⁴ Its message to entrepreneurs is that large-scale corruption should always be refrained from, but when it concerns facility payments, contact needs to be sought with the embassy or other entrepreneurs. In 2011/12 workshops (organised by EVD and MVO Netherlands) have been held on corruption in which case studies and experiences were shared.⁷⁸⁵

On its website some country profiles include a warning about specific corrupt practices businesses might be confronted with.⁷⁸⁶

No information was found on whether training has been provided to SMEs to raise awareness on corruption.

Meld Misdaad Anoniem

By calling Meld Misdaad Anoniem ('Report Crimes Anonymously') or 'M.' a person can pass on information about crime anonymously. M. is meant for people who have information about crime who do not dare to inform the police personally because of fear of reprisals or confrontation with the perpetrator. It explicitly refers to reporting integrity violations and is considered to be part of government integrity policies.⁷⁸⁷

Several campaigns have tried to raise public awareness of its existence via e.g. messages on TV and radio. However, so far no specific campaign has been held aimed at raising public awareness regarding the possibility of reporting integrity violations and/or corrupt practices.

While the public sector is somewhat active in educating the public on corruption, its efforts are generally limited and do not include citizens' roles in fighting corruption.

Cooperation with public institutions, CSOs and private agencies in preventing/addressing corruption

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

Apart from the Platform Corruption Prevention (*please refer to Pillar Executive/Legal system*), no well-known initiatives of public sector agencies working with public watchdog agencies, businesses or civil society on anti-corruption matters have taken place.

The public sector does not actively work together with watchdog agencies, businesses and CSOs on anti-corruption initiatives.

Reduce Corruption Risks by Safeguarding Integrity in Public Procurement

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

The various governmental organisations spend enormous amounts of money annually. Besides the building and usage of their own offices, they are also the principal contractors for infrastructural works. The government therefore forms an important market force. Civil servants have to decide about these expenditures. In situations where a civil servant has to decide about buying products and services, it is possible that favouritism can occur. To be able to

783 <http://www.agentschapnl.nl/en/node/110183>, consulted 13 September 2011.

784 <http://www.agentschapnl.nl/onderwerp/psssssst%E2%80%A6E2%80%A6corruptie-0>, consulted the 30th of December 2011.

785 <http://www.agentschapnl.nl/onderwerp/psssssst%E2%80%A6E2%80%A6corruptie-0>, consulted the 30th of December 2011.

786 <http://www.agentschapnl.nl/onderwerp/zuid-afrika-corruptie-en-transparantie>

787 Interview with Guusje ter Horst, President of the Netherlands Association of Universities of Applied Sciences (HBO-raad) and member of the Senate for the political party PvdA and former Minister of the Interior and Kingdom Relations, 2 May 2011.

guarantee that the best decision is taken and that every market agent has the same chance to sell its product or service to the government, it is necessary that certain purchase and procurement procedures be followed. This is based upon EU regulations and presented in the Framework Law EEC Procurement Regulations (Raamwet EEG – voorschriften aanbesteding) from 1993.

In the Netherlands, a professional and innovative public procurement network for contracting authorities, PIANOo, was established in the Ministry of Economic Affairs to enable exchange of know-how and training among contracting authorities.⁷⁸⁸ PIANOo assists in the exchange of information between government officials, in order to identify and disseminate good practice. Investments have been made in the development of good practice guidance for procurement officials.⁷⁸⁹

The thresholds for which public procurement is required are determined in the European context. For 2010–2011 the thresholds are set at:

Public works contracts	€ 4,845,000	€ 4,845,000	€ 4,845,000
Services	€ 125,000	€ 193,000	€ 387,000
Deliveries	€ 125,000	€ 193,000	€ 387,000

Source: <http://www.pianoo.nl/metrokaart/wat-zijn-drempelbedragen>, consulted the 11th of September 2011

All governmental and public sector organisations fall within the scope of what is considered to be an aanbestedende dienst (procurement service).⁷⁹⁰ Most contracting parties have a procurement policy. According to one expert, corruption is an issue, especially in the execution phase: A procurement policy contains all kind of rules about how you have to deal with certain situations. Often you will find corruption at a very low level in the organisation and it becomes more a question about the quality of the bookkeeping. It is essential that procurement and the responsibility for implementation are not done by one person, but that the “four eyes principle” is applied. That is not always documented in the policy documents.”⁷⁹¹

Formal Instruments

According to a CBS study, the Netherlands scores poorly in the area of public procurement. From total public procurement in 2006, only 9.1 percent was tendered via an open procedure. This is (much) less than other EU countries that are included in the CBS survey.⁷⁹² Above specific thresholds, open and closed bidding should be regarded as default procurements methods. In closed bidding the contracting party makes a selection of parties which can bring out a tender. As a minimum transparency requirement, publicity rules apply for all procedures.⁷⁹³ The ‘Decree on public procurement rules for public contracting’ (Besluit aanbestedingsregels overheidsopdrachten) provides grounds for the obligatory and optional exclusion of bidders.⁷⁹⁴ There are criteria to ensure that bidders have a satisfactory record of integrity. In the case of the obligatory exclusion of a bidder, an assessment of the integrity of a bidder can be requested at the BIBOB Bureau, which is part of the Ministry of VJ.⁷⁹⁵ The BIBOB Bureau will assess, for example, whether the bidder has been involved in

788 OECD. (2007). p.69.

789 Ibid., p.69.

790 Art.1 lid q Besluit aanbestedingsregels overheidsopdrachten.

791 Interview with Henk Wijnen, project manager at PIANOo, Public Procurement Expertise Centre part of the Dutch Ministry of Economic Affairs, Agriculture and Innovation, 16 May 2011.

792 <http://statline.cbs.nl/StatWeb/publication/?DM=SLNL&PA=71161NED&D1=6-7&D2=0,2,4-8,10-16,19-21&D3=4-19&HDR=T,G2&STB=G1&VW=T>, consulted 4 August 2011.

793 OECD. (2007) p.46.

794 Art. 45 Besluit aanbestedingsregels overheidsopdrachten.

795 Bevordering integriteitsbeoordelingen door het openbaar bestuur (BIBOB).

criminal activities or has been convicted. The costs for such an advice vary from EUR 500 to 5,000.⁷⁹⁶ Additionally, a bidder can be asked to provide a declaration by the Ministry of VJ that no objections have been raised against the economic operator on the basis of an investigation concerning the conduct of the economic operator in the past.⁷⁹⁷

By signing 'Model K', the highest manager of a bidding company declares that the bid is in accordance with fair competition rules.⁷⁹⁸ Such a declaration is mandatory when dealing with the national government and for 92 percent of the public works contracts.⁷⁹⁹ According to one expert, this is an important provision for safeguarding integrity, because it raises awareness. In the past there have been corruption cases in which the directors and managers of companies defended themselves by stating that they had never interfered in the procurement process and that they did not know anything about the bid. This has led to cases in which the lowest bidder did not get the contract because the signature of a director or senior manager was missing.⁸⁰⁰

Some efforts are made to minimise integrity risks in specific procurement projects.

Since 2006, contracting authorities publicly announce a request for competition regarding low-value contracts to ensure transparency. They are flexible in determining the medium through which contracts will be publicly announced.⁸⁰¹ To ensure equal and fair treatment for bidders when using procedures which are less subject to competition, additional controls are put

in place to verify the justification of the legal derogation in the approval phase by specific internal control agencies or departments, to safeguard the integrity of the procurement.⁸⁰²

In procurement it can be difficult to define a budget consistent with the expected costs of a solution, thereby ensuring value for money. To develop a sound cost-estimate system for procurement based on a good understanding of the market and available solutions, it is customary in the Netherlands to engage with a representative group of suppliers in that market early in the process.⁸⁰³

Regarding public procurement in practice, a few risks were identified by the OECD in the pre-bidding phase: a lack of adequate needs assessment, deficient business cases, and poor procurement planning.⁸⁰⁴ Another risk involves the abuse of non-competitive procedures on the basis of legal exceptions through (for instance) contract-splitting on the basis of low monetary-value contracts.⁸⁰⁵

In the Netherlands an action can be brought before the president of a district court in a summary injunction procedure, through which the annulment of the decision to award a contract and the order of a new public procurement process for the public contract can be requested.⁸⁰⁶

The Netherlands Competition Authority (NMa – Nederlandse Mededingingsautoriteit)⁸⁰⁷ enforces fair competition between businesses in the marketplace. If,

796 http://vorige.nrc.nl/binnenland/article1880985.ece/Explosieve_stijging_aantal_Bibob-onderzoeken, consulted 12 September 2011.

797 OECD (2007) p.83; <http://www.pianoo.nl/metrokaart/vog-verklaring>, consulted 13 September 2011.

798 Aanbestedingsreglement Werken 2005.

799 <http://www.pianoo.nl/metrokaart/wat-is-arw-2005>, consulted 13 September 2011.

800 Interview with Henk Wijnen, project manager at PIANOo, Public Procurement Expertise Centre part of the Dutch Ministry of Economic Affairs, Agriculture and Innovation, 16 May 2011.

801 OECD (2007) p.49.

802 Ibid., p.45.

803 Ibid., p.58–60.

804 Ibid., p.22.

805 Ibid., p.22.

806 Ibid., p.111.

807 http://www.nma.nl/en/about_the_nma/what_the_nma_does/default.aspx, consulted 13 September 2011.

for example, competitors in public procurement make price agreements, thereby creating a cartel, the NMa takes action against them by imposing a fine.

Informal instruments

There are various codes of conduct available which are aimed at increasing integrity in public procurement. There is a Code of Conduct Public Procurement Awarding Authority (Gedragscode Publiek Opdrachtgeverschap)⁸⁰⁸ from the Public Procurement Awarding Authorities Forum (Opdrachtgeversforum), in which some of the largest public contracting authorities take part. Additionally, all major construction companies have a joint and/or individual code of conduct. (For more information, please refer to the Pillar Report on Business.)

Different policy documents and manuals can be found on the website of PIANOO, e.g. a policy document from the executive arm of the Ministry of Infrastructure and the Environment (Rijkswaterstaat) about prevention of conflict-of-interest situations.⁸⁰⁹

Basic provisions are in place to ensure that the public sector performs its public procurement responsibilities in a lawful and ethical manner. Although unlawful practices are still believed to occur, instruments such as the 'Model K' have helped to make bidders more aware of their responsibility to create fair bidding processes. Additionally, the major representatives of both parties have jointly addressed the issue of integrity in public procurement.

808 http://www.rijkswaterstaat.nl/images/Gedragscode%20Publiek%20Opdrachtgeverschap_tcm174-275077.pdf

809 <http://www.pianoo.nl/sites/default/files/documents/documents/beleidtegenbelangenverstrengelingbijdeaanbesteding.pdf>

6.5 LAW ENFORCEMENT AGENCIES

Role in NIS

The pillar consisting of the Law Enforcement Agencies is essential for guaranteeing the rule of law. These government agencies are responsible for enforcing laws and by doing so promoting adherence to the law. Law enforcement agencies take action when rules and norms are violated. The means for this vary from warning to arresting offenders. Activities include engaging in patrols, surveillance, searches and other investigations.

Law enforcement can be considered to be the essential link between the Executive and the Judiciary. As such, it forms an essential pillar between two other pillars. Not only is this pillar important for the general enforcement of laws, it plays an important role in enforcing anti-corruption legislation. This pillar can only strengthen the NIS if the law enforcement agencies, among other things, are independent, have adequate resources and have been given adequate tools to investigate alleged corruption cases. It can only be effective if there are no doubts regarding its own integrity.

In the Netherlands, various agencies are involved in law enforcement.

In this chapter three agencies will be assessed which are of a particular importance in enforcing the laws on corruption. Besides the police forces, the Public Prosecution Service (OM – Openbaar Ministerie) plays a key role in deciding whether or not a criminal case should be brought to court. The Rijksrecherche (National Police Internal Investigations Department) has a specific role in investigating (semi) governmental officials who are suspected of criminal offences, whereby the integrity of justice and/or that of the public administration is at stake.

Sources

The desk research for this pillar started with the statutory provisions concerning each individual agency. The aim was to get a better understanding of their specific competences and the competences which they shared, hereby considering at what stage of an alleged corruption act they would become involved. Current corruption cases were considered and a media scan was made. An important source of information was the assessment of the occurrence of bribery among officials of government and public administration, published in 2010 by the Rijksrecherche.⁸¹⁰ In-depth interviews were held with experts from the OM and the Rijksrecherche. All interviews were held face-to-face. Two persons indicated that they did not want to be named in the report.

Interviews held:

- Petra Borst, Senior Legal Officer at the National Public Prosecutor's Office, interview held the 6th of June 2011 and a second meeting the 22nd of December 2011.
- Jos Schipper, Information Detective at the Rijksrecherche, interview held the 21st of April 2011.
- Jack van Zijl, National Public Prosecutor for Corruption at the National Public Prosecutor's Office, interview held the 6th of June 2011.
- Key figure 1, Senior member of staff at the Rijksrecherche, interview held the 24th of May 2011.⁸¹¹
- Key figure 2, Senior policy officer at the Rijksrecherche, interview held the 24th of May 2011.⁸¹²

810 Rijksrecherche (2010). Niet voor persoonlijk gebruik! Omkoping van ambtenaren in de civiele openbare sector.

811 This expert requested anonymity.

812 This expert requested anonymity.

LAW ENFORCEMENT

Agencies Status: Strong**Summary**

The law enforcement agencies in the Netherlands form a strong pillar. Their key strength is their accountability. Their anti-corruption activities have led to the successful prosecutions of national corruption cases in which several persons and organisations were involved. However, there is reason to believe that crimes are often not reported, which makes it difficult for the law enforcement agencies to prosecute. Generally, law enforcement agencies enjoy a rather independent position and have their own discretion on the cases they investigate and (in the case of the OM) on the final prosecution. The right for the Minister of VJ to give directions regarding prosecution in individual cases could pose a risk, but this risk is somewhat limited now that parliament has to be informed about the non-prosecution order in an individual case. The existence of an independent organisation which examines the reports concerning possible criminal conduct of government officials and public servants provides a strong safeguard for the prosecution investigations.

The available statutory provisions ensure that the public can access the relevant information on law enforcement activities. There have been concerns in the past regarding the extent to which the OM takes action when internal integrity violations occur. The soon-to-be-installed Bureau Integrity OM will have the competence to promote integrity within the OM. The allocation of resources for the police has led to difficulties in investigating cases and can be considered to be a weak aspect of the pillar. On the other hand, the integrity provisions within the police are rather extensive. The number of internal reports of integrity violations within the police is rather high. This could be caused by the well-developed integrity mechanism through which integrity violations become known. The fight against corruption committed by Dutch firms abroad is yet to be adequate and not even

close to what is being achieved in the USA, UK and Germany. In the last decade no Dutch firm has been sentenced in the Netherlands for bribing a foreign official, although there are reasons to believe that Dutch companies have bribed foreign officials. A variety of reasons are thought to make the prosecution of foreign corruption difficult, among which are difficulty in cooperating with foreign law enforcement agencies; the tension between the importance of investigating and prosecuting corruption versus economic interests, which have an interest in refraining from criminal law enforcement; and the difficulty in collecting evidence to prove corrupt practices.

In a recent important document of the Board of Procurators General concerning handling corruption⁸¹³ it is stated that 'the primary aim is to protect the integrity of the government and to enlarge trust in this government. The aim is not integrity of the business sector. This seems to imply that the public prosecutor does not prosecute a criminal case of corruption that took place abroad if the integrity of government is not involved. This line of reasoning is heavily criticised by the OECD and foreign Law Enforcement Agencies.

Structure and Organisation

This pillar covers two institutionally-separate systems. One is the police force, which has a broad responsibility regarding the maintenance of public order and criminal investigation, whereby its function is both preventive (the more so with regard to the maintenance of public order) and repressive (whereby the focus is on criminal investigations).⁸¹⁴ The Dutch police currently are organised into 25 regional police forces and the Korps Landelijke Politie Diensten (KLPD – National Police Services Agency), which carries out national and specialist police tasks.⁸¹⁵ In addition to this, adjacent regional police forces have joint investigation units for crimes which require certain expertise or which are too large to handle within one regional police force but do not qualify for investigation by the KLPD. These units are known as bovenregionale recherche (BR). Each of the police forces is headed by a regional police board,

813 Openbaar Ministerie, augustus 2011, Aanwijzing opsporing en vervolging ambtelijke corruptie in Nederland (2011A014).

814 <http://www.politie.nl/Overdepolitie/>, consulted 4 August 2011.

815 Art. 4 and 21 Politiewet 1993.

consisting of a mayor and a chief public prosecutor.⁸¹⁶ At the national government level, the Minister of VJ is responsible for overseeing the regional police forces and is directly responsible for managing the KLPD. The Minister of VJ is also politically accountable for the enforcement of criminal law, which includes investigation of crime by the police and the prosecution, trial and punishment of offenders.⁸¹⁷ The current government has stated that public safety and security are one of its priorities.⁸¹⁸ It is likely that the police organisation will be reorganised in the near future. In June 2011 the Minister of VJ, on behalf of the cabinet, sent a letter to the Tweede Kamer in which he presented his law proposal about a national police.⁸¹⁹ The proposal does not intend a change in tasks for the police. It aims at increasing the unity of the police to better combat serious crimes and organised crime at local, national and international levels. The proposal is to create one national police force, organised into ten regional forces with one or more national forces which are no longer autonomous organisations. The management of the forces will be assigned to a national chief officer and to regional chief officers.

The second system is the OM, which together with the courts is known as the judiciary. The OM decides whether or not an offender must appear before court and prepares the indictment. If a criminal offence has been committed, it has sole discretion to decide whether a case should be prosecuted. In the case of a prosecution, a public prosecutor will ask the court to impose an appropriate sanction.⁸²⁰ The organisation of the OM corresponds to the Dutch court organisation (sub-district courts, district courts, courts of appeal and Supreme Court) and is headed by the Board of Procurators General.⁸²¹ The national prosecutor's office (Landelijk Parket) in the city

of Rotterdam is not linked to a particular district court or an appeal court; its focus is on (international) organised crime. The OM is represented in court by a public prosecutor from the office of the region. The OM falls under the authority of the Minister of VJ.⁸²² The Rijksrecherche is a highly-specialised investigation service. Unlike other police forces, the Rijksrecherche falls within the exclusive responsibility and authority of the OM, and it exclusively operates under the responsibility and competency of the Board of Procurators General. This ensures an independent position towards the regular police force and also enables the Rijksrecherche to conduct fact-finding investigations without bias into cases in which police officers used violence during the performance of their duties or were otherwise in fault for causing injuries or death.⁸²³ The Rijksrecherche examines reports concerning possible criminal conduct of government officials and public servants. It investigates allegations whereby the integrity of justice and/or that of public administration (the government) is seriously in peril, for instance allegations of fraud or corruption against the OM, police officers, the judiciary or civil servants from municipal, provincial water and national authorities, as well as from officials of certain other organisations appointed by the state to perform public tasks.⁸²⁴ As a rule, deployment of Rijksrecherche is called for if the reported conduct of an official points to a felony, and if the impartiality of the investigations can be impaired if conducted by another police force. In addition to its repressive task, the Rijksrecherche also takes on a more proactive attitude involving advising third parties on how to prevent future integrity violations in public administration.⁸²⁵

816 Art. 22 Politiewet 1993.

817 Engelsman, den M. and Toorman, A. (2009). p.15.

818 Freedom and Responsibility Coalition Agreement VVD-CDA (2010).

819 Kamerstuk 30 880, nr. 10; <http://www.rijksoverheid.nl/onderwerpen/politie/documenten-en-publicaties/persbericht-en/2011/06/17/wetsvoorstel-nationale-politie-naar-tweede-kamer.html>, consulted 8 August 2011.

820 http://www.om.nl/vast_menu_blok/english/about_the_public/, consulted 4 August 2011.

821 http://www.om.nl/vast_menu_blok/english/about_the_public/who_monitors_the/, consulted 3 August 2011.

822 http://www.om.nl/vast_menu_blok/english/

823 http://www.om.nl/vast_menu_blok/english/the_national_police/, consulted 3 August 2011.

824 Paragraph 3A I of Aanwijzing taken en inzet Rijksrecherche (2010A033) 2010, nr. 20477; http://www.om.nl/vast_menu_blok/english/about_the_public/who_monitors_the/, consulted 3 August 2011.

825 Meerjarenbeleidsplan 2008–2012 Rijksrecherche p. 9 paragraph 3 and 4.

It must be noted that, in addition to these institutions, other separate law enforcement bodies exist which are not reviewed under this pillar. In this report only the main law enforcement bodies which deal with fighting corruption are considered.⁸²⁶

ASSESSMENT

RESOURCES (IN PRACTICE)

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Budget police

Until recently, the financial situation of many regional police forces was far from sound. Forces were understaffed, and there were signs that this led to cases not being adequately investigated. The Dutch police have complained about the lack of sufficient resources, staff and infrastructure to carry out their duties adequately.

Several police boards and police trade unions have expressed their frustration and worries to the government, parliament and the media. The complaints concern the amount of bureaucracy and desk work involved in police work, the lack of policemen on the street and the lack of available

capacity to investigate cases. Research carried out in 2010 concluded that due to capacity issues, 150,000 of the total of 500,000 cases which were reported and declared as 'require further investigation' were in fact not taken on for further investigation. This was due to, among other things, poor operational management, past budget-cuts, and the imbalance in the way money was distributed across the different forces.⁸²⁷ This led to more than half of the forces being held under preventive legal restraint. The budget for the police in 2011 was EUR 5,171 billion (compared to EUR 5,178 billion in 2010 and EUR 5,138 billion foreseen in 2012).⁸²⁸

In 2010 the Tweede Kamer adopted a motion in which it rejected the Minister of BZK's plan for a budget-cut of EUR 192 million for the police.⁸²⁹ Recently, measures were taken by the Minister of VJ to improve the financial situation of the police forces.⁸³⁰ An important step was the amendment of the budget distribution system.⁸³¹ Between 2011 and 2015, 21 police forces will receive extra financial funding. The extra investment in the police force will be around EUR 300 to 370 million in order to bring its total strength to 49,500 full-time equivalents (the full-time equivalents in 2010 were 49,745, but without the extra investment it would be curtailed to a total of 46,500 full-time equivalents).⁸³² In December 2011 it was still unclear whether the police were up to strength as was promised by the Minister of VJ.⁸³³

826 The agencies in the Netherlands which have as their main task supervision and/or law enforcement are various. Among others, there is the Authority Financial Markets (AFM), which is the independent supervisory authority for the savings, borrowing, investment, pension and insurance markets (more information via http://www.afm.nl/en/consumer.aspx?sc_lang=en). The NMa is the Netherlands Competition Authority, which enforces fair competition between businesses in the marketplace (more information via http://www.nma.nl/en/about_the_nma/default.aspx). The FIOD-ECD is concerned with investigations (more information via http://www.belastingdienst.nl/organisatie/en/tax/tax-09.html#P100_10614). The SIOD is concerned with investigation and enforcement regarding work and income (more information via <http://www.siod.nl/>).

827 Boorsma, P.B. and Zengerink, J.A. in Fijnaut, C.J.C.F., Muller E.R. and Rosenthal U. (1999) p.171–180; <http://vorige.nrc.nl/article2355614.ece>, consulted 23 August 2011.

828 Vaststelling begroting Binnenlandse Zaken en Koninkrijksrelaties (VII) voor het jaar 2011 via <http://www.rijksbegroting.nl/2011>, consulted 13 August 2011.

829 Motie-Van Raak (Kamerstukken II, 2009–2010, 29 628, nr. 212).

830 Brief minister van Veiligheid en Justitie 'Besluit herijking BVS' of 24 March 2011.

831 Hols, M.C.A.B., Morée, R.J. and P.F. Rozenberg, P.F. (2010) p.30–33.

832 Jaarverslag Politie 2010 p.30.

833 <http://www.volkskrant.nl/vk/nl/2824/Politiek/article/detail/3084840/2011/12/20/Het-lijkt-erop-dat-de-minister-liegt-over-cijfers-politie.dhtml>, consulted 23 December 2011.

IT issues

Additionally, there were continuous complaints about the computer system which the police officers use. That system was said not to be user-friendly, and inspectors complained about the time required to register reported offences and crimes.⁸³⁴ This has led to incomplete reporting of cases and a drop of 8–10 percent in the number of cases transferred to the OM.⁸³⁵ In the meantime, further research⁸³⁶ has indicated that one third of all police officers suffer from psychological problems (various forms and degrees). This has had a negative impact on available capacity, and the resulting costs involved for the police are estimated to be between EUR 98 – 295 million.⁸³⁷ The Minister of VJ has presented a comprehensive action-plan to increase the mental tenability of police officers.⁸³⁸

Notwithstanding these issues, the police are still perceived as the most attractive employer in the non-profit sector by highly educated young professionals.⁸³⁹ The average monthly salary of a police officer ranges from EUR 1,600 to 2,900 (the legal

minimum wage is EUR 1425).⁸⁴⁰ In a survey held by several police trade unions, 60 percent of the 4,600 respondents (policemen) indicated that they considered their wages to be low.⁸⁴¹

OM

With the overall state budget-cuts, the OM has had to prepare itself for further budget-cuts.⁸⁴² However, the new government has declared security as one of its priorities. The extra investment in the police force coincides with an extra investment of EUR 100 million in the OM, the judiciary and other organisations to fight crime.⁸⁴³ In the budget for the Ministry of VJ of 2011, the budget assigned to the OM was approximately EUR 594 million for 2011 (compared to EUR 588 million for 2010, and EUR 606 million foreseen for 2012).⁸⁴⁴

Nevertheless, the OM needs to cut down on some of its budget. In its annual report it states that due to several other developments (for example, the creation of a national police force and the redesign of the judicial organisation) a large reorganisation is required. This

834 The Netherlands Court of Audit did audit the IT of the police, after the House of Representatives had asked for such an investigation. One of its conclusions was that the management responsible for making the decisions on computer systems was not in close contact with the investigators and policemen and –women who have to work with the system. Rapport Algemene Rekenkamer ICT Politie 2010 (Kamerstuk 29 350 Nr. 9); <http://www.acp.nl/vragen/f/fuwa-functiewaardering-politie/artikel/2010/09/16/onderzoeken-bevestigen-beeld-acp-situatie-bij-politie-zorgelijk/>, consulted 12 August 2011.

835 Episode of Zembla of the 31 January 2010.

836 Elffers Felix, A. (2011).

837 'Onderzoek: psychische klachten bij één op drie agenten' in NRC of 24 June 2011 and Brief van de minister van Veiligheid en Justitie 'Versterking professionele weerbaarheid politie' 27 June 2011 p.2.

838 In this action plan the focus was on e.g. leadership within police organisations, training, care and after-care. Targets were set on decreasing the percentage of police officers which suffer from psychological problems in the coming year, and the effect of the measures will be monitored. Programma- en actieplan versterking professionele weerbaarheid Nederlandse politie (June 2011); corresponding Brief van de minister van Veiligheid en Justitie 'Versterking professionele weerbaarheid politie' 27 June 2011 via <http://www.rijksoverheid.nl/documenten-en-publicaties/persberichten/2011/06/28/opstelten-aantal-politiemensen-met-mentale-klachten-met-helpt-omlaag.html>, consulted 22 August 2011.

839 <http://www.intermediair.nl/artikel/bedrijfskeuze/168047/intermediair-onderzoek-rabobank-favoriete-werkgever.html#168054>, consulted 23 August 2011.

840 <http://www.inoverheid.nl/artikel/nieuws/1351988/salaris-bij-de-politie.html>; <http://www.vkbanen.nl/banen/artikel/Wat-verdient-een-agent-eigenlijk/104056.html>; <http://www.rijksoverheid.nl/nieuws/2010/11/09/wettelijk-minimumloon-per-1-januari-2011.html> consulted 22 August 2011.

841 <http://www.eenvandaag.nl/uploads/doc/Uitslag%20onderzoek%20EenVandaag%20en%20Politiebonden.pdf>

842 OM Jaarbericht 2009 p.3.

843 Kamerstuk 29 628 Nr. 266.

844 Vaststelling van de begrotingsstaten van het Ministerie van Justitie (VI) voor het jaar 2010. Kamerstuk 32 123 VI nr.2.

reorganisation started in 2009 and is still in progress. It remains to be seen whether the overall efficiency of the organisation will be increased and what the effect will be on capacity and available resources.⁸⁴⁵

Rijksrecherche

The interviewees argued that the resources of the Rijksrecherche are considered to be more or less adequate, although limited capacity brings with it the fact that there will always be restrictions on the number of cases which can be investigated. It was also mentioned that some specific expertise is desirable, for example a need for chartered accountants.⁸⁴⁶ Several investigators asserted that, by using their expertise and experience to advise the public administration, they can effectively help to prevent integrity violations.⁸⁴⁷ Although the state budget-cuts also include cuts in the budget of the Ministry of VJ (which involve the OM and Rijksrecherche), the Rijksrecherche receives extra financial means to fight financial economic offences.⁸⁴⁸ This extra budget is partly used to fight public corruption.⁸⁴⁹ These means were spent on extra members of staff, the education of staff and for carrying out of an assessment of the occurrence of bribery among officials of government and public administration (CBA – Criminaliteitsbeeldanalyse).

The resources available to Dutch law enforcement agencies show a mixed picture. The resources available to the OM and the Rijksrecherche allow both to carry out their core tasks and to determine their priorities; additional resources have also been made available. Although overall capacity is never sufficient to deal with each individual case, the resources available to investigate public corruption cases seem to be adequate. The police forces on the other hand have suffered from inadequate resources, in terms of finances as well as staffing and even infrastructure. Here the availability of resources was not the main

issue, but ineffective spending by the management. It is still to be seen whether the revised distribution among regional forces and resource allocation by management has an effect on daily practice experienced by the police forces.

A recent publication from the Netherlands Court of Audit (AR) concerning the organisation of criminal justice in the Netherlands shows that the administrative cooperation between the police and the public prosecution leaves much to be desired. E.g. the police and justice each have their own software programmes. Another example is that the police administers its work in units of cases, while the public prosecutor makes use of numbers of suspects. The AR describes the digital detection system as outdated and user unfriendly. According to others, criminal courts complained about the enormous amount of understaffing of the police. The police officers are young, underpaid and overloaded with work. This results in cancellations, dismissals, limitations and discounts of penalties.⁸⁵⁰

INDEPENDENCE (BY LAW)

To what extent are law enforcement agencies independent by law?

Police

In terms of independence, it is necessary to differentiate between the two separate systems of law enforcement, the police on the one hand and the OM and the Rijksrecherche on the other. As a branch of the executive, the police have the task (subordinate to the competent authority and in accordance with the applicable rules of law) of ensuring effective law enforcement and providing assistance to those who

846 Interview with senior member of staff 1 and senior policy officer 2 both of the Rijksrecherche, 24 May 2011 and interview with inspector 3 of the Rijksrecherche, 21 April 2011.

847 Interview with Jos Schipper, Information detective at the Rijksrecherche, 21st of April 2011 and interview with Senior member of staff 1 and senior policy officer 2 both of the Rijksrecherche, 24 May 2011.

848 Jaarbericht Openbaar Ministerie Rijksrecherche 2008 p.4.

849 Interview held with senior member of staff 1 and senior policy officer 2 both of the Rijksrecherche, 24 May 2011.

850 M. en S. van Kleef, de Rechtspraak is mensenwerk. Alos F. Jelgersma, Strafrechtpleging berust vooral op Haagse illusies. in NRC Handelsblad of 10/11 March 2012.

need it.⁸⁵¹ The Minister of BZK and the Minister of VJ determine the competencies of the police in the ‘office directive’ (ambtsinstructie).⁸⁵² With regard to the maintenance of public order and the rendering of assistance in emergencies, the competent authority is the mayor of the municipality in which the police serve.⁸⁵³ At national government level, the Minister of BZK is responsible for the maintenance of public order and safety. When the police enforce criminal law or carry out duties for the justice authorities, they are acting under the authority of the public prosecutor, who can give directions to the police regarding a specific investigation.⁸⁵⁴ Here, the Minister of VJ is politically accountable. The nature of police work determines authority over the police.⁸⁵⁵ So-called tripartite consultations on policing are held regularly by the mayor, the public prosecutor, and the chief of the regional police force.⁸⁵⁶ The Minister of VJ can give directions to the chief of the force (korpschef) of the KLPD as to the tasks to be carried out.⁸⁵⁷

At the political level, the management of a regional force lies with the force manager (korpsbeheerder), who is appointed by the mayors of the municipalities of the region for a period of six years. Appointment, suspension and dismissal take place by royal decree at the recommendation of the Minister of BZK and after consultation with the regional police board.⁸⁵⁸ The regional police chief (korpschef) is appointed, suspended and dismissed by royal decree on the recommendation of the Minister of BZK in agreement with the Minister of VJ, and after having been advised by

the Queen’s Commissioner.⁸⁵⁹ The korpsbeheerder also makes a recommendation after having consulted the regional police board. The appointment, suspension and dismissal of the korpschef of the KLPD takes place by royal decree on the recommendation from the Minister of BZK in agreement with the Minister of VJ.⁸⁶⁰ The Procedure Kroonbenoemingen (crown appointments) is in place to ensure a careful and transparent human resources policy and a step-by-step appointment procedure.⁸⁶¹

OM

The OM is considerably more independent because it is part of the judiciary. The Procurators General and public prosecutors are appointed by royal decree at the recommendation of the Minister of VJ.⁸⁶² From a minimum of three and a maximum of five, one Procurator General is appointed (after recommendation by the minister) as Chairman of the Board of Procurators General for a period of three years, with the possibility of one reappointment.⁸⁶³ The law stipulates few requirements for the qualifications of candidates for the position of public prosecutor. A candidate must be a Dutch citizen⁸⁶⁴ with a master’s degree in Dutch law and have either successfully completed the “Raio education programme” or have at least four years of experience at the OM, or alternatively have at least six years of legal experience outside the OM.⁸⁶⁵ *(For more information on the Raio-education for public prosecutors, please refer to the report on the pillar Judiciary/Independence Law.)*

851 Art. 2 Politiewet 1993.

852 Art. 7–9 Politiewet 1993.

853 Art. 172 paragraph 2 Gemeentewet.

854 Art. 148 paragraph 2 Wetboek van Strafvordering.

855 Engelsman, den M. and Toorman, A. (2009) p.12–13.

856 Art. 27 lid 1 Politiewet 1993.

857 Art 38 and 38a Politiewet 1993.

858 Art. 23 Politiewet 1993; Fijnaut, C.J.C.F., Muller, E.R. and Rosenthal, U. (2007). p. 51.

859 Art. 24 and 25 Politiewet 1993.

860 Art. 42 Politiewet 1993.

861 Benschop, Y.W.M. and Brink, van den M.C.L. (2009) p. 16.

862 Art. 2 paragraph 2 Wet rechtspositie rechterlijke ambtenaren.

863 Art. 130 paragraph 3 Wet op de Rechterlijke Organisatie.

864 Art. 4 Wet rechtspositie rechterlijke ambtenaren.

865 http://www.om.nl/organisatie/werken_bij_het_om/hoe_word_je_officier/, consulted 20 August 2011.

The Minister of VJ is concerned with general policy regarding investigation and prosecution. He issues general and specific instructions (directives) to the officers of the OM on how to carry out their tasks.⁸⁶⁶ This is due to the ministerial responsibility he bears for the overall conduct of the OM.⁸⁶⁷ The public prosecutor has discretionary power to prosecute or refrain from prosecuting a criminal offence if that is considered to be appropriate. This is called the ‘discretionary principle’ (opportuiniteitsbeginsel) and is the main principle in the ‘prosecution monopoly’ of the OM. However, the minister may issue instructions in writing regarding an individual investigation or prosecution after consultation with the Board of Procurators General.⁸⁶⁸ If there is an instruction not to investigate or prosecute (further), the minister is obliged to inform parliament about the matter as soon as possible.⁸⁶⁹ This right has long been debated by academics and individual MPs because it brings with it the potential risk of prosecution becoming politicised.⁸⁷⁰ This risk is minimised now that an instruction by the minister to prosecute will always be assessed by the judge dealing with the case. The ‘Manual on Sensitive Cases’⁸⁷¹ provides guidance to the Board of Procurators General on how to deal with sensitive cases. These cases are of a serious nature and have the risk of receiving (inter)national attention or of becoming legally or politically sensitive, such as cases of politicians who have committed crimes.

Rijksrecherche

The Rijksrecherche enjoys a considerably higher degree of independence; it falls directly under the authority of the Board of Procurators General. This independent position allows the Rijksrecherche to

investigate alleged criminal offences committed by (semi) public officials (including politicians) and civil servants (including the police). The only risk to its independence can occur if a senior official of the OM becomes part of its investigation. There is as yet no law which specifically refers to the Rijksrecherche. Its independence is to some extent safeguarded by being referred to in the Police Act (Politiewet) as special civil servants of the police” designated on behalf of specifically-indicated tasks.⁸⁷² The proposal for a new police law incorporates several provisions concerning the position and tasks of the Rijksrecherche, which will give it a stronger legal status. Whether this will enhance its impartiality from police and politics or weaken it will depend on the exact provisions and the way they will be applied in practice. A careful balance needs to be considered between, on the one hand, the independence and impartiality of the Rijksrecherche and, on the other, the authority of the Board of Procurators General and the Minister of VJ to supervise. In the Directives (Aanwijzingen),⁸⁷³ the deployment criteria for the Rijksrecherche are listed, as is a prescription of factors to consider when determining the opportunity of investigating and prosecuting public corruption in the Netherlands and abroad.

All of these provisions combined ensure reasonable independence for the respective authorities, although the professional criteria for appointments in law enforcement organisations are formulated in a rather generic manner. This brings along with it the risk of appointments and dismissals becoming arbitrary. Additionally, the risk involved in the right of the minister to issue individual instructions regarding prosecutions is limited now that parliament has to be

866 Art. 127 Wet op de rechterlijke organisatie.

867 Daele, van D. (2003) p.152–160=.

868 Art. 128 Wet op de rechterlijke organisatie http://www.om.nl/vast_menu_blok/english/about_the_public/who_monitors_the/, consulted 21 August 2011.

869 Art. 128 paragraph 6 Wet op de Rechterlijke Organisatie.

870 Daele, van D. (2003) p.165 and 166.

871 Handleiding gevoelige zaken (2007H003).

872 Art. 3 and 43 Politiewet 1993. The Board of Procurators General is composed of special police civil servants for tasks indicated by the Minister of the Interior and Kingdom Relations, who has consulted with the Minister of Security and Justice.

873 Aanwijzing taken en inzet Rijksrecherche (2010A033) 2010, nr. 20477; Aanwijzing opsporing en vervolging ambtelijke corruptie in Nederland; Aanwijzing opsporing en vervolging ambtelijke corruptie in het buitenland 26th of July 2011.

notified about instructions not to prosecute and the judiciary has a final say in cases in which an instruction to prosecute is given by the minister.

INDEPENDENCE (IN PRACTICE)

To what extent are law enforcement agencies independent in practice?

Appointments to the police

The regional police forces are allowed wide discretion in the exercise of their duties and the definition of their priorities. They can make their own decisions regarding staffing, equipment, organisation, operational management and organisation of the regional criminal investigation departments.⁸⁷⁴ Recent research into the recruitment and selection of 'crown appointments' within the police concluded that the current procedure involves too many steps. These steps are characterised as 'rather informal', and during each stage other actors are involved which each have their 'micro political interest' in the appointment.⁸⁷⁵ The selection criteria for candidate crown appointments formulated at national level are considered to be clear and specific, and include growth potential, strategic leadership and knowledge of gender issues in organisations. Nevertheless, the research concluded that these criteria are interpreted differently or are not always considered in the actual recruitment process. Additionally, these selection criteria and core competencies then used by regional forces are often not clear and/or are very generic, e.g. 'team builder and inspiring leader'. At regional level there seem to be difficulties with applying the criteria formulated at national level.⁸⁷⁶ According to researchers, recruitment

reflects an organisation whose focus is internal; proven police experience and having a large network within the police organisation can be crucial in the selection process.⁸⁷⁷ In practice, the objective criteria of the 'Procedure Kroonbenoemingen' are adjusted according to the wishes of higher (police) management.⁸⁷⁸

Interference with the police

Although there are no signs of direct political interference in the activities of the police, the very nature of the police work brings along politicians and media calling for it to take action or refrain from taking action. When public opinion changes due to an incident or a feeling of uncertainty, this will lead to MPs asking the minister for information, who will react by satisfying public opinion's expectation by giving the police specific directions and labelling budgets. During tripartite consultations, the involvement of national politics and media is regularly criticised by law enforcement officials. The influence of local councillors is not considered to be negative.⁸⁷⁹ The direct influence on police activities from citizens, civil society organisations or political parties is very limited.⁸⁸⁰

Interference with the OM

The Minister of VJ is politically responsible for the OM and issues general instructions on investigations and prosecutions. In this light, the Minister of VJ regularly meets with the OM to discuss individual criminal cases without that leading to a ministerial instruction to prosecute or refrain from prosecution.⁸⁸¹ The involvement of the minister is due to the fact that the Tweede Kamer increasingly monitors the investigation and prosecution of individual cases, which requires the minister to be informed as well. For example, in a recent case concerning a blaze in a chemical plant

874 Engelsman, den M. and Toorman, A. (2009) p.12–13.

875 Benschop, Y.W.M. and Brink, van den M.C.L. (2009) p.4 and p.16–25.

876 Ibid., p.1–8 and p.31–38.

877 Ibid., p.4–8 and p.30–38.

878 <http://www.binnenlandsbestuur.nl/vakgebieden/welzijn-zorg/te-weinig-allochtonen-in-politietop.975597.lynx>, consulted 12 August 2011.

879 Boorsma, P.B. and Zengerink, J.A. in Fijnaut, C.J.C.F., Muller, E.R. and Rosenthal, U. (Eds.) (1999) p.153–155.

880 Ibid., p.160.

881 Brief van de minister van veiligheid en justitie bij Vaststelling begroting Ministerie van Justitie (VI) voor het jaar 2011 Kamerstukken 32500 VI nr. 64.

which broke out in the town of Moerdijk, 1,200 inhabitants narrowly escaped serious harm. Intense debates were held with the minister about the investigations following this disaster. The Minister of VJ has stressed the importance of transparency during investigations, but has also indicated that investigative and research authorities should carry out their tasks independently, and that he therefore is not informed about all aspects of investigations before they are concluded.

Another case involved the prosecution of a MP because of alleged discrimination and promotion of hatred. The media reported that the Minister of VJ wanted the prosecution, as did two top public prosecutors, while the Chairman of the Board of Procurators General did not want to prosecute the MP. The MP was prosecuted under the art. 12-procedure (*explained under Law Enforcement Agencies/ Accountability*). The OM stated that in the major cases, it organises meetings to hear objections against its decisions.

The former Chairman recently confirmed that developments in individual cases are discussed with the minister, and that the minister gives his opinion on operations, i.e. individual cases.⁸⁸² The way this is done depends on the individual in office. There have been situations in which the Chairman told a (former) Minister of VJ to stop with 'co-investigating' in an individual case.⁸⁸³ In the end, it depends to a great extent on the professionalism of the individual Minister of VJ and Chairman of the Board of Procurators General to prevent and address undue interference in individual cases. It is therefore important that the Chairman of the Board of Procurators General not be politically appointed.

Position of the Rijksrecherche

The Rijksrecherche is not part of the police force itself. Therefore it can operate to a great extent independently of the other police forces in practice. This is particularly important in cases when police officials are under suspicion of having committed a crime. The Coordination Commission Rijksrecherche (CCR – Coordinatiecommissie Rijksrecherche) has been given the mandate by the Board of Procurators General to decide if and when the Rijksrecherche becomes involved.⁸⁸⁴ An investigation by the Rijksrecherche is carried out under the authority of a public prosecutor. Every once in a while the Rijksrecherche is requested to investigate a case which concerns a politically sensitive issue. In such a case an individual minister is critically approached by the Tweede Kamer regarding a specific incident. Some ministers then respond by stating that he/she will look into the subject" and it ends up becoming an assignment for the Rijksrecherche. This does not mean that there is involvement in the way such an investigation is carried out.⁸⁸⁵ In order to make its law enforcement more effective, the Rijksrecherche is increasing its cooperation with other special investigation services and, if circumstances allow it, with regular police forces. This can be considered to be a change in its attitude; in the past the Rijksrecherche was considered to be 'on an island' in order to safeguard its independence. Although this cooperative attitude is considered to be important in order to increase the effectiveness of law enforcement, it does put the independence slightly under pressure now that information is shared with other law enforcement partners, which increases the risk of confidential information leaking away prematurely.⁸⁸⁶ The members of the staff of the Rijksrecherche explain that most of

882 Episode of Buitenhof of the 1 May 2011.

883 Ibid.

884 <http://www.om.nl/organisatie/rijksrecherche/organisatie/plaats/>, consulted 14 August 2011.

885 Interview with Jos Schipper, Information Detective at the Rijksrecherche, 21 April 2011. The official authorities have claimed not to recognise this point of view. According to the authorities, the deployment criteria of the Rijksrecherche provide a third category of 'other cases', for which the Rijksrecherche is the most suitable agency to carry out an investigation, for reasons of independence.

886 Interview held with senior member of staff 1 and senior policy officer 2 both of the Rijksrecherche, 24 May 2011. In 2009 a pilot was held called Netwerkend Werken en Intelligent Opsporen in which four police forces were involved. A new approach to investigation was tested, which was focussed on networking with other actors and stakeholders involved in the investigation. The pilot was considered to be a success and reflected the cooperative approach of law enforcement agencies in issues of criminality. The pilot was carried out by Prof. dr. Annemieke J. M. Roobeek en Marjanne van der Helm MSc. More on the pilot in Roobeek, A. and Helm, van der M. (2009).

their investigations are so complex that the expertise and information of, for example, the FIOD (which deals with fiscal investigations) is essential. Nevertheless, they do admit that they need to be prudent.⁸⁸⁷ Furthermore, the Rijksrecherche will always lead those investigations for which it is responsible.⁸⁸⁸

Thus, despite certain risks, there is no evidence of serious outside interference in the activities of law enforcement agencies in the Netherlands. The potential threat for the independence of the police is its internal focus, which can lead to management being appointed on the basis of vague criteria. Although there have been no reported incidents, it is important that those who take on the office of Minister of VJ and respective Chairman of the Board of Procurators General, consider the importance of exchanging information regarding prosecution within the context of ministerial responsibilities, while on the other hand ensuring that the personal and/or political interests of the minister do not influence the independence of the OM. For the Rijksrecherche it is all about finding the right balance between staying impartial/unbiased while working closely together with law enforcement partners to make law enforcement more effective.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can access relevant information on law enforcement agency activities?

Communication about investigations

The statutory right to public disclosure of investigations is limited. A detailed directive (2007) prescribes how the OM should communicate with the media and the public about current cases. The directive is a compromise between openness and transparency on the one hand,

and safeguarding the fair trial and privacy of the individuals involved on the other. The directive expresses the belief that it is important to proactively inform the media and the public about investigations and criminal cases. Here, timely and correct information is essential to ensure citizen's trust in the OM and the police. Transparency is said to increase the societal legitimacy of the OM and the police.⁸⁸⁹

Openness of Government Act

The Openness of Government Act (Wob – Wet Openbaarheid van Bestuur) can also be considered a legal provision for information about investigations and prosecutions. Information will not be provided if the interest does not weigh up against the interest concerning investigation and prosecution of criminal facts, the inspection, control and supervision by administrative bodies or the observance of a private life.⁸⁹⁰

Right to information about investigations and prosecutions

A few legal instruments regulate individual citizens' rights to investigation and prosecution information. During the pre-trial phase, the suspect has the right to access the procedural documents if it does not interfere with the investigation.⁸⁹¹ Suspects or their legal advisor can request a copy of the final court decision and statement. Third parties can also request a copy if this does not harm the interest of those who are involved in the case. In some cases, copies can be provided which have been made anonymous. Although all court decisions in criminal proceedings are open to the public, not all decisions in criminal cases are ready available to the public in writing.⁸⁹² Victims have the right to access the procedural documents if this is not a hindrance to the investigation, to privacy or to the investigation and prosecution of criminal offence or the general interest.⁸⁹³

887 Interview with senior member of staff 1 and senior policy officer of the Rijksrecherche, 24 May 2011.

888 The Rijksrecherche sometimes assists other police or investigative organisations by detaching one or more of its investigators. In such cases, however, the investigation will be carried out on the responsibility of the receiving organisation.

889 Aanwijzing voorlichting opsporing en vervolging (2007A017).

890 Art. 3 paragraph 1 and 5 and art 10 paragraph 2 sub c d and e of Wet openbaarheid van bestuur.

891 Art. 30–34 Wetboek van Strafvordering.

892 Art. 5 Wet op de rechterlijke organisatie and art. 365 paragraph 3 and 4 Wetboek van Strafvordering.

893 Art. 51d Wetboek van Strafvordering.

Police Data Act

The Police Data Act (Wpg – Wet Politiegegevens) obliges law enforcement agencies to provide certain data. Police data are available to law enforcement officials involved in criminal cases and to persons whose rights were affected in the process, while persons who carry out scientific or statistical research may acquaint themselves with the police data.⁸⁹⁴ If citizens send a written request to a law enforcement authority in which they ask whether they are registered in any police database, the authority is obliged to respond by indicating if the person is registered and which specific information is recorded. The response must be given within six weeks. There is the option of a suspension of four weeks or alternatively six weeks in case other law enforcement authorities are processing the data as well; this needs to be done via a written notification of the person who has requested the data.⁸⁹⁵ A similar request can be filed by a lawyer after explicit authorization by his client.⁸⁹⁶ Both requests can be refused as an exception (through a written notification) if it is in the interest of either the good carrying out of the police task, acknowledged rights of third parties or the security of the state.⁸⁹⁷ Persons who are registered can request changes to be made regarding their data if the data is incomplete, not relevant or in violation of a legal provision. The authorities make the required changes or refuse to do so via a written notification and provide the arguments for their refusal.⁸⁹⁸

Disclosure of financial information

The law requires the salaries of top officials which are financed by public means and which exceed the annual taxable salary of a minister to be published.⁸⁹⁹ However, there is no such thing in the Netherlands as a compulsory declaration of assets. Law enforcement officials therefore do not need to disclose their assets either.

While various provisions exist, they do not cover all aspects related to the transparency of law enforcement agencies.

TRANSPARENCY (IN PRACTICE)

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

Communication about investigations

A journalistic researcher assessed whether the previous directive (2006) on communications by the OM did in fact increase transparency, by considering two cases which received a lot of media attention. Her findings showed that press officers did communicate on more occasions about the developments during investigations. Although they did not provide more facts to the public and the media than previously, a generally more open approach was noticeable regarding the way investigators carried out their work in general. The content of the information that was shared did not provide relevant new insights, while interesting findings were available which would, had they been shared, not have harmed the investigations. It remains difficult for the OM to be transparent on the one hand while on the other hand still safeguarding the interest of its investigations. The directive has affected the transparency and openness in another way by allowing the media an insight into their way of doing things.⁹⁰⁰

Wob-requests

Most law enforcement agencies have put the information regarding the right to request information via a Wob-request on their websites. The police forces receive by far the most Wob-requests: in 18 months

894 Articles 15, 17, 18, 20, 22, 23, 24, 25 Wet Politiegegevens.

895 Art. 25 Wet Politiegegevens.

896 Art. 26 paragraph 3 Wet Politiegegevens.

897 Art. 27 Wet Politiegegevens.

898 Art. 28 Wet Politiegegevens.

899 Wet Openbaarmaking uit Publieke Middelen gefinancierde Topinkomens.

900 Bijlsma, E. (2010) p.60–64.

901 Grimmius, T., Haeften, van M., and Wils, J. (2010) p.7.

they received a total of 964, compared to a total of 137 on average per ministry.⁹⁰¹ Regularly these Wob-requests concern information which falls within privacy legislation or which concerns tactical, strategic and operational police information which should therefore not be available to the public.⁹⁰² The Wob-request is currently being reviewed by the minister in order to prevent misuse of this right to information. (For more information on Wob, please refer to the pillar Media and/or Legislative.)

The Rijksrecherche does not often receive a Wob-request. If it does, these are usually requests which are filed by journalists regarding political and sensitive cases.⁹⁰³ In 2010, information was provided to the Tweede Kamer by the Minister of VJ which involved two investigative reports of the Rijksrecherche, including the investigation into the Catshuis fire in 2004.⁹⁰⁴

Disclosure of income

Transparency concerning the salary and declarations of higher management within the police has been debated intensively, after the TV programme RTL Nieuws sent a Wob-request to try to obtain the respective information.

When it became clear that police officials earned high salaries and additionally received high representation costs, the Tweede Kamer debated extensively with the Minister of BZK⁹⁰⁵ even though an indication about the salaries of the higher management within the police forces can easily be obtained through the salary overviews in the collective labour agreements which are published on the Internet. However, the individual salaries and corresponding declarations are still not easily accessible to the public, even though they are

registered. There is no possibility to monitor the assets of law enforcement officials, because these are simply not published.

The public can readily obtain basic relevant information on the organisation and functioning of the law enforcement agencies

ACCOUNTABILITY (BY LAW)

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

The courts can review the conduct of the OM and the police services. But at the same time, the Minister of VJ is politically responsible for the conduct and performance of the OM. He may be called upon to render account to Parliament. The consultations between the OM and the minister are therefore centred around policy-related issues.⁹⁰⁶

Art. 12 procedure

If the public prosecutor decides not to prosecute a criminal offence, the person who has a direct interest in the case can complain about the non-prosecution in writing to the Court of Appeal.⁹⁰⁷ The Court of Appeal will hear the person who filed the complaint, and can also hear the persons who are not prosecuted in order to allow them to give comments to this complaint.⁹⁰⁸ The Court of Appeal can order the prosecution of the criminal offence or refuse such an order on grounds of general interest.⁹⁰⁹ The OM also has a complaints

902 Ibid., Bijlagen p. 62.

903 Interview with Jos Schipper, Information Detective at the Rijksrecherche, 21 April 2011.

904 In 2009 the Rijksrecherche looked into the investigation carried out by Kmar into the fire in the official residence of the PM, the Catshuis, in 2004. The fire destroyed much of the ground floor of the building. A painter carrying out renovation work died in the blaze. Initially there were suspicions that civil servants from the Ministry of General Affairs had known that dangerous substances had been used but this was not proven according to the Court of Appeal. The painting company involved was fined.

905 Kamerstuk 29 628 nr. 175; <http://www.trouw.nl/tr/nl/4324/nieuws/article/detail/1178608/2009/11/30/Rumoer-over-declaraties-politiechefs.dhtml>, consulted 23 August 2011.

906 http://www.om.nl/vast_menu_blok/english/about_the_public/who_monitors_the/, consulted 21 August 2011.

907 Art. 12 Wetboek van Strafvordering and http://www.om.nl/vast_menu_blok/contact/klacht_niet/, consulted 24 August 2011.

908 Art. 12d and 12e Wetboek van Strafvordering.

909 12 I paragraph 1 and 2 Wetboek van Strafvordering.

procedure. Anyone who wants to complain about the OM can use it. The complaint will be dealt with within six to ten weeks.⁹¹⁰

Complaints procedures

The law does provide for specific complaints procedures concerning police misconduct. Complaints about police civil servants can be filed with the korpsbeheerder.⁹¹¹ Regional complaints procedures should be organised according to the following minimum requirements: each region should have a complaints commission consisting of independent members and a deadline for complaint handling (between 10–14 weeks), including registration of the complaint and the final decisions. Furthermore, registered complaints and their disposition need to be published in the annual reports, and the complaints procedure itself should be made available to the public.⁹¹²

The Rijksrecherche has its own complaints procedure.⁹¹³ Its provisions are similar to that of the police forces. Complaints should be filed with the director of the Rijksrecherche, and processing of complaints should take place within 10–18 weeks.⁹¹⁴ Complaints and their disposition should be registered and made available at least annually to the Boards of Procurators General. Additionally, a person can complain about law enforcement agencies to the National Ombudsman or send a complaint to the Tweede Kamer Committee on Petitions. *(For more information on the complaint procedure, please refer to the Pillar Report on the National Ombudsman and the Legislature.)*

Corruption committed by law enforcement officials

The Rijksrecherche investigates corruption committed by law enforcement officials. In 2011 the Minister of VJ announced that the Rijksrecherche had investigated

the alleged bribery of a Dutch police officer (of the KLPD) by an employee of UK-headquartered Armor Holdings during the tender for a contract to supply pepper-spray and new police pistols.⁹¹⁵ The Rijksrecherche concluded that they did not find any corrupt practices regarding the contract for the police pistols, while the results from the investigation into the pepper spray are not known yet. Another investigation concerned the integrity of a public prosecutor and a judge, who violated official secrecy by providing confidential information about a suspect to the acquaintances of a judge who knew the suspect.⁹¹⁶

ACCOUNTABILITY (IN PRACTICE)

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

Annual reports

The annual report of the police is also published on the Internet. Various other documents (for example, the complaints procedure and the annual report of complaints) are published on the websites of the regional police forces and the KLPD. The police reviewed their complaints procedure in 2010. There was room for improvement, since the complaints were not recorded in a consistent way by the regional police forces, and the processing of the complaints was not recorded. The new uniform complaints procedure should solve these issues.

The annual report of the OM, including Rijksrecherche, is published annually on its website. The report contains both an overview of the crime situation regarding various categories of crimes over a number of years, as well as short descriptions of the OM's priorities in the given year.⁹¹⁷ The OM received 435

910 Klachtenregeling Algemene Rekenkamer.

911 Art.61 Politiewet 1993.

912 Art. 61–66 Politiewet 1993.

913 Klachtenregeling Rijksrecherche.

914 Art. 2 and 9 Klachtenregeling Rijksrecherche.

915 <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/1828882/2011/01/28/Koop-nieuw-politiepistool-riekt-naar-corrup-tie.dhtml>, consulted 24 December 2011; Transparency International's Progress Report 2011 p. 51.

916 <http://www.om.nl/organisatie/rijksrecherche/nieuwsberichten/@154972/rijksrecherche/>; <http://www.om.nl/organisatie/rijksrecherche/nieuwsberichten/@154972/rijksrecherche>, consulted 23 August 2011.

complaints in 2010, compared to 309 in 2009. A substantial portion of these complaints concerned police forces and the time it took for the OM to respond.⁹¹⁸

Complaints received by the National Ombudsman

In 2010 the National Ombudsman received 1,219 complaints about the regional police forces and 15 about the KLPD (compared to a total of 1,021 and 22 in 2009).⁹¹⁹ A substantial part of the total number of complaints the National Ombudsman receives annually concerns the police. The larger part concerns the use of force by the police.⁹²⁰ The total number of complaints about the OM which the National Ombudsman received was 214 in 2010, compared to 184 in 2009. These complaints mostly refer to the way the OM deals with confidential information and their decision to prosecute or not.⁹²¹

INTEGRITY (BY LAW)

To what extent is the integrity of law enforcement agencies ensured by law?

Police

There are several statutory provisions aimed at safeguarding the integrity of the police. In the law which regulates the legal position of police, a separate

chapter deals with the rules regarding integrity. It is prohibited for civil servants from the police to, for instance, accept money, gifts or services, with the exception if authorisation from the competent authority is given.⁹²² A civil servant is obliged to inform the competent authority about his side-functions.⁹²³ According to the Police Act 1993 (Politiewet 1993), each police force has to define an integrity policy which at least pays attention to increasing integrity awareness and preventing the abuse of power, conflict-of-interest and discrimination. This integrity policy should be part of the personnel (HR) policy; attention should be paid to integrity during the regular function evaluation talks and work meetings, and by offering education and training about integrity.⁹²⁴ The competent authority is required to set up a code of conduct and to account for both duties.⁹²⁵

Several instruments have been developed which can be considered as a model for the development of an integrity policy by public organisations and the police. The Modelaanpak basisnormen integriteit openbaar bestuur en politie provides guidelines on what the minimum package of integrity measures should look like.⁹²⁶ Since 2008, the 'Registratie integriteitsschendingen openbaar bestuur en politie' has been available, which provides a model for the uniform registration of integrity violations in the public sector including the police.⁹²⁷ The current Beroepscode voor de politie in Nederland (Professional Code for the Police in the

917 <http://www.om.nl/organisatie/rijksrecherche/publicaties/jaarberichten/>, consulted 23 August 2011.

918 http://www.jaarberichtom.nl/jaarverslag-2010/Search.a2xhY2h0/aDU1056_OM-ontvangt-meer-klachten-ook-over-politie-optreden.aspx, consulted 23 August 2011.

919 De Nationale Ombudsman (2009) p.74.

920 Ibid., p. 73–78.

921 Ibid., p. 78–82.

922 Art. 55c Besluit algemene rechtspositie politie.

923 Art. 55a paragraph 1 Besluit algemene rechtspositie politie.

924 Art. 50 paragraph a and b Politiewet.

925 Art. 50 paragraph c and d Politiewet.

926 This document was established in 2006 through the cooperation of the Ministry of the Interior and Kingdom Relations, provinces, local councils, water authorities, rijksdiensten (national agencies) and the police. It can provide guidance for the development of integrity policies by all of these organisations. It touches upon topics such as code of conduct, side-functions, gifts, recruitment procedures and public procurement. The model can be found via

http://www.integriteitoverheid.nl/fileadmin/user_upload/Modelaanpak_Basisnormen_Integriteit_Openbaar_Bestuur_en_Politie.pdf

927 Landelijk modelformulier Registratie integriteitsschendingen.

928 The first code was established in 2005 and has been amended.

Netherlands) was established in 2007.⁹²⁸ That code lists seven values, which are made concrete by descriptions of what is considered to be professional treatment by the police. Each police force has a Bureau Beroepsvaardigheden en Integriteit (BBI – Bureau of Professional Skills and Integrity) or Bureau Integriteit en Veligheid (BIV – Bureau of Integrity and Security) which investigates alleged integrity violations by their own staff, and which advises management accordingly.⁹²⁹ The police have given much attention to researching their own integrity, and have shown to be active in the development of integrity provisions.⁹³⁰ However, the integrity instruments developed at national level are not automatically implemented and taken on in a uniform way by regional police forces. According to recent research, the content of integrity policies is characterised by too much variation. The interpretation of what is considered to be ‘integrity’ varies, as do the instruments which are implemented at regional level in order to promote integrity.⁹³¹ Often the regional police forces have their own professional code in addition to the ‘Beroepscode voor de politie in Nederland’, because the wording of the latter is considered to be old-fashioned and patronising.⁹³² This excess of integrity instruments can minimise the overall effectiveness of integrity policies.

OM

The OM has a basic integrity policy set up which includes a code of conduct which became effective in 2006. There is no information available on its integrity policy on its website. The integrity provisions are those

which are applicable to the public sector (Code of Conduct, confidentiality person for integrity issues and the possibility for whistle-blowers to report violations).⁹³³ Initially there were no internal investigations into integrity violations, but this changed when the Board of Procurators General received reports, both internally and externally, about integrity violations by members of staff.⁹³⁴ The Bureau Integrity OM (Bureau Integriteit OM – BIOM) will start in 2012, and hereby the OM will try to increase focus on the integrity of its organisation and its staff. BIOM will advise and support the different parts of the organisation on how to develop and roll out their integrity policy. The Board of Procurators General has appointed a National Programme Manager Integrity who will further institutionalise the integrity policy.⁹³⁵ As a start, the OM has presented its concept for a Bureau Internal Investigations (Bureau Interne Onderzoeken – BIO) which also applies to the Rijksrecherche. All internal integrity violations which are reported will end up here and be further investigated internally and if, criminal investigation is required, that will be taken over by the head public prosecutor of the police region or by the Rijksrecherche.⁹³⁶

Rijksrecherche

The Rijksrecherche has its own code of conduct.⁹³⁷ The code of conduct of the OM and Rijksrecherche are not available via their websites. On the website of the OM there is no specific item about the organisation’s integrity. The website of the Rijksrecherche does refer

929 <http://www.politie.nl/Flevoland/OverDitKorps/Organisatie/stafdiensten.asp#Bureau%20Korpsondersteuning>, consulted 23 August 2011.

930 Huberts, L.W.J.C. and Naeyé, J. (2005).

931 Tankeren van M. (2010).

932 <http://www.depers.nl/binnenland/94297/Kritiek-op-beroepscode-politie.html>, consulted 23 August 2011.

933 Interview with Petra Borst, Senior Legal Officer at the National Public Prosecutor’s Office, interview held the 6th of June 2011 and a second meeting took place the 22nd of December 2011.

934 Interview with Petra Borst, Senior legal officer at the National public prosecutor’s office, 6th of June 2011 and interview with Jack van Zijl, National Public Prosecutor for Corruption at National Public Prosecutor’s Office, 6th of June 2011.

935 http://www.jaarberichtom.nl/jaarverslag-2010/organ.bedrvr/ondom.landien/aDU1053_Integriteitschendingen.aspx, consulted 24 August 2011

936 Interview with Petra Borst, Senior legal officer at the National public prosecutor’s office, 6 June 2011 and interview with Jack van Zijl, National Public Prosecutor for Corruption at National Public Prosecutor’s office, 6 June 2011.

937 <http://www.om.nl/organisatie/rijksrecherche/organisatie/gedragscode/>, consulted 23 August 2011.

to integrity in public administration and its own integrity. It calls upon the public to report integrity violations.⁹³⁸ According to the National Public Prosecutor for Corruption, various protocols and regulations will be rolled out for the OM and Rijksrecherche at the end of 2011.⁹³⁹

INTEGRITY (IN PRACTICE)

To what extent is the integrity of members of law enforcement agencies ensured in practice?

Police

It is difficult to determine the number and nature of integrity violations within law enforcement agencies, because of the 'dark number' which is typical for sensitive issues.⁹⁴⁰ The design and reporting standards found in the annual reports of the regional police forces do vary. In some annual reports the figures of the BBI/BIV can be found, while in other reports these are not explicitly stated.⁹⁴¹ Nevertheless, the Dutch police is considered by analysts to be a pioneer in its uniform registration of integrity violations. Although the number of recorded investigations has increased, it remains difficult to conclude what has caused this increase. Naturally this can mean that more incidents occur, but some analysts explain this increase by referring to the combination of increased strictness concerning (alleged) misconduct and an improved quality of the recording of internal investigations for all Dutch police forces.⁹⁴² Because of increasing attention given to the topic of integrity and the uniform way of registering integrity violations, more cases are

therefore becoming known.⁹⁴³ Two-third of the investigations are the result of an internal report. The Bureau of Internal Investigations of the Dutch police has done 4,000 investigations into alleged integrity violations by police officers from 2008 to 2010.⁹⁴⁴ In 319 cases a criminal offence was established and in 1,270 cases it concerned a violation of duty. In 219 cases it led to the resignation of the police officer.

In 2008 two police officers of a regional police force notified the Minister of BZK about their korpschef's behaviour. According to these whistle-blowers, the korpschef committed integrity violations which could even be considered to be criminal offences. They initially had reported this internally, but this did not lead to an investigation. The minister then established a commission to investigate the integrity issue within this regional police force. The commission concluded in its report that the accusations could not be upheld, and named the whistle-blowers in the report. This was heavily criticised by the police union. One of the whistle-blowers went to the Commission on Integrity Government (CIO – Commissie Integriteit Overheid).⁹⁴⁵ The CIO criticised the conduct of the minister by stating that the minister should have conducted a disciplinary and criminal investigation into the management of the police force. The Rijksrecherche should have been involved in such case. It became clear that the then-korpschef had been suspended and later dismissed after an investigation carried out by the General Intelligence and Security Service (AIVD – Algemene Inlichtingen- en Veiligheidsdienst). The CIO also criticised the way the whistle-blowers were treated; it was a confirmation of the already-existing conviction, that there is no 'happy ending' for whistle-blowers

938 http://www.om.nl/organisatie/rijksrecherche/organisatie/integriteit_binnen/, consulted 23 August 2011.

939 Interview with Petra Borst, Senior legal officer at the National Public Prosecutor's Office, 6 June 2011 and interview with Jack van Zijl, National Public Prosecutor for Corruption at National Public Prosecutor's Office, interview 6 June 2011.

940 Huberts, L.W.J.C. and Naeyé, J. (2005) p.32.

941 http://www.politie.nl/Noord_en_Oost_Gelderland/Images/nogjaarverslag2010_tcm11-673110.pdf, p. 14 and http://www.politie.nl/Haaglanden/Images/jaarverslagenjaarrekening2009_tcm20-577848.pdf

942 Lamboo, T. (2010) p.622-6228.

943 This is referred to as the 'integrity paradox' by Professor of Governance L.W.J.C. Huberts of the VU. By integrity paradox is meant that more attention and better registration seem to lead to more violations.

944 Voorziening tot Samenwerking Politie Nederland. (2011) p.6.

945 The CIO is the highest organisations to which integrity violations of the government are reported. *This will be further discussed in the Report on the Public Sector.*

within the police. This potentially can hold back others who consider reporting integrity violations within the police. The Minister of VJ has announced a putting-aside the CIO's critique.⁹⁴⁶

OM

One investigative programme editor working for the TV programme Zembla made a documentary about the number of public prosecutors who have made mistakes in the way they carry out their duty. Suspects were not convicted because of serious mistakes made by public prosecutors (e.g. forgery of evidence leading to release) and according to the journalist innocent people were convicted (because evidence which could discharge suspects was withheld).

The OM could not provide an overview of the measures taken after the integrity violations were reported, and MPs asked the minister questions regarding the matter, in particular when it appeared that some of the prosecutors had been promoted.⁹⁴⁷ The Board of Prosecutors General responded by ordering its scientific department (WBOM) to investigate the cases referred to in Zembla. This led to the conclusion that the situation was not as bad as presented by Zembla, but that nevertheless in 17 cases the public prosecutor could be blamed for making some kind of mistake, which in some cases had influenced the verdict. As a result, it also announced plans to improve investigation and prosecution.⁹⁴⁸

The National Public Prosecutor for Corruption has visited several regional prosecution offices to identify the general level of knowledge about integrity. Levels turned out to vary a lot. In the near future, integrity violations will have to be reported to management, who

will have to take action accordingly. Those in charge of the investigations can be trained by the Rijksrecherche.⁹⁴⁹ In the 2010 annual report of the OM, a total of 34 integrity violations were reported, of which 31 led to some form of disciplinary punishment or measure (6 incidents led to a dismissal while the rest led to conditional dismissal). The integrity violations varied from forms of misbehaviour in the private domain to conflicts-of-interest. This is a slight increase compared to the previous five years, when a total 120 disciplinary punishments were imposed.⁹⁵⁰

CORRUPTION PROSECUTION

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

Issues regarding corruption investigation

Investigations into corruption cases are carried out by various organisations. Regional police forces, the national police force (in particular the nationale recherche), specialised investigation services and the internal investigation departments of governmental organisations and private investigators: they all have the competency to investigate corruption. There is no overview available which shows the total number and type of investigations that are carried out.

One concern which arises out of the various competent organisations is that sometimes private organisations can undermine the criminal prosecution of corruption. It can occur that organisations which have a case of alleged corruption call in a private investigative bureau in order to circumvent the whole criminal procedure

946 <http://www.acp.nl/de-acp/actueel/nieuws/single-item/artikel/2011/07/18/acp-positie-klokkenluiders-bij-politie-enorm-onderdruk/>, consulted the 20 August 2011.

947 Episode of Zembla of the 31st of January 2010.

948 Letter from Openbaar Ministerie the College van procureurs-generaal of the 11th of May 2010 with the subject: Onderzoek Sierra, Tom Poes and Zembla (PaG/BJZ/32305); [http://www.om.nl/algemene-onderdelen/uitgebreid-zoeken/@151984/om_in_hoger_beroep/over Tom Poes \(Rijksrechercheonderzoek\)](http://www.om.nl/algemene-onderdelen/uitgebreid-zoeken/@151984/om_in_hoger_beroep/over_Tom_Poes_(Rijksrechercheonderzoek);); [http://www.om.nl/@154176/om_trekt_hoger/\(leermomenten OM en intrekken hoger beroep tegen niet ontvankelijkheid](http://www.om.nl/@154176/om_trekt_hoger/(leermomenten OM en intrekken hoger beroep tegen niet ontvankelijkheid).

949 Interview with Petra Borst, Senior Legal Officer at the National Public Prosecutor's Office, 6 June 2011 and interview with Jack van Zijl, National Public Prosecutor for Corruption at National Public Prosecutor's Office, 6 June 2011.

950 http://www.jaarberichtom.nl/jaarverslag-2010/organ.bedrvt/ondom.landien/aDU1053_Integriteitschendingen.aspx, consulted 24 December 2011.

(including the duty to report). In practice, this means that organisations order such a private/internal investigation and thereby determining what the scope of the investigation will be and what will be done with the outcome. Although the involvement of private/internal investigation bureaus is positive, considering the limited capacity of law enforcement agencies to investigate all who are suspected of integrity violations/corrupt behaviour, in reality such an investigation often takes place in stead of a criminal investigation.

If a case is taken on by a private/internal organisation without notifying law enforcement agencies and without discussing the case with these agencies, the criminal part of the 'anti-corruption chain' is broken, which makes it impossible to create chain-wide insight and which obstructs a chain-wide coordinated approach. This way the OM cannot execute its discretionary principle for prosecution. Even if in a certain phase the police or the Rijksrecherche get involved, evidence can already be lost and criminal investigations thereby undermined. Such a practice can lead to corrupt civil servants not being criminally prosecuted, but only being given disciplinary sanctions. This seems to be a solution for restoring integrity in the organisation, but such a civil servant can easily be appointed at a different public (or private) organisation, because there is no criminal track record on him and he can show a Certificate of Good Conduct.⁹⁵¹

Investigative techniques

The police, public prosecutors and the Rijksrecherche have fully adequate powers to apply proper

investigative techniques.⁹⁵² For some of them permission from the court is required, e.g. house-searches and telephone-tapping. Concerns have arisen about the very high frequency of this instrument in the Netherlands. The law enforcement agencies themselves and the media regularly report about e.g. house searches and documentation seized by the Rijksrecherche and/or the public prosecutors as part of their investigation of alleged corruption.⁹⁵³ In a major case concerning real estate fraud, conducted by FIOD, heavy investigative instruments were used. Crucial evidence was collected through installing hidden cameras and microphones in hotel rooms where the businessmen involved met each other.⁹⁵⁴

Investigations against (semi) government officials

The Rijksrecherche holds a rather unique position as an independent investigative organisation. Within its investigations, the main focus is on investigations against (semi) government officials (civil servants), who are suspected of criminal offences, including corruption crimes at e.g. the police forces, the judiciary and public administration. The Board of Procurators General has issued a directive about correctly carrying out the investigation and prosecution of corruption cases. The objective of the directive is to explain the criteria according to which the Rijksrecherche may be deployed. It is the CCR which decides if and when an investigation will actually be conducted by the Rijksrecherche.⁹⁵⁵ The total number of investigations conducted by the Rijksrecherche into public corruption was 15 in 2010, compared to 13 in 2009 and 23 in 2008.⁹⁵⁶

951 Interview with key figure 2, senior member of staff at the National Police Internal Investigations Department, 24th May 2011.

952 Interview with Petra Borst, Senior Legal Officer at the National Public Prosecutor's Office, 6 June 2011 and interview with Jack van Zijl, National Public Prosecutor for Corruption at National Public Prosecutor's Office, 6 June 2011.

953 <http://www.trouw.nl/tr/nl/4324/nieuws/article/detail/1100467/2010/04/02/Rijksrecherche-doet-inval-bij-ex-gedeputeerde-Hooijmaijers.dhtml>; http://www.om.nl/organisatie/item_144364/item_147886/nieuwsberichten/@155964/onderzoek-corruptie/; <http://www.om.nl/actueel-0/nieuws-persberichten/@156305/aanhoudingen/>, consulted 25 August 2011.

954 The major case referred to is the 'Klim-op' case, which is the biggest real estate fraud case ever to be held. (For more information on the case please refer to the Business Pillar) and <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/1832288/2011/02/07/Zaak-Klimop-Onderzoek-Fiod-en-Belastingdienst-liepen-door-elkaar.dhtml>, consulted 23 August 2011.

955 The description of the tasks and organisation of the Rijksrecherche is to be found via http://www.om.nl/vast_menu_blok/english/the_national_police/, consulted 3 August 2011.

956 http://www.jaarberichtom.nl/jaarverslag-2010/typeinfo.cijf/ondom.landien/krntak.opspr/aDU1042_default.aspx, consulted 24 December 2011.

CBA

In addition to its repressive tasks, the Rijksrecherche is increasingly involved in preventing corruption and improving understanding of corruption. That is the reasons that it carried out a study into the bribery of civil servants in the public sector (CBA). This research was based on a total of 221 reports and 73 investigations into the bribing of civil servants in the period 2003–2008. In 2010, the Rijksrecherche presented the outcome of this research in a report.⁹⁵⁷ The analysis provides an insight into the features and vulnerabilities of civil servants and external parties, based on the investigation. Although there is a 'dark number' regarding the total size of corruption, these investigations show that out of every 6,000 civil servants, one civil servant's behaviour is reported, and one of every 16,000 civil servants is involved in an investigation of the Rijksrecherche or one of the other special investigative services.⁹⁵⁸ This research can help (semi) public organisations and law enforcement agencies with their prevention of corruption and their programmes to raise awareness. The results were shared during a conference to which a variety of organisations and individuals were invited, where they shared their experiences and best-practices in the field of corruption prevention.⁹⁵⁹ Another change in the Rijksrecherche's position is that it increasingly cooperates with other specialised investigative services in investigations. The directors of the special investigation services take part in a national platform in order to connect at the strategic level too.⁹⁶⁰ The Rijksrecherche makes itself better known to the other law enforcement agencies and its 'clients'.⁹⁶¹ One

inspector describes how this has led to two cases, which could lead to further investigation.⁹⁶²

National Public Prosecutor for Corruption

In the Netherlands, one public prosecutor is appointed as the National Public Prosecutor for Corruption. This officer has the specific expertise required to investigate and prosecute corruption cases. His duty is to make his knowledge available to other members of the OM. He assists local OMs in their investigations and prosecutions of corruption cases, both on demand and at his own initiative.⁹⁶³ The National Public Prosecutor for Corruption also coordinates the mode of operation in fighting corruption committed abroad by Dutch (legal) persons.⁹⁶⁴ The National Public Prosecutor for Corruption explained that he depends on local prosecution offices to report corruption offences. The extent and way in which this is done varies considerably from one prosecution office to the other.⁹⁶⁵ He explained how this cooperation with the regional offices is essential to get an impression on the total scale of corruption. The recording of corruption requires additional administrative steps to be taken; it does happen that these offences are registered under a more general category. This is also caused by the unfamiliarity with the directive on corruption and the fact that law enforcement officers are not confronted with corruption on a daily basis, and therefore most of their capacity will be used for other offences. The National Public Prosecutor for Corruption is also involved in the specialised courses on corruption offered twice a year for members of law enforcement agencies and the judiciary.⁹⁶⁶

957 Rijksrecherche (2010).

958 Other special investigation services are: SIOD (information and investigation regarding work and income) and FIOD (fiscal investigation).

959 <http://www.om.nl/organisatie/rijksrecherche/publicaties/rapporten/>, consulted 23 August 2011.

960 Interview with senior member of staff 1 and senior policy officer 2 both of the Rijksrecherche, 24 May 2011.

961 Meerjarenbeleidsplan 2008–2012 Rijksrecherche p. 9 paragraph 4 and 5.

962 Interview with Jos Schipper, Information Detective of the Rijksrecherche, 21st of April 2011.

963 Aanwijzingen opsporing en vervolging ambtelijke corruptie in Nederland of the 26th of July 2011 via <https://zoek.officielebekendmakingen.nl/>

964 Ibid.

965 Interview with Petra Borst, Senior Legal Officer at the National Public Prosecutor's Office, interview held the 6th of June 2011 and interview with Jack van Zijl, National Public Prosecutor for Corruption at National Public Prosecutor's Office, interview held the 6th of June 2011.

966 The Justice Study Centre (SSR – Studiecentrum Rechtspleging) provides this training. For more information, please refer to <http://www.ssr.nl/?page=opleiding&cursusId=10532&jaar=huidig>, consulted 27 December 2011. Information provided by Petra Borst, Senior Legal Officer at the National Public Prosecutor's Office on 22 December 2011.

Issues with reporting

It is believed that not all cases of bribery are reported to the police or the OM. Although there is a legal duty⁹⁶⁷ for civil servants to immediately report a crime which they become aware of while carrying out their job, this is rarely done in practice. Research indicates that in practice it is not clear for which crimes this duty is applicable.⁹⁶⁸ Neither is it clear who is considered to be a 'civil servant' and which actions are considered to be 'crimes of office' (ambtsmisdrijf). At the time of the research, 80 percent of civil servants were unaware of this duty to report.⁹⁶⁹ According to the research, there is uncertainty about whether organisations will report a crime once internal investigation confirms that there is 'crime of office'. The research suggests that there is a 'dark number' concerning 'crimes of office'.⁹⁷⁰ This possibility for criminal law enforcement can be hindered if an organisation decides to call in a private investigation bureau to investigate the alleged corruption.

Additionally, the poor whistle-blower protection in the public and private sectors is believed to discourage individuals in reporting corrupt behaviour, but there are also reasons to believe that public organisations are aware but do not report the serious integrity violations committed by members of their staff.⁹⁷¹ *(For more information on the protection of whistle-blowers, please refer to the Report on Public Sector/Accountability.)*

OM

When criminal offences such as corruption, fraud or tax evasion are reported, it is the OM which decides whether to prosecute them or not. Some offences are not prosecuted. In 2011 the state secretary of Finance responded to questions from MPs about the criminal prosecution of tax evasion by stating that the prosecution directives holds limits on what amount of money is required to be at stake in the tax evasion in

order for the OM to start prosecutions. In general, the loss for the Tax Collectors Office needs to be minimum EUR 125,000 before the case is taken up with the OM. Tax evasion by citizens is prosecuted if there is at least EUR 10,000 at stake; this minimum is EUR 15,000 for businesses.⁹⁷²

By not enforcing the law in all instances of financial economic crimes, an incentive is provided for citizens to calculate to what extent they can get away with criminal offences. This is somewhat minimised by the administrative fines which will be imposed but which do not lead to a criminal record.

Additionally, financial economic crimes often come together. There is a certain risk involved – the risk of not discovering and prosecuting corruption cases – when violations of tax law are only prosecuted when large sums are involved.

Figures on corruption cases

Information regarding the status of cases and other details has not been made systematically accessible, due to the registration programme COMPAS, in which offences and crimes are registered by the regional prosecution offices. Unfamiliarity with corruption by the law enforcement official or a case involving several crimes can lead in practice to registration under the crime of (for example) forgery. It is therefore difficult for the OM to present information on the total number of corruption reports and the way these have been followed-up (number of prosecutions, dismissals and settlements). The OM has indicated that they will keep a track-record (manually) on corruption crimes in 2012.⁹⁷³ However, in practice it is often unclear or difficult to legally qualify the alleged criminal offence, and therefore the Dutch statistics may seriously under-report the number of bribery offences. They might also have been prosecuted as fraud, money-laundering or forgery.

967 Art. 162 paragraph 1 Wetboek van Strafvordering.

968 Cornelissens, A., Ferwerda, H. and Vries Robbé, de E. (2008) p. 89.

969 Ibid., p.113.

970 Ibid., p. 91–92.

971 Transparency International's Progress Report 2011 p.10 and p.51.

972 'Tot euro 125.000 buit rukt het OM niet uit', in het Financieel Dagblad of the 23rd of June 2011 p.15.

973 Information provided by Petra Borst, Senior Legal Officer at the National Public Prosecutor's Office, 22 December 2011.

Foreign bribery

According to the 2011 Bribe Payers Index, the extent to which Dutch firms bribe abroad is comparatively low; the Netherlands has a shared first position (score 8.8 on a 1–10 scale) on the 2011 BPI.⁹⁷⁴ Nevertheless, foreign bribery by Dutch companies is still a phenomenon that exists.⁹⁷⁵ In the 2011 annual report on the enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials Dutch, enforcement is described as ‘moderate’, and the fight against international corruption seems to have insufficient priority.⁹⁷⁶ During the last ten years, no Dutch company has been brought to trial for committing bribery and corruption abroad, despite the fact that since 2001 the OM has the legal right to prosecute such crimes.⁹⁷⁷ According to the OM, it investigates ‘a limited number of cases in which there is a suspicion of foreign corruption’. However, there are additional requirements, such as the principle of dual criminality, which need to be fulfilled in order for Dutch authorities to have jurisdiction. Foreign corruption cases are hard to investigate because they take place abroad and parties will remain silent.⁹⁷⁸

One inspector of the Rijksrecherche described how two investigations into international corruption have led to repeated requests for information and/or the right to conduct investigations in the respective countries (international legal assistance), but this was refused by the foreign authorities.⁹⁷⁹ Dutch–parent or –subsidiary companies have been prosecuted abroad.

Snamprogetti Netherlands BV, a Dutch subsidiary of the Italian company ENI SpA, has undergone bribery investigations in the US, Nigeria and Italy for its role in a joint venture (TSKJ) that was awarded contracts for the decade long (1994–2004) development of a liquefied natural gas plant (Bonny Island) in Nigeria.⁹⁸⁰

The subsidiary and the mother company, ENI SpA, reportedly have settled things with US authorities and are said to have paid USD 32.5 million to the Nigerian government. In 2010 Royal Dutch Shell Ltd. reached a settlement with US authorities over alleged bribes paid to Nigerian officials on its behalf by the company Panalpina. In connection with the same case, Royal Dutch Shell Plc. reportedly paid fines to the Nigerian government and US authorities.⁹⁸¹

In 2011, it was reported that 23 individuals, including two former employees of the Dutch consumer appliance, healthcare and lighting company Royal Philips Electronics NV, and Philips Polska, together with managers of Polish public hospitals, were due to go on trial in Poland in June 2011 for corruption charges.⁹⁸² The allegations were that Philips personnel bribed the managers of the public hospitals to give Philips contracts of exclusivity regarding equipment to be purchased by the hospitals. In 2008, the Polish Department of Justice requested international legal assistance from the Dutch OM because of this alleged corruption. Polish authorities regarded Philips Medical Systems (PMS) as a witness,

974 Transparency International, Bribe Payers Index 2008 and Bribe Payers Index 2011.

975 Ibid.

976 Hulten, van M. (2010) p.52–60; <http://www.transparency.nl/2010/09/voortgangsrapportage-2010-van-transparency-international-over-de-uitvoering-van-het-oeso-verdrag/>, consulted 23 August 2011.

977 Transparency International's Progress Report 2011 p.9. The legal provisions referred to are art. 177, 177a and 178a Wetboek van Strafrecht.

978 Article ‘Omkoping blijft onbestraft’ in the Financieel Dagblad of the 6 July 2011, and interview with Petra Borst, Senior Legal Officer at the National Public Prosecutor's Office, 6 June 2011 and interview with Jack van Zijl, National Public Prosecutor for Corruption at National Public Prosecutor's Office, 6 June 2011.

979 Interview with Jos Schipper, Information Detective at the Rijksrecherche, 21st of April 2011.

980 Transparency International's Progress Report 2011 p.10 and p.44, 50 and <http://blogs.wsj.com/corruption-currents/2010/12/20/eni-unit-reaches-325-million-settlement-with-nigeria/>, consulted 25 August 2011.

981 Transparency International's Progress Report 2011 p. 50 and 51 and File No. 3–14107 United States of America before the Securities and Exchange Commission in the Matter of Royal Dutch Shell plc, and Shell International Exploration and Production Inc. (Respondents).

982 Transparency International's Progress Report 2011 p.51.

while Dutch law enforcement regarded PMS as a suspect and wanted a Dutch investigation. The Dutch OM tried to establish cooperation in this investigation (where additional information was required and whether it concerned a dual criminality).⁹⁸³ In 2010 the information could be provided to Poland. PMS only played a minor role, and in the meantime measures had been taken by PMS. Based on this information, the OM decided not to instigate a separate Dutch investigation.⁹⁸⁴

An unintended result of the strength of the USA and UK investigative and prosecutor systems relative to the Dutch system, is that Dutch international companies may have to pay fines to the USA Department of Justice and/or the SEC for corruption cases that have no or hardly any link with these countries, simply because such companies invariably have connections with the USA and UK. It is not logical that Philips cannot be held accountable for book & records violations at the HQ levels as all the books of the subsidiaries in the end roll up to the level of the parent company that has its legal seat in the Netherlands. This is the way SEC prosecutes: if the public prosecutor cannot prove the bribery *per se*, then SEC can still prosecute financial fraud and the IRS tax fraud. In any case the Dutch Treasury misses out here, foregoing possibly significant budgetary income.

Investigation and prosecution of foreign bribery

In the 2011 report on the enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials, law enforcement agencies are described as rather 'decentralised and uncoordinated', which is detrimental to the effectiveness of the legal provisions.⁹⁸⁵ TI also points at the lack of access to information about the number of foreign bribery cases; information on the status of cases and other details is

not systematically accessible.⁹⁸⁶ In the annual report, a possible risk is identified regarding the role of the Rijksrecherche. The Rijksrecherche is specialised in investigating passive corruption by Dutch public officials. Its additional responsibility to investigate cases of alleged foreign bribery is of a totally different nature, and often includes complex financial constructions. In an interview with the Rijksrecherche, a member of its staff described how the focus is now also aimed on the briber.⁹⁸⁷ The fact that the Rijksrecherche has recently begun to increase its cooperation with other specialised investigation services, e.g. FIOD (an investigative authority specialised in fiscal investigations), is considered to be a positive development for the effective enforcement of the Convention.⁹⁸⁸

The Instructions for the Investigation and Prosecution of Corruption Offences in Public Office Committed Abroad ('CPG Aanwijzing')⁹⁸⁹ list 'those factors which play a role and which need to be considered in determining whether it's opportune to prosecute a briber or person who was bribed'. 'One factor listed in the Instructions is 'the size of the potential impact on the reputation of the Dutch trading and political interests if a suspicious case is not investigated'. The OECD criticised this description in 2008, which could be interpreted that Dutch trading and political interests created a motive for prosecuting or refraining from prosecuting foreign corruption, which would pose a violation of article 5 of the Convention.⁹⁹⁰ This article provides that 'investigation and prosecution of the bribery of a foreign public official [...] shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved'.

983 <http://nos.nl/artikel/247938-traag-optreden-justitie-bij-philips.html>, consulted 27 August 2011.

984 Interview with Petra Borst, Senior Legal Officer at the National Public Prosecutor's Office, 6 June 2011 and 22 December 2011.

985 Transparency International's Progress Report 2011 p.11.

986 Ibid.

987 Interview with senior member of staff 1 and senior policy officer 2 both of the Rijksrecherche, 24 May 2011.

988 Transparency International's Progress Report 2011 p. 51.

989 Aanwijzingen opsporing en vervolging ambtelijke corruptie in het buitenland of the 26th of July 2011 via <https://zoek.officielebekendmakingen.nl/>

990 OECD (2008). Follow-up Report on the Implementation of the Phase 2 Recommendations p.3-5.

The Ministry of VJ and the OM have indicated that the referral to ‘potential impact on the reputation of the trade and economic interests’ is explicitly a positive motive to prosecute, and that one is not to conclude that they refrain from prosecuting foreign corruption when that is believed to stimulate Dutch trade interests. In order to take away the criticism of the OECD, the phrase above beginning ‘those factors which...’ was included in the 2011 Instructions.⁹⁹¹

The phrase beginning ‘the size of the potential impact’, as implemented in the new Instructions, can possibly be interpreted that when there is no potential impact on the reputation of the trade and economic interests or when the trade and political interests are served by the suspected corruption, prosecution will be less likely.⁹⁹² It is not the aim of this NIS study to assess the way the Dutch government has dealt with criticism from the OECD. It is important to note that this fits a pattern that one struggles in the Netherlands with judging (and prosecuting) corruption by Dutch citizens and Dutch companies abroad.

Foreign corruption prosecution: difficulties in practice

The National Public Prosecutor for Corruption states:

“Most contacts with foreign partners concern international requests for legal assistance. Also, visits to Paris are made to speak with colleagues of the OECD. We regularly receive phone calls, for example a recent phone call from Germany where a police officer had fined mainly foreigners. The OECD multinational list is reliable. Our contacts rarely involve large cases

*in which Dutch companies are believed to have paid bribes abroad. That is really a ‘dark number’. I do have the ambition to investigate trans-boundary cases, but they are so complicated. These involve the ‘goodwill’ of foreign partners and the Ministries of BZK and EL&I.”*⁹⁹³

*Also, here economic and political interests play a role, which I have little influence on. In the past attempts have been made to establish a sort of Project Bureau Foreign Corruption, but then you are confronted with the limits to your own capacity. How to deal with requests for legal assistance from states with which the Netherlands has not signed a treaty? Simply provide the information on the basis of mutual trust? A few years ago this was done in a case concerning the bribery of Chilean civil servants. You need to be patient, and it requires sufficient capacity for a thorough investigation.”*⁹⁹⁴

The USA, UK and Germany have publicly mentioned at international fora and conferences that if the Netherlands does not want to prosecute, they might do so in every case where they can claim (extraterritorial) jurisdiction. Several experts have indicated that there is a tension between the importance of criminal law enforcement and the economic interests of no criminal law enforcement.⁹⁹⁵

One expert considered the prosecution of international bribery to be poor, because the government allows the economic interests of companies to prevail over the law.⁹⁹⁶

990 OECD (2008). Follow-up Report on the Implementation of the Phase 2 Recommendations p.3–5.

991 Aanwijzingen opsporing en vervolging ambtelijke corruptie in het buitenland of the 26th of July 2011 via <https://zoek.officielebekendmakingen.nl/>

992 Pereira, P.C. (2011). Omkoping van buitenlandse ambtenaren. Waarom wordt de Nederlandse rechtsmacht niet benut? p.43.

993 The commitment of the Minister of EL&I to put corruption on the agenda is deemed important by other experts as well, such as Willem Stevens, lawyer, who is cited in Grant Thornton and Norton Rose (2011). Tien keer tien. Corruptie in 10 vragen en 100 antwoorden, p. 37.

994 Interview with Jack van Zijl, National Public Prosecutor for Corruption at National Public Prosecutor’s office, 6 June 2011.

995 In the article ‘Omkoping blijft onbestraft’ in the Financieel Dagblad of the 6th of July 2011, the financial criminal lawyer and substitute judge Joost Italianer and lawyer Carel Raymakers are cited; interview with Jos Schipper, Information Detective at the Rijksrecherche, 21st of April 2011.

996 In the article ‘Omkoping blijft onbestraft’ in the Financieel Dagblad of the 6th of July 2011 the financial criminal lawyer and substitute judge Joost Italianer is cited.

“The easiest way to start an investigation was to screen the annual accounts of firms which (in the past) explicitly referred to ‘bribes paid’. These investigations were not up for discussion. In two cases which were under investigation, we did not get the permission from the states involved to carry out investigations on their territory. There are also cases which were not taken on, but here it is unclear why these were not further investigated and/or prosecuted. There is only radio silence. In particular, corruption abroad is not a vivid topic, although there are a few signs of increased attention.”⁹⁹⁷

A criminal lawyer confirms that these cases have no priority in the Netherlands, but wonders whether more priority for these cases is desirable now that strict prosecution will have negative consequences for Dutch companies.⁹⁹⁸

It is also important to create a world-wide level playing field. If the Netherlands “protects” its own industry this will be a negative element in contradiction to creation equal conditions in the export markets concerned. If e.g. Philips can get away with certain practices, where Siemens is not, this will lead to unfair competition.

A newspaper reported in February 2012 that the OM had not done much concerning international bribery for a long time, but that currently three investigations were taking place.⁹⁹⁹

One involved Trafigura Beheer, suspected of bribing politicians in Jamaica, and another trade firm is suspected of bribing civil servant in East Timor and a former consultant to the World Bank.¹⁰⁰⁰

On the 21st of February 2012, the Minister of VJ signed a memorandum of understanding with the World Bank in which the ministry and World Bank agreed to cooperate in support of criminal and administrative investigations and proceedings by national and international authorities. The Minister of VJ said that ‘Combatting international corruption and fraud are important principles of the Dutch government, in signing this memorandum of understanding we will be able to detect instances of possible fraud faster with the help of our partners in the US. This cooperation is already bearing fruit for both parties. Thanks to a referral from the World Bank Group Integrity Vice Presidency, the Dutch government is currently investigating possible corruption by a Dutch firm.’¹⁰⁰¹ It remains to be seen how active and successful the Dutch law enforcement agencies will be in investigating and prosecuting (international) corruption.

997 Interview with Jos Schipper, Information Detective at the Rijksrecherche, 21st of April 2011.

998 In the article ‘Omkoping blijft onbestraft’ in the Financieel Dagblad of the 6 July 2011 the criminal lawyer Brendan Newitt is cited.

999 Het Financieel Dagblad. ‘Justitie VS pakt omkoping in buitenland hard aan’ 23 February 2012 p. 13.

1000 Ibid.

1001 World Bank and Ministry of Security and Justice News Release (2012).

6.6 ELECTORAL MANAGEMENT BODY

Role in NIS

The government gains its legitimacy by receiving a mandate from the people to govern. The way in which this mandate is won is crucial to the quality of that legitimacy and to the readiness of all to acknowledge it. If elections lack legitimacy, this might lead to instability and create an environment in which corruption can quickly breed. Public confidence in government is enhanced if elections are considered to have taken place according to the law and under the watchful eye of an independent Electoral Management Body (EMB).

At the core of the administration of an election lies the official body responsible for its conduct. Such an EMB should be at a certain distance from the government to avoid any ability to manipulate the administration of the election. The EMB should therefore be responsible for preparing and overseeing the election, and for publishing the results. Tasks include: the receipt of nominations of candidates and ensuring their eligibility to stand; regulating voters' credentials; design of the ballot papers; the logistical aspects, for instance polling stations; the conduct of the poll itself; the compilation and announcement of the results; the monitoring of the income and expenditure of political parties and individual candidates; and the preparation of a public report, with recommendations for reforms to the processes.

The EMB should also have a role in civic education to inform voters how to vote and ensure that they are aware of when and where they should go in order to do so.¹⁰⁰²

Sources

The desk research for this pillar was carried out by considering the statutory provisions regarding elections and the Dutch Electoral Council (KR – Kiesraad). The Election Assessment Mission Report¹⁰⁰³ by the OSCE in 2010 turned out to be a valuable source, because here the Dutch elections process was examined from an external observer perspective. An in-depth interview was held with the current chairman of the KR and the current secretary-director of the KR. To get an outsider's perspective, an academic was interviewed who has published, among other things, on election administration. A second academic was interviewed about the political parties in the NIS, but since these two pillars are interrelated, valuable outsider's perspective was provided during this interview as well. All interviews were held face-to-face.

Interviews held:

- Melle Bakker, Secretary-Director of the Electoral Council, interview held the 20th of April 2011.
- Henk Kummeling, Chairman of the Electoral Council, interview held the 20th of April 2011.
- Remco Nehmelman, Senior Lecturer State and Administrative Law University of Utrecht, interview held the 17th of May 2011.
- Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, interview held the 25th of May 2011.

1002 Transparency International. (2003). Pillars of Integrity: Confronting Corruption. The Key Elements of a National Integrity System p.29–30.

1003 OSCE/ODIHR (2010) OSCE/ODIHR Election Assessment Mission Report: The Netherlands Early Parliamentary Elections, 9 June 2010.

ELECTORAL MANAGEMENT

Body Status: Strong

Summary

The pillar Electoral Management Body has adequate safeguards to ensure integrity, but nevertheless there is still room for improving these safeguards. The Dutch Electoral Council (KR – Kiesraad) has adequate financial resources, and adequate legal provisions exist ensuring its transparency and accountability. The KR's independence is not entirely ensured by law because it falls under the authority of the Ministry of BZK. However, its legal powers cannot be administered by the Minister of BZK. Nevertheless, there is a financial dependence on the ministry. In practice this independent position is somewhat more safeguarded, because the KR decides on its own work plan and the advice it gives on election law. This independence is also reflected in the fact that in practice the Chairman is in charge of appointing and dismissing most of the KR's personnel. Overall, the KR is a highly-respected body which functions well within its competences. Nevertheless, the assessment finds that the way the KR functions is not entirely satisfactory. This is to a large extent caused by its limited role in campaign regulation. At the beginning of 2012 there is still no monitoring of political party financing or the financing of candidates. The legislation which creates the right to monitor those finances is being prepared. The task of monitoring will be with the Minister of BZK. Competence in election administration lies with municipalities and the KR has no authority in overseeing the election process. Formal integrity provisions for KR members are lacking, which is particularly a concern now that there are no prohibitions on their political affiliations. Although formal integrity provisions are absent, in practice the topic of integrity is discussed during the meetings of the KR.

Structure and Organisation

Election administration

Dutch election administration is characterised by a three-tiered, decentralised structure. This includes the KR, twenty Principal Electoral Committees (PEC –

Kieskringen), and around 10,000 polling stations.¹⁰⁰⁴ This pillar report focuses on the KR because it determines the official election results at national level, i.e. the election results of the House of Representatives (Tweede Kamer), Senate (Eerste Kamer) and the European Parliament. For these elections, the KR is also the central polling station. Political parties wanting to take part in national elections under a specific name – which is, however, not required – have to register that name at the KR. These names will be assessed before their registration. The candidate lists for the national and EP elections are assessed and determined by the KR.

Advisory body

In addition, the KR is also the official independent advisory body for the Dutch government and parliament on electoral rights and the organisation and carrying out of elections. The KR can provide advice to the Council of State Administrative Jurisdiction Division (ABRvS – Raad van State Afdeling Bestuursrechtspraak) in lawsuits which deals with aspects of electoral procedure, often at the municipal level. Ministers, political parties, civil servants, citizens and the media can turn to the KR with their questions on electoral rights and elections. KR members are appointed by royal decree for a period of 4 years and can be reappointed twice. This selection and appointment are based on the grounds of their respective expertise in advising on electoral rights and elections, their knowledge of society and their experience. The KR is supported by a secretariat.

ASSESSMENT

RESOURCES (IN PRACTICE)

To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

Budget

The annual reports show that the KR hardly ever spends its entire budget. Its budget for 2010 was EUR 2.8 million (EUR 3.1 million in 2009 and EUR 2.4 million in

¹⁰⁰⁴ OSCE/ODIHR (2010) p.11.

2008). The costs made in reality were approximately EUR 2.7 million in 2010 (EUR 2.7 million in 2009 and EUR 2.1 in 2008). This budget was used for expenses of personnel costs and material costs.¹⁰⁰⁵ The budget for 2011 is approximately EUR 2.0 million.¹⁰⁰⁶ The KR consists of seven members, including the chairman and vice-chairman.¹⁰⁰⁷ The chairman is appointed on a 0.3 full-time equivalent. The secretariat supports the members of the KR in their activities. The secretary-director is in charge of KR's secretariat. The KR's secretariat has 12 full-time equivalent staff, but it is possible to increase the staff in times of elections. In 2009 there was such an increase to ensure adequate staffing of the Information Point Elections (Informatiepunt Verkiezingen)¹⁰⁰⁸ and because of a project which involved the testing of software which supports elections.¹⁰⁰⁹ The available resources in 2008 and 2009 were not entirely spent, one reason being that the KR did not need to hire the number of temporary staff that had been foreseen.

Human resources

Among others, the KR currently consists of a chairman, who is also a professor of constitutional law and comparative constitutional law; a dean, who is a professor of comparative political science; a member who is a former Tweede Kamer parliamentary grouping chairman; and a member who is also the Head of the Constitutional and Administrative Law sector of the Legislative Bureau of the Ministry of VJ. Currently the KR consists of three women and four men. There is a legal obligation regarding the appointments of the chair and other members of official Dutch advisory bodies to strive for proportional representation of women and persons belonging to ethnic and cultural minorities.¹⁰¹⁰ Since 2008 the KR has a Scientific Advisory Council (Wetenschappelijke Raad van Advies),

which consists of four (external) experts in the field of electoral rights and elections. This council supports and assesses the research programme of the KR. Members of the KR and its secretariat have organised and actively participated in international conferences and workshops in order to exchange experiences and to be informed about possible new ways to carry out (future) activities.

The Dutch KR has adequate resources to carry out its tasks. Financial resources seem to be sufficient since they are in the budget. KR members all have appropriate academic qualifications and diverse work experience, and appear to be complementary to one another.

INDEPENDENCE (BY LAW)

To what extent is the electoral management body independent by law?

Authority over resources

The KR's independence or the independence of its members are not formalised in statutory provisions. The KR is a permanent advisory body; its members are appointed through an open recruitment procedure. The KR falls under the authority of the Ministry of the Interior and Kingdom Relations (BZK – Binnenlandse Zaken en Koninkrijksrelaties), except for its legal position as a central polling station. The KR receives a budget from the Ministry of BZK, and its human and financial resources are under the authority of the Ministry of BZK. In February 2011 the secretary general of the Ministry of BZK and the chairman of the KR agreed that the KR was to be primarily responsible for the spending of its own budget.¹⁰¹¹ The aim was to further increase the independence of the KR in relation to the Ministry of BZK. The budget is still allocated by

1005 All amounts have been rounded off. The specific amounts can be found in: Kiesraad. (2010). Annual Report Kiesraad 2010 p.45, Annual Report Kiesraad 2009 p.39 and Annual Report Kiesraad 2008 p.30.

1006 Rijksbegroting 2010 VII Binnenlandse Zaken en Koninkrijksrelaties art. 31.5.

1007 Article A2 paragraph 3 Kieswet.

1008 The Information Point Elections answers to questions from the media, citizens, political parties, provinces and councils which concern the elections.

1009 Annual Report Kiesraad 2009 p.15.

1010 Article 12 paragraph 3 Kaderwet Adviescolleges.

1011 Beheersreglement Kiesraad chapter 5.

the Minister of BZK, but the KR can decide how the budget will be used. The staff of the secretariat is formally employed with the Ministry of BZK. However, they are only accountable to the KR.¹⁰¹² Civil servants enjoy adequate dismissal protection. *For more information on the terms of employment for civil servants, please refer to the Pillar report on Public Sector/Independence.*

Appointments

The Minister of BZK gives public notice of vacancies within the KR.¹⁰¹³ He organises a selection commission and then nominates KR's members, which then are appointed by royal decree.¹⁰¹⁴ There is little transparency in the composition of the selection committee.

There is no formal procedure which ensures the independence and transparent selection of candidates. Neither are there specific criteria for appointments of KR members to be found in formal provisions, nor corresponding correction mechanisms to prevent politicisation. The formal criteria for appointment are of a general nature and can be found in the Advisory Bodies Framework Act (Kaderwet Adviescolleges). This act states that members of advisory bodies are appointed based on the expertise which is required in advising on policies for which the advisory body was established, their knowledge of society and their experience.¹⁰¹⁵ In the same article it is stated that civil servants who work for a ministry, or service or company related to it, are not eligible for an advisory body if the topics on which they advise relates to their

activities.¹⁰¹⁶ The KR's chairman is formally the head of the secretariat, but members of the secretariat are not allowed to be members of the KR.¹⁰¹⁷ The secretary-director manages the secretariat in carrying out its daily activities; he is responsible to the chairman of the KR for the way activities are carried out.¹⁰¹⁸ The Elections Law does not restrict political affiliation by members of the KR or its secretariat. However, it is incompatible to be in office on behalf of a political party.¹⁰¹⁹ The laws and regulations applicable to civil servants of the Ministry of BZK are also applied for the members of staff of the secretariat. *For more information on rules applicable to civil servants, please refer to Pillar report on the public sector.*

Enforcing rules on the financing of political parties

The current Elections Law and the KR's internal protocol do not provide provisions to ensure the KR's impartiality or to prevent outside influences over its activities. The original 2006 draft Financing of Political Parties Act (WFPP – Wetsvoorstel financiering politieke partijen)¹⁰²⁰ was foreseen to coincide with an amendment to the Elections Law to guarantee the KR's independence. Originally the KR was to become responsible for enforcing and safeguarding the WFPP. Further rules were to be made to separate the exercise of duties in connection with the financing of political parties from all other duties.¹⁰²¹ However, in the 2011 draft WFPP these tasks were not assigned to the KR, but would be brought under the competence of the Ministry of BZK.¹⁰²² The Minister of BZK considers the impartiality of the KR to be at risk if it would become

1012 Annual Report Kiesraad 2009 p.14 and Kaderwet Adviescolleges (the Advisory Bodies Framework Act) article 15.

1013 Art. 11 paragraph 3 Kaderwet Adviescolleges.

1014 Art. 11 paragraph 2 and 3 Kaderwet Adviescolleges.

1015 Article 12.1 Kaderwet Adviescolleges.

1016 Article 12.2 Kaderwet Adviescolleges.

1017 Article 15.4 Kaderwet Adviescolleges.

1018 Beheersreglement Kiesraad chapter 2.

1019 Interview with Melle Bakker, Secretary-Director of the Electoral Council, 20 April 20; Interview with Henk Kummeling, Chairman of the Electoral Council, 20 April 2011.

1020 The full name of the draft act is: 'Regels inzake de subsidiëring en het toezicht op de financiën van politieke partijen (Wet financiering politieke partijen)' Kamerstukken II, 2010–11, 32 752, nr. 2.

1021 GRECO (2010) Third evaluation round: Compliance Report on the Netherlands on Incriminations and Transparency of Party Funding, Paragraph 68.

1022 Art. 33–36 Wet financiering politieke partijen Kamerstukken II, 2010–11, 32 752, nr. 2.

responsible for monitoring the finances of political parties, while its other tasks comprise being a central polling station and deciding in individual cases on the registration of political parties and the validation of candidate lists.¹⁰²³ It is currently still to be seen when and how the WFPP will become effective and what the consequences will be for the KR. *For more information on the financing of political parties, please refer to Pillar report on political parties.*

The KR's independence is not directly safeguarded in the Constitution nor in the Elections Law. By appointing the members of the KR by royal decree, the independence of the KR is somewhat foreseen. Additionally, the KR's discretion to decide on how to spend its budget is proof of a more independent position in law. Its independent role could have been increased by receiving the competences to monitor and enforce the financing of political parties. Also, the KR could have been granted overall and independent responsibilities in overseeing all aspects of the election process. However, since this is not likely to be the case, its tasks are limited. While a number of provisions exist, they do not cover all aspects of the independence of the KR.

INDEPENDENCE (IN PRACTICE)

To what extent does the electoral management body function independently in practice?

Authority over resources

Although the provisions to secure the KR's independence are limited to the way its members are appointed and its rights concerning its budget, its independence seems to become more of a priority for the Minister of BZK, the KR and its members. In the past, the absence of independence in practice was

reflected in the members of staff of the KR considering themselves to be part of the Ministry of BZK. In practice, they carried out tasks for both institutions at the same time.¹⁰²⁴ In 2005, the Minister of BZK and the KR wanted to increase the independent position of the KR in a practical way by relocating the secretariat of the KR from the Ministry of BZK's Constitutional Affairs and Legislation Department to a neighbouring building with its own entrance. It has been functioning as an independent unit ever since. Although officially appointed by the Minister of BZK, personnel of the secretariat are hired and fired by the chairman of the KR, with the exception of the secretary-director and his substitute. The KR considers itself to be more independent due to the competences regarding its budget and its new location. The Ministry of BZK and the KR are increasingly considered to be different organisations with independent tasks.¹⁰²⁵ The KR's legal responsibilities towards the budget are still relatively new, and the extent to which this will increase the KR's independence in practice is still to be seen.

Appointments

Although the Minister of BZK nominates candidates for the KR, the KR itself plays a prominent role in drafting advertisements and selecting candidates. There is no evidence of political appointments within the KR, although a few members are also members of a political party.¹⁰²⁶ Notwithstanding that, it is worth noting that membership of a political party is traditionally of great importance for top senior positions in Dutch public administration¹⁰²⁷, whereby members of the KR reflect the political parties represented in parliament to ensure a balanced composition. In recent years, the tendency is that selection of members is more down to the individual's expertise and knowledge of election law.¹⁰²⁸ The KR provided examples of how its members refrain from becoming actively involved in political activities. During the recent provincial elections, one member was

1023 'Nader rapport inzake het voorstel van wet houdende regels inzake de subsidiering en het toezicht op de financiën van politieke partijen' (Wet financiering politieke partijen) of the 18th April 2011 p.2.

1024 Interview with Melle Bakker, Secretary-Director of the Electoral Council, 20 April 2011.

1025 Ibid.; Interview with Henk Kummeling, Chairman of the Electoral Council, 20 April 2011.

1026 Ibid.

1027 Raad voor het openbaar bestuur (Rob). (1998) p.25 and Raad voor het openbaar bestuur (Rob) (2006). p. 55.

1028 http://www.kiesraad.nl/nl/Organisatie/Leden_Kiesraad.html, consulted the 21st of February 2012.

approached by an affiliated local party to provide advice on the need for a recount of the votes. In order to prevent a conflict-of-interest, the member did not get involved himself. Another member was offered the position of municipal councillor, but the KR considered this to be in violation of its internal protocol and therefore a threat to the absolute neutrality of the KR. The chairman and secretary-director of the KR describe the KR's internal environment to be 'open and with a lot of discussions on for example the other activities of members'. The chairman stresses that those members who are professors are careful to write or present articles and opinions on topics which are related to their activities for the KR.¹⁰²⁹

The KR and local Electoral Committees

Overall, the KR does not get much attention in academic articles or public debate. There are no incidents known in which the impartiality and/or independence of the KR or one of its member were considered to be at stake. In one of GRECO's evaluations, the KR is referred to by the interlocutors as 'a highly respected body, which is currently perhaps little-known to the general public.'¹⁰³⁰ There is no evidence of bias or lack of confidence in the Dutch KR by the government, Tweede Kamer, Senate or citizens. There is a general belief in the fact that there are quite a few institutions, which play a role in the elections process, assure that the process is scrutinised and that all actors control one another directly or indirectly.¹⁰³¹ Nevertheless, there have been a few isolated incidents concerning election fraud by members of local polling stations. These incidents have been openly addressed in the media and have been dealt with via criminal proceedings.¹⁰³² The KR is not entirely independent in practice, but its impartiality is not contested. The independence of the KR or its members has not been

debated. The fact that a few members of the KR are members of a political party has not led to any known incidents, but does pose a risk of individual political considerations becoming internalised. The independence of members of local polling stations seems to be more of an issue.

TRANSPARENCY (BY LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

Responsibilities of actors in electoral management

The Minister of BZK, principal electoral committees and local councils all play a role in electoral management. The KR is not a body on its own; electoral management is a shared responsibility of several actors. The formal requirements regarding the preparation of elections, the carrying out of elections and the publishing of election results are all clearly prescribed in the Elections Law and are governed by the KR, the PEC's, local councils and polling stations. These actors all play different roles, depending on whether the specific elections concern parliamentary, provincial or municipal elections. Their respective duties to inform the public about important dates, the location of the polling stations, the delivery of voter's cards and the publishing of elections results, are all legally assigned to these actors with set deadlines and time-frames. For all elections, it is the municipal mayor who is obliged to send a copy of the list of candidates together with the addresses of all polling stations to every house within their municipality, at the latest four days before elections.¹⁰³³

¹⁰²⁹ Interview with Melle Bakker, Secretary-Director of the Electoral Council, 20 April 2011; Interview with Henk Kummeling, Chairman of the Electoral Council, 20 April 2011.

¹⁰³⁰ GRECO (2008) Third evaluation round: Evaluation Report on the Netherlands on Transparency of Party Funding, paragraph 90.

¹⁰³¹ Lukowski, S. (2008). Verkiezingsfraude vanuit strafrechtelijk perspectief p.29-30.

¹⁰³² <http://www.elsevier.nl/web/Nieuws/Politiek/260062/Hoogleraar-Opzet-met-telfouten-verkiezingen-Rotterdam.htm?rss=true;>
<http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/947848/2008/01/18/Kandidaat-raadslid-pleegde-verkiezings-fraude.dhtml;>

http://www.kiesraad.nl/nl/Actueel/Persberichten/2006/Mogelijke_fraude_bij_gemeenteraadsverkiezingen_in_Landerd.html, consulted 12 September 2011.

¹⁰³³ Kieswet J 4.1 and Kiesbesluit J 1.

The KR's specific responsibilities

The KR has a statutory obligation under the Elections Law to publish in the Dutch Government Gazette (Staatscourant) all registrations of political groupings and notifications of groupings' de-registering for parliamentary elections.¹⁰³⁴ The KR holds a confidential meeting to discuss relevant formalities concerning the parliamentary elections including the assessment of candidate lists.¹⁰³⁵ Decision-making takes place in public. The chairman of the KR is required to make public as soon as possible the results of parliamentary elections in the Dutch Government Gazette.¹⁰³⁶

There is no role for the KR in registering or overseeing the finances of political parties. The KR does have to comply with the Openness of Government Act (Wob – Wet Openbaarheid van Bestuur).

There are adequate provisions in place which allow the public to obtain information on the organisation and functioning of the KR. The KR is not involved in overseeing the finances of political parties.

TRANSPARENCY (IN PRACTICE)

To what extent are reports and decisions of the EMB made public in practice?

Responsibilities of actors in electoral management

Some incidents have occurred in the Netherlands which have involved faults made in the preparation of elections, the carrying out of elections and the publishing of election results. These are further discussed in the report under Election Administration.

The KR's specific responsibilities

In practice, the KR makes available to the public its reports, decisions and advice. The formal documents are published in the Dutch Government Gazette; all other

documentation is published on the website of the KR. This public website is accessible and frequently updated, and public information such as brochures on electoral administration, annual reports, statistical information on the elections and research reports are available.

The KR is transparent about the advice it gives to government and parliament. A specific section on the website provides an overview of the advice given by the KR. The advice of the KR on law proposals to amend the Elections Law is published before the proposal reaches the Tweede Kamer. Most of the advice relates to the technical aspects of rules regarding electoral rights and elections. All official advice, the arguments for it and the evidence supporting the advice e.g. external research reports are published here. Another part of the website contains information on the elections and provides a calendar with the dates of upcoming elections (European, national and provincial). Other relevant dates for future elections, for example the deadlines for registering as a political party, the registration of candidates and the meetings of the KR, can be found. Due to several collapses of the Cabinet, new parliamentary elections had to be held in 2002, 2003, 2006 and 2010. In 2010 the date for the snap election was determined by royal decree, which turned out to be later than expected in order to provide extra time for new political parties to register with the KR.¹⁰³⁷ On a separate website election results since 1848 can be found.¹⁰³⁸ Questions on electoral rights and elections can be answered by contacting the Information Point Elections.

Most meetings of the KR are not open to the public, because the KR wants its members to speak out freely and consider different options without it becoming known to a wider public or media at a too early stage.¹⁰³⁹ This would pose a risk of the KR becoming

¹⁰³⁴ Kieswet art. G1 and I 17.

¹⁰³⁵ Interview with Melle Bakker, Secretary-Director of the Electoral Council, 20 April 2011; Interview with Henk Kummeling, Chairman of the Electoral Council, 20 April 2011.

¹⁰³⁶ Art. P 23 and art. U 16 Kieswet and Kiesbesluit art. P 1.

¹⁰³⁷ http://vorige.nrc.nl/binenland/article2490471.ece/Verkiezingen_Tweede_Kamer_op_9_juni, 14 April 2011.

¹⁰³⁸ <http://www.verkiezingsuitslagen.nl>

¹⁰³⁹ Interview with Melle Bakker, Secretary-Director of the Electoral Council, 20 April 2011; Interview with Henk Kummeling, Chairman of the Electoral Council, 20 April 2011.

part of 'politics'. The meetings which the KR occasionally has with commissions of the Tweede Kamer are generally open to the public. Nevertheless, the fact that most of the meetings are not open, does limit transparency in the activities of the KR.

In general the Wob is not often used to request information from the KR. Most information is readily available and provided to the person concerned; there is no need to use the Wob.¹⁰⁴⁰ In the last 12 months there has been one request for information, and the information was provided.¹⁰⁴¹ However, in 2006 and 2007 the Wob was used several times by an NGO called 'We do not trust voting computers' in order to receive documents on electoral administration from the KR, Ministries and local councils.¹⁰⁴² This was clearly an exception directly related to incidents with electronic voting (*further explained in the report under Election Administration*). The Wob requests made were successful, and among the documents requested were the minutes of the meetings of the KR.

In practice, the transparency of the KR is safeguarded because it makes available to the public its reports, decisions and advice. The process leading to these documents is not transparent, since most meetings of the KR are not open to the public.

ACCOUNTABILITY (BY LAW)

To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

Accountability to other institutions

The Advisory Bodies Framework Act prescribes that the KR is required to present to the Minister of BZK a work

plan for the coming year. The KR is also required to annually report on its activities of the previous year to the Minister of BZK.¹⁰⁴³ This includes accounting for the way it has spent its budget. The Minister of BZK can request the KR to make an evaluation report on its job fulfilment at least once every four years. The KR has to send the work plan, annual report and the evaluation to the Tweede Kamer and the Senate.¹⁰⁴⁴ The allocation of expenditures by the KR is part of the broader allocation of expenditures for the Ministry of BZK and as such is presented by the Cabinet to the Tweede Kamer and the Senate.

Accountability to the public

The possibilities for citizens to hold the KR, PEC's or local Electoral Committees accountable shows a mixed picture. Citizens can appeal some decisions during the preparation phase of the elections before the ABRvS. This can be an appeal of the KR's decision to approve or refuse the registration of a specific name of a political grouping, or its decision concerning the list of candidates.¹⁰⁴⁵

However, there are no rights to appeal decisions made once the polling stations are open. Citizens can only file their complaint in the official report of the specific polling station.¹⁰⁴⁶ The KR can decide, either on its own initiative or in response to a request from a voter, to conduct a recount of the votes for one or more polling stations if there are serious grounds for suspicion that errors or misconduct in the count may have affected the results.¹⁰⁴⁷ There is no possibility for voters, candidates or parties to appeal to a court regarding the redress of irregularities or contesting the results.¹⁰⁴⁸ Voters can send complaints to the authority the elections are held for. The authority can order a recount or a re-election if they consider that there are enough reasons for it.

¹⁰⁴⁰ Ibid.

¹⁰⁴¹ Annual report Kiesraad 2010, p.40.

¹⁰⁴² <http://wijvertrouwenstemcomputersniet.nl>, consulted 13 April 2010.

¹⁰⁴³ Article 28.1 Kaderwet Adviescolleges.

¹⁰⁴⁴ Article 28 paragraph 2 and 3 Kaderwet Adviescolleges.

¹⁰⁴⁵ Article G5 and I7 Kieswet.

¹⁰⁴⁶ Art. J 36 Kieswet.

¹⁰⁴⁷ Art. P 21 Kieswet.

¹⁰⁴⁸ OSCE/ODIHR (2010) p.3.

A Complaints Procedure is published on the KR's website. It offers citizens the possibility to complain about the behaviour of a member of staff of the KR.

The KR is formally accountable for the way it carries out its tasks and the way it has spent its budget. There are appeal procedures in place which can be used if a citizen does not agree with the KR's decision on the registration of political parties' names or candidate lists. However, there are few possibilities for citizens to complain about the way elections take place.

ACCOUNTABILITY (IN PRACTICE)

To what extent does the EMB have to report and be answerable for its actions in practice?

Accountability to other institutions

In practice, the KR has never presented its work plan to the minister. The work plan is an internal document of the KR.¹⁰⁴⁹ The annual reports¹⁰⁵⁰ are sent to the Minister of BZK, because electoral rights and elections fall within his responsibility. Additionally, the Presidents of the Tweede Kamer and the Senate receive the annual report.¹⁰⁵¹ The KR meets now and then with the Tweede Kamer Commission on BZK to discuss (pressing) matters.¹⁰⁵²

Accountability to the public

All annual reports are available to the public and can be found easily on the KR's website, which has been made

more user-friendly recently. The annual report of 2010 offers an overview of the appeals made on the decisions of the KR. In 2010 two of those appeals were made. One involved the KR's decision not to refund the deposit of a political party. The District Court of Leeuwarden acknowledged the appeal because it considered the KR's motivation inadequate. However, it decided to keep in force the legal effects because KR's decision was considered just.¹⁰⁵³ The ABRvS declared the appeal to be inadmissible.¹⁰⁵⁴ Another appeal involved the de-registering of the name of a political party, because it had not handed in a valid list of candidates.¹⁰⁵⁵ This appeal was also declared inadmissible by the ABRvS.¹⁰⁵⁶ All decisions of the ABRvS are available on its website.¹⁰⁵⁷ There is no effective right to complain or appeal once the polling stations are open. Citizens can only file their complaint in the official report. If irregularities occur in one of the polling stations, there is little a citizen can do. Most citizens do not know what to do or where to file their complaint.¹⁰⁵⁸ In practice, the mayor of the municipality will decide what to do, but there is no independent institution which can deal with such a complaint. Hardly ever does a citizen who filed a complaint receive feedback on how his complaint was handled.¹⁰⁵⁹

Recent incidents involving a recount of votes of specific polling stations during provincial elections did involve the KR, which provided advice on how this could be done best.¹⁰⁶⁰ The provincial council was responsible for the recount and was assisted by civil servants.

1049 Letter to the researcher from Melle Bakker, Secretary-Director of the Electoral Council, d.d. 8 November 2011.

1050 http://www.kiesraad.nl/nl/Overige_Content/Bestanden/Bestanden-Jaarverslagen_Kiesraad/Jaarverslag_2010.pdf

1051 http://www.tweedekamer.nl/images/besluitenlijst_pv_cie_BZK_1_juli_2010_tcm118-210187.pdf

1052 Interview with Melle Bakker, Secretary-Director of the Electoral Council, 20 April 2011; Interview with Henk Kummeling, Chairman of the Electoral Council, interview 20 April 2011.

1053 Uitspraak van de rechtbank Leeuwarden van 1 november 2010, zaak nr. AWB 69/2397 via <http://www.rechtspraak.nl>

1054 <http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=bq8870>

1055 Jaarverslag 2010 Kiesraad p.33-35 and p.48.

1056 <http://zoeken.rechtspraak.nl/ResultPage.aspx?snelzoeken=t&searchtype=ljn&ljn=BN6986>

1057 http://www.raadvanstate.nl/uitspraken/zoeken_in_uitspraken/

1058 Interview with Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, 25 May 2011.

1059 Ibid.

1060 <http://www.destentor.nl/regio/flevoland/5052160/Blunder-Dronten-is-landelijk-voelbaar.ece>;

http://www.kiesraad.nl/nl/Actueel/Nieuwsberichten/Actueel-Nieuwsberichten-2011/Kiesraad_blikt_terug_op_laatste_verkiezingen.html, both consulted the 14 September 2011.

The KR has received complaints in the past about electronic voting and how the use of computers could harm the fairness of elections. One expert did notice that the attitude of the KR is somewhat cautious and defensive. When there is criticism from the public, academics, mayors or international observers regarding elections, the KR does not proactively reflect on the elections by addressing the issues or creating a dialogue with experts of the local authorities.¹⁰⁶¹ *For more information on how the KR was held accountable and how the KR and the Ministry of BZK dealt with complaints, see the indicator 'Election Administration'.* According to the secretary-director of the KR, no complaints have ever been made about the behaviour of a member of staff of the KR.¹⁰⁶²

The KR accounts for its own decision-making and activities adequately. In case a dispute arises out of a decision made by the KR, a citizen can file a complaint with KR. Additional judicial redress is provided by the right to appeal before the ABRvS. Nevertheless, accountability is low where complaints about irregularities at polling stations are concerned.

INTEGRITY (BY LAW)

To what extent are there mechanisms in place to ensure the integrity of the EMB?

The KR and its members

The Elections Law does not restrict the political affiliation of KR members or its secretariat. The KR formulated an internal protocol in 2006 which gives some guidance as to which additional functions are incompatible with that of being a member of the KR. For example whether it is incompatible to be involved in services provided by companies to the KR if these are carried out through competition.¹⁰⁶³ The main guideline in this internal protocol is that in considering

additional functions, no damage can be brought to the position or authority of the KR. In the internal protocol it is explicitly stated that the aspect of side-functions cannot and should not be totally regulated. It is the explicit wish of the KR to trust the wisdom and prudence of its members.

The KR and its secretariat

The Civil Servants Act is applicable to civil servants of the Ministry of BZK and therefore equally applies to the civil servants of the KR's secretariat. The law, among other things, prescribes that ministries develop and implement an integrity policy, which includes a mandatory code of conduct. Additionally, civil servants are required to take an oath or pledge at their appointment. In 2009 the AR assessed the integrity policy of the Ministry of BZK. The Ministry of BZK has developed an integrity policy, and a code of conduct is in place. Other provisions in place were e.g. integrity audits and the recording of integrity violations. The provisions which were not entirely available were risk analysis and policy evaluation.¹⁰⁶⁴ *For more information on integrity provisions for civil servants; please refer to Pillar report on the Public Sector.*

Local polling stations

The individuals who participate as members of polling stations are appointed by the mayor and aldermen.¹⁰⁶⁵ The preparation of the members of the polling stations is believed to have been improved. Instructions have been formalised. Members receive an instruction DVD and booklet, and the chair of the polling station has to attend an information meeting.¹⁰⁶⁶ The city council can determine whether to pay compensation to these members and what the amount will be.

While a number of integrity provisions exist, these do not apply to the members of the KR but rather to the civil servants. The internal KR document provides very little guidance on how to prevent conflict-of-interest.

1061 Interview with Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, 25 May 2011.

1062 Klachtenregeling Kiesraad; Interview with Melle Bakker, Secretary-Director of the Electoral Council, 20 April 2011.

1063 Letter from the chair of the EC regarding external contacts, dated 10 May 2006.

1064 Algemene Rekenkamer (2010). Overzicht integriteitsbeleid ministeries. p.2.

1065 Art. E 4 Kieswet.

1066 Interview with Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, 25 May 2011.

Membership of the KR is an additional function in itself, except for the chairman who is appointed part-time. For the civil servants working at the KR's secretariat the same provisions apply as for civil servants from the Ministry of BZK. There are no special provisions designed to deal with integrity issues which are specific to the KR's secretariat. There are no specific provisions on the integrity of members of local polling stations. However, the instructions have been formalised, to try to ensure fair voting at polling stations.

INTEGRITY (IN PRACTICE)

To what extent is the integrity of the EMB ensured in practice?

The KR, its members and its secretariat

Although the formal provisions for the members of the KR which relate to integrity are scarce, this has not led to any known integrity violations.¹⁰⁶⁷ Integrity is a recurring topic on the agenda of the KR.¹⁰⁶⁸ According to the chairman of the KR, the biggest risks involve those activities which members combine with their membership.¹⁰⁶⁹ In some instances a member was approached for an outside position, for instance the office of municipal councillor. Such an offer was then discussed by the KR and in this case found to be incompatible with membership of the KR. There is said to be a culture within the KR in which members do not hesitate to discuss dilemmas and provide feedback on each other's behaviour.¹⁰⁷⁰

Local polling stations

In practice, members of polling stations are often civil servants of the municipality, municipal councillors or aldermen. The KR has advised the local council to be hesitant in appointing members who are also a

candidate in the elections.¹⁰⁷¹ According to one of the experts; the recruitment of these members is done very carefully but often takes place in small networks where people know each other. This might lead to a higher risk of conflict-of-interest.¹⁰⁷² The integrity violations which have occurred concerning elections management all took place at local level. For instance, in 2006 a local councillor, who was also a candidate in the elections, was also a member of the local polling station. The results of the elections were highly suspicious, and many local citizens suspected that he had committed election fraud. The local newspaper contacted the Rijksrecherche and in 2008 the person involved was convicted.¹⁰⁷³

There have been no incidents which directly involve the integrity of the KR, its members or its secretariat. It seems to be impossible to ensure the integrity in the overall management of elections. Especially polling stations are vulnerable, since they are the place where the voting takes place and the votes are counted. There is now more attention paid to the training of members of the local polling stations. This is important to ensure the professionalism and integrity of those involved with elections in polling stations.

There is a piecemeal and reactive approach to ensuring the integrity of the members of the KR.

CAMPAIGN REGULATION

Does the EMB effectively regulate candidate and political party finance?

Registration costs

The Elections Law prescribes the registration of a 'political grouping', which is defined as an association with legal capacity as established by a notary on the

¹⁰⁶⁷ Ibid.

¹⁰⁶⁸ Interview with Henk Kummeling, Chairman of the Electoral Council, 20 April 2011.

¹⁰⁶⁹ Ibid.

¹⁰⁷⁰ Interview with Melle Bakker, Secretary-Director of the Electoral Council, 20 April 2011; Interview with Henk Kummeling, Chairman of the Electoral Council, 20 April 2011.

¹⁰⁷¹ http://www.kiesraad.nl/nl/Onderwerpen/Stembureaus/Leden_stembureau.html, consulted 16 September 2011.

¹⁰⁷² Interview with Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, 25 May 2011.

¹⁰⁷³ Lukowski, S. (2008). Verkiezingsfraude vanuit strafrechtelijk perspectief p.34-36.

basis of the group's charter. Registration needs to take place up to 43 days before the nomination day. Election campaigns are almost completely unregulated in the Netherlands. For the Tweede Kamer elections, the KR (as the central polling station) has the responsibility to register the names of the political parties. Such registration costs EUR 450, which will be refunded if a party hands in a valid candidate list for the coming elections. The freedom of association, freedom of speech and the right to passive vote do not allow the KR to screen the purpose or activities of the grouping. The KR does however assess whether the name of the grouping is not confusing for the public or violating public order.¹⁰⁷⁴ Groupings wanting to take part in the elections without a name do not need to register. Parties concerned have a direct right of appeal of the approval or denial of a designation before the ABRvS.

Subsidies for political parties

Most national political parties in the Netherlands are financed through an annual public subsidy and membership fees. In order to receive the annual subsidy, political parties must have at least one seat in parliament and at least 1,000 members each contributing at least EUR 12 annually to the party.¹⁰⁷⁵ Furthermore, they must file an activities plan, a budget, and a specification of their membership figures to the Ministry of BZK.¹⁰⁷⁶ They must also report how the subsidy was used. In the Netherlands political parties are considered to be essentially private associations, primarily accountable to their members. Freedom of association¹⁰⁷⁷ is dominant in Dutch thinking. Transparency and accountability requirements for political finance have until recently been regarded as interfering with this right.

Financing of political parties

The financing of political parties is an on-going topic of discussion. Currently political parties are permitted to raise additional campaign funds from private sources, essentially non-restricted. Political parties are required to register donations of over EUR 4,537 (compared to Belgium where it is EUR 125 and Germany where it is EUR 500).¹⁰⁷⁸ Donations over EUR 4,537 from natural persons do not need to be published in the annual reports.¹⁰⁷⁹ Donations can be described in general terms if a donor refuses to have his or her identity disclosed. The Ministry of BZK does not verify or audit donation reports. Review of political party donations and expenditure reports may be requested, and these reports can be released to the public if the party in question consents to the disclosure.¹⁰⁸⁰ Recently, it has been rumoured that parties receive large private donations, allegedly including gifts from foreign sources.¹⁰⁸¹ This does pose a risk for the integrity of the decision-making process. There is no transparency, which makes it difficult to see whether political parties are financed in order to influence decision-making in the Netherlands. (*For more information on the financing of political parties, please refer to Pillar report on Political Parties.*) International organisations such as the Council of Europe have urged the Dutch authorities to come up with regulations.¹⁰⁸² Recently the Netherlands Court of Audit (AR) presented a thorough report on the financing of political parties, in which it stressed the importance of regulating this as soon as possible.¹⁰⁸³ In May 2011 the draft WFPP was sent to the Tweede Kamer. The initial plan to make the KR responsible for the monitoring and safeguarding of political parties' finances was changed. In the draft WFPP this competence is assigned to the Minister of

1074 Art. G1 paragraph 4 sub a Kieswet.

1075 Art. 1 sub c, art. 2 and art. 6 Wet subsidiëring politieke partijen.

1076 Art. 8 paragraph 2, art.9–10 Wet subsidiëring politieke partijen.

1077 Article 8 Grondwet.

1078 Algemene Rekenkamer (2011). Financiering politieke partijen. p.23.

1079 Art.18 Wet subsidiëring politieke partijen.

1080 OSCE/ODIHR (2010) p. 21.

1081 Episode of TV-programme Nieuwsuur from 29 November 2010.

1082 Third Evaluation Round Compliance Report on the Netherlands "Incriminations (ETS 173 and 191, GPC 2)" and "Transparency of Party Funding" the 11th of June 2010 p.8–17.

1083 Algemene Rekenkamer (2011). Financiering politieke partijen. p.23.

BZK, because this could otherwise pose a risk for the impartial and independent fulfilment of the other tasks carried out by the KR. If the Minister of BZK is in charge of supervision, the requirement of 'independent supervision' of political parties' finances is not fulfilled.¹⁰⁸⁴ This would imply that the Minister of BZK could have to fine his own political party or that of a coalition partner.

ELECTION ADMINISTRATION

Does the EMB ensure the integrity of the electoral process?

Public trust

The Central Bureau of Statistics (CBS – Centraal Bureau voor de Statistiek) recently published its figures on 'public trust in fair elections'. Of the total number of people with the right to vote, 72 percent had much or a lot of trust in the fairness of the elections. Around 11 percent had little or no trust in the fairness of the Dutch election process, and 17 percent were neutral.¹⁰⁸⁵ *For more information on confidence, please refer to the Pillar report on political parties.*

Responsibility for the overall election process

There is currently no legal provision on the overall responsibility for ensuring the integrity of the election process. The municipalities autonomously administer the elections. One of the discussions on electoral reform is whether a central authority should have a role in overseeing certain aspects of the organisation of the elections in order to improve accountability. This issue was considered in the 'Voting with Confidence' report.¹⁰⁸⁶ This report was published by an advisory commission which was temporarily appointed in 2006

by the Minister of BZK to assess the Dutch election process.¹⁰⁸⁷ Both the Minister of BZK and the KR agreed this would be a positive development, but views differed as to where such overall responsibility for the entire election process should be assigned. The dominant opinion at the local level is that there is no need to give any national institution more authority over the electoral process in view of the broad public confidence in the current framework.¹⁰⁸⁸ However, during an Election Assessment Mission it was noticed that local practices for the organisation and conduct of Election Day differ and could harm the equal treatment of voters.¹⁰⁸⁹ The complete integrity of the electoral process cannot be assured with the current decentralised Dutch system. One expert expressed his hope that the formalised instructions given to members of polling stations will improve the awareness of these persons that they are actually a representative of the government and thereby should show professionalism, independence and accuracy.¹⁰⁹⁰

Voter registration and the distributions of voter cards

The municipalities are responsible for the administration of voter registration and the elections in their jurisdictions.¹⁰⁹¹ The registration of voters is based on population registries maintained at the municipal level. A registry is made of those citizens who are eligible voters in the municipality as of nomination day. Each voter receives a voter card by mail, at least two weeks before Election Day. The voter card is personalised and has security features to deter fraud. If a voter does not receive a voter card or loses it, he or she may request a new voter card. The municipality can also issue special voter cards to voters allowing them to vote at another polling station in the country (only in relation to provincial or national elections), if a written request is made two weeks prior

1084 Doublet, Y.-M. (2010). Political financing: GRECO's first 22 evaluations. Third evaluation round. Retrieved from the GRECO p.15; interview with Remco Nehmelman, Senior lecturer State and Administrative Law University of Utrecht, 17 May 2011.

1085 Centraal Bureau voor the Statistiek (2010). Sociale Samenhang: Participatie, Vertrouwen en Integratie p.73.

1086 Rijksoverheid (2007). Stemmen met Vertrouwen, Adviescommissie inrichting verkiezingsproces.

1087 <http://www.denederlandsegrondwet.nl/9353000/1/j9vvihlf299q0sr/vhmk0yd9jzm?ctx=vg09llk3d1zt>

1088 OSCE/ODIHR (2010) p.13.

1089 Ibid., p.12–13.

1090 Interview with Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, interview held the 25th of May 2011.

1091 Art. D 1 Kieswet.

to the elections or by visiting the local council days before the elections. The Organisation for Security and Co-operation in Europe (OSCE – Organisatie voor Veiligheid en Samenwerking in Europa) and its Office for Democratic Institutions and Human Rights (ODIHR – Organisatie voor Democratische Instituten en Mensenrechten) regard the maintenance of the municipal population registries and the distribution of voter cards through the postal service to be very good.¹⁰⁹² Nevertheless, some incidents related to voter registration and the distributions of voter cards have occurred. In one instance, a small number of voters received duplicate voter cards¹⁰⁹³, but this was quickly corrected. In another instance in 2010, the media exposed a case of voter cards of mentally disabled voters being thrown away by their caretakers.¹⁰⁹⁴ Although the Minister of BZK has addressed this, the KR additionally advised the Minister of BZK to look into the possibility of criminal enforcement in the case of expropriation of voter cards. For the parliamentary elections, the municipality of The Hague is responsible for the registration of Dutch citizens who live abroad.¹⁰⁹⁵ In 2010 the KR has advised the government to improve the registration procedure for citizens living abroad. It advises that a single electronic registration of voters prevents votes from getting lost or being invalid, as occurs in the current procedure of registering via mail for every election.¹⁰⁹⁶

Polling stations

The municipalities decide the number, location and type of polling stations, and appoint and train the 10,000 polling station staff, which conduct the voting and counting process. There have been cases in which a recount was necessary. During the provincial

elections in March 2011, a recount was carried out of the votes cast at 42 of the 199 polling stations in Flevoland because there were 80 voter cards more taken in than actual votes cast. After the recount, the number could be reduced to 2. Here the KR was asked for advice on how to proceed.

Voting

From 1978 to 2007 the Netherlands used electronic voting.¹⁰⁹⁷ During the elections held in November 2006 this became problematic. Concerns were raised about the risks to integrity and the secrecy of votes because the voter-verified paper trail was lacking and the authorisation of the software appeared weak.¹⁰⁹⁸ The NGO 'We do not trust voting computers' successfully advocated that there was an easy way to tamper with the voting machines.

In 2007 the government decided to stop electronic voting and withdrew the approval of computers. In addition, the two commissions which were set up to review recent developments concluded that there was a lack of e-knowledge within government administration, which was therefore not actively involved in the development of the software. Furthermore mistakes were made in the process and management which resulted in not making a risk-assessment and created a deficit in security awareness. In 2009 this led to renewed voting with paper ballot and red pencil. OSCE describes this decision as being 'a positive and appropriate measure in view of the serious challenges to electoral integrity that were identified in 2006. Moreover, the transparent process through which the issue was considered further contributed to maintaining public confidence'.¹⁰⁹⁹ The KR does state that it keeps an eye open for new

¹⁰⁹² OSCE/ODIHR (2010) p. 15.

¹⁰⁹³ <http://www.volkskrant.nl/vk/nl/2784/Verkiezingen/article/detail/984350/2010/05/26/Dubbele-stempassen-voor-twintig-Utrechters.dhtml>, consulted 13 September.

¹⁰⁹⁴ <http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/1100170/2010/04/28/Stempas-gehandicapte-meestal-weggegooid.dhtml>, consulted 13 September 2011.

¹⁰⁹⁵ Advies Kiesraad n.a.v. gemeenteraadsverkiezingen en Tweede Kamerverkiezing 2010, 22 September 2010 under E.

¹⁰⁹⁶ Ibid., under A.

¹⁰⁹⁷ Information provided by Melle Bakker, Secretary-Director of the Electoral Council via letter d.d. 3 February 2012.

¹⁰⁹⁸ <http://www.volkskrant.nl/vk/nl/2672/Gezondheid-wetenschap/article/detail/785899/2006/10/14/Creatief-met-stemcomputers.dhtml>, consulted 12 September 2011.

¹⁰⁹⁹ OSCE/ODIHR (2010) p.1.

developments and technology, especially internationally.¹¹⁰⁰ The incidents had an effect on citizens' trust in voting machines. In 2006 80 percent of voters had confidence in electronic voting; this number has gone down to 63 percent in 2010. The reliability does not equally influence voter preferences on means of voting.¹¹⁰¹ Still, 43 percent of voters prefer electronic voting and 27 percent prefer using paper ballot and red pencil.

Proxy voting is popular in the Netherlands. It is regarded as being an effective mean to facilitate participation by voters who otherwise would not be able to vote. There have been allegations of abuse of proxy voting. In the past there were a few cases in which individuals attempted to collect proxy votes from other citizens.¹¹⁰² Safeguards have been introduced since then to limit the potential for abuse of proxy voting. Now, a person can cast a maximum of two proxy votes, which have to be done when the person votes himself. The person needs the original, signed voter card of the voter in order to cast the proxy. Proxy voting is only allowed if it's at the initiative of the voter. In order to prevent the use of stolen voter cards, the person has to show a copy of the voter's identification document. The average percentage of proxy voting is around 11 percent.¹¹⁰³

Election reform

The KR is trying to improve the integrity of the electoral process. Where it sees weaknesses in the electoral process it advises government on amendments to the Elections Law. One of the experts explains how until 2006 the attitude of the KR and other institutions involved in the election process could best be described as 'at ease', convinced that there was nothing to worry about because there were no threats to the election

process. According to the expert, the voting computers had led to a routine in the organisation of elections; it led to some negligence.¹¹⁰⁴ The Dutch election process has undergone considerable reform since the elections in 2006. In 2006 amendments to the Elections Law were made in order to increase voter participation and to introduce additional safeguards for the integrity of the election process. These include the repeal of the disenfranchisement of persons legally incapacitated for mental disability and an increase in the number of candidates that may appear on a candidate list in an electoral district.¹¹⁰⁵ Other changes in the electoral process include the right for citizens to vote at any polling station in their municipality. In order to ensure the integrity of the process, a requirement for voter identification was introduced. From now on 25 percent of the polling stations need to be accessible for physically disabled persons.

Although the administration of the elections in the Netherlands is decentralised, it works reasonably well and enjoys a high level of public confidence. There have been isolated incidents of integrity violations in the electoral process. The incidents with electronic voting were of a structural nature. If such incidents occur they are adequately addressed. With the decentralised structure of election administration, extra care should be in place to ensure that local practices for the organisation and conduct of Election Day do not differ. Equal treatment of voters is essential for ensuring integrity in elections.

The KR is generally involved in ensuring free and fair elections. Its tasks are limited because of the decentralised election administration. However, it does get involved when incidents occur or advice is requested.

1100 Presentation held by Prof. Dr. Monique Leyenaar, Member, Dutch Electoral Council, 'Electronic Voting: the Case of The Netherlands', OSCE Chairmanship Seminar on Present State and Prospect of Application of Electronic Voting in the OSCE participating States, Vienna, 16–17 September 2010.

1101 Centraal Bureau voor the Statistiek (2010). Sociale Samenhang: Participatie, Vertrouwen en Integratie p. 72.

1102 <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/2793486/2002/03/14/Geronsel-en-gesjoemel-bij-raadsverkiezingen.dhtml>, consulted 11 September 2011.

1103 Information provided by Melle Bakker, Secretary-Director of the Electoral Council via letter d.d. 3 February 2012.

1104 Interview with Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, 25 May 2011.

1105 OSCE/ODIHR (2010) p.6.

6.7 OMBUDSMAN

Role in NIS

The ombudsman is a person who acts as an intermediary between government and citizens, and in doing so he represents the interests of the public by investigating and addressing complaints reported by individual citizens. An ombudsman will attempt to resolve them, usually through recommendations (binding or not) or mediation. In the NIS, the ombudsman and its bureau form an independent and fair mechanism for preserving accountability of the executive and its civil servants, which fall within the pillar public sector. In the Netherlands the Constitution determines that there is a National Ombudsman (Nationale ombudsman).¹¹⁰⁶ Additionally, there are statutory obligations to provide similar Ombudsman provisions for municipalities, provinces and water authorities.¹¹⁰⁷ Other Ombudsmen dealing with more specific complaints are: Ombudsman Financial Services Providence (Ombudsman Financiële Dienstverlening) and the Ombudsman of several newspapers¹¹⁰⁸, universities¹¹⁰⁹ and hospitals. The main focus of this chapter will be on the National Ombudsman. A well-functioning National Ombudsman is an important safeguard in the NIS because he can examine the conduct of administrative organs and by doing so address misbehaviour, neglect and delay in administration. Citizens who were treated inappropriately by government agencies and whose objections are not heard by these agencies can seek help and are not left to the discretion of the administration. This means that if NIS institutions such as the Executive,

public sector or law enforcement agencies are not functioning adequately with regards to the way they treat citizens, the institution of National Ombudsman can correct this by investigating the conduct of these institutions. The ombudsman can therefore best be described as a 'watchdog agency'.¹¹¹⁰ It is important that the National Ombudsman not only address wrongdoings by government agencies. He has a role of his own in acting with integrity. To make sure that integrity is safeguarded in the bureau of the National Ombudsman, among others, his independence needs to be guaranteed and he should account for his own conduct.

Sources

The desk research for this pillar started with the statutory provisions on the National Ombudsman. Following that, a collection of articles was reviewed. These articles were written by various academics, the former National Ombudsman and other public administration officials, and were compiled in 2007 at the 25th anniversary of the institute National Ombudsman in the Netherlands.¹¹¹¹ Another valuable source of information was the 2010 'Reflection on the National Ombudsman'; an investigation into the way the office of National Ombudsman was carried out from 2005–2010 and what its future role might be. The research was carried out by external researchers by order of the director of the institute National Ombudsman.¹¹¹² The current affairs which concerned the National Ombudsman were taken into account and

¹¹⁰⁶ Art. 78a Grondwet.

¹¹⁰⁷ Art. 81p Gemeentewet, art. 51k Waterschapswet, art. 79q Provinciewet, art. 18 Wet Nationale ombudsman and art. 9:17 Algemene wet bestuursrecht.

¹¹⁰⁸ For example the Ombudsman of the newspaper NRC via http://weblogs.nrc.nl/ombudsman/files/2010/10/statuten_ombudsman_303850a.pdf

¹¹⁰⁹ For example the Ombudsman of the University of Amsterdam via <http://www.student.uva.nl/ombudsmanstudenten/ombudsmanstudenten.cfm>

¹¹¹⁰ Pillars of Integrity: Confronting Corruption. The Key Elements of a National Integrity System. Transparency International, March 2003 p.6 and p.13.

¹¹¹¹ Werken aan behoorlijkheid. De Nationale ombudsman in zijn context, BJu 2007.

¹¹¹² Reflectie op de Nationale ombudsman, Verwey-Jonker Instituut, November 2010 p.5.

a media scan was made. An in-depth interview was held with the current National Ombudsman and one of his staff members. To get an outsider's perspective on the National Ombudsman, an academic was interviewed who has published on the topic of the National Ombudsman and whistle-blowing, and who has also worked for the institute National Ombudsman at the very time of its establishment. All interviews were held face-to-face.

Interviews held:

- Alex Brenninkmeijer, National Ombudsman of the Netherlands, interview held the 18th of April 2011.
- Elisabeth Lissenberg, Emerita professor of Criminology at the School of Law University of Amsterdam, interview held the 30th of May 2011.
- Stephan Sjouke, Head International Affairs Bureau National Ombudsman, interview held the 18th of April 2011.

OMBUDSMAN

Status: Very Strong

Summary

The pillar Ombudsman is the strongest pillar. The Dutch National Ombudsman has adequate resources and is independent in law and in practice. The National Ombudsman is appointed by the Tweede Kamer on the basis of clear selection criteria which have been established by the Tweede Kamer. The National Ombudsman reports to the Tweede Kamer and operates in a transparent manner. Although his formal power is limited, the National Ombudsman is widely regarded to have authority. The National Ombudsman is successful in investigating citizen's complaints about the government. He also is active in promoting good practice, and this is generally regarded to be a

success. This always brings with it the risk of advising an authority on how to provide good services while at the same time receiving complaints about the same authority. Although the provisions regarding his transparency, accountability and integrity are meagre, he nevertheless seems to ensure these in practice. However, it is important that the National Ombudsman show that his own integrity has priority. This way, he can be an example in his role as a watchdog.

Structure and Organisation

The National Ombudsman is one of the five High Councils of State anchored in the Constitution.¹¹¹³ The National Ombudsman is an independent and impartial administrative body responsible for assessing the performance of public authorities and the lawfulness of their decisions and promoting citizens' rights. This institution does not have judicial powers, but can inquire about citizens' complaints and attempt to resolve them, through non-binding judgments and interventions. The National Ombudsman is a 'second line' provision: citizens first need to file their complaint with the respective public institution. Only when the citizen and the public institution do not seem to find a solution can the citizen go to the National Ombudsman to file his complaint.¹¹¹⁴ The National Ombudsman can also decide to investigate at his own initiative, so that more systemic bottlenecks in the performance of public authorities can be discovered.¹¹¹⁵ Both competences cover the whole spectrum of public authorities, varying from the ministries to the decentralised authorities. The National Ombudsman is restricted to assessing the complaints about actions of public institutions and therefore cannot deal with complaints about policy or the content of laws. It is constitutionally exempt from any form of administrative or judicial review. Its effectiveness is based solely on institutional authority. The current National Ombudsman is Alex Brenninkmeijer. The National Ombudsman is supported by two substitute National Ombudsmen and an office of 170 staff members.

¹¹¹³ The High Councils of State are: The House of Representatives, the Senate, the Council of State, the Netherlands Court of Audit and the National Ombudsman, and are anchored in chapter 3 and 4 of the Grondwet. The National Ombudsman is anchored in art. 78a Grondwet.

¹¹¹⁴ Carlens, B. and Verbeeck, B. (2010). p.3.

¹¹¹⁵ Art. 9:26 Algemene wet bestuursrecht.

ASSESSMENT

RESOURCES (IN PRACTICE)

To what extent does an ombudsman or its equivalent have adequate resources to achieve its goals in practice?

Budget

The financial resources for the National Ombudsman are adequate for carrying out its duties. The budget is part of the (remaining) budget for High Councils of State and Cabinets of the Governors and is determined by the (budget) legislature (government and parliament).

The National Ombudsman has financial autonomy over the way he spends his budget. For 2010 the National Ombudsman had a budget of EUR 13.6 million (compared to EUR 13.8 in 2009), in practice the money spent was EUR 14.6 million (compared to EUR 13,8 in 2009). This overrun was caused by the fact that part of the receiving money was not received in 2010, but only in early in 2011.¹¹¹⁶ If this time was settled, there was no excess, but a minimum of underspending. Of the EUR 14.6 million spent, 73 percent is salary costs and 27 percent is expenses such as material costs and training for staff.¹¹¹⁷

Number and type of complaints

Although the budget has not decreased dramatically, it needs to be considered that the number of complaints in 2010 has gone up by 14 percent and these have also become more complex compared to 2009.¹¹¹⁸ This increase might be caused by greater attention brought to the public via campaigns to raise awareness on the existence of the National Ombudsman or because of issues regarding the service provision by public authorities.¹¹¹⁹ It is worth noting that the total number of referrals has gone up as well.

Competences and tasks

According to the National Ombudsman, the current budget is more or less adequate.¹¹²⁰ The National Ombudsman has broadened his 'modus operandi' since its establishment in 1982. Since being in office the current National Ombudsman has clearly aimed for broadening and intensifying his tasks. In addition to grounds of lawfulness, complaints are assessed on the aspect of decency (behoorlijkheid). The decency standards have deepened and include formal legal criteria and social criteria. Here aspects such as 'respect to one another and treatment' and whether both sides are heard are considered in the investigations.¹¹²¹ This broadening can also be found in the fact that more

The total number of complaints in 2010 and 2009 and how they were dealt with can be found in the following table.

Year	Total	Referral	Intervention	Mediation	Reported/Initiated by the National ombudsman
2010 (total no.)	around 14.000	8.298	2.973	53	369/8
2009 (total no.)	12.257	6.630	3.550	56	295/7

Source: Jaarverslag 2010 'Wat vindt u ervan?' Reflectie op burger en overheid, p.13 and p.140 Jaarverslag 2009 'Voorbij het conflict', p.136 and 137. The total number of complaints does also include those complaints which did not concern a governmental agency and which were therefore inadmissible. Additionally some reports concern more than one complaint.

¹¹¹⁶ Wet van 27 januari 2011 inzake wijziging van de begrotingsstaat van de Raad van State, de Algemene Rekenkamer, de Nationale ombudsman, de Kanselarij der Nederlandse Orden, het kabinet van de Gouverneur van de Nederlandse Antillen en het kabinet van de Gouverneur van Aruba (IIB) voor het jaar 2010 (wijziging samenhangende met de Najaarsnota). The marginal deviation in the final act still has to be checked.

¹¹¹⁷ De Nationale Ombudsman (2010). Jaarverslag 2010 p.161; De Nationale Ombudsman (2009). Jaarverslag 2009 p.156.

¹¹¹⁸ Jaarverslag en slotwet van de Overige Hoge Colleges van Staat en Kabinetten 2010 Nr. 1 (IIB), presented the 18th of May 2011.

¹¹¹⁹ De Nationale Ombudsman (2010). Jaarverslag 2010 p.140.

¹¹²⁰ Interview with Alex Brenninkmeijer, National Ombudsman of the Netherlands, 18 April 2011.

¹¹²¹ Meurs, P.L. (2007). p.21.

attention is paid to 'the system' from which the complaint arose, which comprises the general relation civil servant-citizen. The National Ombudsman instigates an investigation at his own initiative. The methods used by the National Ombudsman have also expanded from the initial report (judgment) and intervention to using the methods of mediation. The current National Ombudsman has initiated the method of mediation, and this shift in methods used has led to an intensification of his tasks.¹¹²²

Human resources

Human resources are reasonably stable. From 2008 to 2010 the number of staff increased from full-time equivalents in 2008 of 134, to 140 in 2009 to 143 in 2010.¹¹²³ In 2009 some of the staff received extra training on mediation and conflict resolution, and front-desk employees attended training on aggression control, team building and clear communication.¹¹²⁴ In 2010 attention was paid to internal training on research skills. The National Ombudsman indicated that extra budget for the development and training of personnel would be welcome. He explained that his new approach to the institution also requires a more multidisciplinary team. The broadening and intensification of its tasks require other expertise at the bureau of the National Ombudsman. The current staff members are mostly lawyers and legal professionals, and the National Ombudsman thinks that professionals with a social science or governance background would be a great support.¹¹²⁵ The increase in complaints and broadening of tasks will require additional funding in the years to come. The National Ombudsman has an adequate financial, human, legal and infrastructural resource base to meet its goals.

INDEPENDENCE (BY LAW)

To what extent is the ombudsman independent by law?

Constitution and statutory provisions

High Councils of State, such as the National Ombudsman, which carry out their tasks independently of the government, are bodies anchored in the Constitution and further regulated by law. The National Ombudsman is established in both the Constitution (in 1999) and in the 'Act National Ombudsman' (WNo – Wet Nationale ombudsman) in 1981.¹¹²⁶ The organisation and the mode of operation are regulated in de WNo and the 'General Administrative Law Act' (Awb – Algemene Wet Bestuursrecht).

Appointments

The appointment procedure ensures impartiality of the office-holder. The WNo prescribes that the appointment of the National Ombudsman is preceded by the recommendation of a commission consisting of the vice-president of the Council of State, the president of the Supreme Court and the president of the Netherlands Court of Audit (AR – Algemene Rekenkamer) in which three suitable candidates are suggested to the Tweede Kamer.¹¹²⁷ The Tweede Kamer decides by majority voting, which candidate is to be appointed for a period of 6 years; in general this is 2 years longer than the term of the Tweede Kamer, and he does not get any instructions from other institutions.¹¹²⁸ If the Tweede Kamer wants to reappoint the current Ombudsman, this can be decided without the selection procedure.¹¹²⁹ There are no specific selection criteria for the office of National Ombudsman determined in law. However, in 2005 a sub-commission of the permanent commission

1122 Interview with Elisabeth Lissenberg, Professor (emerita) of criminology of the University of Amsterdam, Faculty of Law, 30 May 2011;

Lissenberg, E. (2008), *Zeg ken jij de ombudsman?* p. 272–275; Aaij, S.W.P., Euwema, M.C., Landzaat, D. and Langen, J.W.E. (2007) p.227.

1123 De Nationale Ombudsman (2010). *Jaarverslag 2010* p.161.

1124 De Nationale Ombudsman (2009). *Jaarverslag 2009; Werken aan behoorlijkheid. De Nationale ombudsman in zijn context*, p. 29 and 140–141.

1125 Interview with Alex Brenninkmeijer, National Ombudsman; interview with Stephan Sjouke, Head International Affairs Nationale Ombudsman, 18 April 2011.

1126 Art. 78a Grondwet.

1127 Art. 2 paragraph 1 and 2 Wet Nationale ombudsman.

1128 <http://www.nationaleombudsman-nieuws.nl/benoeming-nationale-ombudsman>, consulted 2 May 2011.

1129 Art. 2 paragraph 4 Wet Nationale ombudsman.

on BZK of the Tweede Kamer set up a comprehensive profile for the National Ombudsman which was approved by the Tweede Kamer.¹¹³⁰ The substitute National Ombudsmen are also appointed by the Tweede Kamer after the National Ombudsman has given his recommendation.

Incompatibilities

The independence of the National Ombudsman is further safeguarded through the legal provision which explicitly mentions four positions which are incompatible with the post of National Ombudsman. The National ombudsman is not allowed to be a collegial member of a public authority for which the appointment takes place by elections which are prescribed by law. Neither can the National Ombudsman be in a public office for which he receives a fixed wage or remuneration, or be a member of a permanent advisory or support body for the Dutch government. Lastly, the National Ombudsman is not allowed to carry out the profession of lawyer or notary public.¹¹³¹ Additionally, there is a general legal prohibition for the National Ombudsman to be involved in activities which may be undesirable for the fulfilment of his position or for enforcing his impartiality, independence or confidence in those.¹¹³² The National Ombudsman is required to make his side-functions and activities public.¹¹³³

Dismissal and suspension

The National Ombudsman can only be dismissed by the Tweede Kamer on six grounds mentioned in the law. These grounds are similar to those applicable to the judiciary and, involve among other things the

situation in which the National Ombudsman takes on a position which is incompatible with the position of National Ombudsman as mentioned in the law. Other reasons for dismissal are a criminal conviction which cannot be appealed or which leads to detention. Or when the Tweede Kamer is of the opinion that the way the National Ombudsman acted or failed to act has seriously damaged the confidence he enjoyed.¹¹³⁴

Status

The status of the National Ombudsman can be compared with that of a minister. The salary of the National Ombudsman is EUR 10,325.86 per month.¹¹³⁵ This salary is equal to that of the president of the ARK, the vice-president of the Council of State and that of ministers.¹¹³⁶

Minister of the Interior and Kingdom Relations

The National Ombudsman is independent by law and as such not subordinate to a minister. The only special involvement concerns the Minister of the Interior and Kingdom Relations (BZK – Binnenlandse Zaken en Koninkrijksrelaties) through his responsibility for the laws regarding the National Ombudsman and through his responsibility regarding the budgets of the High Councils of State.¹¹³⁷ Although the law prescribes that it is the Minister of BZK, through recommendation by the National Ombudsman, who decides which members of staff are to be appointed, promoted and dismissed by the National Ombudsman, the applicable decree determines that the staff members of the institute of the National Ombudsman are appointed, promoted and dismissed by the National Ombudsman.¹¹³⁸ This applies to all staff members except for the director

1130 Kamerstuk 30 052 nr. 1.

1131 Ibid., Article 5 paragraph 1.

1132 Ibid., Article 5 paragraph 2.

1133 Ibid., Article 5 paragraph 3.

1134 Ibid., Article 3 paragraph 2.

1135 Article 1 paragraph 1 Wet Rechtspositie Raad van State, Algemene Rekenkamer en Nationale Ombudsman; Art. 6 Wet Nationale ombudsman.

1136 <http://www.rijksoverheid.nl/onderwerpen/rijksoverheid/politieke-ambtsdragers>, consulted 11 May 2011.

1137 De Nationale Ombudsman, Instituut, Taak en Werkwijze February 2008, p.11.

1138 Article 11 Wet Nationale ombudsman; Besluit van 15 mei 1990, houdende regels met betrekking tot aanstelling, schorsing en ontslag van de tot het bureau van de Nationale ombudsman behorende personen.

and the heads of departments, who are appointed and dismissed by the Crown after recommendation by the National Ombudsman.¹¹³⁹

Although this decree does provide an extra safeguard for its independence, it can easily be amended or withdrawn because it is not an act.

Right to appeal

The judgments of the National Ombudsman are not considered to be administrative acts and therefore there is no possibility of appeal. The public authorities have a legal duty to provide the information asked for in person.¹¹⁴⁰ By law, all parties concerned have to cooperate, and if necessary witnesses can be picked up at their homes by the police.¹¹⁴¹ There is no statutory safeguard which ensures the anonymity of the citizen who complain, but the office of National Ombudsman brings with it the right to silence and thereby granting anonymity to those who complain.^{1142, 1143} This limits the fear for retaliation towards those who complain.¹¹⁴⁴ The legal provisions provide adequate safeguards for the independence of the National Ombudsman.

INDEPENDENCE (IN PRACTICE)

To what extent is the ombudsman independent in practice?

Appointments

Although there are no legal selection criteria for the office of National Ombudsman in law, the profile for the National Ombudsman drafted in 2005 states general and specific selection criteria. These vary from proven

knowledge and reputation in the field of law and public administration to being independent and acting with integrity and having an eye for the social aspects in the relation between a complainant and public authority.¹¹⁴⁵ This profile is the outcome of talks which the Tweede Kamer sub-commission had with the current National Ombudsman, the Commission Recommendation National Ombudsman and staff members of the National Ombudsman's office.¹¹⁴⁶ Of a total of four office holders who have been appointed since the establishment of the office, there has been no removal from office.¹¹⁴⁷

The Tweede Kamer decided in January 2011 to reappoint the current National Ombudsman for another term which will start in October 2011. The official selection procedure did not need to be followed; a majority of the Tweede Kamer voted by show of hands in favour of his reappointment.

In the past a recommended candidate and former Minister of Justice, Sorgdrager, was not appointed by the Tweede Kamer because there was a majority which feared that this would mean that if she were appointed as National Ombudsman, she would have to assess complaints of citizens which resulted from her own policies as a Minister of Justice.¹¹⁴⁸

Competence

There have been a few occasions in which ministers or MPs scrutinised the statements of the National Ombudsman because they considered these to be inappropriate, because they were of the opinion that the National Ombudsman had not carried out an official

¹¹³⁹ De Nationale Ombudsman, Instituut, Taak en Werkwijze February 2008, p.10.

¹¹⁴⁰ Art. 9:31 Algemene wet bestuursrecht.

¹¹⁴¹ Art. 15 Wet Nationale ombudsman.

¹¹⁴² Lissenberg, E. (2008). Klokkenluiders, toezichthouders en anonimiteit. p. 1–2; Interview Elisabeth Lissenberg, Professor (emerita) of criminology of the University of Amsterdam, Faculty of Law, 30 May 2011.

¹¹⁴³ Art. 10 Wet openbaarheid van bestuur.

¹⁰⁴⁴ Lissenberg, E. (2008). Klokkenluiders, toezichthouders en anonimiteit. p. 1–2.

¹⁰⁴⁵ <http://www.nationaleombudsman-nieuws.nl/benoeming-nationale-ombudsman>, consulted 8 May 2011.

¹⁰⁴⁶ Kamerstuk 30 052 nr. 1.

¹⁰⁴⁷ Oosting, M. (2007). p.253.

¹¹⁴⁸ Interview with Elisabeth Lissenberg, Professor (emerita) of criminology of the University of Amsterdam, Faculty of Law, 30 May 2011; <http://retro.nrc.nl/W2/Nieuws/1999/06/16/Vp/05.html>, consulted 20 June 2010.

investigation before giving his judgment.¹¹⁴⁹ The current National Ombudsman is rather proactive in giving his opinion on proposed legislation and decisions from the government; this is the result of the broadening of the tasks assigned to the National Ombudsman.¹¹⁵⁰ Not long ago, the National Ombudsman expressed his worries about the government's plan to cut the budget of the judiciary and to increase registry costs.¹¹⁵¹ During a recent lecture, the National Ombudsman posed some critical questions about the way the police had acted during a certain incident which led to a fatal shooting. This led to the government expressing its anger towards the National Ombudsman.¹¹⁵² The Minister of Finance (also vice-president) stated that it was irresponsible and inappropriate, taking into account his authority, for the National ombudsman to express his opinion without having done an investigation into this incident. The Minister of BZK addressed this with the National Ombudsman. The National Ombudsman reacted by expressing his disappointment with the reaction of the government and stressed the fact that he only raised it as a question during his lecture. Since the National Ombudsman is a respected authority, it is unlikely that lectures like these would not be known to a wider public. The Tweede Kamer was divided on whether it was acceptable for the Minister of BZK to address this. The

National Ombudsman regards his independence to be guaranteed in practice, and argued that his position sometimes leads to intense discussions.¹¹⁵³

The Executive through the prime minister once contested the competence of the National Ombudsman and thereby interfered with his tasks.¹¹⁵⁴ In 2009 the National Ombudsman decided to investigate a complaint by Edwin de Roy van Zuydewijn, the ex-husband of Princess Margarita de Bourbon de Parme (niece of Queen Beatrix), who accused the Queen's Office (Kabinet der Koningin) and the Minister of General Affairs of misusing their power and unlawfully interfering in his private life. Prime minister Balkenende reacted by sending three letters to the National Ombudsman in which he declared the National Ombudsman to be incompetent to investigate the conduct of the Queen's Office since it is not considered to be an 'administrative organ' according to the definition of the law. Accordingly, the prime minister contested that this was a duty for the director of the Queen's Office to provide information. The National Ombudsman reacted by stating that it is up to the National Ombudsman to determine whether he is competent or not. The National Ombudsman confirmed that indeed there have been discussions regarding his competence, but he still makes his own choices on whether or not to investigate a complaint.¹¹⁵⁵

1149 http://vorige.nrc.nl/binnenland/article2214542.ece/Nationale_Ombudsman_kapittelt_minister, consulted 13 May 2011.

1150 The permanent commission on Interior and Kingdom relations sent a letter on 21 March 2005 to the Tweede Kamer which contained the design of a profile for the to-be-appointed National Ombudsman. In paragraph 2.3 of that letter a general requirement is stated: ". . . Vermogen om de belangen van het instituut Nationale ombudsman doeltreffend te behartigen, in contacten met de politiek en het bestuur. De Nationale ombudsman moet zich gemakkelijk mengen in maatschappelijke discussies in een publieke openbare omgeving, en met gezag bijdragen aan publieke meningsvorming gevoed door zijn specifieke kennis en ervaring" and in 2.6: "De Nationale ombudsman moet in staat zijn om algemene tekortkomingen in het overheidshandelen vast te stellen, de oorzaken daarvan aan te duiden en daarvoor oplossingen voor te stellen." The letter can be found on <https://zoek.officielebekendmakingen.nl/kst-30052-1.html>, consulted on 19 June 2011; Meurs, P.L. (2007). pp.22, 28.

1151 <http://nos.nl/artikel/217764-rechters-hekelen-bezuinigingsplannen.html> and <http://www.nu.nl/politiek/2132688/rouvoet-noemt-ombudsman-onzorgvuldig.html>, consulted 8 May 2011.

1152 http://vorige.nrc.nl/binnenland/article2435814.ece/Kabinet_geschokt_door_kritiek_van_ombudsman and <http://nos.nl/artikel/119391-kabinet-boos-op-nationale-ombudsman.html>, consulted 8 May 2011.

1153 Interview with Alex Brenninkmeijer, the National Ombudsman, 18 April 2011.

1154 <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/325496/2009/04/01/Ombudsman-onderzoekt-behandeling-De-Roy-van-Zuydewijn.dhtml>;
<http://www.eenvandaag.nl/binnenland/35506/ombudsman-overheid-zat-de-roy-van-zuydewijn-niet-dwars>; <http://www.eenvandaag.nl/politiek/35325/balkenende-frustreert-onderzoek-ombudsman>, consulted 8 May 2011.

1155 Interview with Alex Brenninkmeijer, the National Ombudsman and Stephan Sjouke, Head International Affairs Nationale Ombudsman, 18 April 2011.

Although his independence is essential, it is important that the National Ombudsman act within the description of his assigned task. Some analysts were of the same opinion as the National Ombudsman and agreed that the Queen's Office can be the subject of an investigation by the National Ombudsman.¹¹⁵⁶

In 2010 the National Ombudsman published his report on this case with the conclusion that the complaint was not valid because the alleged interference could not be substantiated through the documents and the declarations given under oath.¹¹⁵⁷ Generally, the National Ombudsman's independence is respected in practice.¹¹⁵⁸

The National Ombudsman operates freely without interference from other actors and is not engaged in any political or other activities which can compromise his independence or political neutrality.

TRANSPARENCY (BY LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ombudsman?

Duty to make public

Before completing an investigation, the National Ombudsman informs the administrative organ which is involved, the person whose conduct is part of the investigation and the complainant about his

judgment.¹¹⁵⁹ It is the National Ombudsman who determines the time-lines for this.¹¹⁶⁰ The complaints and the corresponding final report of the National Ombudsman are to be made available to those involved, but the personal information of people filling complaints is kept secret.¹¹⁶¹ Reports also are made available to the public.¹¹⁶² Anyone can obtain an extract of an investigation report; a small fee needs to be paid.¹¹⁶³ The law does not mention time-lines for any document or report to be made public.

There is a general provision which prescribes that the National Ombudsman has to send an annual report regarding his activities to the Tweede Kamer and Senate, to ministers and to representative organs of the provinces, municipalities and water authorities and other boards to which the National Ombudsman is responsible for dealing with their complaints.¹¹⁶⁴ The annual report should also be made available to the public. There is no provision which prescribes when the annual report is to be made available.

Disclosure of financial information

Since 2006 a law requires ministers and other top officials' income to be made public, however this law does not apply to the National Ombudsman even though his income is comparable to that of ministers.¹¹⁶⁵ There are no other duties to declare financial information.

There are few statutory provisions in place to ensure that important information on the activities and decisions of the National Ombudsman are available to the public.

1156 Roger Vleugels, Legal advisor on Openness of Government and Jit Peters, Professor in Constitutional Law at the University of Amsterdam in episode of TV-broadcast of Eenvandaag of 10 November 2009.

1157 De Nationale Ombudsman (2010). Overheidsbemoeden in privéleven De Roy van Zuydewijn niet gebleken.

1158 Interview with Elisabeth Lissenberg, Professor (emerita) of criminology of the University of Amsterdam, Faculty of Law, 30 May 2011.

1159 Art. 9:35 paragraph 1 Algemene wet bestuursrecht.

1160 Ibid., Art. 9:35 paragraph 2.

1161 Ibid., Art. 9:36; Art. 10 Wet openbaarheid van bestuur; <http://www.nationaleombudsman.nl/wat-er-met-uw-klacht-gebeurt>, consulted 13 May 2011.

1162 Art. 9:36 paragraph 5 Algemene wet bestuursrecht.

1163 Ibid., Art. 9:36 paragraph 5.

1164 Article 16 paragraph 2 Wet Nationale ombudsman; Carlens, B. and Verbeeck, B. (2010). p.20.

1165 Wet openbaarmaking uit publieke middelen gefinancierde topinkomens.

TRANSPARENCY (IN PRACTICE)

To what extent is there transparency in the activities and decision-making processes of the ombudsman in practice?

Duty to make public

The National Ombudsman is active in making his activities and decisions transparent and available to the public. Although there are only a few formal provisions safeguarding transparency, the National Ombudsman goes further than the legal provisions demand. The National Ombudsman publishes information on two different websites. One website was launched in December 2010 and is specifically designed for complainants; here information on procedures is provided and explained in detail.¹¹⁶⁶

The second website is designed for citizens wanting to be informed on recent developments and current affairs regarding the National Ombudsman. The website is visually impaired-friendly through the option to enlarge the text or have the information read out by a computer voice.¹¹⁶⁷ Particularly the (summary) annual reports, government's reaction to the annual reports, thematic documents on e.g. Work and Income, news articles and speeches are published here.

The annual reports to the Tweede Kamer provide information on the work done. Detailed information is also provided on the complaints: the number of complaints received, referred and completed. Additionally ratios of effective intervention by the National Ombudsman, the duration of cases filed and finalised, type and number of organisations or issues cited in the complaints are presented. A specific chapter in the annual report provides comprehensive management information on, among other things, budget, staffing, training and sick leaves.

Involvement of the public

The National Ombudsman does involve the public and intermediaries. The National Ombudsman has organised citizen's panels and via the website and other media consults citizens about a specific subject, for example the communication via email between citizens and governmental organisations.¹¹⁶⁸

Disclosure of financial information

Although there is no legal obligation for it, the office holder publishes his income in the annual report because he regards this as desirable on the grounds of transparency.¹¹⁶⁹

The public is able to readily obtain relevant information on the organisation and functioning of the National Ombudsman, on decisions that concern them and how these decisions were made.

Accountability (by law)

To what extent are there provisions in place to ensure that the ombudsman has to report and be answerable for its actions?

The main provision is that the National Ombudsman is legally required to present his annual report to the Tweede Kamer and the Senate and to government and those authorities which have been the subject of complaint.¹¹⁷⁰ In 2007 the Tweede Kamer voted in favour of a motion which expressed the desirability to assess in what way the National Ombudsman accounts for his conduct in an annual debate with the Tweede Kamer.¹¹⁷¹ There is no deadline for the National Ombudsman when to deliver the annual report. The National Ombudsman can determine if and when he informs the Tweede Kamer and Senate and other representative organs on the outcome of his investigations.¹¹⁷² The administrative

¹¹⁶⁶ <http://www.nationaleombudsman.nl>, consulted 13 May 2011.

¹¹⁶⁷ <http://www.nationaleombudsman-nieuws.nl>, consulted 13 May 2011.

¹¹⁶⁸ Information based on email exchange (d.d. 3 May 2011) with Stephan Sjouke, Head International Affairs at the Office of the National Ombudsman and <http://www.nationaleombudsman-nieuws.nl/nieuwsbrief/item/onderzoek-naar-e-mailverkeer-burger-en-overheid>, consulted 13 May 2011.

¹¹⁶⁹ <http://www.nationaleombudsman-nieuws.nl/jaarverslag/bijlage-3-nevenfuncties-ambtsdragers>, consulted 14 May 2011.

¹¹⁷⁰ Article 16 paragraph 1 Wet Nationale ombudsman.

¹¹⁷¹ Kamerstuk 30990 nr.10.

¹¹⁷² Article 16 paragraph 3 Wet Nationale ombudsman.

actions taken by the National Ombudsman cannot be judicially reviewed. The National Ombudsman is not required to have a complaints procedure.¹¹⁷³

There are few provisions which aim at holding the National Ombudsman accountable for its actions, which could be viewed as problematic if one considers the impact his opinions and interventions have.

ACCOUNTABILITY (IN PRACTICE)

To what extent does the ombudsman report and is answerable for its actions in practice?

Although the legal provisions regarding his accountability are rather limited, the National Ombudsman takes extra initiatives to answer for his actions in practice. It is at the discretion of the National Ombudsman to determine when he sends the annual report to the Tweede Kamer, Senate and government and other public authorities. In practice, the annual reports have always been sent; this is done in March.¹¹⁷⁴

The annual reports are comprehensive and focus on the content of the activities carried out, e.g. the initiatives taken, complaints received, and recommendations made and complied with by the administration. In most years, the annual meeting with the Tweede Kamer Commission on BZK to discuss the annual report¹¹⁷⁵, has taken place. The National Ombudsman is regularly invited by other

Tweede Kamer commissions to share his vision on subjects such as youth care, or to discuss more structural issues regarding certain public authorities such as the Healthcare Inspection. Here the National Ombudsman freely expresses his opinion and provides recommendations on ways to improve the service provided by these authorities.¹¹⁷⁶ This information is debated in a meeting with the National Ombudsman and the Tweede Kamer commission on BZK. A second meeting is held in which the minister of BZK exchanges thoughts on the annual report with the Tweede Kamer.

Complaints procedure

Additionally, citizens can complain about the staff members of the bureau of the National Ombudsman by using the 'Complaints procedure Bureau National ombudsman' (Klachtregeling Bureau Nationale ombudsman).¹¹⁷⁷ The National Ombudsman usually calls the complainant to address the issue.¹¹⁷⁸ In 2010, 42 complaints were filed compared to 35 in 2009.¹¹⁷⁹ Of the complaints in 2010, 20 complaints concerned the time needed for the National Ombudsman to deal with the complaint. Of these, 15 complaints were valid because too much time was needed to handle the complaint. Other complaints concerned the partiality of the staff member, of which one was found to be valid.¹¹⁸⁰

The website of the National Ombudsman does provide the total figures and subject of the complaints; however it does not state how the complaints which were valid have been solved.

¹¹⁷³ Art. 9:1 and art.1:1 lid 1 paragraph f Algemene wet bestuursrecht.

¹¹⁷⁴ Interview with Alex Brenninkmeijer, National Ombudsman, 18 April 2011; <http://www.nationaleombudsman-nieuws.nl/nieuws/2011/toespraak-alex-brenninkmeijer-over-jaarverslag>; http://www.tweedekamer.nl/vergaderingen/commissievergaderingen/volgende_weken/details.jsp?parlisnummer=2011A01805&dayofweek=Woenstag&his=1, consulted 24 December 2011.

¹¹⁷⁵ http://www.tweedekamer.nl/vergaderingen/commissievergaderingen/volgende_weken/details.jsp?parlisnummer=2011A01805&dayofweek=Woenstag&his=1, consulted 24 December 2011.

¹¹⁷⁶ De Nationale Ombudsman (2010). Jaarverslag 2010 p.161; De Nationale Ombudsman (2009). Jaarverslag 2009 p.13; Interview with Alex Brenninkmeijer, the National Ombudsman and Stephan Sjouke, Head International Affairs Nationale Ombudsman, 18 April 2011.

¹¹⁷⁷ <http://www.nationaleombudsman-nieuws.nl/jaarverslag/2-4-klachten-over-het-bureau-nationale-ombudsman>

¹¹⁷⁸ Interview with Alex Brenninkmeijer, National Ombudsman, 18 April 2011; <http://www.nationaleombudsman-nieuws.nl/jaarverslag-2010/3-6-klachten-over-medewerkers-van-de-nationale>, consulted 27 September 2011.

¹¹⁷⁹ De Nationale Ombudsman (2010). Jaarverslag 2010 p.153.

¹¹⁸⁰ <http://www.nationaleombudsman-nieuws.nl/jaarverslag-2010/3-6-klachten-over-medewerkers-van-de-nationale>, consulted 27 September.

The complaints regarding the judgement following an investigation or the decision not to investigate are not considered to be complaints but requests for reconsideration. The total number of requests for reconsideration was 89 in 2010 and 44 in 2009.¹¹⁸¹ In 2010, 4 requests for reconsideration were found valid.

Reflection on the National Ombudsman

In 2010 a 'Reflection on the National Ombudsman' was published.¹¹⁸² The director of the National Ombudsman had assigned an external research institute to do research into the way the office of National Ombudsman had been taken on and carried out in the last five years, as well as looking at the future role the National Ombudsman might fulfil.¹¹⁸³ The purpose of this research was to get a better understanding of what this specific office holder had accomplished for Dutch society and in particular of the relation between public authorities and citizens. But also to get a better insight into and be accountable for the way the office had fulfilled and to inspire both the National Ombudsman and the institute in their vision for the future.¹¹⁸⁴ The report concluded, among other things, that the National Ombudsman should broaden his field of activity to include assessment of legislation, jurisprudence and privatised public functions, and further should professionalise his organisation. The advice was also to further professionalise the bureau of the National Ombudsman and to focus more on the self-learning ability of the government.

Existing provisions are effective in ensuring that the National Ombudsman has to report and be answerable for its actions in practice. The accountability could be improved if the outcome of complaints could be made available as well.

INTEGRITY (BY LAW)

To what extent are there provisions in place to ensure the integrity of the ombudsman?

Officeholder

The office-holder's integrity is safeguarded by the provisions in the law regarding the grounds for his dismissal, when e.g. the Tweede Kamer is of the opinion that his conduct is damaging the trust confided in him.¹¹⁸⁵ The office-holder and substitute office-holders are required to take an oath/pledge.¹¹⁸⁶ Before accepting office, the (substitute) National ombudsman declares or promises in order to be appointed not to have promised, directly or indirectly, on whatever pretences, any gift or favour. He declares and promises that in order to act or refrain from acting in this office no direct or indirect promises were made or gifts were taken, or will be made or taken. Side-functions have to be made public.¹¹⁸⁷

Integrity policy

The staff members are civil servants; this means that the Civil Servants Act is applicable. There is therefore a duty for the competent authority to design and implement integrity provisions (*For details, please refer to Pillar report on public sector.*) For instance, they need to inform the director of the National Ombudsman on their other positions, gifts above EUR 50 are not allowed and the whistle-blower procedure is applicable.¹¹⁸⁸ Notwithstanding these few provisions, there is no comprehensive framework to promote integrity as required by the Civil Servants Act. Instruments such as a 'code of conduct' or a 'conflict-of-interest manual' are not available.

1181 <http://www.nationaleombudsman-nieuws.nl/jaarverslag-2010/3-6-klachten-over-medewerkers-van-de-nationale>, consulted 27 September 2011.

1182 Boutellier, J.C.F., Hermens, F.J., Lünemann, K., Meere, de F.B.J. and Mein, A.G. (2010).

1183 Ibid., p.5.

1184 Ibid., p.7.

1185 Art. 8 to 10 and art. 3 paragraph 2 sub e, f and g Wet Nationale ombudsman.

1186 Art. 8 Wet Nationale ombudsman.

1187 Article 5 paragraph 3 and article 9 paragraph 4 Wet Nationale ombudsman.

1188 Art. 125quater Ambtenarenwet and Rechtspositie rijksambtenaar juli 2010 Ministerie van Binnenlandse Zaken en Koninkrijksrelaties and information based on email exchange (d.d. 3May 2011) with Stephan Sjouke, Head International Affairs at the office of the National Ombudsman.

The integrity policy of the bureau of the National Ombudsman is a 'work in progress'. An integrity policy plan was made in 2010 based on the outcome of the SAINT-monitor.¹¹⁸⁹ This is an instrument developed by the AR and BIOS to provide a self-assessment of integrity risks in organisational processes and of the comprehensiveness of the entire set of rules and policies to promote integrity.

According to the website of the National Ombudsman, specific integrity provisions have been developed in 2010 and will be rolled out in 2011.¹¹⁹⁰ The integrity policy plan provides an overview of all integrity instruments and their date for completion (from January to December 2011). Among other things, a code of conduct, a confidential adviser, registry of side-functions and 'revolving door' provisions are to be introduced. It is still to be seen when and how the integrity provisions will become effective.

Although the general legal provisions applicable to the civil servants working for the bureau National Ombudsman apply, these have not led to any comprehensive formal provisions being present in the institution and applicable to the office holder.

Integrity (in practice)

To what extent is the integrity of the ombudsman ensured in practice?

Office-holder

The National Ombudsman and substitute National Ombudsmen published their side-functions in an annex to the annual report.¹¹⁹¹ Except for their income, there is no disclosure regarding other financial interests.

Incidents

Although there is not yet a comprehensive framework to safeguard integrity, integrity is ensured in practice. In the early days of the National Ombudsman, there was one incident in which a member of staff misused his position by addressing the poor condition police cells in the city of Gorinchem were, through informing the newspaper NRC Handelsblad.¹¹⁹² He did so without notifying the National Ombudsman on what he discovered.¹¹⁹³

In 2010 one complaint which involved the lack of impartiality of a staff member of the National Ombudsman was considered to be valid. The 2010 annual report of the National Ombudsman does state this as a fact, but does not elaborate on how this was resolved.¹¹⁹⁴

Integrity risks

In 2006/07 the director of the National Ombudsman asked an external accountancy firm to carry out an integrity analysis.

The conclusion of this research was that there were few integrity risks within the institute of the National Ombudsman, mainly because of the nature of the work carried out by the institution. The report is not available to the public. The National Ombudsman stressed that in the last 5 years the internal culture has developed in such a way that members of staff feel free to address integrity issues with each other. Instead of the classical focus on formalities and legal provisions, the attitude of staff members has changed.¹¹⁹⁵

There is an adequate approach for ensuring the integrity of members of the National Ombudsman which includes addressing alleged misbehaviour.

¹¹⁸⁹ Beleidsplan Integriteit Bureau Nationale ombudsman 2010 (internal document).

¹¹⁹⁰ <http://www.nationaleombudsman-nieuws.nl/jaarverslag/4-3-1-integriteit>, consulted 14 May 2011.

¹¹⁹¹ De Nationale Ombudsman (2010). Jaarverslag 2010 p.161; De Nationale Ombudsman (2009). Jaarverslag 2009 p.104.

¹¹⁹² <http://www.volkskrant.nl/vk/nl/2824/Politiek/archief/article/detail/491382/1997/03/29/Het-dilemma-van-de-ambtenaar.dhtml>

¹¹⁹³ Interview with Elisabeth Lissenberg, Professor (emerita) of criminology of the University of Amsterdam, Faculty of Law, 30 May 2011.

¹¹⁹⁴ <http://www.nationaleombudsman-nieuws.nl/jaarverslag-2010/3-6-klachten-over-medewerkers-van-de-nationale>, consulted 27 September.

¹¹⁹⁵ Interview with Alex Brenninkmeijer, the National Ombudsman and Stephan Sjouke Head International Affairs Nationale Ombudsman, 18 April 2011.

INVESTIGATION

To what extent is the ombudsman active and effective in dealing with complaints from the public?

Office-holder

The National Ombudsman is active in dealing with complaints from the public. The role of the institute has developed over the years; the different office-holders have all in their own way influenced the position of the institute in Dutch society. One office-holder focussed on reaching out to the more vulnerable individuals in society, for instance refugees, and accomplishing change in the way they were treated by state authorities. The current office-holder has initiated the use of mediation. The National Ombudsman is increasingly taking on the role of mediator between complainant and public authority.¹¹⁹⁶ The Tweede Kamer is also responsible for this change in perception of how the National Ombudsman should carry out its work. The 2005 'Profile on the National Ombudsman' contained as a selection criterion awareness of the social dimension of the relationship between citizen and government, and this has been taken seriously by this National Ombudsman.¹¹⁹⁷

Outreach

The National Ombudsman is active in making people aware of the existence of his institute, namely, through a renewed website and an outreach campaign (through means of TV) aimed at reaching out to citizens who feel that they are confronted with poor services from the government. Special attention was paid to the lower social economic class, because research indicated that they did not easily contact the National

Ombudsman.¹¹⁹⁸ The website of the National Ombudsman is now more user-friendly and provides all relevant information for complainants on how to file their complaint. Complaints can be filed by telephone, letter or email. The website provides an overview and checklist regarding the type of complaints which the National Ombudsman can help citizens with. There are example letters, videos and example cases to explain the possibilities and what can be expected from the National Ombudsman.

Investigations

Complaints to the National Ombudsman may be immediately dismissed for not respecting the scope of its duties¹¹⁹⁹ or be referred to the competent authorities when the internal complaint procedure has not been followed.¹²⁰⁰ Regardless of the outcome of the complaint, a response is always given to the person who filed it. The National Ombudsman is successful in using the method of intervention to provide a solution in those cases which are not so complex.¹²⁰¹ The method of investigation results in a report stating a judgment on the decency of conduct of the public authority and sometimes includes a recommendation to the public authorities. *For figures on complaints received and the way they were dealt with, please refer to Resources.*¹²⁰²

In 2010, the National Ombudsman carried out 8 investigations at his own initiative.¹²⁰³ This is usually done when he suspects a more structural bottleneck in the relation of citizen and government. He investigates what is causing this situation instead of dealing with the individual complaint. One investigation concerned the increasing complaints from citizens on the way the

¹¹⁹⁶ Profiel: episode of TV-broadcast 'Een portret van Alex Brenninkmeijer. De Nationale ombudsman' of 14 November 2010.

¹¹⁹⁷ Kamerstuk 30 052 nr. 1.

¹¹⁹⁸ Note: this was instigated by the previous office-holder Mr. R.Fernhout and got renewed attention from the current office-holder.

Interview with Elisabeth Lissenberg, Professor (emerita) of criminology of the University of Amsterdam, Faculty of Law, 30 May 2011;

Interview with Alex Brenninkmeijer, National Ombudsman; interview with Stephan Sjouke, Head International Affairs Nationale Ombudsman, 18 April 2011.

¹¹⁹⁹ Art. 9:22 and 9:23 Algemene wet bestuursrecht.

¹²⁰⁰ Ibid., Art. 9:19.

¹²⁰¹ Boutellier, J.C.F., Hermens, F.J., Lünemann, K., Meere, de F.B.J. and Mein, A.G. (2010). p.21.

¹²⁰² De Nationale Ombudsman. (2010). Jaarverslag 2010 p.13.

¹²⁰³ Ibid., p.13.

municipalities enforce laws on pollution, noise, issues with neighbours, etc. An inventory was made of the type and complexity of the complaints. These were discussed by the National Ombudsman during a round-table meeting with representatives from the municipalities and experts. This resulted in a practical tool with directives for municipalities on how to deal with these types of complaints.¹²⁰⁴ Another investigation, begun at its own initiative, concerned the registration of foreigners in the Schengen Information System. According to the National Ombudsman, not enough consideration had been given to the far-reaching consequences such a registration might have: it may lead to a prohibition to be on European soil.¹²⁰⁵

Satisfaction

The authority of the National Ombudsman depends on the effect of his work for the complainant and the administration.¹²⁰⁶ The general perception of the National Ombudsman is positive, from the complainants' point of view and from the public authorities.¹²⁰⁷ Since 2010 the National Ombudsman contacts citizens whose complaints have been dealt and asks them to evaluate the service provided by the National Ombudsman on aspects such as: duration of procedure, accessibility and whether the information received was clear. They generally appreciated the service with a score of 8.2 (scale 1–10).¹²⁰⁸

The investigations which the National Ombudsman initiated himself included, among others, the way state authorities handle the letters from citizens, the way transport to school for disabled children takes place and the extent to which the personal data of football

supporters are collected by state authorities.¹²⁰⁹ The National Ombudsman is generally very active and successful in dealing with complaints from the public.

PROMOTING GOOD PRACTICE

To what extent is the ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?

Appreciation

The National Ombudsman is active and effective in raising awareness of decent conduct or action in the provision of services on the part of the authorities. There are different means by which the National Ombudsman tries to accomplish this, for example, by making recommendations.

In 2010 the National Ombudsman gave 77 lecturers to inspire groups of civil servants to deal with citizens in a decent way.¹²¹⁰ The public authorities are positive about the National Ombudsman's focus on decency in service-providing.¹²¹¹ During the interviews for the Reflection on the National Ombudsman, some claimed that this approach has led them to think less from the point of view that the 'rule is rule' and to become more aware of the citizen's perspective. Hereby this increased the customer focus in their service-providing.¹²¹² There has also been some criticism about the 'norms for decency' which the National Ombudsman uses to assess claims. According to some of the representatives, this has led to more bureaucracy.¹²¹³

¹²⁰⁴ Ibid., p.44–45.

¹²⁰⁵ De Nationale Ombudsman (2010). Toegang verboden. Onderzoek naar de opname van vreemdelingen in het Schengen Informatie Systeem en de informatievoorziening hierover.

¹²⁰⁶ Oosting, M. (2007) p.258.

¹²⁰⁷ Boutellier, J.C.F., Hermens, F.J., Lünemann, K., Meere, de F.B.J. and Mein, A.G. (2010) p.33.

¹²⁰⁸ De Nationale Ombudsman (2010). Jaarverslag 2010 p.159.

¹²⁰⁹ <http://www.nationaleombudsman-nieuws.nl/jaarverslag-2010/1-1-2-effecten-onderzoek-uit-2009>;

<http://www.nationaleombudsman-nieuws.nl/nieuws/2011/ombudsman-onderzoekt-verzamelen-van>, consulted 20 June 2011.

¹²¹⁰ De Nationale Ombudsman (2010). Jaarverslag 2010 p.14.

¹²¹¹ Boutellier, J.C.F., Hermens, F.J., Lünemann, K., Meere, de F.B.J. and Mein, A.G. (2010). p.19.

¹²¹² Ibid.

¹²¹³ Ibid., p.20.

Jurisdiction

The number of governmental agencies within the jurisdiction of the National Ombudsman is extensive. The website provides an alphabetic overview of those agencies and excludes institutions which are part of the judiciary.¹²¹⁴ The competence of the National Ombudsman has been debated by government when a complaint involved their conduct. The National Ombudsman explicitly called himself competent and carried out the investigation. It is common for the National Ombudsman to consult agencies before criticising the agency or person involved. However, there have been incidents in which the National Ombudsman felt he could freely express his opinion before he had done an investigation. This sometimes led to tension between politicians and the National Ombudsman. Also, his opinion could hinder third parties which have a legal task to investigate a case and establish the truth; the results of these investigation might be perceived differently.

Advice

The National Ombudsman increasingly provides advice to public organisations on how to improve the quality of their services. The public authorities argue that the National Ombudsman and his staff are easy to approach and are willing and active in sharing ideas how to improve quality in service-providing.¹²¹⁵ On a regular basis, there is contact between the National Ombudsman and his members and staff and the public authorities to deal with complaints internally. In 2008 the Tax bureau received 16,000 internal complaints,

2,700 of those were also filed with the National Ombudsman and led to 1,200 interventions. The National Ombudsman had made a selection about which subjects the complaints were about, and addressed this with the Director-General and Minister of the Ministry of Finance, who provided their points of view. This resulted in a report which was sent to the Tweede Kamer and which in the end led to concrete steps taken by the Ministry of Finance, e.g., the Tax Bureau invested in the recording of complaints, the Tax Bureau helpline improved, special teams were formed to deal with the more complex problems and internal mediation began to be used.¹²¹⁶

The National Ombudsman was also actively involved in the project of the Ministry of BZK called 'Pleasant contact with the government'.¹²¹⁷ In this project, civil servants of different governmental agencies were involved in improving their services by carrying out their legal tasks with more customer focus. Problems which arose were dealt with in a different way, by using mediation and communication skills in order to prevent escalation in the form formal complaints and appeals. The results were positive: the number of formal complaints filed decreased, while citizens' appreciations for the services rendered increased.¹²¹⁸ However, a small risk might be that the National Ombudsman might receive a complaint regarding a public organisation for which he provides training.

The National Ombudsman is generally very active and successful in raising awareness within government and the public about standards of ethical behaviour.

1214 <http://www.nationaleombudsman.nl/overheidsinstanties-waarover-de-nationale#M>, consulted 14 May 2010.

1215 Boutellier, J.C.F., Hermens, F.J., Lünemann, K., Meere, de F.B.J. and Mein, A.G. (2010). p.22.

1216 Beemster, R., Brenninkmeijer, A.F.M. and Stehouwer, A. (2010). p.182.

1217 Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (2010). Eindrapportage pioniertraject mediationvaardigheden resultaten, analyses & aanbevelingen. Prettig contact met de overheid.

1218 Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (2010). Prettig contact met de overheid deel 2. Eindrapportage pioniertraject mediationvaardigheden resultaten, analyses & aanbevelingen. p.167.

6.8 SUPREME AUDIT INSTITUTION

Role in NIS

In order to assure that public money is spent correctly in the public sector, an independent institution is required which is responsible for auditing government income and expenditure. This national audit institution should be an effective watchdog over financial integrity and the credibility of reported information by public officials. The financial information should be assessed by this audit institution so that public officials can be held accountable to the public and to the legislature for their performance and stewardship of public funds and assets.

In order to effectively carry out this audit function, the audit institution should assess whether national government policy is implemented as intended, promote efficiency and cost effectiveness, and prevent corruption through the development of financial and auditing procedures.

Its independence should be protected by special provisions on the appointment and removal of the office-holder. This should be independent from the control of the governing party, politicians, or senior civil servants in order to prevent political influence or patronage.

To be effective, any external auditor must be immune from pressures from the clients or institutions being audited. If the role of the audit institution is to be a properly independent and constitutional one, the audit institution and its functions should be accountable and subject to periodic reviews by the legislature.¹²¹⁹

Sources

The desk research for this pillar report started with a broad investigation into the tasks of the Netherlands Court of Audit (AR – Algemene Rekenkamer) and current affairs concerning the AR. Literature was examined, as well as the applicable legal provisions. Additionally, audit reports from the AR and the 2006 peer review on the Netherlands AR were analysed. Additionally, a media scan was made. In-depth interview were held with senior auditors from the AR and with an external expert with a good notion of the AR. This led to a more in-depth view on the AR's integrity in practice. All four interviews were held face-to-face. The senior auditors of the AR have expressed their wish to be paraphrased anonymously.

Interviews held:

- Interviewee 5, Senior auditor at the Netherlands Court of Audit, interview held the 18th of April 2011.¹²²⁰
- Interviewee 6, Senior auditor at the Netherlands Court of Audit, interview held the 18th of April 2011.¹²²¹
- Interviewee 7, Senior auditor at the Netherlands Court of Audit, interview held the 18th of April 2011.¹²²²
- Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, interview held the 25th of May 2011.

¹²¹⁹ Pillars of Integrity: Confronting Corruption. The Key Elements of a National Integrity System. Transparency International, March 2003 p.12–15.

¹²²⁰ This interviewee requested anonymity.

¹²²¹ This interviewee requested anonymity.

¹²²² This interviewee requested anonymity.

SUPREME AUDIT INSTITUTION

Status: Strong**Summary**

The AR is one of the pillar of the Dutch NIS where strong integrity safeguards are present. Its resources are adequate, but there is a potential risk regarding the effect that state budget-cuts might have on the internal audits at the ministries since the AR's audits are based on this control structure. If this is likely to be weakened because of cutbacks, this will directly have an effect on the AR's audits. Integrity is one of the priorities of the AR, both its own integrity and that of ministries and other public sector organisations could be affected.

The AR takes on a rather proactive approach its audits. It audits what it considers to be a priority whether this opinion is shared by the Executive or legislature or not. The AR accounts for its conduct by giving those involved in an audit the option to respond to the outcome; this reaction is always enclosed in an audit report. The AR is effective in its audits and provides ministries with advice on how to improve their financial management. The selection criteria for members of the Board of the AR are not clearly defined by law, but the procedure for selection is laid down by law. Members of the Board are appointed for life by royal decree based on nominations which the Tweede Kamer and the Board have established. In practice, the political party background of (candidate) Board members plays an important role in their appointment. This is exemplary for key positions within the Dutch public administration, for within High Councils of State a balance of political party background is sought within the Board as well as between them. However, the independence of the AR is ensured in practice since the AR can decide on its own resource allocation, and that provides an adequate safeguard for its autonomy. The AR has proven to take integrity as its priority, both within its own organisation through self-assessment and integrity policies, but also in the integrity audits it carries out at ministries. The Netherlands AR audits

systems and individuals to the extent that the expenditure of individual ministers and state secretaries, involving the provisions and compensations for fulfilling their office, are audited. It does not further investigate or sanction misbehaviour by public officeholders, this is done by the investigative authorities.

Structure and organisation

There are various levels of audit institutions in the Netherlands (at national and local level). The AR is the external audit institution at national government level, while local audit institutions are responsible for auditing at provinces, local municipalities and water authorities. The AR is an independent High Council of State, consisting of a Board which is made up of a President and two members.¹²²³ The AR has broad competence to audit those services and departments of national government institutions which it considers necessary.¹²²⁴ The AR aims to audit and improve the regularity, efficiency, effectiveness and integrity with which the State and associated bodies operate. This means that it audits whether national government revenues and expenditures are received and spent correctly.¹²²⁵ In doing so, the AR is part of a comprehensive audit system whereby first of all a financial audit is carried out by the internal audit service of a ministry. In its audits the AR assesses independently whether there are sufficient safeguards in these internal audits. Based partly on this, the AR determines the points which require its own investigation. In 2007 the Dutch cabinet decided to create one single government-wide internal audit department: the Central Audit Service (RAD – Rijksauditedienst). Gradually the internal ministerial audits are being taken over and carried out by the RAD.¹²²⁶

The AR also carries out performance audits of institutions that use public funds to carry out statutory tasks (arm's length institutions). This is a statutory task of the AR and includes institutions such as public

¹²²³ <http://www.courttofaudit.com/english>

¹²²⁴ Art. 87 Comptabiliteitswet 2001.

¹²²⁵ Art. 76 Grondwet.

¹²²⁶ <http://www.rad.nl/000167/Organisatie/>, consulted 17 December 2011.

broadcasters, schools, benefit agencies and police forces.¹²²⁷ In this respect it assesses whether national government policy is implemented as intended and whether the policy goals are achieved. In carrying out its various audit functions, both in the areas of financial and performance audit, the AR aims at not only reporting on 'things going wrong', but also contributing in a constructive way to a more efficient and effective performance of the Government. It thereby strictly adheres to the principle of 'hearing both sides', i.e. before publishing its findings, conclusions and recommendations, it will discuss these with the responsible authorities and include their comments in its report.¹²²⁸

The AR also audits the Netherlands EU member state declaration.¹²²⁹ This pillar report focuses entirely on the AR.

ASSESSMENT

RESOURCES (IN PRACTICE)

To what extent does the supreme audit institution have adequate resources to achieve its goals in practice?

Budget

The budget for the AR is part of the general budget for High Councils of State, and falls within the

responsibility of the Ministry of the Interior and Kingdom Relations (BZK – Ministerie van Binnenlandse Zaken en Koninkrijksrelaties). The AR is fully authorised to determine its resource allocation. As a result of a control agreement with BZK, the AR agreed to take on a non-obliging financial duty of effort to increase efficiency by 5 percent.¹²³⁰ The resource allocation for 2010 was EUR 30.4 million (realisation approximately EUR 30 million), compared to a budget of EUR 30.2 million in 2009 (realisation EUR 30.1 million).¹²³¹ Senior auditors from the AR explained that from their point-of-view current resources can be considered sufficient to perform their tasks; there are enough resources to carry out their core activities.¹²³² The budget-cuts for the AR were relatively small compared to those for the ministries. Extra financial resources were made available for the AR to carry out its extraordinary tasks, such as the EU member state declaration.¹²³³ Nevertheless, it is still to be seen how state budget-cuts will affect the national audit control structure which exists of ministerial internal audit services and the Central Audit Service. The extent to which the AR will continue to achieve its goals depends a lot on the effect the budget-cuts have on the quality of the internal audits.

Human resources

At the end of 2010 the AR had 305 employees (277 full-time equivalents), compared to 319 employees (294 full-time equivalents) at the end of 2009.¹²³⁴

1227 Art. 85 Comptabiliteitswet 2001; http://www.courtsofaudit.com/english/Organisation/What_do_we_do/Performance_audits, consulted 27 May 2011.

1228 <http://www.intosaiitaudit.org/mandates/writeups/netherlands.htm>, consulted 27 May 2011.

1229 Art. 92 paragraph 1, 5 and 6 Comptabiliteitswet 2001. This declaration concerns the management and use of EU funds in the Netherlands. Its aim is to improve the accountability and control of funds that the Netherlands contributes to and receives from the EU.

1230 Jaarverslag Algemene Rekenkamer 2009 p.64.

1231 All amounts have been rounded off. The specific amounts can be found in Jaarverslag Algemene Rekenkamer 2010 via http://www.rekenkamer.nl/Verslag_2010/Verslag_2010/Algemene_Rekenkamer_in_bedrijf_Financiën/Realisatie_2010/, consulted 29 May 2011.

1232 Interviewee 5, senior auditor at the Netherlands Court of Audit, 18 April 2011; Interviewee 6, senior auditor at the Netherlands Court of Audit, 18 April 2011.

1233 Interview with interviewees 5, 6 and 7, all senior auditors from the Netherlands Court of Audit, 18 April 2011; http://www.rekenkamer.nl/Actueel/Onderzoeksrapporten/Introducties/2010/05/Rapport_bij_de_Nederlandse_EU_Lidstaatverklaring_2009, consulted 27 May 2011.

1234 All figures have been rounded off. The real figures can be found via http://www.rekenkamer.nl/Verslag_2010/Verslag_2010/Algemene_Rekenkamer_in_bedrijf/Personeel, consulted 27 May 2011.

This decrease is the result of the AR's duty to save EUR 703,000. There was a temporarily halt on openings, and the AR strove for a lowering of the average manning.¹²³⁵ According to senior researchers, the expertise available within the AR is sufficient, but there is a shortage of financial experts; in general, public organisations have difficulty in attracting financial experts.¹²³⁶ In its annual report 2010, the AR referred to a practical incident involving a software programme. This involved the transformation of the new (national government) HR payroll system which initially led to issues with the way data was presented in the system. The AR noted that it was impossible, as a small organisation, to be involved in the meetings regarding these developments. How small this issue may have seemed, it does reflect the limits the current capacity brings along.¹²³⁷

Overall, resources and human resources are deemed as sufficient for the AR to perform its tasks. The state budget-cuts did not have as big impact on the AR as they did on other public organisations. However, there is a real risk that state budget-cuts could have detrimental effects on the way the AR audits if the quality of internal audits is no longer up to par.

INDEPENDENCE (BY LAW)

To what extent is there formal operational independence of the supreme audit institution?

Appointments

The members of the Board are appointed for life by royal decree; according to the Government Accounts Act this means retirement at the age of 70.¹²³⁸ The appointment is prepared by both the Board and

parliament. The Board selects six candidates. This list of six is submitted to the Tweede Kamer.¹²³⁹ The Tweede Kamer submits a list with the names of three candidates to the Cabinet, which appoints one of the candidates as a new member.

Out of the three Board members, a President is appointed by royal decree at the nomination of the Minister of BZK. The secretary-general, a civil servant, is also appointed by royal decree at the recommendation of the AR.¹²⁴⁰ He/she advises the Board and heads the professional organisation. The Constitution does not refer explicitly to the independence of institutions such as the AR. The Government Accounts Act 2001 (Comptabiliteitswet) does do so, although indirectly. The independence of the institution can be distilled from the appointment for life of its members by royal decree, which originates from the perception that this strengthens their independence.¹²⁴¹ Additionally, the independence of the AR is ensured through its right to decide autonomously on its resource allocation.

The law provides a general prohibition for members of the AR and the secretary-general to take on additional functions which might be of risk to their independence or to be a collegial member of a public authority for which appointment takes place by election, or to be in a public office for which a fixed wage or remuneration is received.¹²⁴² There are no restrictions on the political affiliation of Board members and the secretary-general of the AR. The professional criteria for candidates are not very specific. Other than age limitation, Dutch citizenship and these incompatibilities, no professional criteria are formulated in the Constitution or Governments Accounts Act.¹²⁴³ It is therefore difficult to get an idea of the selection criteria used in the appointment of the AR's Board members.

¹²³⁵ Jaarverslag Algemene Rekenkamer 2010.

¹²³⁶ Interviewee 5, senior auditor at the Netherlands Court of Audit, 8 April 2011.

¹²³⁷ Jaarverslag Algemene Rekenkamer 2010.

¹²³⁸ Art. 77 paragraph 1 Grondwet and art. 70 and art. 74 paragraph 1 Comptabiliteitswet 2001.

¹²³⁹ Art. 70 paragraph 3 Comptabiliteitswet 2001.

¹²⁴⁰ Ibid., Art. 72.

¹²⁴¹ Ibid., Art. 70 paragraph 1.

¹²⁴² Ibid., Art. 73 paragraph 2 and 3.

¹²⁴³ Raad voor het openbaar bestuur (Rob) (2006). p.39.

Position and competences

The law obliges the AR to carry out regularity and performance audits.¹²⁴⁴ Similar to other state institutions, only the legislature (government and parliament) can determine and amend the constitutional and statutory provisions concerning the composition and competency of the AR.¹²⁴⁵ The AR derives its statutory base from the Constitution, which stipulates that the AR examines whether the state's revenues and expenditures are received and spent correctly.¹²⁴⁶

An important safeguard for the AR's independence is its own discretion to decide what it audits. The AR determines its own activity programme and methods. In addition to the annual audit into the state's revenues and expenditures, the AR initiates its own audits.¹²⁴⁷

This high degree of formal independence means that the AR is not subject to any ministerial administration, and that it does not receive directives from parliament. While being completely independent, the AR reports both to parliament and to the government.¹²⁴⁸

The AR has its legal base in the Constitution and in statutory provisions. The Tweede Kamer plays an important role in the appointment of Board members. The professional recruitment criteria for candidate Board members are broadly formulated.

Additionally, Board members are allowed to be members of a political party. The AR has great autonomy to determine what it audits. The formal provisions are adequate to safeguard the AR's independence.

INDEPENDENCE (IN PRACTICE)

To what extent is the supreme audit institution free from external interference in the performance of its work in practice?

Appointments

Historically, members of High Councils of State in the Netherlands have originated from one of the three main political movements. After a public procedure with announcements in all Dutch newspapers, the Board selects six candidates. In the advertisement the position is explained, legal requirements are given, as also the appointment procedure.¹²⁴⁹

A study showed that the advertisement does not mention the desired (party) political background of the candidate, although this would be recommended on grounds of transparency now that political affiliation is a prerequisite in practice. The professional criteria mentioned in the advertisement are, among others, insight and extensive experience in political-governmental relations and a large governmental network.¹²⁵⁰ Both, the candidate list which the AR sends to the Tweede Kamer and the final candidate list which the Tweede Kamer submits to the Cabinet, are made public. The six candidates are usually from the same political movement as the Board member who has left.¹²⁵¹ According to the AR, in the last two selection procedures respectively one-third and one-half of the candidates were of the same movement as the departing member.¹²⁵² In practice, most key positions in public administration or society (e.g. media) are filled by persons who are member of a political party. Traditionally, Board members of the AR came from one of the major political movements (liberal, social democratic and christian-democratic).¹²⁵³

1244 Articles 82, 83 and 85 Comptabiliteitswet 2001.

1245 Articles 77 and 78 Grondwet.

1246 Art. 76 Grondwet.

1247 Art. 85–96 Comptabiliteitswet 2001.

1248 Ibid., Art. 84.

1249 Raad voor het openbaar bestuur (Rob) (2006) p.37.

1250 Vacaturetekst Algemene Rekenkamer 'Collegelid Algemene rekenkamer (m/v)' 2010.

1251 Raad voor het openbaar bestuur (Rob) (2006) p.37.

1252 Information provided by the AR via email d.d February 2012.

1253 Baakman, N. (2003). p. 173; <http://www.rijksbegroting.nl/2009/kamerstukken,2010/12/9/han8671a13.html>, consulted 27 May 2011; Raad voor het openbaar bestuur (Rob) (2006) p.38.

In 2011 a change of custom took place when a list of six candidates¹²⁵⁴ from various political parties was drafted, and which resulted in appointing a former MP for GroenLinks¹²⁵⁵ as a Board member.¹²⁵⁶ Such appointments have not led to any known interference in the performance of the AR, and the risk of political interests influencing the AR. Thereby harming its independence is minimised, because the Board speaks with one voice.

Position and competences

The Board has a final say about which audits are to be carried out; this brings along the risk of setting priorities, partly on the basis of political preferences and current themes. In order to safeguard its independence in determining which audits are to be carried out, the AR formulates an AR Strategy for a period of five years.¹²⁵⁷ This helps the AR not to be influenced by the pressing political agenda individual members might be confronted with. Again, it is difficult to determine whether and how the Board member's membership of political parties determines the strategy and choices made. In practice the opinions of individual members of staff and/or individual Board members can differ as to which audit is to be carried out. The senior auditors agree that it is important to have these discussions.¹²⁵⁸ Additionally the 'bestuurlijke boodschap' (governmental/administrative message) which is put to an audit report is decisive for the way the report is perceived by the institution being audited, the Tweede Kamer and the Cabinet. This message might have political consequences and therefore its wording is carefully discussed internally. The criterion is that the message has to be confirmed

in the underlying report. It might occur that the project leader does not agree with the Board member regarding the message put on a report. In this case, the objection is logged in the corresponding file.¹²⁵⁹ One external expert does notice that this shift towards effectiveness of audits brings with it the risk of becoming involved in political debates.¹²⁶⁰

The AR receives requests to carry out audits from the Tweede Kamer, ministers and state secretaries who want an independent expert opinion on a particular matter. Nobody can order the AR to perform such an audit, because of its independence. Besides, requests are honoured if the AR considers it to be of added value and a majority of the Tweede Kamer has made the request.¹²⁶¹ In practice, the AR also audits at its own initiative. The AR's decision to do research into the effectiveness of current Dutch legislation on party financing in the light of international EU and Council of Europe recommendations is a clear example of the AR's autonomy to audit whatever subject is deemed necessary. Recently the AR presented its report on 'The Financing of Political Parties'. The legislature has not given priority to this topic, although GRECO has repeatedly advised the legislature to do so. The report of the AR was clear in its advice that the Dutch legislature should speed up regulating the financing of political parties. It considers this to be essential to safeguard the integrity and transparency of public administration.¹²⁶² *For more information on this report, please refer to Pillar Report on Political parties.*

The independence of the AR seems to be adequately safeguarded in practice. The tradition of appointments of AR Board members along the major political

1254 http://www.rekenkamer.nl/Nieuws/Persberichten/2011/01/Aanbevelingslijst_nieuw_lid_Algemene_Rekenkamer, consulted 17 December 2011.

1255 GroenLinks (Green Party), makes up about 4–8 percent of the seats in the Tweede Kamer. For more information, please refer to www.groenlinks.nl

1256 http://www.rekenkamer.nl/Actueel/Nieuwsberichten/2011/04/Kees_Vendrik_gestart_op_18_april_als_collegelid; <http://groenlinks.nl/node/64219>, consulted 27 May 2011.

1257 http://www.rekenkamer.nl/Actueel/Brochures/The_Netherlands_Court_of_Audit_Strategy_2010_2015, consulted 27 May 2011.

1258 Interview with interviewees 5, 6 and 7, all senior auditors from the Netherlands Court of Audit, 18 April 2011.

1259 Ibid.

1260 Interview with Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, 25 May 2011.

1261 http://www.courttofaudit.com/english/Organisation/What_is_the_Court_of_Audit, consulted 27 May 2011.

1262 Algemene Rekenkamer (2011). Financiering politieke partijen p.28 (Bijlage bij Kamerstuk 32 634 nr. 1).

movements is typical for appointments throughout Dutch public institutions. There is no evidence of interference in the decision-making of the AR, neither has the impartiality of the AR been a point of discussion in parliament, government, media or the public. The AR decides autonomously what it audits. There are no examples of the government attempting to interfere in the work of the AR.

TRANSPARENCY (BY LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decisions of the supreme audit institution?

Audit reports

The annual audit into national government revenues and expenditures and national government policy-implementation results in annual reports which the AR is obliged to send to parliament and to the Cabinet on the third Wednesday in May.¹²⁶³ With these reports the corresponding 'declarations of approval' are sent. If an audit has not been finalised before this date, the AR has to send a preliminary report with an indication as to the status of the audit. The final report and declaration will be sent as soon as possible. On the same day, the Minister of Finance presents the National Financial Annual Report and the ministerial annual reports to the Tweede Kamer. The National Financial Annual Report states what has been realised in the previous year compared to the budget, submitted 18 months earlier on Budget Day. The AR's President thereafter presents the audit reports and states which aspects have been improved and which aspects still need improvement. The day after, the Tweede Kamer will debate with the Cabinet about the reports.

There is a legal obligation for the AR to notify parliament and the Cabinet of those reports which have been made as a result of audits carried out by the AR. Additionally, an annual report of its activities is to be sent to the parliament and the Cabinet before the 1st of

April.¹²⁶⁴ A statutory provision prescribes that the reports should be sent to parliament. This is an indirect way of making the report publicly available.

The Openness of Government Act does not apply to the AR.¹²⁶⁵

There are adequate provisions in place which allow MPs and the public to obtain information on the organisation and the functioning of the AR. Reports have to be made publicly available by sending them to Parliament.

TRANSPARENCY (IN PRACTICE)

To what extent is there transparency in the activities and decisions of the supreme audit institution in practice?

Audit reports

Although the legal provisions to safeguard transparency of the activities and decision-making processes are focused on the annual reporting towards the Cabinet and the parliament, the AR is transparent towards the institutions involved and the public at large. In practice, all legally required documents are prepared by the AR and sent to the Cabinet and the Tweede Kamer. The public has easy access to all reports of the AR, which are found on its website. There is a procedure on the publishing of reports which can be found on the AR's website. The steps to be taken in the process of publishing reports are set. The AR offers a briefing to the Tweede Kamer, ministers and Board members of the institution which is involved in the audit. Those involved are informed about the outcome of the audit. These briefings are confidential. As soon as the Tweede Kamer receives the report, it is also made available to the public. The whole report will then be published on the AR's website. This also includes publishing the reactions by Board members of affected institutions and from ministers. The Tweede Kamer can pose questions to the AR.

Two months after publishing the report, the responsible project leader contacts the institution

¹²⁶³ Articles 82, 83 and 84 Comptabiliteitswet 2001.

¹²⁶⁴ Art. 95 Comptabiliteitswet 2001.

¹²⁶⁵ Art. 1:2 paragraph 2 sub e Algemene wet bestuursrecht and art. 1 Wet openbaarheid van bestuur.

involved to arrange an evaluation talk. Here the audit process and the final product (report) are evaluated and an inventory is made on the practical value of the product.¹²⁶⁶

Website

The website of the AR is kept up-to-date and is easily accessible in both Dutch and English.¹²⁶⁷ All information concerning the AR's internal organisation, audit reports, investigation reports, its activity programme and its own annual report can be found here.

An important document which gives insights into the AR's priorities, mission and its role within society is entitled 'Strategy 2010–2015'; here the selection criteria for its activity programme can be found. One aspect on which the AR could be more transparent, and which was also mentioned in the peer review, is that it could improve its audit reports by providing a full description of the methodology used.¹²⁶⁸

The website of the AR provides a specific section in which the different manuals can be found that AR's staff uses in the audit. Among others, there are manuals on integrity audit and effectiveness, and efficiency audit. In these manuals information is provided on audit methodology; however, this is not fully explained in all the audit and investigative reports. In a reaction to the peer review, the AR mentioned the 'Performance Audit Manual' would be amended by explaining how case studies were selected and used. However, as of July 2011 the manuals available at the website all date back to before the peer review, with exception of the 'Integrity Audit Manual'.¹²⁶⁹ The AR states in its Strategy 2010–2015 that it will do its best to improve transparency in this respect, and that it

wants to peer-review its organisation at the end of this period.¹²⁷⁰ MPs and the public are able to readily obtain relevant information on the organisation and functioning of the AR, but not all manuals can be found on the website.

ACCOUNTABILITY (BY LAW)

To what extent are there provisions in place to ensure that the supreme audit institution has to report and be answerable for its actions?

Annual reporting

The core provision for ensuring accountability is the AR's legal obligation to notify parliament and the Cabinet on those reports which have been made as a result of audits it carried out. On the third Tuesday in September each year (Budget Day), the government presents its plans for the coming financial year. More than 18 months later the ministers account in their annual reports for the activities they carried out. They do so on Accountability Day (the third Wednesday in May). The AR then publishes 'Accounting for Central Government', its report on the national government financial accounts. On the same day it presents its reports about the ministries' annual reports. Additionally, a statement of approval on the national government's annual financial report is given. It thus approves the national government's statement of expenditures and receipts and trial balance. It also informs the Tweede Kamer about the ministries' operational management and their accounts as presented in their annual reports.¹²⁷¹ At this moment, the AR decides whether the financial information in the annual reports and the trial balances is complete and accurate, and it also considers the ministries' operational management. It then issues an opinion on

¹²⁶⁶ http://www.rekenkamer.nl/Over_de_Algemene_Rekenkamer/Werkwijze_Algemene_Rekenkamer/Publicatie_van_rapport_en_daarna, consulted 7 June 2011.

¹²⁶⁷ <http://www.rekenkamer.nl> or <http://www.courttoaudit.com>, consulted 27 May 2011.

¹²⁶⁸ Peer review of the Netherlands Court of Audit March 2007 p.12.

¹²⁶⁹ <http://www.rekenkamer.nl/Actueel/Handleidingen>, consulted 27 May 2011.

¹²⁷⁰ http://www.rekenkamer.nl/Actueel/Brochures/The_Netherlands_Court_of_Audit_Strategy_2010_2015 p.26, consulted 27 May 2011.

¹²⁷¹ In March 2007 the AR was subject to a peer review, carried out by the Supreme Audit Institutions of Norway, South Africa, New Zealand and the United Kingdom; and http://www.courttoaudit.com/english/Organisation/What_do_we_do/Regularity_audits, consulted 12 June 2011.

the policy information presented in the ministries' annual reports. The reporting on the ministries' annual reports disclose any errors and uncertainties that it finds in those annual reports and trial balances. The AR also reports on any problems in the ministries' operational management. It will inform parliament about these, and encourage ministers to improve their operational management. The AR can lodge an objection if it detects irregularities or shortcomings in a minister's financial management or material management.

The AR's own annual reports

There are two annual reports by the AR. The AR's annual report of its activities is to be submitted to parliament and the Cabinet before the 1st of April.¹²⁷² There are a few statutory provisions concerning its content, but no indication as to how this report is to be audited.¹²⁷³ However, annually a budget for the High Councils of State is made, of which one chapter is dedicated to the AR. Overall, the legal requirements regarding this annual report for all High Councils of State are similar to the requirements for the annual report of the ministries. This budget and corresponding annual report is audited by the Central Audit Service because the High Councils of State fall within the responsibility of BZK.¹²⁷⁴ The external audit is done by the AR, which thus audits its own chapter in this annual report.¹²⁷⁵ The Minister of BZK sends this budget and annual report to the Tweede Kamer.¹²⁷⁶

Right to object and right to information

There is no right of appeal to challenge the audit results of the AR. The AR is not considered to be an administrative body according to Dutch law.¹²⁷⁷

The provisions to ensure that the AR has to report and be answerable for its actions are limited and do not

cover all aspects of its accountability. The legal accountability provisions for the Dutch AR are similar to those for the ministries. There are additional duties for the AR to send reports on its audits, but there is no obligation to hear the party which has been audited after the report.

ACCOUNTABILITY (IN PRACTICE)

To what extent does the supreme audit institution has to report and be answerable for its actions in practice?

The AR's own annual report

The AR reports annually on its activities. These annual report are comprehensive and entail all the information on its activity programme, financial situation and human resources. Additionally, it reports on the number and type of audits and investigations it has carried out and whether these have been carried out as foreseen. In the paragraph on 'conduct of business' the AR reports the most noticeable aspect of last year's conduct of business.

Audits of the AR's own financial management

In the annual report of the AR a specific section explains the way the AR is auditing itself. It appoints an accountant from an independent accountancy firm. This accountant checks the annual account and the financial and material management. In 2006 the AR set up an Audit Committee, consisting of external members. This committee advises the secretary-general and the AR's President on its statutory tasks.¹²⁷⁸ The Central Audit Service makes use of the information collected by the internal accountant. The State Audit Services can decide to conduct any additional audit and report to the Minister of Finance as part of the annual report on the High Councils of State.¹²⁷⁹

¹²⁷² Art. 95 paragraph 2 Comptabiliteitswet 2001.

¹²⁷³ Ibid., Art. 56 paragraph 2, 58.

¹²⁷⁴ Ibid., Articles 1 paragraph 1 sub g and art. 66.

¹²⁷⁵ <http://www.rijksbegroting.nl/2010/kamerstukken,2011/5/17/kst156119.html>, consulted 17 December 2011.

¹²⁷⁶ Art. 1 paragraph 1 sub g, art. 19 paragraph 5 and art.66 Comptabiliteitswet 2001.

¹²⁷⁷ Art. 1:2 paragraph 2 sub e Algemene wet bestuursrecht.

¹²⁷⁸ http://www.rekenkamer.nl/Verslag_2010/Verslag_2010/Algemene_Rekenkamer_in_bedrijf/Controlestructuur, consulted 25 May 2011.

¹²⁷⁹ http://www.rekenkamer.nl/Verslag_2010/Verslag_2010/Algemene_Rekenkamer_in_bedrijf/Controlestructuur, consulted 25 May 2011.

Hearing after audit

In practice, the AR always contacts the ministry or organisation which was audited. Both at the level of civil servants and at the level of the executive, a reaction is heard. This allows a minister to refute facts, for example, or to contradict the conclusions. Hereafter the AR has the last word. Both reaction are enclosed with the audit report.¹²⁸⁰

The AR's audits challenged

There are very few cases in which the audit results of the AR are challenged in practice. Overall, effectiveness audits will be more likely to be contested, because the criteria are considered to be less objective compared to regularity audits. One occasion involved the publishing in 2011 of an audit into 'open source software'.¹²⁸¹ In this audit, the AR calculated what the total savings would be if the government used open source software. According to the AR, it was difficult to calculate this for the individual ministries. BZK, some MPs and some other people involved in this matter criticised the report and were of the opinion that more specific calculations could be made.¹²⁸² The AR sent the report to the Minister of BZK and enclosed his reaction in the report, as well as the AR's own reaction to this response of the minister.¹²⁸³ Both formal reactions were also published on the website of the AR.

An older example is the audit into the effectiveness of energy saving measures in greenhouse cultivation in 2003.¹²⁸⁴ The AR's audit suggested that energy-saving measures in greenhouse cultivation had little effect.

This was contrary to other scientific research. At that time an effectiveness audit was rather new for the AR to carry out. According to senior researchers, the AR carried out the audit rigorously but the theoretical framework was perceived differently by other external researchers and some of the ministries. Therefore the outcome was different as well.¹²⁸⁵ They challenged to a certain extent the results of the AR's reports. The Minister of Economic Affairs asked the Netherlands Bureau for Economic Policy Analysis (CPB – Centraal Planbureau) to review the methodology used by the AR. CPB concluded that there were errors in the data and models used by the AR, which explained the outcome.¹²⁸⁶ However, in both instances the reports were discussed by the Tweede Kamer and the minister involved and did not lead to anything other than the discussion itself. The AR published the CPB report along with the dossier on its website.

Peer review

The willingness of the AR to hold itself accountable can also be noticed from its decision to be subject to peer review, carried out by the Supreme Audit Institutions of Norway, South Africa, New Zealand and the United Kingdom in March 2007. One of the outcomes of this peer review was that quality could be better assured, if the AR would set up an accountability regime to ensure clear and auditable reporting and accountability lines from team leader to directors in managing projects and compliance with quality standards.¹²⁸⁷ The AR has stated that a second peer review is to take place in the period 2010–2015.¹²⁸⁸

1280 http://www.rekenkamer.nl/Over_de_Algemene_Rekenkamer/Werkwijze_Algemene_Rekenkamer/Hoe_verloopt_een_onderzoek, consulted 17 December 2011.

1281 Interview with interviewee 7, senior auditor at the Netherlands Court of Audit, 18 April 2011.

1282 http://www.rekenkamer.nl/Actueel/Onderzoeksrapporten/Introducties/2011/03/Open_standaarden_en_opensourcesoftware_bij_de_rijksoverheid, consulted 11 June 2011.

1283 Algemene Rekenkamer (2011). Open standaarden en opensourcesoftware bij de rijksoverheid. p.57.

1284 <https://zoek.officiëlebekeendmakingen.nl/dossier/28780/kst-28780-4?resultIndex=2&sorttype=1&sortorder=4>, consulted 11 June 2011;

Interview with interviewee 5, senior auditor at the Netherlands Court of Audit, 18th April 2011.

1285 Interview with interviewees 5, 6 and 7, all senior researchers at the Netherlands Court of Audit, 18 April 2011.

1286 CPB. (2003). Effecten van energiebesparende investeringen in de glastuinbouw. Een analyse van de evaluatie door de Algemene Rekenkamer. p.31.

1287 Peer review of the Netherlands Court of Audit March 2007 p.12.

1288 http://www.rekenkamer.nl/Actueel/Brochures/The_Netherlands_Court_of_Audit_Strategy_2010_2015 p.26, consulted 27 May 2011.

Complaints procedure

The AR has voluntarily designed its own complaints procedure. Those who are involved in the audits of the AR can complain about the way they were treated by an individual staff member from the AR.¹²⁸⁹ Complaints about the results of the audits do not fall within the scope of this procedure, because they are part of the clearance procedure during the audit.

The AR is rather proactive and strives to uphold its accountability. Existing provisions are effective in ensuring that the AR has to report and be answerable for its actions in practice.

INTEGRITY (BY LAW)

To what extent are there mechanisms in place to ensure the integrity of the supreme audit institution?

Integrity provisions

The AR's staff members are civil servants, and the general integrity provisions for civil servants apply to them. They also take the oath/pledge. They need to inform their executive about their other positions if these could be of influence on the auditor's work. Gifts have to be reported, and those above EUR 50 are not allowed.¹²⁹⁰ *For more information, please refer to Pillar report on public sector.* The general formal provisions aiming to ensure integrity in practice are available.¹²⁹¹ The president, other members of the Board and the secretary-general are all sworn in by the Queen.¹²⁹² The Board members are required to make their other

side-functions known to the public.¹²⁹³ The president sends an overview of the side-functions of the Board members and the secretary-general to the Dutch Government Gazette (Staatscourant).¹²⁹⁴ There is statutory provision which prohibits Board members or the Secretary-General of the AR from being present at discussions or decisions on a case that could pose a conflict-of-interest. For example when their spouses, partners or relatives are involved in the case.¹²⁹⁵ There is a confidential counsellor to whom members of staff can turn to, when they want to confide their dilemmas or the integrity violations which they are aware of.¹²⁹⁶ Although the main provisions are in place, the AR's integrity policy is still 'under construction'. The AR explicitly states in its annual report and on its website that there should never be any doubts about the AR's own integrity, because of its special position as a High Council of State.¹²⁹⁷ The current integrity policy was designed and rolled out in 2007, and will be renewed in 2011. The core element of the AR's integrity policy is its 'list of values' which is codified in the 'Code of Conduct' from November 2009, which is assessed along the 'State Model Code of Conduct from BIOS'.¹²⁹⁸ The code is an easy-to-read and accessible document in which AR's vision on integrity is established through the 8 values by which employees can make their judgments in their interaction with colleagues and with people outside the organisation. The tone of the code is rather informal and practical, and it addresses topics such as preventing conflict-of-interest, and being independent, objective and reliable to carry out work in a sustainable way. Each value is followed by a concrete dilemma to make the value more real. It calls

1289 http://www.rekenkamer.nl/Over_de_Algemene_Rekenkamer/Werkwijze_Algemene_Rekenkamer/Klachtenregeling/ Klachtenregeling_Algemene_Rekenkamer, consulted 27 May 2011.

1290 Art. 125quater Ambtenarenwet; Rechtspositie rijksambtenaar juli 2010 Ministerie van Binnenlandse Zaken en Koninkrijksrelaties.

1291 Art. 80 Comptabiliteitswet 2001.

1292 Ibid., Art. 75.

1293 Ibid., Art. 73 paragraph 4.

1294 Art. 4 Reglement van Orde Algemene Rekenkamer.

1295 Art. 79 Comptabiliteitswet 2001.

1296 Jaarverslag Algemene Rekenkamer 2009 p. 59; Interview with interviewee 6, Senior auditor at the Netherlands Court of Audit, 18 April 2011

1297 http://www.rekenkamer.nl/Verslag_2010/Verslag_2010/Algemene_Rekenkamer_in_bedrijf/Integriteit

1298 http://www.rekenkamer.nl/Over_de_Algemene_Rekenkamer/Werkwijze_Algemene_Rekenkamer/Gedragscode/ Gedragscode_AlgemeneRekenkamer, consulted 25 May 2011.

employees to be open and honest when being confronted with dilemmas, so that the existing values become 'alive' and other values can be added. It does not mention any sanctions on non-compliance.

SAINT

The seriousness with which the AR takes its integrity is reflected in its monitoring of the results of its integrity policy through the self-assessment instrument SAINT in 2006 and 2010. This instrument enables a self-assessment of integrity risks in organisational processes and in the comprehensiveness of the entire set of rules and policies to promote integrity.¹²⁹⁹ This instrument is now adopted by BIOS¹³⁰⁰ and made available to all public organisations.¹³⁰¹

There are provisions in place to ensure the integrity of the AR. The integrity policies are likely to be updated with the review of the policy in 2011.

INTEGRITY (IN PRACTICE)

To what extent is the integrity of the supreme audit institution ensured in practice?

Integrity provisions

There is no readily-available information on integrity violations within the AR. In the Code of Conduct it is stated that the Code also plays a role when new employees are hired and when they take their oath/pledge, during their interviews of performance,

and when they leave the organisation. Additionally it is also discussed at the start and evaluation of a project. The AR's president asserts that during meetings integrity issues are regularly discussed.¹³⁰² In 2010 an 'integrity afternoon' was organised during which moral dilemmas were discussed by staff members. The president has explained that the rule-abiding approach is not enough and that she urges staff members to be proactive in their approach to integrity issues.¹³⁰³ New staff members receive training called Leerkring in which these values are discussed.¹³⁰⁴ Internally, integrity is reported to be safeguarded, mainly because of the careful attitude of abiding by the ethical rules.¹³⁰⁵ At operational level individuals (peers) do discuss the moral dilemmas they are confronted with; but this is still somewhat more difficult between members of staff and their manager.¹³⁰⁶ In practice, staff members cannot be involved in audits which involve their previous department or organisations.¹³⁰⁷ According to one expert, the AR will be an paragon institution for integrity if it continues to be as independent and autonomous as it is right now.¹³⁰⁸

InternetSpiegel

In addition to SAINT, the AR carried out an internal employee perception survey on integrity, in which employees were asked to what extent they perceive their organisation and the organisational culture to safeguard integrity.¹³⁰⁹ The outcomes of both results provide a basis for updating the integrity policy.¹³¹⁰

¹²⁹⁹ The instrument was developed in 2005 by the AR in cooperation with the Ministry of BZK and Bureau Integrity of the City of Amsterdam, following a government-wide audit on integrity.

¹³⁰⁰ <http://www.integriteitoverheid.nl/producten-en-edoiensten/producten-en-diensten/saint.html>, consulted 17 December 2011.

¹³⁰¹ http://www.rekenkamer.nl/Actueel/Toespraken/Innovations_in_the_fight_against_corruption;
http://www.rekenkamer.nl/english/Organisation/What_do_we_do/International_activities/Design_your_own_integrity_policy_with_Into_SAIN, consulted 17 December 2011.

¹³⁰² Jeurissen, R. and Spoor, S. (2010). Moreel Calvinisme. Interview met Saskia J. Stuiveling Moreel Calvinisme p.10-13.

¹³⁰³ Ibid.

¹³⁰⁴ Interview with interviewee 6, Senior auditor from the Netherlands Court of Audit, 18 April 2011.

¹³⁰⁵ Interview with interviewees 5, 6 and 7, all senior auditors from the Netherlands Court of Audit, 18 April 2011.

¹³⁰⁶ Interview with interviewee 6, senior auditor from the Netherlands Court of Audit, 18 April 2011.

¹³⁰⁷ Interview with interviewee 7, senior auditor from the Netherlands Court of Audit, 18 April 2011.

¹³⁰⁸ Interview with Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, 25 May 2011.

¹³⁰⁹ Jaarverslag Algemene Rekenkamer 2010.

¹³¹⁰ Interview with interviewee 6, senior auditor from the Netherlands Court of Audit, 18 April 2011.

Effective financial audits

To what extent does the supreme audit institution provide effective audits of public expenditure?

Regularity audits

The AR has a statutory task to carry out regularity audits, which means that it audits the ministries' annual reports each year. Via these regularity audits it checks whether the ministers use tax money in accordance with the rules. Wherever possible, these regularity audits rely on audits carried out by other parties, e.g. the audit departments of the ministries. The AR has a right of inspection in these internal audit departments' reports.¹³¹¹ These audit institutions are much closer to the departments and in practice this sometimes results in having a more positive view of the situation compared to the view of the AR. This can lead to some tensions between both auditors.¹³¹² The AR also carries out its own audits. These regularity audits can result in objections being lodged by the AR. Before it decides to do so, it first carries out a more detailed audit of the problem known as an 'objection audit'. Depending on the findings, it then decides whether or not to lodge an objection. The objection procedure is a sign that measures are needed urgently. Recently such an objection was lodged for the Ministry of Health, Welfare and Sport (VWS – Ministerie voor Volksgezondheid, Welzijn en Sport). According to the AR, the ministry has had issues for ten years concerning its supervision of subsidies. Among other complaints, legal deadlines are not enforced, records are incomplete and decisions are poorly motivated.¹³¹³ In this case the minister will have to explain how this situation is to be improved. The AR does not have any

means for further enforcement. It can be addressed in the media and by the parliament.

Performance audits

Additionally the AR regularly carries out its statutory task of performance audits, which means that it audits whether ministers' policies have had the intended results. In 2010 11 performance audits were carried out, and in 2009 14. Here it focuses on policies and their implementation by national government and related institutions. It seeks to analyse the gap between a government policy and its implementation, and to pinpoint causes for this gap.¹³¹⁴ The peer review of 2007 concluded that the performance audit reports of the AR are in accordance with good professional practice of performance auditing, and provide parliament with objective and reliable information on government performance.¹³¹⁵ Due regard is given to the effectiveness and efficiency of government policy implementation. In its audits the AR explains reasons and identifies trends. It then advises the minister on what he should do in order to achieve the intended results. It also carries out performance audits of institutions that use public funds to carry out statutory tasks (arm's-length institutions).¹³¹⁶ The AR is obliged to send the reports on its regularity and performance audits to the Cabinet and the parliament.¹³¹⁷

The AR is perceived to be a reliable and professional institution which provides effective audits of public expenditure.¹³¹⁸ The peer review remarked upon four noticeable aspect of performance audit which could be improved: methodology, the collection and presentation of information, detailed audit planning, and quality assurance.¹³¹⁹ From the peer review it has

¹³¹¹ Interview with interviewees 5, 6 and 7, all senior auditors from the Netherlands Court of Audit, 18 April 2011.

¹³¹² Art. 86 Comptabiliteitswet 2001 and interview with interviewees 5, 6 and 7, all senior auditors from the Netherlands Court of Audit, 18 April 2011.

¹³¹³ <http://www.nrc.nl/nieuws/2011/05/17/rekenkamer-tikt-vws-en-defensie-op-de-vingers>, consulted 12 June 2011 and interviews with interviewees 5, 6 and 7, all senior auditors from the Netherlands Court of Audit, 18 April 2011.

¹³¹⁴ Peer review of the Netherlands Court of Audit March 2007 p.8.

¹³¹⁵ Ibid., p.5.

¹³¹⁶ http://www.courttoaudit.com/english/Organisation/What_do_we_do/Performance_audits, consulted 12 of June 2011.

¹³¹⁷ Art. 95 Comptabiliteitswet 2001.

¹³¹⁸ Interview with Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, 25 May 2011.

¹³¹⁹ Peer review of the Netherlands Court of Audit March 2007 p.12–16.

become clear that, overall, departments consider the AR's work to make a difference.¹³²⁰ There are examples of departments not agreeing with the outcome of an audit or with the methodology used, but this has never led to any real incidents. The Tweede Kamer's view is that the AR's reports have had an impact.¹³²¹

The AR has full authority to oversee all public financial operations, and it always reports the results of the audit to the legislature and the respective organisation. However, not all ministries take full notice of the audit results or agree with the outcomes of the audits.

Detecting and sanctioning misbehaviour

Does the supreme audit institution detect and investigate misbehaviour of public officeholders?

The AR audits the expenditures of individual ministers, state secretaries and top civil servants which involve the provisions and compensations for fulfilling their duties (*bestuurskosten*). These audits are limited to the ministries, while individuals from autonomous administrative authorities (ZBO – Zelfstandige Bestuursorganen) and legal persons with a statutory task (RWT – Rechtspersoon met een Wettelijke Taak) are not subject to these audits. On a few occasions a request was made by the Tweede Kamer or a minister to do research into an individual office-holder's conduct because of the appearance of conflict-of-interest. For example, in 2002 the AR investigated alleged the conflict-of-interest of a minister. The outcome was that there was no conflict-of-interest.¹³²² If the AR is confronted with possible misconduct by an individual when it audits, it informs the internal audit

department, or in a severe case the AR notifies the OM. In auditing the *bestuurskosten*, declarations of secretaries-general and directors-general of the ministries regularly are more exceptional than those of ministers and state secretaries.¹³²³ The senior auditors consider these to be of a more serious nature than the expense claims of ministers, because the latter are more closely monitored by the media.¹³²⁴ The AR will start paying attention to the integrity of public office holders officials in the near future. In 2012 the AR will explore the theme's and topics surrounding the ZBOs and RWTs.

In its audits of the *bestuurskosten* the AR does detect misbehaviour by public officeholders. Further investigation and sanctioning of misbehaviour is not done by the AR, but by the investigative authorities.

Improving financial management

To what extent is the supreme audit institution effective in improving the financial management of government?

In general, the AR's recommendations are positively received by departments, and they promise to implement the recommendations given. The AR carries out the so-called 'retrospective view research' (*terugblikonderzoek*) to get an overview of the extent to which their recommendations to promote efficiency in the use of state money, were actually implemented. The senior researchers note that this picture looks rather positive.¹³²⁵ However, not every department is equally active in taking on these recommendations. The interviewees explained how some departments seem to have their plan of approach ready before the

¹³²⁰ Ibid., p.8 and 9.

¹³²¹ Ibid., p.8 and 9.

¹³²² http://www.rekenkamer.nl/Nieuws/Persberichten/2002/07/Geen_belangenverstrengeling_minister_Jorritsma, consulted 17 December 2011.

¹³²³ Interview with interviewees 5, 6 and 7, all senior auditors from the Netherlands Court of Audit, 18 April 2011. The Netherlands Court of Audit has stated that these statements are not reflected in its reports and purely express the opinion of the interviewees.

¹³²⁴ In 2009 a Wob-request was made by the newspaper de Telegraaf. The expense claims led to a discussion in society because rather expensive items, e.g. sunglasses and luxury hotels, were claimed. The information can be found via <https://minfin.nl/dsresource?objectid=71818&type=org>; http://vorige.nrc.nl/binnenland/article2352112.ece/Van_Middelkoop_betaalt_jacquet_terug

¹³²⁵ Interview with interviewee 6, senior auditor at the Netherlands Court of Audit, 18 April 2011.

ink of the recommendation is dry.¹³²⁶ This is perceived as not taking the AR's audits seriously. They describe that after recommending the same action year-in, year-out, it is no longer useful to do that again. The AR then decides to change the type of audit and perhaps decides to start an effectiveness audit. The AR has no formal provisions to ensure implementation of its recommendations. However, one expert did maintain that the AR is very proactive in getting its voice heard and addressing issues which it considers important.¹³²⁷ The Tweede Kamer is then the powerful institution to put pressure on the department to improve its situation. In 2003–2005 the AR presented its audit reports on the security of military objects in which it recommended how to improve this security via policy changes and changes in the way money was spent.¹³²⁸

At first the Minister of Defence did not take action, but this changed when the media and the Tweede Kamer paid attention to the report.¹³²⁹ When the Tweede Kamer stressed the importance of taking action, the recommendations were soon implemented. In its annual report the AR mentions a few of these 'retrospective view researches'. Here it becomes clear that some ministers have taken the advice on board, but this is not always done to the extent and in the way recommended by the AR.¹³³⁰

The AR makes comprehensive, well-grounded and realistic recommendations on how to improve financial management, and engages government in follow-up. However, the effectiveness of this follow-up depends on the willingness of the ministry involved.

1326 Interview with interviewees 5, 6 and 7, all senior auditors from the Netherlands Court of Audit, 18 April 2011.

1327 Interview with Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, 25 May 2011.

1328 Algemene Rekenkamer (2004). Beveiliging militaire objecten.

1329 Nieuwsbank (2009). Onderzoek SBS 6 programma 'Undercover in Nederland'.

1330 Algemene Rekenkamer (2011). Verslag over 2010 digitaal; 3 terugblikonderzoeken.

6.9 ANTI-CORRUPTION AGENCIES

While there are variations around the world, the most usual 'integrity pillars' of a society include 'watchdog agencies' such as the police, Ombudsman, Supreme Audit Institution and an Anti-Corruption Agency.¹³³¹ According to the NIS methodology, an Anti-Corruption Agency is 'a specialised, statutory and independent public body of a durable nature, with a specific mission to fight corruption (and reduce the opportunity structures propitious for its occurrence in society) through, preventive and/or repressive measures'.¹³³² The United Nations Convention Against Corruption prescribes that signatory states should have a preventive anti-corruption body or bodies.¹³³³ As was concluded in the 2001 Netherlands NIS study, there is no such specific civic anti-corruption institution in the Netherlands with a more general task concerning corruption.¹³³⁴ This does not mean that activities that such an agency could carry out, are not taking place in the Netherlands at all. According to the NIS methodology, there are three different tasks which such an agency carries out: engagement in preventive activities in the fight against corruption, engagement in educational activities regarding the fight against corruption and engagement in investigations regarding alleged corruption.

National Office for Promoting Ethics & Integrity in the Public Sector (BIOS)

The Minister for BZK coordinates and promotes integrity for the public sector in the Netherlands. The Minister has established BIOS. BIOS was set up to help

government organisations to improve their integrity policies. The total number of staff in 2011 was five full-time equivalents.¹³³⁵ Due to recommendations following the United Nations Convention Against Corruption, it was decided to situate BIOS outside the Ministry of BZK, but within the Netherlands' largest knowledge and service centre for the labour market and labour relations within the public domain (CAOP), in 2009.¹³³⁶ Thus, although BIOS is subsidised by the Ministry for BZK, the independence of BIOS is respected and in this way it can carry out its functions with the necessary resources and autonomy. The approach chosen by BIOS is clearly preventive and facilitating, and is centred around 'awareness raising'. In its early days BIOS' focus was on writing procedures, then it involved in the design of instruments, such as risk-analysis and methods for dealing with dilemmas. Since 2011 the focus is more on the development of training. In the beginning, BIOS was mostly known and contacted by ministries or supervisory authorities, which were linked with the ministries. Nowadays also local, regional and water board authorities and autonomous administrative authorities contact BIOS.¹³³⁷ Among the products it offers on its website one can find.¹³³⁸

- A checklist for public organisations on the different parts of integrity policy, which public organisations have to have in place (Integriteitswijzer – Integrity Indicator)
- A catalogue with real examples, which can help in the development of integrity policy (I-Catalogus)

1331 Transparency International. (2003). Pillars of Integrity: Confronting Corruption. The Key Elements of a National Integrity System, p.6.

1332 Description of Anti-Corruption Agency to be found in Annex to the NIS Toolkit.

1333 Art. 6 United Nations Convention Against Corruption.

1334 Huberts, L.W.J.C. (2001). p. 25.

1335 Interview with Alain Hoekstra, Coordinating Policy Advisor and Researcher at CAOP/BIOS, the National Office for Promoting Ethics & Integrity in the Public Sector, 24 May 2011.

1336 BIOS (n.d.). Towards a coherent ethics and integrity policy; Interview with Alain Hoekstra, Coordinating Policy Advisor and Researcher at CAOP/BIOS, the National Office for Promoting Ethics & Integrity in the Public Sector, 24 May 2011.

1337 Interview with Suzanne Verheij, Policy Advisor at National Office for Promoting Ethics & Integrity in the Public Sector – CAOP/BIOS, interview held the 24 May 2011.

1338 BIOS (n.d.) Producten en diensten.

- A workshop by which organisations can be screened on integrity risks (SAINT: Self-Assessment INTEgriteit)
- A survey which can be held among employees to discover how they experience the ethical climate of the organisation and its integrity. With these results the integrity policies can be amended and improved (InternetSpiegel)
- Code of Conduct Central Government
- Manual Conflict of Interest
- Handbook Integrity Assessment
- HRM and Integrity

The training and education offered by BIOS¹³³⁹:

- Workshop integrity for council clerks, which can be requested by groups of council clerks and will be organised by BIOS for free (basic expenses need to be paid)
- Training Confidence Person Integrity (VPI – Vertrouwenspersoon Integriteit) offered monthly and costing EUR 1,850.

These responsibilities regarding prevention fall within the role-description of an anti-corruption agency. However, it is important to note that BIOS is tasked with promoting integrity, but not with the coordination of anti-corruption activities. It does receive and respond to requests for advice from the public and/or other government agencies, but it is limited in its capacity and therefore cannot provide customised advice to public organisations. Most requests will be answered by BIOS by referring to the products, services and training available on its website, which can be used by these organisations to further develop their integrity policies.¹³⁴⁰ This is where the limitations of its power become apparent. BIOS is not established to be involved in recommendations on legislative reforms, neither does it submit proposals to parliamentary and governmental bodies. It is an office which offers practical support to organisations in their development

and implementation of integrity policies, but which does not have to invent every aspect of these policies themselves.

Bureau Integriteit

Bureau Integriteit is the integrity knowledge and service centre of the municipality of Amsterdam.¹³⁴¹ Bureau Integriteit provides advice to public office-holders and the civil service, both when being asked to do so but also at its own initiative. The Bureau tries to raise integrity awareness within the municipality, for example by providing training to politicians and civil servants. Members of the Executive and managers can assign the Bureau to investigate an appearance of integrity violation. Suspicions of integrity violations can be reported to the Bureau, which then advise the director of the department involved or the municipality secretary of the district involved to start an investigation into the concrete suspicion. This investigation can be carried out by the department or district involved, by the Bureau or any other investigative bureau.¹³⁴² Bureau Integriteit is directly connected to the Commission Integrity, and was established in 2001 in order to safeguard integrity policy for the governing top (city council consisting of a mayor and aldermen) and civil service of the municipality of Amsterdam. The Bureau has a total of twelve-and-a-half full-time equivalents on its staff.¹³⁴³ The Commission consists of, among others: the mayor, an alderman, the director of one of the service departments, the municipal secretary and the director of Concern Organisation. The Bureau is competent in coordinating the promotion of integrity, in doing so it carries out similar tasks as BIOS, although here within the municipality of Amsterdam or its surrounding municipalities. Again, the focus is not on corruption but on integrity. Unlike BIOS, Bureau Integriteit can investigate integrity violations and, in the case of suspicions of a criminal offence, it will contact law enforcement agencies. Similar to BIOS, its

¹³³⁹ BIOS (n.d.) Opleidingen.

¹³⁴⁰ Interview with Suzanne Verheij, Policy Advisor at National Office for Promoting Ethics & Integrity in the Public Sector – CAOP/BIOS, interview held the 24 May 2011.

¹³⁴¹ http://www.amsterdam.nl/gemeente/organisatie-diensten/integriteit-0/wat_doet_bureau/organisatie/, consulted 18 January 2012.

¹³⁴² Bureau Integriteit Gemeente Amsterdam (2011). Jaarverslag 2010 p.4.

¹³⁴³ Ibid., p.7.

Regular tasks	2010	2009
Number of reports of integrity violations	85	71
Number of investigations	21 investigations 35 recommendations	25 investigations 30 recommendations
Number of legal recommendations	42 disciplinary recommendations 3 objection/appeal 30 political recommendations 6 recommendations regarding additional functions of civil servants	30 disciplinary recommendations 1 objection/appeal
Risk analysis	2 specific risk analyses 1 inventory vulnerable positions 21 workshops vulnerable positions 5 quick scans integrity risks	2 citywide risk analyses 1 specific risk analysis 8 descriptions of vulnerable positions
Number of trainings and recommendations	169 training and recommendations of various sorts	255 training and recommendations of various sorts

focus is on office-holders and civil servants and not on the public. It operates independently but falls under the authority of the municipality of Amsterdam. The following figures from the 2010 annual report¹³⁴⁴ of Bureau Integriteit give an idea of the activities carried out:

There are various commercial firms active in promoting integrity in the public and private domain, but none of them matches the description of an anti-corruption agency. Both BIOS and the Amsterdam Bureau Integriteit bear some features of an anti-corruption agency. In both bureaus, the priority is on stimulating and assisting integrity policies by offering guidance, training and manuals. Hereby BIOS' focus is on national

and local public organisations, while Bureau Integriteit is part of the municipality of Amsterdam and its activities are mainly carried out in Amsterdam and in some surrounding municipalities as also part of its cooperation with the Dutch Antilles.¹³⁴⁵ Both bureaus are funded by public means and offer products and services for free, as well as at a certain prices. Both bureaus play an important role in integrity promotion, although this is limited to the public domain. Although these bureaus are considered to be reasonable initiatives, they are not considered to be strong anti-corruption fighters. There is no information available on the net overall effect both bureaus have. There is no assistance to the private sector; companies can turn to

¹³⁴⁴ Ibid., p.8.

¹³⁴⁵ Ibid., p.6.

commercial firms for assistance regarding their integrity polices. None of the bureau has have any contact with the public at large or with individual citizens. Nor is there any involvement in educational activities regarding fighting corruption, which is expected from an anti-corruption agency. BIOS does not carry out investigations, Bureau Integriteit on the other hand can carry out investigations after alleged integrity violations have been reported, but it has no authority to start independent investigations nor can it apply sanctions.¹³⁴⁶ Here its role is rather reactive; there are no clear figures on the number of cases which were identified by the Bureau's own initiative. If an investigation concerns an alleged criminal offence, law enforcement agencies will take it from there. As such, there are no national anti-corruption agencies present in the Netherlands which fight corruption through prevention, education or investigation. Prevention of corruption does take place via the promotion of integrity, but education of the public is absent and investigations are carried out by a wide variety of private forensic investigative bureaus, Amsterdam

Bureau Integriteit and the official law enforcement agencies.

A civic anti-corruption agency or integrity watchdog, which is independent from government or local administration is lacking in the Netherlands.¹³⁴⁷ Such an agency could contribute to the comprehensiveness and effectiveness of the national integrity system by offsetting weaknesses in the pillars of the NIS. If a pillar's own correction mechanism fails or if other external correction mechanisms/watchdogs such as the media fail to correct a situation, this can be compensated for by the anti-corruption agency. The powers of such an agency should be preventive (including education) and repressive (with linkages to criminal investigations and justice), and its focus should be on all forms of corruption in the (semi)public and private sector.¹³⁴⁸ This includes the mandate to investigate alleged integrity violations at its own discretion. As fraud and corruption are often intertwined a case could be made for a separate anti-corruption and fraud office.

¹³⁴⁶ Anechiarico, F., Huberts, L., Six, F. (2008).

¹³⁴⁷ Ibid.

¹³⁴⁸ Grant Thornton and Norton Rose (2011) p.20.

6.10 POLITICAL PARTIES

Role in NIS

The political parties form an important pillar in the NIS. Political parties play an important role in elections and through formulating and implementing government policies. Political parties are essential to democracy. They simplify voting choices, organise competition, unify the electorate, bridge the separation of powers and foster cooperation among branches of government, translating public preferences into policy and providing loyal opposition. During elections, political parties mobilise citizens to use their right to vote or to run for office. After elections, political parties play an important role in determining the policy goals of the government. Political parties give a voice to the political interests which they represent. They therefore can play a role of their own in setting the agenda for anti-corruption policies. In order for an NIS to be strong, it is important that political parties act with integrity. This means that political parties have to be transparent about their internal organisation and account for their activities. This also means that the internal decision-making process of political parties needs to be fair and democratic. Additionally, political parties have to account for their finances in order to ensure that there are no donations received in return for creating advantages in political decision-making in the representative bodies. Not only are members of political parties elected in representative bodies, they are also appointed to (senior) positions within public administration or employed in the private sector. If this appointment or employment is done because of this membership, a risk occurs that the institutions become politicised. This would undermine democracy by creating an informal system apart from democratic decision-making process.¹³⁴⁹

Sources

The desk research for this pillar was carried out by considering the statutory provisions regarding political parties. The 2010 Report by the Netherlands Court of

Audit¹³⁵⁰ (AR – Algemene Rekenkamer) was a valuable source because it provided an international and national perspective on the financing of political parties. Academic articles and media coverage provided an outsider's perspective on the way political parties function in the Netherlands. Although many key experts who have been interviewed for this study are member of a political party, this chapter deals with the organisation of political parties. Therefore, representatives of the Bureau of two different political parties were interviewed. Additionally, an academic with a good notion of the regulations concerning political parties was interviewed. Two experts provided information on several NIS pillars and have been considered here as well. All interviews have been carried out face-to-face.

Interviews held:

- Henk Kummeling, Chairman of the Electoral Council, interview held the 20th of April 2011.
- Ellen Nauta-van Moorsel, Director at the Bureau of the political party CDA, interview held the 1st of March 2012.
- Remco Nehmelman, Senior lecturer Constitutional and Administrative Law University of Utrecht, interview held the 17th of May 2011.
- Henk Nijhof, Chair of the Board of the political party GroenLinks, interview held on the 21st of June 2011.
- Ruth Peetoom, Chair of the Board of the political party CDA, interview held the 1st of March 2012.
- Matthijs Schüssler, Legal Officer at the Bureau of the political party CDA, interview held the 1st of March 2012.

¹³⁴⁹ Transparency International. (2003). Pillars of Integrity: Confronting Corruption. The Key Elements of a National Integrity System.

¹³⁵⁰ Algemene Rekenkamer (2011). Financiering politieke partijen.

POLITICAL PARTIES

Status: Strong**Summary**

Although only a small percentage of Dutch citizens are members of a political party, political parties play an important role in the Dutch society because of their elected candidates representing the Dutch people and the importance of political party membership in appointments within public administration. This puts political parties' legitimacy under pressure. Overall, political parties have adequate resources, with governmental subsidy being a major source. This subsidy granted to existing political parties does make new political parties/movements more dependent on private funding in order to enter the political arena. There are comprehensive constitutional and statutory safeguards to prevent unwarranted external interference in the activities of political parties. All political parties are treated equally by the government, and political parties and politicians are not obstructed and if necessary are protected by the government. The main concern is the risk of conflict-of-interest in the Senate when a member is considered to be loyal to the political party they represent while at the same time being in a key position whose interests need to be respected as well. Most but not all political parties have and follow provisions for internal democratic governance. Another major concern regarding this pillar is the lack of adequate provisions for political parties' accountability and transparency. This absence in law is not compensated by voluntarily accountability and transparency in practice. This makes political parties vulnerable to integrity violations with little possibility for external monitoring. The main issue here concerns the serious lack of adequate regulation and control in the field of private party funding. There are no adequate legal safeguards to prevent unwarranted external interferences in the activities of political parties and movements. Private party funding is allowed within certain legal boundaries and does occur. For the political parties which receive a subsidy from the government, very basic rules exist for their financial reporting. The political movements which do

not receive such a subsidy do not have to publish how their finances are received. Corruption and integrity are not big issues on political party agendas.

Structure and organisation

The Netherlands has a political system of proportional representation, without electoral threshold. Consequently, there are several parties with one or two seats in Parliament. The Dutch bicameral Parliament consists of two chambers: the House of Representatives (Tweede Kamer der Staten-Generaal), directly elected by the electorate and the Senate (EK – Eerste Kamer der Staten-Generaal), elected by the 566 members of the Provincial Councils. In 2011, 10 political parties were represented in the Tweede Kamer (150 members) and 12 political parties in the Senate (75 members).

The current political parties were represented in the Tweede Kamer in 2011:

Abbreviation	Name	Orientation
VVD	People's Party for Freedom and Democracy	Conservative Liberal
PvdA	Labour Party	Labour
PVV	Party for Freedom	Populist
CDA	Christian Democratic Appeal	Christian Democrats
SP	Socialist Party	Socialist
D66	Democrats '66	Liberal Democrats
GroenLinks	Green Left	Left
ChristenUnie	Christian Union	Centrist Christian
SGP	Reformed Political Party	Calvinist Reformed
PvdD	Party for Animals	Animals

National political parties have regional and local branches. There are also political parties that operate only regionally (in provinces) or locally. In the Netherlands there are also political parties with no democratic structure, because they have no formal party structure or membership organisation. An example is the PVV.¹³⁵¹

¹³⁵¹ <http://www.politiekemonitor.nl/9353000/1/j9vvioaf0kku7zz/vhnnmt7m4rqj> and <http://www.pvv.nl>, consulted 17 August 2011.

Political parties receive public funding under the Political Parties Grants Act (WSPP – Wet subsidiëring politieke partijen). The amount of this subsidy depends on the number of seats in the Tweede Kamer and/or the Senate and the total number of a party's members.

ASSESSMENT

RESOURCES (BY LAW)

To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

Constitutional and statutory provisions

The right of association is recognised in the Constitution.¹³⁵² This right includes the establishment of a political party. Unlike in most other European countries, political parties receive no mention in the Constitution.¹³⁵³ There is no need for a political party to register itself in order to be able to participate in elections. If a political party wants to use its name on the candidate list, the name has to be registered. Therefore a political party must be established as an association (vereniging) with full juridical competence according to the Dutch Civil Code¹³⁵⁴ and it has to be registered with the Chamber of Commerce.¹³⁵⁵

Political parties can choose their own name. The registry of political parties is administered by the Electoral Council (KR – Kiesraad). New political parties have to pay a deposit of EUR 450, which is refunded as soon as they have handed in a valid list of candidates. The request for registration can only be rejected on specific legal grounds, such as conflict of the party's name with public order, or because of too much similarity with the name of an existing political party. Candidates of registered

political parties can take part in parliamentary elections (both national and for the European Parliament), for provincial governments and local councils. Individual candidates can participate in elections with a 'blank list', but this rarely occurs.

Statutes and members

Each association has statutes and regulations, in which the main provisions concerning organisation and the decision-making are recorded. The democratic structure is ensured by the fact that the General Assembly is the highest organ of an association. The General Assembly of an association elects the Board members, including the chairman of the association (political party). The election manifesto and the list of candidates are (in most political parties) laid down by the members. Members pay a membership fee (dues), the amount of which is determined by the General Assembly.

Appeal

Political parties can appeal to the Administrative Jurisdiction Division of the Council of State (ABRvS – Raad van State Afdeling bestuursrechtspraak)¹³⁵⁶ against rejected registration.¹³⁵⁷ When a political party hands in a list of candidates, it also has to submit 30 statements from voters wishing to support that list of candidates. In the case of local elections 20 or 10 statements are required, depending on the number of council seats.¹³⁵⁸

Public order

The Constitution and the Electoral Law (Kieswet) do not include legal restrictions on party ideology. However, under the Penal Code it is possible to start criminal proceedings against expressing certain ideas such as:

- discrimination against certain groups of people;¹³⁵⁹

¹³⁵² Art. 8 Grondwet.

¹³⁵³ Biezen, van I. (2009). p. 6–7.

¹³⁵⁴ Art. 2:26, par. 1 Burgerlijk Wetboek.

¹³⁵⁵ Art. G1 Kieswet.

¹³⁵⁶ http://www.raadvanstate.nl/the_council_of_state/, consulted 2 August 2011.

¹³⁵⁷ Art. G5 Kieswet.

¹³⁵⁸ Ibid., Art. H4.

¹³⁵⁹ Art. 137c Wetboek van Strafrecht.

- incitement to hatred or discrimination or violence against people;¹³⁶⁰
- libel and slander.¹³⁶¹

These provisions have a general application and are also applicable to politicians and political parties. In the Netherlands political parties can only be banned by a judge when their activities are contrary to public order.¹³⁶² Political parties and their role are not mentioned in the Dutch Constitution but in the Electoral Law, which is based on the Constitution, in which political parties are mentioned many times.¹³⁶³

Civil law provisions

Because political parties are associations, the general rules of (democratic) decision-making under the Civil Code apply to them.¹³⁶⁴ This means the freedom to shape if the internal organisation is extensive.¹³⁶⁵ For instance, members can decide on the policy and the election manifesto of the party. It is also possible to delegate certain decisions to the board or to a council of members under the Civil Code.¹³⁶⁶

Political movement

For a political party with no members (a 'political movement') these rules do not apply. Examples include the PVV and, until 2009, Proud of the Netherlands (TON).

Subsidy and free airtime

According to the Political Parties Grants Act (WSPP – Wet subsidiëring politieke partijen) political parties represented in the Tweede Kamer and/or Senate are eligible for a subsidy from the government¹³⁶⁷ for

certain activities listed in the WSPP¹³⁶⁸ such as political education and training activities, information services, political science operations and the recruitment of members. However, no subsidy is paid to a political party that does not have a minimum of 1,000 members.¹³⁶⁹ Subsidy-requests must be submitted to the Minister of the Interior and Kingdom Relations (BZK – Binnenlandse Zaken en Koninkrijksrelaties).

The subsidy is calculated as follows:¹³⁷⁰

- a basic amount per party of EUR 187,990
- per parliamentary seat of a political party, an amount of EUR 54,526
- per member of the political party an amount equal to EUR 2,058,386 divided by the number of members of all political parties together, and
- if the political party has an own political science institute, a basic amount of EUR 132,034 and an amount of EUR 13,570 per parliamentary seat.
- If the political party has a youth organisation, it receives an additional amount.

For work abroad the party may receive additional funding, in particular for like-minded political groups in Central and Eastern Europe and in the Third World. The amounts are adapted to wage and price adjustment every year.¹³⁷¹ This legally-guaranteed right to public funding of political parties can be considered as the 'materialisation of the state's responsibility to ensure (and promote) the viability of modern democracy.'¹³⁷² Regarding public funding, the law makes no distinction between parties who are represented in government and opposition parties.

¹³⁶⁰ Ibid., Art. 137d.

¹³⁶¹ Ibid., Art. 261 and 262.

¹³⁶² Art. 2:20 Burgerlijk Wetboek.

¹³⁶³ Art. 59 Grondwet.

¹³⁶⁴ Art. 2:238 Burgerlijk Wetboek.

¹³⁶⁵ Kortmann, C.A.J.M. (n.d).

¹³⁶⁶ Art. 2:239 Burgerlijk Wetboek.

¹³⁶⁷ Art. 2 WSPP.

¹³⁶⁸ Ibid., Art. 5.

¹³⁶⁹ Ibid., Art. 2, par. 3.

¹³⁷⁰ Ibid., Art. 6.

¹³⁷¹ Ibid., Art. 6, par. 6.

¹³⁷² Biezen, van I. (2010). p. 6.

Political parties receive no subsidy unless they are represented in the Tweede Kamer or in the Senate. It follows that provincial and local parties do not receive any public funding from the national budget.¹³⁷³ Local political parties have raised objections against this, but the court has rejected these objections on the basis of the current legislation.¹³⁷⁴ Some receive local or regional financial support from local or regional public funds, in particular, in support of their work in the local and regional councils.

Political parties with representatives in Parliament get some free airtime on public broadcasting.¹³⁷⁵

Donations

Most political parties receive an income through the membership fees of the party members. As a supplement, political parties may receive donations from companies and citizens, including from abroad. A few political parties demand that their representatives in Parliament donate part of the compensation they receive to the party. This practice may be seen as going against the Constitution that says 'they shall exercise their functions without any instructions or consultation'. For more information on the rules concerning the financing of political parties, *please refer to Political Parties/Transparency*.

The legal framework is very conducive to the formation and operations of political parties.

RESOURCES (IN PRACTICE)

To what extent do the financial resources available to political parties allow for effective political competition?

Membership

Only a small portion of the Dutch population is member of a political party. The figures on the number

of Dutch citizens who are members vary from 2.5 to 4 percent.¹³⁷⁶ All political parties represented in Parliament receive a subsidy. The political movement PVV is an exception to this, as the party leader, Mr. Geert Wilders, is the only member of the corresponding association and therefore not eligible for a subsidy.

Elections

In June 2010 the latest elections for the Dutch Tweede Kamer were held. Eighteen political parties took part in these elections, eight of those newcomers. However, no candidates of these new parties were elected.¹³⁷⁷ The report 'Financing Political Parties' of the AR contains a summary of the total amounts of subsidies political parties received in 2008.¹³⁷⁸ In total, the political parties received the following amounts:

Political party	Total amount of subsidies
CDA:	EUR 3,594,445
PvdA:	EUR 3,076,936
SP:	EUR 2,382,448
VVD:	EUR 2,157,409
GL:	EUR 949,641
CU:	EUR 976,664
D66:	EUR 625,164
SGP:	EUR 797,339
PvdD:	EUR 516,274
OSF:	EUR 370,021

¹³⁷³ However, the Minister of BZK established a subsidy for training and education councillors and council candidates in 2009.

¹³⁷⁴ <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/2462747/2011/07/07/Lokale-partij-wil-ook-subsidie.dhtml>, consulted 10 July 2011.

¹³⁷⁵ Art.6.1 Mediawet 2008.

¹³⁷⁶ <http://dnpp.eldoc.ub.rug.nl/FILES/root/Persberichtenledenta/ledentallen2010.pdf>

¹³⁷⁷ [http://www.kiesraad.nl/nl/Actueel/Nieuwsberichten/\(2047\)-Actueel-Nieuwsberichten-2010/Uitslag_verkiezing_leden_Tweede_Kamer_van_9_juni_2010.html](http://www.kiesraad.nl/nl/Actueel/Nieuwsberichten/(2047)-Actueel-Nieuwsberichten-2010/Uitslag_verkiezing_leden_Tweede_Kamer_van_9_juni_2010.html), consulted 25 May 2011.

¹³⁷⁸ Algemene Rekenkamer (2011). Financiering politieke partijen. p.7.

The results of the last two elections in the Tweede Kamer (in 2006 and 2010) and in the Senate (in 2007 and 2011) were as follows:

Party	Seats in the Tweede Kamer (150)		Seats in the Senate (75)	
	2006–2010	Since 2010	2007–2011	Since 2011
Christian Democratic Party (CDA)	41	21	21	11
Labour Party (PvdA)	33	30	14	14
Socialist Party (SP)	25	15	12	8
Liberal Party (VVD)	22	31	14	16
Green Party (GL)	7	10	4	5
Christian Union (CU)	6	5	4	2
Liberal Democratic Party (D66)	3	10	2	5
Political Reformed Party (SGP)	2	2	2	1
Party for the Animals	2	2	1	1
Independent Senate Group (OSF)	–	–	1	1
Freedom Party (PVV)	9	24	–	10
50 Plus	–	–	–	1

Source: <http://www.verkiezingsuitslagen.nl/Na1918/Verkiezingsuitslagen.aspx?VerkiezingsTypeld=>, consulted the 22nd of October 2011

In practice, subsidies that political parties receive are not enough to cover all the costs, particularly considering the costs of the election campaigns. There are large differences in financial support from private sources, when new political parties/movements depend entirely on private funding in order to compete with the existing political parties which are subsidised. Small parties like the SGP and the PvdD receive a large amount of money from supporters and sometimes from abroad. Presumably the PVV receives financial support from abroad via its foundation 'Friends of the Freedom Party' in The Hague.^{1379, 1380} This party rejects any form of interference of the state in the internal affairs of its party and therefore is against subsidising

political parties.¹³⁸¹ Due to a lack of transparency, no figures are available on its finances.¹³⁸² Irrespective of whether it is necessary to accept donations from companies or individuals, given all the costs, it may be questioned to what extent political parties as well as politicians are willing to accept such donations spontaneously. According to an analyst, the state does not make it difficult for political parties and politicians to do so, since adequate regulatory measures and enforcement are missing.¹³⁸³

During election campaigns political parties can buy advertising and airtime, but they have to pay for it themselves, depending on available private funding.

¹³⁷⁹ <http://www.geertwilders.nl/>

¹³⁸⁰ <http://www.elsevier.nl/web/Nieuws/Politiek/292776/PVV-moet-identiteit-geldschietters-openbaar-maken.htm>; Interview with Remco Nehmelman, Senior Lecturer Constitutional and Administrative Law University of Utrecht, 17 May 2011.

¹³⁸¹ MP Hero Brinkman of the PVV during the plenary meeting of the Tweede Kamer of 25 of January 2012 in which the the draft Financing of Political Parties Act was discussed.

¹³⁸² Interview with Remco Nehmelman, Senior Lecturer Constitutional and Administrative Law University of Utrecht, 17 May 2011.

¹³⁸³ Reijntjes, J.M. (2004). p.30–34.

Public order

It is rare for a party to be banned on the grounds of public order. This has occurred twice: after the Second World War, the National Socialist Movement (NSB – Nationaal-Socialistische Beweging) was banned and the Centre Party '86 was prohibited in 1998 by the Supreme Court because it was inciting hatred against foreigners.

Political parties have adequate funding, reflecting their socio-political weight in society, allowing for effective political competition.

INDEPENDENCE (BY LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

Constitutional rights

The right of association, assembly and demonstration is constitutionally recognised.¹³⁸⁴ Political parties can move freely in the Netherlands. The government itself cannot prohibit political parties or exclude them from elections.¹³⁸⁵ Nor has it legal power for surveillance of political parties. Political meetings can take place in private; the government has no right in forcing political parties to admit someone, for instance an officer. However, the public prosecutor, who is subordinate to the Minister of Security and Justice (VJ – Veiligheid en Justitie), can ask the civil court:

- to prohibit and dissolve a corporation whose activity is contrary to public order; and
- to dissolve a corporation whose purpose is contrary to public order¹³⁸⁶

These provisions are not applicable to political 'movements' (political organisations without legal personality). Also, interested citizens or groups of citizens can ask the civil court to prohibit a political party that commits or promotes illegal activities, although those possibilities are limited.¹³⁸⁷ In addition, individual offenders can be punished by the criminal court.

Incompatibilities and protection

There are no general rules on incompatibilities. Civil servants, policemen and military personnel may be members of a political party without any limitation; they may also operate within a political party.

Only when members of a political party are elected to a representative body there are rules on incompatibilities. For instance, in order to protect the independence of MPs, there are several incompatibilities of function.¹³⁸⁸

Chosen representatives of the people cannot be dismissed. They are free to develop and express their own opinion. According to the Constitution, representatives of the people are not bound by the opinions of the political party they represent. They have a free mandate.¹³⁸⁹

Registration

Registration of new political parties is the responsibility of the KR. This is an administrative body that exercises its functions independently. Political decisions are thus avoided. One could say that the rule of law reigns here, as was evidenced by the interview with the chairman of the KR.¹³⁹⁰

Comprehensive legal safeguards to prevent unwarranted external interference in the activities of political parties exist.

¹³⁸⁴ Art. 8 and 9 Grondwet

¹³⁸⁵ As noted above, according to the Civil Code a political party – as an association – may be banned at the request of the prosecutor in court. Furthermore, the Electoral Council may decide that a political party is not allowed to participate in elections if the legal requirements are not met.

¹³⁸⁶ Art. 2:20, par 1 and 2 Burgerlijk Wetboek.

¹³⁸⁷ LJN: AY4017 Rechtbank 's Gravenhage, July 17, 2006.

¹³⁸⁸ Art. 57 Grondwet.

¹³⁸⁹ Ibid., Article 67, paragraph 3.

¹³⁹⁰ Interview held with Henk Kummeling, Chairman of the Electoral Council, 20 April 2011.

INDEPENDENCE (IN PRACTICE)

To what extent are political parties free from unwarranted external interference in their activities in practice?

Equal treatment

It is rare in the Netherlands that a political party is prohibited by the court. Also, there are no examples of other forms of state interference in the activities of political parties, or examples of harassment and attacks on opposition parties by state authorities or actors linked to the state/governing party. All political parties are treated equally by authorities. However, in 2010 the Supreme Court decided that the SGP should not exclude women from standing for election.¹³⁹¹ Pending the decision of the European Court, the Minister of BZK decided to impart no (legal) effect yet.

Interference

Detention or arrest of political party members because of their party work does not occur in the Netherlands. In case of attacks on politicians or party members, the state will engage in a proper and impartial investigation.¹³⁹² The government provides additional protection necessary to political parties and politicians who receive threats. The meetings of these political groups are not open to the public, in order to prevent disturbances. Endangered politicians, like PVV's Wilders¹³⁹³ have permanent personal security at the expense of the state.

Conflict-of-interest

In practice, the independence of politicians can be undermined. They are considered loyal to the party they represent, but in some cases Senators are also representative of a social partner or company with special interests in several ways. Two examples: the

leader of the CDA in the Senate is also Chairman of Building Netherlands, the employers association of construction companies in the Netherlands.¹³⁹⁴ The leader of D66 is also Chairman of the Board of Directors of a large health insurer.¹³⁹⁵ Loyalty conflicts can arise here. Furthermore, there are also lobbyists who approach parties and politicians to impose their (client's) point-of-view. Sometimes MPs are dependent on lobbyists for information, as they have limited resources at their disposal.¹³⁹⁶ It depends on the integrity of the political party or politician involved what the extent or character of the influence is.

Freedom of speech

The freedom of speech of politicians in the Netherlands is not unlimited. MPs and all other persons taking part in the deliberations of parliament or in the parliamentary committee meetings have legal immunity regarding any communication they make, either in speech or in writing.¹³⁹⁷ Otherwise the members have no immunity. Nevertheless, in a criminal case against the leader of the PVV, because of his utterances about Islam and the Koran, the Amsterdam court found him not guilty of discrimination and sowing hate.¹³⁹⁸ Political parties operate freely and are subject only to reasonable oversight linked to clear and legitimate public interests.

TRANSPARENCY (BY LAW)

To what extent are there regulations in place that require parties to make their financial information publicly available?

Statutory provisions

In the Netherlands, the obligation of political parties towards financial transparency is poorly regulated. The

1391 LJN: BK4547 en BK4549, Hoge Raad 9 April 2011.

1392 LJN: BQ7588 Rechtbank 's Gravenhage, June 9, 2011.

1393 Het Parool (2011). 'Wilders op dodenlijst al-Qaeda'.

1394 http://www.eerstekamer.nl/persoon/mr_drs_l_c_brinkman_cda, consulted 17 April 2011.

1395 http://www.eerstekamer.nl/persoon/mr_r_h_l_m_van_boxtel_d66, consulted 17 June 2011.

1396 Luyendijk, J. (2010).

1397 Article 71 Grondwet.

1398 Uitspraak Rechtbank Amsterdam van 23 juni 2011, zaak Wilders.

conclusion is that Dutch law is inadequate on this point. Political parties represented in the Tweede Kamer and/or Senate are eligible for a subsidy from the government – *see above: Resources (by law)*. This subsidy is provided under the obligation that the political party maintains records, so that for the determination of the subsidy relevant rights, obligations, payments and receipts can be verified.¹³⁹⁹ According to the law, the administration and the corresponding documents are to be preserved for ten years.¹⁴⁰⁰ In addition, political parties can set their own rules on internal accountability of membership fees and donations to their members. The application for the establishment of the subsidy is to be made within six months after the end of the calendar year.¹⁴⁰¹ The application to set the subsidy must be accompanied by a financial report and an activity report.¹⁴⁰² The financial report must be accompanied by an auditor's report.¹⁴⁰³ The Minister of BZK shall send each year to the Tweede Kamer and the Senate a list of subsidies provided to political parties.¹⁴⁰⁴

In addition, donations to political parties are allowed under the following rules:¹⁴⁰⁵

- A donation to a political party of EUR 4,537.80 or more, from other than a natural person, must be disclosed. These gifts must in any case be mentioned in the financial report of the political party.¹⁴⁰⁶
- Gifts from a donor with an aggregate amount of EUR 4,537.80 or more per year are considered to be one gift.

A provision for adaptation of the amounts to the wages and price adjustment is missing here.

The name of the donor must be disclosed. When he objects to the mention of his name, this may be omitted, except that in this case a description is given of the category of institutions or organisations to which the donor belongs.

It could be argued that Article 18 WSPP does not apply to gifts:

- to political parties which do not receive subsidy under this Act, which is the case with [a] political parties that are not eligible for subsidy; [b] local political parties and [c] political parties or movements that do not allow members;
- to individual politicians;
- from natural persons.

In 2008 the Group of States against Corruption (GRECO) concluded that the Dutch legislation had a number of shortcomings. GRECO also gave (thirteen) recommendations for improvements.¹⁴⁰⁷ Among others, the following recommendations were made¹⁴⁰⁸:

- To require all entities represented in parliament to disclose, at least annually, all donations and bequests received from natural persons (including party members) and legal persons, including information on the source of these donations (at least above a certain threshold), their nature and value; to lower the current disclosure threshold of EUR 4,537.80 for (corporate) donations in the

¹³⁹⁹ Art. 9, par. 1 WSPP.

¹⁴⁰⁰ Ibid., Art. 9, par. 2.

¹⁴⁰¹ Ibid., Art. 10, par. 1.

¹⁴⁰² Ibid., Art. 10, par. 2.

¹⁴⁰³ Ibid., Art. 11, par. 1, 2 and 4.

¹⁴⁰⁴ Ibid., Art. 17.

¹⁴⁰⁵ Ibid., Art. 18.

¹⁴⁰⁶ GRECO reports that the publication of donations and donors above a certain level is applied in Germany, Spain, Ireland, Luxembourg, Norway, Poland and the United Kingdom. The GRECO evaluation teams found the threshold in Germany to be too high. GRECO recommended a reduction in the EUR 50,000 minimum for immediate reporting and disclosure and a significant reduction in the threshold for the disclosure of donations and donors. See:

http://www.coe.int/t/dghl/monitoring/greco/documents/2010/Greco%282010%298_RapportYVDoublet_EN.pdf (page 5), consulted 7 August 2011.

¹⁴⁰⁷ GRECO (2008) Third Evaluation Round Evaluation Report on the Netherlands on Incriminations.

¹⁴⁰⁸ Ibid., p.27 and 28.

Political Parties Subsidisation Act to an appropriate level and to prohibit donations from donors whose identity is not known to the political party/grouping/candidate;

- To require all entities represented in parliament to report on their financial situation in appropriate detail, including information on income, expenditure, debts and assets, and to establish a standardised format (accompanied by appropriate guidelines, if necessary) for financial reports to be submitted by all entities represented in parliament;
- To establish independent monitoring of political funding, including electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4 and to provide the body to be entrusted with carrying out this monitoring (which is most likely to be the KR) with adequate powers and financial and human resources;
- To clarify the provisions on sanctions in the draft Financing of Political Parties Act, ensuring that sanctions for violations of political funding rules can be imposed upon all entities on which the draft law imposes obligations.

Because of these shortcoming, and because the government had failed to tackle this problem (in their opinion), in 2010 two MPs¹⁴⁰⁹ took the initiative to put forward a proposal for an initiative law which would change Article 18 WSPP. The main changes they proposed were:

- Any donation to any political party or to an MP or Senator of EUR1,500 or more must be made public. Gifts from a donor with an aggregate amount of EUR1,500 or more per year for the purposes of this paragraph are considered to be one gift.
- In violation of Article 18 WSPP, the Minister of BZK can impose an administrative fine of up to EUR 20,000.

While this bill is intended as narrowing existing regulations, the AR considers that a number of suggestions of GRECO are not incorporated therein.¹⁴¹⁰

Representatives of all major political parties, except the PVV, have met several times to discuss the topic of financing of political parties and the extent to which this should be regulated.¹⁴¹¹

In January 2012 the Tweede Kamer started with a parliamentary debate on the draft Financing of Political Parties Act (WFPP), which was sent to the Tweede Kamer in April 2011.¹⁴¹² Donations above EUR 1,000 would have to be registered and donations above EUR 4,500 would have to be disclosed, including the name of the donor. The provisions do not apply to regional or local political parties.

The draft Act gives the responsibility for the monitoring and enforcement of the rules on the financing of political parties to the Minister of BZK, instead of the KR. According to the media, it is difficult to predict which parliamentary groupings will vote in favour of this proposal.¹⁴¹³

According to an interviewee, several political parties are against a change in the law, because of the negative financial consequences for them.¹⁴¹⁴

While a few laws/provisions exist, they do not cover all aspects related to the financial information of political parties, and some provisions contain loopholes.

Transparency (in practice)

To what extent can the public obtain relevant financial information from political parties?

In practice there are major differences in the extent to which the public can obtain relevant financial information from the various political parties.¹⁴¹⁵

1409 Mr. Dibi (Green Party) and Mr. Schouw (Liberal Democrats).

1410 Algemene Rekenkamer (2011). Financiering politieke partijen p. 19.

1411 Interview with Ellen Nauta-van Moorsel, Director at the Bureau of the political party CDA, interview held the 1st of March 2012.

1412 Wetsvoorstel Regels inzake de subsidiëring en het toezicht op de financiën van politieke partijen (Wet financiering politieke partijen) (32752); Wetsvoorstel Wijziging van de Wet subsidiëring politieke partijen met het oog op verlaging van de subsidies (31906).

1413 Donner: Openheid over giften. <http://www.trouw.nl> d.d. 25th March 2011.

1414 Interview with Henk Nijhof, Chair of the Board of the political party GroenLinks, 21 June 2011.

1415 Interview with Remco Nehmelman, Senior lecturer Constitutional and Administrative Law University of Utrecht, 17 May 2011.

On the website of the PvdA the following information was found:

- Annual Report 2010; the amounts that have been received on contributions and donations are disclosed.¹⁴¹⁶
- Publication of names of party members who have paid over EUR 500.¹⁴¹⁷
- Guidelines for donations and sponsorship, which include that only donations from individuals are accepted by the Labour Party. There is no maximum set for these donations. The Labour Party will not accept business donations or sponsorship.¹⁴¹⁸

On the website of the VVD the following information was found:

- Donations: Any amount is welcome, this supports the Liberal Party in its ongoing campaign. The VVD is legally required to include donations over EUR 4,500 in its financial report. Donations to the VVD cannot create any rights.¹⁴¹⁹
- Annual Report 2009, which disclosed which amounts were received in contributions and donations.¹⁴²⁰ On page 22 of this report is published one gift of a natural person and three transfers of legal person. These four gifts are larger than EUR 4,538.

On the website of the CDA, the following information was found:

- Donations are welcome. The CDA is legally required to disclose donations over EUR 4,500 in its financial accounts. Donations to the CDA cannot create any rights.¹⁴²¹

- The annual account of 2010 can be found, which includes the total amount of contributions and donations.¹⁴²²

On the website of the D66, the following information was found:

- Donations are welcome. A registry is kept at the Party Bureau in which all donations over EUR 1,500 are disclosed.¹⁴²³
- The annual account for 2010 includes the total amount of contributions and donations.¹⁴²⁴

On the website of Groenlinks, no relevant information on financial matters was found.¹⁴²⁵

On the website of SP, the following information was found:

- The annual account for 2010 includes the total amount of contributions and donations.¹⁴²⁶
- A statement that no donations were received over EUR 4,537.80 from businesses or societal organisations. Other donations are either included in the total amount of contributions and donations or are included in the item 'hand-over by elected representatives'.¹⁴²⁷

On the website of PVV, no relevant information on financial matters was found.¹⁴²⁸

Criticism of political parties over their lack of transparency and openness on the financing of their activities can also be considered as a sign that they are

¹⁴¹⁶ Jaarverslag Partij van de Arbeid 2010 p.56.

¹⁴¹⁷ <http://www.pvda.nl/vereniging/over+de+pvda/Vereniging/Financi%C3%ABn/Openbaarmaking+giften+aan+de+PvdA.html>, consulted 4 March 2012 and PvdA (2011) Jaarverslag Partij van de Arbeid 2010 p.56.

¹⁴¹⁸ <http://www.pvda.nl/vereniging/over+de+pvda/Vereniging/Financi%C3%ABn/Richtlijnen+donaties+en+sponsoring.html>, consulted 8 March 2012.

¹⁴¹⁹ <http://www.vvd.nl/donaties>, consulted 4 March 2012.

¹⁴²⁰ <http://www.vvd.nl/over-de-vvd/detail/41/verantwoording>, consulted 28 May 2011.

¹⁴²¹ http://www.cda.nl/Organisatie/CDA_steunen/Doneren.aspx, consulted 4 March 2012.

¹⁴²² CDA (n.d.) Jaarrekening 2010 van Stichting Secretariaat CDA. p.16.

¹⁴²³ D66 (n.d.) Jaarrekening 2010 Vereniging Politieke Partij Democraten 66 p.27.

¹⁴²⁴ Ibid., p.16.

¹⁴²⁵ <http://www.groenlinks.nl>, consulted 4 March 2011.

¹⁴²⁶ SP (2011). Jaarrekening SP 2010. p.16.

¹⁴²⁷ Ibid., p.18.

¹⁴²⁸ <http://www.pvv.nl>, consulted 4 March 2011.

regarded as institutions that make an essential contribution, or should do so, to the functioning of democracy.¹⁴²⁹ In general, while it is possible for the public to obtain basic relevant financial information from political parties, it is usually a difficult, cumbersome and/or lengthy process. Only the legally-required information can be found for most political parties. The extent to which donations are registered and/or disclosed varies considerably.

ACCOUNTABILITY (BY LAW)

To what extent are there provisions governing financial oversight of political parties by a designated state body?

Requirements on subsidy

In the application for a subsidy to a political party there must be included an activity plan, a budget, a statement of the membership figures on the record date and, if applicable, membership of the designated youth political organisation.¹⁴³⁰ The application for the establishment of the subsidy must be accompanied by a financial report and an activity report.¹⁴³¹ The Minister of BZK may impose requirements with regard to the design of the financial report, the activity report and the list of members of political parties and political youth organisation, considered to be relevant to the determination of the subsidy.¹⁴³² There are no legal loopholes which allow parties not to provide information for the subsidy. If the application is not submitted in the prescribed manner, the applicant receives no subsidy. Political parties have to provide their financial report to an accountant, and the Minister of BZK is responsible for the overall enforcement of the provisions by political parties.¹⁴³³ Any wrongfully-obtained subsidy must be repaid to the government.

Requirements on private financing

This is not the case with private financing. Only certain gifts should be published and there are no penalties for breaking the existing rules provided in the current WSPP. In the WFPP the possibility is created for the Minister of BZK to impose an administrative fine on, or withdraw a subsidy from, a political party which has violated the rules on financing.

While a few laws/provisions exist, they do not cover all aspects of financial reporting and accounting of political parties and/or some provisions contain loopholes.

ACCOUNTABILITY (IN PRACTICE)

To what extent is there effective financial oversight of political parties in practice?

Compliance

In general, political parties that receive subsidies comply with the governing rules. Nevertheless, a newspaper reported recently that the CDA had received EUR 100,000 from a company, but had refused to disclose the name of the donor.¹⁴³⁴

On private financing there is little or no accountability, but this is likely to improve if the WFPP becomes effective. Tools for compelling political parties are missing or not applied.

Enforcement

On the question of who should be responsible for enforcement, there is disagreement. The current Minister of BZK is of the opinion that she should be charged with enforcement. Also, the initiative law proposal submitted by the MPs Dibi and Schouw (Article 18a) adopts such view.¹⁴³⁵ The KR¹⁴³⁶ and

¹⁴²⁹ Biezen, van I. (2010). p. 11.

¹⁴³⁰ Art. 8, par. 2 WSPP.

¹⁴³¹ Ibid., Art. 10, par. 2.

¹⁴³² Ibid., Art. 10, par. 5.

¹⁴³³ Ibid., Art. 11.

¹⁴³⁴ <http://www.nrc.nl/nieuws/2011/07/27/cda-houdt-herkomst-100-000-euro-geheim-kiezer-heeft-er-recht-op/>, consulted 27 July 2011.

¹⁴³⁵ <http://tweedekamer.groenlinks.nl/files/Initiatiefwetsvoorstel%20Subsidi%C3%ABring%20Politieke%20Partijen.pdf>, consulted May 2011.

¹⁴³⁶ Interview with Henk Kummeling, Chairman of the Electoral Council, 20 April 2011.

several experts are of the opinion that this should not happen. They are of the opinion that it is better to entrust an independent body such as the KR with this task, rather than the Minister of BZK or another Member of Cabinet, who are more interrelated with politics and political parties. An interviewed party chairman called for an independent regulator as well, such as the AR¹⁴³⁷ or the KR.^{1438, 1439}

In general, parties provide partial, low-quality and/or late reports on their financing sources.

INTEGRITY (BY LAW)

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

The Civil Code contains rules on the appointment of the chairman and other board members of associations. These rules also apply to political parties. In the regulations and standing orders, which can be changed by the members, the rules of the Civil Code are developed and expanded.

The major political parties choose to have their members electing candidates for parliament, provincial and municipal elections. Candidates can be screened in various ways.

Often political parties ask their candidates to submit a Certificate of Good Conduct (VOG – Verklaring omtrent gedrag) from the Minister of VJ. If a candidate is convicted for certain crimes, the certificate is denied. The party manifesto and election manifestos are usually also adopted by party members. It should be noted that the rules mentioned above do not apply to

political parties without members. These are not governed democratically. However, according to the law these ‘political movements’ can exist in the Netherlands.

Self-regulation

Some of the major political parties have developed basic documents as part of their integrity policy. The CDA has developed a document for its representatives in which the principles and values for a reliable politician are to be found.¹⁴⁴⁰ Here integrity of a politician is further stipulated. Additionally, there is the possibility for CDA representatives to turn to a regional CDA confidentiality counsellor if a dilemma needs to be discussed or advice is needed.¹⁴⁴¹ Integrity violations can be reported to the CDA national integrity commission.

Most major parties have comprehensive regulations in place on their internal democratic governance.

INTEGRITY (IN PRACTICE)

To what extent is there effective internal democratic governance of political parties in practice?

Nowadays the members of most political parties choose party leaders and candidates for the elected representative bodies. In some parties, the list of candidates is drawn up by an electoral commission.¹⁴⁴² Here too it should be noted that in the Netherlands only a small percentage of the electorate is a member of a political party, which puts their legitimacy under pressure.¹⁴⁴³ The dominance of the leader and/or a small group of prominent party members is evident in all cases. In the VVD Mark Rutte is the undisputed leader;¹⁴⁴⁴ in the CDA Maxime Verhagen is the

1437 <http://www.rekenkamer.nl/english>, consulted 6 July 2011.

1438 <http://www.kiesraad.nl/English-Home.html>, consulted 6 July 2011.

1439 Interview with Henk Nijhof, Chair of the Board of the political party GroenLinks, 21 June 2011.

1440 CDA (n.d.) Een betrouwbaar politicus: Grondhouding voor volksvertegenwoordigers en bestuurders namens het CDA.

1441 Interview with Matthijs Schüssler, Legal Officer at the Bureau of the political party CDA, interview held the 1st of March 2012.

1442 VVD: <http://www.vvd.nl/over-de-vvd/detail/53/kandidatenlijst-eerste-kamer-vastgesteld-door-leden-vvd>; PvdA:

<http://www.pvda.nl/vereniging>; CDA: <http://www.cda.nl/Organisatie/Partij/Partijbestuur.aspx>, all websites consulted 7 August 2011.

1443 <http://dnpp.eldoc.ub.rug.nl/FILES/root/Persberichtenledenta/persberichtledentallen2010.pdf>

1444 <http://www.politiekemonitor.nl/9353000/1/j9vvioaf0kku7zz/vh8lnhrouwxy>, consulted 7 August 2011.

same.¹⁴⁴⁵ Their votes inside the party count much more than 'ordinary' party members, regardless the content of their position. However, there are also examples of party leaders being presented or recommended without any involvement of the members of the political parties. The PvdA party leader Bos resigned in 2010 and presented Cohen as his successor, Cohen was elected during a meeting of members. In 2010 the Board of the CDA nominated Balkenende as party leader, and the members voted in favour of his appointment.¹⁴⁴⁶ Both appointments were not undisputed. Most political parties do organise meetings in which important decisions are on the agenda and then voted by the members. Candidate selection or determining the financial report generally require members' approval.¹⁴⁴⁷

Some parties do not have a membership organisation (PVV and TON). In these parties, the dominance of the party leader is unquestionable, both formally and materially. Regarding this aspect, the Dutch political parties may not meet the European standards as formulated in the guidelines on political party regulation:

113. Parties must have the ability to determine party officers and candidates, free from government interference. Recognizing that candidate selection and determination of ranking order on electoral lists is often dominated by closed entities and old networks of established politicians, clear and transparent criteria for candidate selection is needed, in order for new members (including women, and minorities) to get access to decision-making positions. Gender-

*balanced composition of selecting bodies should also be commended.*¹⁴⁴⁸

The latter is certainly the case for the SGP, which will not admit women to the list of candidates, on Biblical grounds.¹⁴⁴⁹

Approval

The integrity, but also the loyalty, of MPs and Senators who are also party members of the coalition, is put to the test when their support is indispensable regarding a specific topic, while they actually may agree with the opposition. Therefore, in practice politicians tend to act in conformity with official party positions; there may even be a form of pressure on dissidents. Sometimes specific approval of members is asked. In 2010, the Christian Democratic Party (CDA) submitted the question to its members whether or not to participate in a coalition-government with the conservative VVD, together a minority in the Tweede Kamer, which would be supported by the PVV. This seems to have been the case with the MPs Koppenjan¹⁴⁵⁰ and Ferrier from the CDA.¹⁴⁵¹ Both MPs were against their political party becoming part of the minority coalition, which was to be supported by PVV. The media reported that party members of CDA were trying hard and pressuring these MPs to guarantee unanimous support for the coalition.¹⁴⁵² In the end both MPs agreed with the coalition agreement.¹⁴⁵³

Most major political parties follow democratic procedures in selecting their leaders and candidates and deciding on major policies. However, there are also examples of political parties without members and political parties which interfere with their individual representatives.

¹⁴⁴⁵ Ibid.

¹⁴⁴⁶ <http://www.parool.nl/parool/nl/224/BINNENLAND/article/detail/283718/2010/03/12/Wouter-Bos-stopt-Cohen-mogelijk-opvolger.dhtml> and <http://vorige.nrc.nl/article2488559.ece>

¹⁴⁴⁷ Interview with Ruth Peetoom, Chair of the Board of the political party CDA, interview held the 1st of March 2012.

¹⁴⁴⁸ [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)024-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)024-e.asp), consulted 17 June 2011.

¹⁴⁴⁹ <http://www.sgp.nl/Home/Partij> (Program van beginselen, artikel 10, Toelichting), consulted 2 August 2011.

¹⁴⁵⁰ <http://www.nrc.nl/nieuws/2011/03/03/onrust-in-cda-over-nieuwe-kritiek-dissident-koppejan/>, consulted 17 June 2011.

¹⁴⁵¹ http://www.telegraaf.nl/binnenland/8052058/_CDA_ers_zijn_Ferrier_spuugzat_.html, consulted 17 June 2011.

¹⁴⁵² <http://www.trouw.nl/tr/nl/4324/Nieuws/article/detail/1809181/2010/10/01/Ferrier-en-Koppejan-wacht-ultieme-test.dhtml>, consulted 20 October 2011.

¹⁴⁵³ <http://www.ad.nl/ad/nl/1012/Binnenland/article/detail/1911278/2010/10/05/Groen-licht-voor-kabinet-Rutte-Verhagen.dhtml?redirected>, consulted 20 October 2011.

Interest aggregation and representation

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

For many years political parties have had wide and stable support among the electorate, although the support has declined in recent years.

There are many more floating voters who do not always vote the same party. Most of the voters are not members of a political party.

Representation

There are political parties on a specific population group or subject focus:

- Fifty-plus (founded in 2011): defends the interests of the elderly;
- Reformed Political Party (Staatkundig Gereformeerde Partij; abbreviated as SGP): bases its views on the Bible alone;
- Party for the Animals (Partij voor de Dieren; abbreviated as PvdD): animal welfare is the main theme for the party;
- Labour Party (PvdA), Socialist Party (SP) and Green Party (GroenLinks): defend the socially disadvantaged.

There is also a Dutch Muslim party (Nederlandse Moslim Partij)¹⁴⁵⁴, but this party is not represented in parliament. Several political groups in the Tweede Kamer and Senate harbour members coming from minority groups in society. The previous government (2007–2010) had one deputy minister from the Moroccan-origin minority (who now is mayor of the city

of Rotterdam) and one deputy minister with a Turkish background (she is now MP for the PvdA).

Many farmers seem to vote for the Christian Democratic Party (CDA).¹⁴⁵⁵ The Freedom Party (PVV) seems to get many votes from less-educated voters¹⁴⁵⁶; on the other hand, the Liberal Democratic Party (D66) and the Green Party (GroenLinks) seem to get many votes from highly-educated people¹⁴⁵⁷.

Many entrepreneurs seem to vote for the Conservative Liberal Party (VVD) and the Christian Democratic Party (CDA).¹⁴⁵⁸

According to the Dutch Council for Public Administration (Rob – Raad voor het openbaar bestuur) democratic institutions are accepted by most citizens – that is to say: there is no confidence crisis, but there is a legitimacy crisis.

People have confidence in the democratic system, but much less confidence in the way political parties and politicians operate. Voters have limited confidence in politics.¹⁴⁵⁹ Many PVV supporters have a strong sense of social and political discontent.¹⁴⁶⁰

The turnout rates for national elections, although decreasing over the years, are much higher than for all other elections. These other elections are often referred to as ‘second-order national elections’ which do not have clear features and interests of their own.

The turnout rate for these elections and the elections results are to a large extent determined by issues and politicians from national politics.¹⁴⁶¹

¹⁴⁵⁴ <http://nederlandsemoslimpartij.nl>, consulted 28 of May 2011.

¹⁴⁵⁵ <http://www.lto.nl/media/default.aspx/emma/org/10398316/verkiezingsthema+29+mei.pdf>

¹⁴⁵⁶ <http://www.os.amsterdam.nl/nieuws/10504>, consulted 7 August 2011.

¹⁴⁵⁷ <http://www.dpes.nl/documents/eenverdeeldelektorat.pdf> (see p. 278, Tabel 10).

¹⁴⁵⁸ <http://www.deondernemer.nl/deondernemer/485564/Ondernemers-kiezen-VVD-en-CDA.html>, consulted 7 August 2011.

¹⁴⁵⁹ Raad voor het openbaar bestuur (2010); Biezen, van I. (2010) p. 3 and 10–11.

¹⁴⁶⁰ <http://www.scp.nl/dsresource?objectid=27915&type=org>, consulted 7 August 2011.

¹⁴⁶¹ Aarts, C.W.A.M. (1999). p.17.

The average turnout rates in elections held from 2009–2011:

Elections for:	Year(s)	Average turnout rate(s)
Local councils	2010 (2006)	54.1 (58.6)
Provincial councils	2011 (2007)	55.9 (46.4)
House of Representatives	2010 (2006)	75.4 (80.4)
European Parliament	2009 (2004)	36.8 (39.3)

Source: <http://www.verkiezingsuitslagen.nl/Default.aspx>, consulted the 20th of October 2011

In general, political parties are able to aggregate and represent a range of relevant social interests in the political sphere.

ANTI-CORRUPTION COMMITMENT

To what extent do political parties give due attention to public accountability and the fight against corruption?

There is little or no attention given to the fight against corruption or public accountability by political parties. 'Corruption' is only mentioned in the election manifestos of the following political parties that participated in the parliamentary elections in June

2010: CDA, PvdA, PVV, D66 and SP, in all cases in a very limited sense (see Context).

According to the media (television, radio and newspapers), it appears that corruption and integrity get only very little attention in the speeches of party leaders.

While there are a few reforms initiated and promoted by political parties to counter corruption and promote integrity, these are piecemeal efforts, which are considered largely ineffective in achieving their goals. 'Integrity' is only mentioned in the election manifestos of the following political parties that participated in the parliamentary elections in June 2010: CDA, PvdA and PVV, in all cases in a very limited sense (see Context).

Corruption

Political party	Number of times mentioned	Context
Christian Democratic Party (CDA)	1	International cooperation
Labour Party (PvdA)	1	Development and cooperation
Freedom Party (PVV)	1	Democratisation
Liberal Democratic Party (D66)	1	International cooperation
Socialist Party (SP)	1	Youth Policy

Integrity

Political party	Number of times mentioned	Context
Christian Democratic Party (CDA)	1	Democratization
Labour Party (PvdA)	1	Financial supervision in Europe
Freedom Party (PVV)	1	Education ('Competence-based learning, where students' own responsibility for their learning process focuses on intangible skills (such as integrity) rather than knowledge, is completely wrong.')

6.11 MEDIA

Role in NIS

The more a society develops open and transparent practices, the more information becomes available within the public domain. However, the amount of information makes it almost impossible, even for the most diligent citizen, to stay up-to-date about everything relevant that is going on within society. The proceedings of the legislature, public and local authorities, courtrooms, and public companies may all be open to the public, but no single member of the public can ever hope to attend them all. Therefore, it is important to have diligent, professional media which are devoted to sifting through this mass of information on a daily basis, selecting with wisdom and with at least one eye on the public interest, precisely what it is that should concern us – and then conveying this information to us in a fair and responsible way. Of course, there will be the inevitable conflicts-of-interest between the media exercising its constitutional function of informing the public, and its desire to attract a greater public, ample advertising, and a healthy profit-margin.

A free media sector is an important pillar which serves as a powerful counterforce to corruption in public life. To fulfil this role the media should possess sufficient resources. These include financial resources, but also mechanisms (legally and in practice) which guarantee the diversity of the media. The degree to which the media are independent is the degree to which they can perform an effective public watchdog function over the conduct of public officials. This is relevant at the organisational level (does financial dependence lead to dependence on the government, on businesses as a financing institution, or does the dependence on advertisements have consequences for the content of the news?) as well as for the individual journalist.

At the moment, when the media use their power and therefore have societal impact, transparency, accountability and integrity become important.

Transparency about the way this power is exercised is crucial in order to prevent misuse of this power. Furthermore, it is important that media organisations are aware of the impact of their reports and that they are answerable for their activities.

To function properly as part of the National Integrity System, it is important that the media have their own correction mechanism in place to prevent misuse of power. Investigation and publication of corruption practices are a specific and important task for the media in the National Integrity System. The news media follow powerful individuals and organisations which belong to other pillars. It is important that the media investigate and expose cases of corruption, inform the public about the impact of corruption and inform the public about weak aspects of the assurance mechanisms that help to prevent the occurrence of corruption in the different pillars. By publicizing corruption, its impact and the governance of the different pillars, the media make it possible for society to address corruption.¹⁴⁶²

Sources

The desk report for this pillar started with general research into the topic of the media regulations and current affairs concerning the media's own integrity. The applicable legal provisions and literature were examined as well as parliamentary documents concerning the media. Additionally, a media scan was made. An in-depth interview was held with two key figures from the media. The outsider's view was either provided via academic articles or during interview with key experts on other pillars. Interviews held:

- Hugo Arlman, Freelance journalist, interview held the 9th of December 2011.
- Alexander Rinnooy Kan, President of the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.

¹⁴⁶² Transparency International. (2003). Pillars of Integrity: Confronting Corruption. The Key Elements of a National Integrity System. p.19–25.

- Margo Smit, Journalist and the Director of the Association of Investigative Journalists, interview held the 31st of May 2011.
- Ivo Thomassen, Senior Policy Advisor Directorate of Public Administration at the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.

MEDIA

Status: Strong

Summary

The situation in the Netherlands regarding the news media is generally satisfactory. The law provides conditions for free and independent media (Internet, radio, television, newspapers and magazines). There is no censorship in the Netherlands; journalists can carry out their work in freedom. The direct funding of public broadcasting organisations poses a risk to its independence, with MPs expressing their opinions on programmes and in other content. The extent to which the media are transparent about their ownership, decision-making and policies varies from the extensive transparency of public broadcasters to commercial broadcasters and newspapers disclosing less about their organisation. A similar distinction can be made about the available integrity provisions.

Overall, integrity in journalism is not a widely-discussed topic by the media themselves, although occasionally media report about other media's conduct. The Netherlands Press Council is becoming more professional in its task to assess complaints about media or journalistic conduct. It does not actively engage in addressing ethics in the media. The Openness of Government Act (Wob – Wet Openbaarheid bestuur) gives individuals the right to public sector information. However, in practice this right to information is not always ensured, mainly because the information requested is often refused or not provided in due time. If the requested information is denied, citizens have a right to appeal to the court. On a daily basis the media (television, radio and press) pay attention to political or government-related issues, including integrity violations. Additionally, corruption cases are exposed by the media.

Structure and Organisation

There is a wide variety of media organisations in the Netherlands.

Radio and television

The public broadcasting organisations are in the hands of associations. These were traditionally organised on the basis of the pillar structure which was typical for Dutch society (*'pillarisation', please refer to the socio-political foundations*). For example, the KRO used to be a Roman Catholic broadcasting organisation. There are several broadcasters which traditionally had a more protestant background, such as the NCRV, the EO and the VPRO, although the latter has lost its protestant character entirely. The VARA is a broadcasting organisation that is affiliated with the socialist tradition. The AVRO, Veronica and the TROS have a more liberal orientation. The connections of these broadcasting organisations with their traditional pillars dating back to the days of pillarisation have more or less disappeared. However, several broadcasting organisations still have strong ties with certain political parties. The public broadcasting associations are financed by the government.

In the Netherlands a distinction is made between the technical infrastructure for the broadcasting of radio and television ('hardware') and the programs that are broadcast ('software'). The infrastructure falls under the jurisdiction of the Ministry of Infrastructure and Environment (I&M – Infrastructuur en Milieu). This ministry is responsible for the fair distribution of available broadcasting options.

The Minister of Education, Culture and Science (OCW – Onderwijs Cultuur en Wetenschap) is responsible for the programs that are broadcast. This ministry supervises the public broadcasting associations as to ensure sufficient diversity in the programmes offered.

Besides the national public broadcasting organisations, there are also national commercial broadcasting companies. The most important Dutch commercial broadcasting companies are SBS6 (owned by SBS Broadcasting B.V., which is part of the German ProSiebenSat.1 Media AG) and several RTL (Radio Télévision Luxembourg) broadcasting companies owned by the RTL group, which is the media division of the German company Bertelsmann, owned by the family Mohn. The commercial European broadcasting market is

dominated by four big players: ProSiebenSat.1 Media AG, the French TF1 Group, the Italian Mediaset SpA and RTL Group SA.

Print media

The Dutch press is in private hands. The most important newspapers are NRC Handelsblad, De Volkskrant, Trouw, De Telegraaf and Algemeen Dagblad (AD). Additionally, there are three free daily newspapers with national distribution; Metro, Spits and De Pers. Important news magazines are Elsevier, Vrij Nederland, HP/De Tijd and De Groene Amsterdammer. For the publishing and distributing of newspapers and magazines no governmental license is required.

Internet

New media grow rapidly in the Netherlands. This leads to the provision of new forms of news. Small parties are able to provide news and information. The new media also make interactive forms of news provision possible. This fast-growing area of the media is privately-owned. The broadcasting companies, the commercial ones as well as the public broadcasting associations as well as the newspapers, are all trying to explore the potential of the new media. The position of websites related to big media-outlets (for example NOS, De Telegraaf and De Volkskrant) is strong. There are only a few independent competitors.

Profession

Many professional journalists are organised in labour unions for journalists, among which the Dutch Association of Journalists (NVJ – Nederlandse Vereniging van Journalisten) is the largest union. Almost 8,000 of the 12,000 to 15,000 Dutch professional journalists are members of this union. The NVJ is part of the general labour union FNV.¹⁴⁶³ Additionally, there is the Association of Investigative Journalists VVOJ (Vereniging van Onderzoeks-journalisten). In the Netherlands,

journalism is a free profession; everybody is able to call him or herself a journalist. In practice, there are no restrictions or legal requirements for journalists in exercising their profession. It is possible to study journalism at several Dutch universities.

ASSESSMENT

Resources (by law)

To what extent does the legal framework provide an environment conducive to a diverse independent media? The legal framework pertaining to the existence and operations of independent media (public, commercial and community broadcasting) is conducive.

Constitutional and statutory provisions

Freedom of the press as a fundamental right is existing since 1848.^{1464, 1465} The Media Act regulates access to the broadcasting system and ensures that there is adequate diversity of media.¹⁴⁶⁶ The Media Authority (CvdM – Commissariaat voor de Media) upholds the rules which are formulated in the Media Act as well as in the regulations based on this act, such as the Media Decree.¹⁴⁶⁷ This is done by providing information about the way the act is to be interpreted beforehand and by supervision afterwards. The activities of the CvdM focus on both public service and commercial broadcasters and on cable operators. The CvdM is an independent administrative body situated in the city of Hilversum. Regarding the supervision of radio and television, the work of the CvdM includes three areas: licensing, supervision and financial surveillance.¹⁴⁶⁸

Broadcasting license

The Minister of OCW decides on the acknowledgement of broadcasting organisations and the corresponding broadcasting license. A broadcasting license expires after five years. This applies to commercial radio stations and to television stations.¹⁴⁶⁹ Providing a

¹⁴⁶³ See pillar: Business organisations.

¹⁴⁶⁴ Art. 7 Grondwet.

¹⁴⁶⁵ <http://www.denederlandsegrondwet.nl/9353000/1/j9vvihlf299q0sr/vh8lnhrpfxtu>, consulted 9 August 2011.

¹⁴⁶⁶ The Mediawet came into force in the Netherlands in 2008 ('Mediawet 2008').

¹⁴⁶⁷ <http://www.cvdM.nl/content.jsp?objectid=7011>, consulted 9 December 2011.

¹⁴⁶⁸ <http://www.cvdM.nl/content.jsp?objectid=7419>, consulted 21 May 2011.

¹⁴⁶⁹ Art. 2.24–2.34 Mediawet and <http://www.cvdM.nl/content.jsp?objectid=7302>, consulted 10 December 2011.

commercial broadcasting service is only allowed with the permission of the CvdM.¹⁴⁷⁰ According to the General Administrative Law Act (Awb – Algemene wet bestuursrecht) a negative decision on a request for a broadcasting license is subject to an appeal. In granting licenses in public broadcasting, the diversity of media is considered. This means that the different societal groups should recognise themselves in the television and radio programming, and that a variety of programs is offered. For commercial broadcasters there are comparable rules about ‘media diversity’.¹⁴⁷¹ Diversity in public broadcasting is regulated by law. There is a so-called ‘public media mission’ which includes care for the national, regional and local provision of public media services by offering informative, cultural and educational programs scattered between the regular programming and on all available channels.¹⁴⁷² Public media services must comply with the democratic, social and cultural needs of Dutch society by offering media content that:

- a. Is balanced, multifaceted, varied and of high quality and also characterised by a great diversity in form and content;
- b. Provides an image of society and shows the diversity of the population, its beliefs, attitudes and interests;
- c. Is focussed on both a broad and general public, on population and age groups of different sizes and composition, with particular attention to smaller target groups;
- d. Is independent of commercial influences and government influences (apart from legally defined exceptions);
- e. Meets high professional journalistic standards,
- f. Is accessible for everyone.¹⁴⁷³

Furthermore, churches and associations of a spiritual or legal basis will be designated to provide media offerings on the religious or spiritual area for the national public service media.¹⁴⁷⁴

However, some commercial broadcasting institutions are registered in Luxembourg and do not have to adhere to the Dutch regulations on e.g. advertising or sponsoring. This is due to the lack of supervision, sanctions and procedures. Luxembourg has no supervisor for the media at all.

Content

Within the responsibilities given to public broadcasting organisations, they can determine the form and content of their programmes.¹⁴⁷⁵ Commercial media institutions determine the form and content of their programming.¹⁴⁷⁶ They have to meet the requirements of the European Audio-visual Media Services Directive.¹⁴⁷⁷ The audio-visual programs provided by the public as well as the commercial media may not broadcast programs that could cause serious damage to the physical, mental or moral development of persons less than sixteen years.¹⁴⁷⁸

Funding

Public broadcasting is funded by the government.¹⁴⁷⁹ In order for public broadcasting associations to receive funding from the government, governmental approval (acknowledgement and licence) is required.¹⁴⁸⁰

The budget of a broadcasting association depends upon the number of people that are a member of the broadcasting association. There are also revenues from the broadcasting of advertisements, and membership fees.

¹⁴⁷⁰ Art. 3.1, par. 1 Mediawet.

¹⁴⁷¹ Ibid., Art. 3.20, par. 1 and art. 3.24, par. 1.

¹⁴⁷² Ibid., Art. 2.1, par. 1.

¹⁴⁷³ Ibid., Art. 2.1, par. 2.

¹⁴⁷⁴ Ibid., Art. 2.42, par. 1.

¹⁴⁷⁵ Ibid., Art. 2.88.

¹⁴⁷⁶ Ibid., Art. 3.5, par. 1.

¹⁴⁷⁷ Ibid., Art. 3.20, par. 1.

¹⁴⁷⁸ Ibid., Art. 4.1, par. 1.

¹⁴⁷⁹ Ibid., Sections 2.6.1 and 2.6.2.

¹⁴⁸⁰ Ibid., Art. 2.149 and 2.24.

Sponsorship is also possible.¹⁴⁸¹ According to the policy of the CvdM only cultural programs, programs about sporting events or events for non-commercial purposes may be sponsored. Sponsoring of news programs, information programs or programs of political parties and programs for children of twelve years or younger is not permitted.¹⁴⁸² The Media Act also governs regional and local broadcasting¹⁴⁸³, including their methods of funding.¹⁴⁸⁴ Local authorities receive funding from the government, which they then give to local broadcasters.

Fund for stimulating the Press

The Fund for stimulating the Press (Stimuleringsfonds voor de Pers) provides loans and subsidies to printed and digital media such as daily newspapers, magazines and websites as well as for research into the newspaper industry.¹⁴⁸⁵ The Fund is an independent authority financed by the government from the revenues of advertising on radio and television. This Fund is run by a Board whose members are appointed and dismissed by royal decree. The board of the Fund decides on requests for financial help.¹⁴⁸⁶ In 2010 the budget of the Fund for stimulating the press was EUR 1,750,000.^{1487, 1488}

Print media

According to the Dutch Constitution there are no preventive restrictions on setting up print media entities.¹⁴⁸⁹ No license is required. There are civil law provisions applicable to companies and publishers of newspapers and magazines.

The profession of journalist

For exercising the profession of journalist no permission of the public authorities is required. The profession of journalist is not regulated or protected by law. Any person can introduce himself as a 'journalist' or 'reporter'. A diverse group of institutions offers forms of journalism education in the Netherlands, on bachelor as well as master level.

RESOURCES (IN PRACTICE)

To what extent are there diverse independent media providing a variety of perspectives?

There is a plurality of media sources covering the entire political and social spectrum.

Television and radio

Political and ideological orientation

The funding of public broadcasting under the Media Act has led to the existence of a wide range of public broadcasters and corresponding programmes on radio and television. However, in order to save costs, the government announced in 2010 that it wanted to reduce the number of national broadcasters. The broadcasters were fiercely and fully opposed to this, but in the end accepted it.¹⁴⁹⁰ In July 2011 public broadcasting had a market share of around 40 percent.¹⁴⁹¹ Besides the public broadcasters, more than

1481 Ibid., Article 2.106 t/m 2.114. The first article states that sponsorship of public broadcasts is not allowed. This article is followed by various exceptions to this prohibition.

1482 <http://help.publiekeomroep.nl/faqs/worden-de-programma%E2%80%99s-van-de-publieke-omroep-gesponsord>, consulted 28 August 2011. Also a directive about sponsorship has been adopted; see: http://www.ntr.nl/static/docs/Code_goed_bestuur.pdf (page 35).

1483 Art. 2.61 to 2.71 Mediawet.

1484 Ibid., Art. 2.170 and 2.170a.

1485 Ibid., Art. 8.1.

1486 <http://www.stimuleringsfondspers.nl/Internet/English/page.aspx/999>, consulted 9 June 2011.

1487 <http://www.stimuleringsfondspers.nl/Internet/Subsidie/page.aspx/973>, consulted 9 June 2011.

1488 About the distribution of subsidies, see: <http://www.stimuleringsfondspers.nl/Internet/Organisatie/Wet-Regelgeving/Subsidieplafonds-2011/page.aspx/1054>, consulted 9 June 2011.

1489 Art. 7 paragraphs 1 and 3 Grondwet.

1490 <http://www.nrc.nl/nieuws/2011/06/24/fusieomroepen-beklagen-zich-bij-kabinet/>, consulted 13 August 2011. See also: <http://en.publiekeomroep.nl/page/nieuws/artikel/598>, consulted 17 August 2011.

1491 http://www.kijkonderzoek.nl/images/stories/Maandpersberichtentweeduizendelf/110808_Persbericht-SKO_2011_juli_kijktotaal.pdf

10 commercial stations are active nationwide. Public broadcasting has faced stiff competition from commercial stations since the commercial broadcasting companies received their legal status in 1988.¹⁴⁹² The political spectrum in the Netherlands can be shown by using the following coordinates: left, right, conservative and progressive.¹⁴⁹³ A few years ago it was assumed that public broadcasting was predominantly progressive ('left').^{1494, 1495} With the arrival of new broadcasters (Powned¹⁴⁹⁶ and WNL¹⁴⁹⁷, both related to De Telegraaf¹⁴⁹⁸, a morning newspaper that is known as 'right wing') there has been a shift since 2010 to the effect that conservative ('right wing') values are more discussed in public broadcasting.¹⁴⁹⁹ Furthermore, there is a statutory provision stipulating that all political parties represented in parliament receive broadcasting time.¹⁵⁰⁰

The Netherlands Press Council (Raad voor de Journalistiek) is concerned about the growing number of public channels competing against each other within a limited amount of broadcasting time. The emphasis on news provision among public channels is fading as they aim to meet the goals of increasing their viewing figures, which entails a diversification of content.¹⁵⁰¹ Overall, the increasing competition among the media, caused by commercial pressure, has led to more special interest, human interest and amusement. The news has to be entertaining, which brings with it that new news gets media attention while the follow-up on

how stories develop is rarely reported on.¹⁵⁰² This can become a risk to the classic role of the media being the watchdog.¹⁵⁰³

Programmes

According to the Sustainable Governance Indicators 2011, Dutch television and radio stations produce on a daily basis high-quality information programs and discuss government decisions.¹⁵⁰⁴ The NOS (main public news channel) provides at least 15 hours of reporting weekly on political issues. The radio channel Radio 1 has the task of providing primarily information. In recent years, its ratings have decreased. New media (such as the Internet) have grown at the expense of more traditional media and are becoming more influential in providing news. Parliamentary debates are not publicly broadcast on television. Nonetheless, NOS broadcasts Politiek 24, a digital television channel on the Internet that contains live streams of public debates, analyses, background information and a daily political show.¹⁵⁰⁵ (See also *Legislative/Transparency*.)

Location

Most broadcasting companies and associations are located in the city of Hilversum or in Amsterdam. Internet providers are located across the country and even across the world. In public broadcasting different kind of broadcasting organisations provide radio and television programs. Each of these broadcasting organisations belongs to one of the following

1492 <http://www.freedomhouse.org/uploads/pfs/371.pdf> (see page 184), consulted 10 August 2011.

1493 <http://www.kieskompas.nl/>, consulted 10 August 2011.

1494 <http://www.volkskrant.nl/vk/nl/2686/Binnenland/article/detail/868810/2007/11/20/Onderzoek-linkse-Publieke-Omroep.dhtml>, consulted 10 August 2011.

1495 <https://n5.noties.nl/peil.nl/>, consulted 10 August 2011.

1496 <http://www.powned.tv/>, consulted 10 August 2011.

1497 <http://www.omroepwnl.nl/>, consulted 10 August 2011.

1498 <http://www.telegraaf.nl/> and <http://www.cvdn.nl/dsresource?objectid=9956&type=org> (page 12), consulted 28 August 2011.

1499 <http://www.geencommentaar.nl/2010/12/21/verzuijing-en-vernieuwing-in-de-publieke-omroep/#more-23300>, consulted 10 August 2011.

1500 Art. 6.1 Mediawet.

1501 http://www.sgi-network.org/index.php?page=indicator_quali&indicator=M12_1&pointer=NLD#NLD, consulted 10 December 2011.

1502 Interview with Hugo Arlman, freelance journalist, 11 December 2011.

1503 Drok, N. (2007) p.13.

1504 http://www.sgi-network.org/index.php?page=indicator_quali&indicator=M12_1&pointer=NLD#NLD, consulted 10 December 2011.

1505 http://www.sgi-network.org/index.php?page=indicator_quali&indicator=M12_1&pointer=NLD#NLD, consulted 21 May 2011.

categories: state broadcasters (NOS¹⁵⁰⁶ and NTR¹⁵⁰⁷), associations and special broadcasters (based on a religion or philosophy of life) together with more than 20 public broadcasting organisations.¹⁵⁰⁸ Additionally, every province has at least one public television channel. There are also local public radio and television stations.¹⁵⁰⁹

Funding

In 2010 the governmental contribution to the media was a total of EUR 663,774 million (compared to EUR 665,586 million in 2009). The revenues from broadcasting of advertisements were EUR 215,294 million in 2010 (EUR 188,500 in 2009).¹⁵¹⁰ The income of the broadcasting associations from membership fees amounted EUR 23,748 to EUR 32,439 million in 2009.^{1511, 1512} An overview of the total amount of sponsorship fees cannot easily be found. From 2013 onwards the media budget will decrease. A state budget-cut in the media budget of EUR 200 million was announced in 2011, of which EUR 125 million will be at the cost of the public broadcasting organisations.¹⁵¹³

In 2011 EUR 10 million was received by local authorities from the government to use as a subsidy to local broadcasters. In total, 49 of the 112 local authorities gave less subsidy to these local broadcasters than they should have done.¹⁵¹⁴

Fund for stimulating the Press

This Fund is believed to be a useful buffer since it can independently provide subsidies to journalists and media initiatives.¹⁵¹⁵

Print media

Diversity

The Netherlands has a wide range of newspapers and magazines on various topics.¹⁵¹⁶ The press faces competition from news sites on the Internet.¹⁵¹⁷ Newspapers are trying to anticipate this by using social media,¹⁵¹⁸ but the number of daily and weekly newspaper companies has decreased from 55 (1950s) to 8 (2009).¹⁵¹⁹ The number of newspaper subscriptions has gone down, it is difficult to attract

¹⁵⁰⁶ The Netherlands Broadcasting Foundation (NOS – Nederlandse Omroep Stichting) is one of the broadcasters in the Netherlands Public Broadcasting system. The NOS has a statutory obligation to make news and sports programs for the three Dutch public television channels and the Dutch public radio services. See: <http://nos.nl/>, consulted 17 August 2011.

¹⁵⁰⁷ NTR is the independent Dutch public service broadcaster specialising in information, education and culture. NTR's themes are based on the statutory duties of the three public service broadcasters which in 2010 merged into NTR: NPS, Teleac and RVU. See: <http://www.ntr.nl/page/about-ntr>, consulted 17 August 2011.

¹⁵⁰⁸ <http://www.apporte.nl/index.html>, consulted 9 August 2011. An overview of all broadcasting organisations and companies is available at: <http://www.zoekned.nl/Bedrijven/Omroeporganisaties/1>, consulted 7 August 2011. See also: <http://en.publiekeomroep.nl/page/organisatie/omroepen>, consulted 17 August 2011.

¹⁵⁰⁹ <http://en.publiekeomroep.nl/page/organisatie/historie>, consulted 17 August 2011.

¹⁵¹⁰ <http://www.cvdm.nl/dsresource?objectid=11764&type=org> (page 80), consulted 10 August 2011.

¹⁵¹¹ For 2009, please refer to: <http://www.cvdm.nl/dsresource?objectid=9956&type=org> (page 4). For Powned, see: <http://www.powned.tv/docs/algemenevoorwaarden.pdf>. For WNL, see: <http://www.omroepwnl.nl/wnl/algemene-voorwaarden-om-roepvereniging-wnl>, all consulted 28 August 2011.

¹⁵¹² <http://www.cvdm.nl/dsresource?objectid=9997&type=org> (page 3), consulted 28 August 2011.

¹⁵¹³ <http://www.rijksoverheid.nl/nieuws/2011/06/17/kabinet-omroepbestel-wordt-eenvoudiger-en-krachtiger.html>, consulted 10 December 2011.

¹⁵¹⁴ <http://www.binnenlandsbestuur.nl/financien/nieuws/nieuws/geld-lokale-omroepen-niet-langer-via-gemeenten.3097219.lynkx>, consulted 14th December 2011.

¹⁵¹⁵ Welkomstwoord Arendo Joustra tijdens de viering van het 50-jarig jubileum van het Genootschap 27 November 2008.

¹⁵¹⁶ http://nl.wikipedia.org/wiki/Lijst_van_tijdschriften_in_Nederland, consulted 10 August 2011.

¹⁵¹⁷ <http://retro.nrc.nl/W2/Lab/Profiel/Krant/uitgevers.html>, consulted 10 August 2011.

¹⁵¹⁸ <http://www.nvj.nl/internetonderzoek/interview-met-pieter-kok.html>, consulted 10 August 2011.

¹⁵¹⁹ Bijwaard, D. (2009) p.10.

new readers; newspapers therefore have to report fast and on selected topics in order to reach the audience.¹⁵²⁰ This puts investigative journalism under pressure.¹⁵²¹ There are also concerns about the declining quality of journalism.¹⁵²² One expert even refers to a “demolition in regional journalism”, particularly in relation to political reporting.¹⁵²³ Another trend is the increasing influence of government and industry (product-placement), since they are more capable – for example through press-releases – in finding their way to the newspaper pages.¹⁵²⁴

Membership and subscription

Daily and weekly newspapers and magazines do not receive government funding as regular budget funding. In 2010, the total circulation of paid daily newspapers was 4,222,466 copies.¹⁵²⁵

According to the Central Bureau of Statistics (CBS), in 2008 50 percent of Dutch households had a newspaper subscription. In 1997 this was 62 percent.¹⁵²⁶

Additionally, there are three national newspapers that are distributed for free.¹⁵²⁷ This decrease in subscriptions along with the freely-available news on the Internet and the decrease in advertisement income are considered to be major threats for the print

media.¹⁵²⁸ However, according to Freedom House a wide variety of opinions are expressed in the print media, despite a high concentration of newspaper ownership.¹⁵²⁹

The profession of journalist

Although no qualification is formally required, many professional journalists are highly-educated, often with an academic qualification. The Netherlands has eight journalism master's degrees, with seven higher and two secondary vocational training systems. In addition, many (sometimes private) courses are offered.¹⁵³⁰ The NVJ offers its members courses, workshops, master classes and summer schools.¹⁵³¹ Investigative journalists have their own association, VVOJ, which organises conferences and workshops.¹⁵³²

Location

Most of the printed press is located in Amsterdam, but a few are based in other places. The Persgroep (publisher of four newspapers: AD, De Volkskrant, Trouw and Het Parool) is based in Amsterdam. De Telegraaf is also based in Amsterdam. NRC Handelsblad is a Rotterdam-based newspaper but will soon move to Amsterdam. Additionally there are also various regional newspapers which are based in the different regions.

1520 Interview with Hugo Arlman, freelance journalist, 11 December 2011; interview held with Alexander Rinnooy Kan, President of the Social and Economic Council of the Netherlands (SER), 15 March 2011.

1521 Interview held with Ivo Thomassen, Senior Policy Advisor, Directorate of Public Administration at the Social and Economic Council of the Netherlands (SER), 15 March 2011.

1522 <http://www.toekomstvandejournalistiek.nl/2009/05/door-te-veel-concurrentie-daalt-journalistieke-kwaliteit/>, consulted 10 August 2011.

1523 Interview with Margo Smit, Director of the Association of Investigative Journalists, 31 May 2011.

1524 Kruidhof J. d.d. 21-12-2010 about 'investigative journalism in 2010'. See: <http://www.scribd.com/doc/54049024/The-best-of-times-the-worst-of-times-Onderzoeksjournalistiek-anno-2010>, consulted the 10th of August 2011.

1525 <http://oplagen-dagbladen.nl/>, consulted the 10th of August 2011.

1526 <http://www.cbs.nl/nl-NL/menu/themas/vrije-tijd-cultuur/publicaties/artikelen/archief/2009/2009-2978-wm.htm>, consulted the 10th of August 2011.

1527 <http://mens-en-samenleving.infonu.nl/communicatie/14289-de-gratis-kranten-van-nederland.html>, consulted the 10th of August 2011.

1528 'De volgende editie' – Adviesrapport Tijdelijke Commissie Innovatie en Toekomst Pers, June 2009 p.5-7.

1529 <http://www.freedomhouse.org/uploads/pfs/371.pdf> (see page 184), consulted the 10th of August 2011.

1530 <http://www.villamedia.nl/opleidingenkaart/opleidingen-wo/>

1531 <http://www.nvj.nl/academy/>, consulted the 10th of August 2011.

1532 <http://www.vvoj.nl/cms/>, consulted the 10th of August 2011.

INDEPENDENCE (BY LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

Comprehensive legal safeguards to prevent unwarranted external interference in the media exist.

General constitutional and statutory provisions

Freedom of expression is enshrined in the Dutch Constitution.¹⁵³³, ¹⁵³⁴ Censorship is contrary to the Constitution.¹⁵³⁵ Because of the prohibition of constitutional review of legislation, the provision on freedom of expression (art. 10) in the European Convention on Human Rights (ECHR) provides an important safeguard. The government can intervene when the media engage in criminal acts, but it does so only in retrospect.¹⁵³⁶ For instance, action can be taken when discrimination takes place in a television or radio program. In that case, an infringement of the freedom of expression is permitted and is it possible to prosecute the persons concerned. Libel is also punishable in the Netherlands.¹⁵³⁷

Right to information

The gathering of information is protected in the ECHR.¹⁵³⁸, ¹⁵³⁹ The Openness of Government Act (Wob – Wet openbaarheid van bestuur¹⁵⁴⁰) provides citizens, journalists and others access to governmental information. At the moment, the Dutch government

intends to amend the law so as to give public authorities the right to assess whether requests for information are improper. The authorities will have to assess whether the request is proportional, i.e. whether the capacity required to find and provide the information is proportional to the goal served by the request.¹⁵⁴¹ This statutory provision concerning (access to) information of the government is based on the principle that information is to be provided, except in the case of exceptional grounds mentioned in the statutory provisions.¹⁵⁴² The Wob lists the exceptional grounds in which a governmental agency is not allowed to provide the information requested. These exceptional grounds include, among others, the privacy of third parties, the prosecution and investigation of crimes, or the security of the State.¹⁵⁴³ If the governmental agency does not respond to the Wob-request in time, it has to pay a fine to the requester. In the case of a refusal by the authorities, access to the administrative courts is ensured. *(For more information, please refer to Executive/Legal system and Legislative/Legal reform.)*

Political and commercial influence

Public broadcasters – and to a lesser extent commercial broadcasters – are obliged to contribute to the ‘public media mission’ under the Media Act (*see Resources/Law*). Public broadcasters have to offer programmes which reflect the diversity of social, cultural, religious or spiritual interests in Dutch society. Programmes should be independent of commercial interests and should be free of governmental influence

1533 “No one shall be required to submit thoughts or opinions for prior approval in order to disseminate them by means other than those mentioned in the preceding paragraphs, without prejudice to the responsibility of every person under the law.” (Art. 7, par. 3 Grondwet).

1534 See also article 10 Convention for the Protection of Human Rights and Fundamental Freedoms.

1535 Art. 7 Grondwet.

1536 <http://www.rijksoverheid.nl/onderwerpen/media/omgaan-met-media/veilig-aanbod-media>, consulted the 10th of August 2011.

1537 Article 261 Wetboek van Strafrecht.

1538 Article 10 Convention for the Protection of Human Rights and Fundamental Freedoms.

1539 <http://www.ivir.nl/publicaties/schuijt/jandemeijbundel.PDF>

1540 http://wetten.overheid.nl/BWBR0005252/geldigheidsdatum_17-06-2011, consulted the 10th of August 2011.

1541 Brief van de minister van Binnenlandse Zaken en Koninkrijksrelaties van 31 mei 2005 inzake Wet openbaarheid van bestuur and ‘Minister Donner legt bom onder de Wob’ (Trouw 05-05-2011). See also:

<http://www.rtvnh.nl/nieuws/56421/Donner+legt+bom+bij+Dag+van+de+Persvrijheid+>, consulted the 17th of June 2011.

1542 Article 7 lid 2, 10 en 11 Wet openbaarheid van bestuur (Openness of Government Act).

1543 Art.10 Wet openbaarheid van bestuur (Openness of Government Act).

except in those cases determined in law.¹⁵⁴⁴ The Minister of OCW can withdraw a broadcast licence when the broadcasting association no longer meets the public media mission under the Media Act.

Editorial charter

There are no specific legal rules for editorial independence. In the procedure concerning takeovers, the editorial independence of newspapers and publishing houses is usually included in the negotiations with potential buyers.¹⁵⁴⁵ In the Holland Media Group and SBS Broadcasting, two commercial broadcasting companies, this is also inserted in an editorial charter.¹⁵⁴⁶

Concentrations

The Dutch Competition Authority (NMa – Nederlandse Mededingingsautoriteit)¹⁵⁴⁷ is responsible for countering economic monopolies ('concentration'). Plans for a merger or takeover should therefore be reported to the NMa¹⁵⁴⁸, which then determines whether

a license is required.¹⁵⁴⁹ This license is granted or denied by the NMa.¹⁵⁵⁰ Appeal against the decision is possible.¹⁵⁵¹ This legislation also applies to media companies.

INDEPENDENCE (IN PRACTICE)

To what extent is the media free from unwarranted external interference in its work in practice?

Overall, the Dutch media are free from unwarranted external interferences, although some incidents do show attempts of indirect censorship by individuals.

Press freedom

According to the Table of the Global Press Freedom Rankings (Freedom of the Press 2010)^{1552, 1553} the Dutch media are 'free of interference' (rank 11 out of 196 countries). Table A below shows that press freedom in recent years has decreased slightly.

Table A. The Netherlands' score and status in 2005–2010. The figures are on a 100 point scale. The scores are based upon a judgment concerning three dimensions: legal environment, political environment and economic environment. A total score between 0 and 30 places a country in the Free press group.

	2005	2006	2007	2008	2009	2010
Total score	11	11	13	13	13	14
Status	Free	Free	Free	Free	Free	Free

Source: <http://www.freedomhouse.org/uploads/pfs/371.pdf> (see page 183)

¹⁵⁴⁴ Art. 2.1 paragraph 2 (sub b and d) Mediawet.

¹⁵⁴⁵ <http://stdem.org/nl/archief%20persberichten>, consulted the 10th of August 2011.

¹⁵⁴⁶ <http://www.villamedia.nl/n/nvj/docs/statuuthmg.shtm> and: <http://www.villamedia.nl/n/nvj/docs/statuutcameo.shtm>, consulted the 15th of August 2011.

¹⁵⁴⁷ <http://www.nma.nl/en/default.aspx>, consulted the 10th of August 2011.

¹⁵⁴⁸ Article 34 Mededingingswet.

¹⁵⁴⁹ Ibid., Article 37 paragraph 1.

¹⁵⁵⁰ Ibid., Article 42 and 44.

¹⁵⁵¹ Ibid., Article 47 lid 1.

¹⁵⁵² <http://www.freedomhouse.org/uploads/pfs/371.pdf> accessed August 10, 2011.

¹⁵⁵³ See also http://cima.ned.org/docs/CIMA-Evaluating_the_Evaluators_Report.pdf

According to Freedom House, international news sources are widely accessible in the Netherlands. The Internet is not restricted by the government, and in 2009 roughly 90 percent of the population used the Internet.¹⁵⁵⁴

Censorship

In the Netherlands there is no direct censorship. Although journalists are sometimes opposed by the government, it can generally be said that they can assert their right to freedom of expression without fear of retribution. However, censorship by indirect means does occur. For instance, in 2009 the mayor of Utrecht stopped a publication in a free local paper which had written a critique on the pension costs the mayor had received unlawfully.¹⁵⁵⁵ According to one of the experts, there is 'subtle influence' from external parties. Obstruction in order to forbid a certain broadcast is never formally done. The pressure not to publish or broadcast a certain story more often occur at the regional or local level, where those involved try to influence or blackmail journalists. This expert does believe that the chief editors in the Netherlands are not sensitive to these attempts to influence them.¹⁵⁵⁶ He also maintains that governmental press officers attempt to influence journalists in an informal way.¹⁵⁵⁷ Another expert said that official approval of press officers or a ministry is increasingly required when wanting to visit (semi) public institutions or talk to civil servants. Previously, a general approval was given regarding a specific investigation, but now for every single aspect of an investigation this formal approval from the ministry must be requested.¹⁵⁵⁸ In 2009 a study showed that the

number of press officers and PR advisors hired by the government at all levels was growing fast and was believed to be three times the number of journalists.¹⁵⁵⁹ Additionally, Freedom House states that in the Netherlands a climate of fear among journalists and artists interested in pursuing controversial topics, particularly those related to immigration and the role of Islam in the Netherlands, has arisen after the 2004 murder of controversial film-maker Theo van Gogh by a radical Islamist.¹⁵⁶⁰ Freedom House also reports about the Dutch cartoonist Gregorius Nekschot who allegedly violated anti-discrimination laws by offending Muslims and other minorities. He was arrested in May 2008 and jailed overnight, but had not been prosecuted by the end of 2009."¹⁵⁶¹

Right to information

The way the Openness of Government Act (Wob – Wet openbaarheid van bestuur) is applied by governmental organisations is seriously criticised by the National Ombudsman, journalists and academics.¹⁵⁶² Requests for information are regularly declined by referring to the legal exceptional grounds. In practice this leads to long and legal (appeal) proceedings.

The National Ombudsman stated that the Wob is used to create legal grounds for refusal and hinders timely information. For more information, *please refer to the Political-institutional foundations*.

Political and commercial influence

Recently, the Council for Culture, which is legal adviser to the government in the fields of the arts, culture and media, expressed concerns about the increasing

1554 <http://www.freedomhouse.org/uploads/pfs/371.pdf> (see page 184).

1555 [http://www.trouw.nl/tr/nl/4324/Nieuws/article/detail/1143996/2009/04/14/\"quo-Wolfsen-hield-onwelgevallige-publicatie-tegen-rsquo.dhtml](http://www.trouw.nl/tr/nl/4324/Nieuws/article/detail/1143996/2009/04/14/\), consulted the 17th of June 2011. In August, 2011, there was a new accusation against this mayor. See: <http://www.nu.nl/media/2595680/burgemeester-utrecht-werkte-weer-journalist-tegen.html> and <http://www.ad.nl/ad/nl/1039/Utrecht/article/detail/2859095/2011/08/22/Onderzoek-naar-dwarsbomen-journalist-bij-profiel-Wolfsen.dhtml>, consulted the 23rd of August 2011.

1556 Interview with Margo Smit, Director of the Association of Investigative Journalists, interview held the May 31, 2011.

1557 Ibid.

1558 Interview with Hugo Arlman, freelance journalist, interview held the 9 December 2011.

1559 'De volgende editie' – Adviesrapport Tijdelijke Commissie Innovatie en Toekomst Pers, June 2009.

1560 <http://www.freedomhouse.org/uploads/pfs/371.pdf> (see page 184), consulted the 9th of August 2011.

1561 Ibid.

1562 Episode of Radio-broadcast of VPRO's Argos 'De WOB op de schop' of the 1st of October via <http://weblogs.vpro.nl/argos/>

influence of politics on news provision and media diversification among public channels. The worries are partly due to the loss of fees paid by citizens for accessing public television and radio broadcasts.¹⁵⁶³ Because of efficiency arguments, the financing now takes place via direct governmental funding. One expert also expressed the opinion that direct funding poses a serious risk of political involvement by MPs in public programming, thereby forming a risk to the independence of the media. The funding has increased attention from the House of Representatives (Tweede Kamer) and the government to the organisation of public broadcasters, which has increased the political influence on the design and format of programming. This is a reciprocal situation in which the chief editors of the public broadcasters also keep in close (informal) contact with the MPs involved and with the minister and state secretary of OCW.¹⁵⁶⁴ The Minister of OCW claimed to be concerned about the political influence on programming of public broadcasters.¹⁵⁶⁵

Commercial influence, for example in the form of 'product placement', does occur, although it is mostly in the programs of the commercial broadcasters.¹⁵⁶⁶ Additionally, all sorts of press releases end up in TV programmes and in newspapers without being thoroughly investigated, which has led to disguised advertisement and poor scientific studies getting attention in the media.¹⁵⁶⁷

Threats and physical violence

Threats and physical violence against journalists do occur. The NVJ published a list of twenty cases in 2010 in which violence was used against journalists.¹⁵⁶⁸

Three cases concerned violence by police against one or more journalists. In six cases there was a prosecution and a punishment by the court. In 2009 and 2008 there were twelve incidents, in 2007 nine and in 2006 five.¹⁵⁶⁹

Investigative reporting

In general, Dutch media are active in exposing the misconduct of politicians. According to the Sustainable Governance Indicators 2011, the chair of the Tweede Kamer has recently criticised the media for its lack of investigative reporting on public debates.¹⁵⁷⁰ Journalists are said to report only on issues for which they expect to attract large public attention, rather than reporting on politically important issues. The Netherlands has increasingly developed the features of a mediocracy, a democracy governed by those who exercise power over the media in order to influence the populace. This, in turn, leads to politicians who act strategically in order to attract journalists. Now more than ever, politicians have to react to short-term issues in order to get attention by journalists instead of focussing on the content of political issues that attract less attention.¹⁵⁷¹

Concentrations

Mergers have reduced the number of broadcasters and newspapers. In July 2009 the Belgian media group De Persgroep (DPG) acquired a 51-percent stake in PCM Publishers in Amsterdam. The NMa gave permission for this transaction, provided that PCM Publishers disposed of NRC Media. The NMa found that DPG, which already has owned the Amsterdam newspaper Het Parool since 2003, would be in a too-dominant position in the region of Amsterdam through the acquisition of

1563 http://www.sgi-network.org/index.php?page=indicator_quali&indicator=M12_1&pointer=NLD#NLD, consulted the 10th of December 2011.

1564 Interview with Hugo Arlman, freelance journalist, 9 December 2011.

1565 NRC (2011) 'Van Bijsterveldt: Politici kunnen niet Hilversumse emoties aansturen'.

1566 Interview with Hugo Arlman, freelance journalist, 9 December 2011.

1567 <http://www.denieuwereporter.nl/2011/09/hoogleraren-en-journalisten-mishandelen-wetenschap-in-de-media/>, consulted the 14th of December 2011 and interview with Hugo Arlman, freelance journalist, 9 December 2011.

1568 http://www.nvj.nl/docs/Geweld_tegen_journalisten_in_2010.pdf

1569 http://www.nvj.nl/docs/Geweld_tegen_journalisten_2006-2009.pdf; see also the NJV report of the investigation by Frank Bovenkerk 'Rot op met die camera' (2009) and the report Bedreigingen in Nederland from August 2005, consulted the 11th of August 2011.

1570 http://www.sgi-network.org/index.php?page=indicator_quali&indicator=M12_1&pointer=NLD#NLD, consulted the 14th of December 2011.

1571 http://www.sgi-network.org/index.php?page=indicator_quali&indicator=M12_1&pointer=NLD#NLD, consulted the 14th of December 2011. In the case of this minister, other motives played a role, but her presentation in the media was also an important motive.

PCM.¹⁵⁷² PCM, De Telegraaf and Wegener are the major players among the newspapers. The NPO, RTL and SBS are the main broadcasters. Concentration is considered to be a threat to diversity.¹⁵⁷³

TRANSPARENCY (BY LAW)

To what extent are there provisions to ensure transparency in the activities of the media?

While a number of laws/provisions exist, they do not cover all aspects related to the transparency of the media, and some provisions contain loopholes.

Television and radio

As associations with individual members, public broadcasters have to adhere to the statutory provisions of civil law about governance, policies, integrity etc.¹⁵⁷⁴ Information from the public broadcasting association is available on the Internet. Examples are the websites of the Avro^{1575, 1576, 1577} and the KRO.^{1578, 1579, 1580} But commercial broadcasters such as SBS6¹⁵⁸¹ and RTL¹⁵⁸² are not required to publish these data. There is a legal provision that obliges commercial broadcasting companies asking the CvdM for permission to broadcast, to disclose their statutes and information about their ownership, Board members and shareholders to the government, but not to the public.

The owners must be registered with the Chamber of Commerce. Mergers and acquisitions should also be reported for review to the NMa. *See Independence (law).*

Print media

For the companies that own print media or Internet media, no other governance rules apply than the normal rules for all privately-held companies.

TRANSPARENCY (IN PRACTICE)

To what extent is there transparency in the media in practice?

While public broadcasting companies usually disclose relevant information about their activities, this is only partially done by the commercial broadcasters and the print media.

Television and radio

On the website of the public broadcasters, the Board members of these organisations are disclosed. The owners of Dutch commercial broadcasters can only be traced by using the commercial registries of the Chambers of Commerce. Information about takeovers of media companies is generally disclosed. Examples are the takeover of PCM¹⁵⁸³, the takeover of Jaap.nl¹⁵⁸⁴ and the takeover of SBS.¹⁵⁸⁵ A public broadcaster generally

1572 <http://stdem.org/nl/archief%20persberichten>, consulted the 10th of August 2011.

1573 De toekomst van de journalistiek, Nico Brok, 2007 p.13.

1574 Associations must also be registered with the Chamber of Commerce.

1575 <http://www.avro.nl/>, consulted the 17th of June 2011.

1576 http://www.avro.nl/avro/over_de_avro/verantwoording/#, consulted the 17th of June 2011.

1577 http://www.avro.nl/avro/over_de_avro/verantwoording/, consulted the 17th of June 2011.

1578 See <http://info.kro.nl/english.aspx>, consulted the 17th of June 2011.

1579 <http://content1c.omroep.nl/19f14a61f9fc2ce81f880ffd8acf81c2/4dfb4f13/kro/ledenraadverkiezingen/KROstatuten.pdf>

1580 <http://content1b.omroep.nl/b7af34f28e6c45e4238ead936ad3a6f5/4dfb4e8e/kro/homepage/mediagedragscode1.pdf>

1581 <http://www.sbs6.nl>, consulted the 17th of June 2011.

1582 <http://www.rtl.nl/experience/rtlnl/>, consulted the 17th of June 2011.

1583 'WPG en Lannoo Groep nemen PCM Algemene Uitgeverijen over' (22 januari 2010); see: <http://www.persgroep.nl/actueel/13.html>, consulted the 17th of June 2011.

1584 'JAAP.NL 100% EIGENDOM VAN TELEGRAAF MEDIA NEDERLAND' (29th of April 2010); see: <http://blog.jaap.nl/2010/04/jaap-nl-100-eigendom-van-telegraaf-media-nederland.html>, consulted the 17th of June 2011.

1585 'Sanoma en Talpa nemen SBS over', de Volkskrant, April 20, 2011; see: <http://www.volkskrant.nl/vk/nl/2694/Internet-Media/article/detail/1877924/2011/04/20/Sanoma-en-Talpa-nemen-SBS-over.dhtml>, consulted the 17th of June 2011.

make publicly available information such as statutes, (social) annual reports, house rules and policies on sponsoring.¹⁵⁸⁶ In these documents, information on their internal staff, employee participation and reporting and editing policies can be found. The commercial broadcasters are less transparent regarding this internal information. Often only the annual report or media code is made available on their websites.¹⁵⁸⁷

Newspapers

In general, the main newspapers do not publish internal information such as annual reports and information on their ownership on their website.

ACCOUNTABILITY (BY LAW)

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

A number of accountability provisions exist. They cover most of the aspects that are relevant for the accountability of the media.

Annual reports

The Dutch Foundation for Public Broadcasting (NPO) is the cooperation and coordination body for the implementation of the public media mission on a national level.¹⁵⁸⁸ The NPO is required to provide

information to the Minister of OCW.¹⁵⁸⁹ Also, a report must be submitted annually.¹⁵⁹⁰ If the NPO in the opinion of the minister seriously neglects its duties, the minister may, after consultation with the NPO, intervene with the necessary arrangements.¹⁵⁹¹ The NPO will send a report to the CvdM and the minister annually before the 1st of May regarding the previous calendar year.¹⁵⁹² The Dutch Broadcasting Foundation (NOS)¹⁵⁹³ is responsible for media opportunities for the public service media in providing news, sports and events.¹⁵⁹⁴ The NOS is required to provide information to the Minister of OCW. Also, an annual report must be submitted.¹⁵⁹⁵

The Dutch Program Service (NPS)¹⁵⁹⁶ is responsible for broadcasting television and radio programs that satisfy societal demands, for example social, cultural, religious or spiritual needs.¹⁵⁹⁷ The NPS is required to provide information to the Minister of Education, Culture and Science. Also, an annual report must be submitted.¹⁵⁹⁸ Additionally most broadcasters and newspapers have a legal obligation to report annually on their activities.

The Minister of OCW

The extent, to which the Minister of OCW is effective in his media policies and monitoring will be reviewed by the parliament, to which he is accountable. The minister in turn assesses the effectiveness of the CvdM, by approving its budget.¹⁵⁹⁹ Also, the CvdM must deliver

1586 <http://avro.nl/Avro/Verantwoording/?r=>, <http://www.vpro.nl/overdevpro> and <http://over.vara.nl/>, consulted the 14th of December 2011.

1587 http://www.rtl.nl/service/rtlnederland/publieksvoorlichting/faq_new/home/ and <http://www.sbs.nl/organisatie/mediacode-sbs>, consulted the 14th of December 2011.

1588 Art. 2.2, par. 1 Mediawet.

1589 Ibid., Art. 2.15, par. 1.

1590 Ibid., Art. 2.17, par. 1.

1591 Ibid., Art. 2.16, par. 1.

1592 Ibid., Art. 2.58.

1593 <http://nos.nl/over-de-nos/organisatie/>, consulted the 17th of June 2011.

1594 Article 2.34a, paragraph 1 Mediawet.

1595 Ibid., Article 2.34h, paragraph 1.

1596 In 2010 merged with Teleac and RVU, from which NTR is derived. See <http://www.ntr.nl/page/over-ntr>, consulted the 17th of June 2011.

1597 Article 2.35, paragraph 1 Mediawet.

1598 Ibid., Article 2.39, paragraph 1.

1599 Ibid., Art. 7.6.

an annual financial report to the minister.¹⁶⁰⁰ The CvdM must also notify the minister of its decisions, who may suspend and undo these decisions.¹⁶⁰¹

Netherlands Press Council

The Netherlands Press Council is an independent body where people can complain about journalistic activities.¹⁶⁰² The Council is a self-regulating body for the media. Membership is not compulsory. According to the statutes, the Press Council is charged with the examination of complaints against violations of good journalistic practice.¹⁶⁰³ Not every complaint leads to such an examination. Only individuals who are considered as directly involved in a case of journalistic (mal)practice can complain. These complaints must concern journalistic practice of either a professional journalist or someone who, on a regular basis and for remuneration, collaborates on the editorial content of a mass medium.¹⁶⁰⁴

One of the larger commercial broadcasters, RTL, is not a member. The biggest newspaper of the Netherlands, De Telegraaf, is no longer a member either, because it considered the norms applied by the Netherlands Press Council to be much stricter than the legal norms, and because this procedure is often the first step of a civil law procedure.¹⁶⁰⁵ See also below, *Integrity Mechanisms (practice)*.

Ombudsman

A few broadcasting organisations and newspapers have their own ombudsman. This ombudsman comments on the way the newspaper addresses the news and receives complaints from citizens on reports in the newspaper and on TV.

In most cases such an ombudsman is a former journalists/chief editor. Their independence is guaranteed. Such an ombudsman is often rather critical in his column and criticises the pressure put on journalists to create news and lack of balance in the way in which news items are presented.

Legal action

In case of the spreading of false information by the press, victims can enforce correction through the civil court.¹⁶⁰⁶ The court's decision may include a deadline for correction and/or requirements for the manner in which the correction should take place.

ACCOUNTABILITY (IN PRACTICE)

To what extent can media outlets be held accountable in practice?

Netherlands Press Council

Although not all media are member of the Netherlands Press Council¹⁶⁰⁷, it is becoming more professional. After its establishment it decided on cases without using clear criteria for its assessment.

Since 2007 it uses a guideline in which the criteria for responsible journalism are prescribed. This guideline can be found on the Council's website.¹⁶⁰⁸

The Council is considered to be effective in discussing and handling complaints it receives. Its verdict are more transparent and include referral to the guideline.¹⁶⁰⁹

¹⁶⁰⁰ Ibid., Art. 7.7.

¹⁶⁰¹ Ibid., Art. 7.9.

¹⁶⁰² <http://www.rvdj.nl/?katern=22>, consulted the 17th of June 2011.

For guidelines see: <http://www.rvdj.nl/rvdj-archive//docs/Guidelines%202010.pdf>

¹⁶⁰³ Art.3 Statutes Netherlands Press Council.

¹⁶⁰⁴ <http://www.rvdj.nl/?katern=15>, consulted the 9th of June 2011.

¹⁶⁰⁵ http://vorige.nrc.nl/article2092236.ece/Telegraaf_uit_Raad_voor_de_Journalistiek

¹⁶⁰⁶ Tort (onrechtmatige daad), see article 6:162 Burgerlijk Wetboek.

¹⁶⁰⁷ <http://www.rvdj.nl/katern/23>, consulted the 17th of June 2011.

¹⁶⁰⁸ <http://www.rvdj.nl/katern/47>, consulted the 14th of December 2011.

¹⁶⁰⁹ Interview with Hugo Arlman, freelance journalist, 9 December 2011.

The following figures show the complaints received in 2010 and 2009:

Complaints	2010	2009
Complaints filed	83	78
Successful mediation	3	4
Verdicts	57 (13 valid complaints) (27 invalid complaints)	69 (15 valid complaints) (39 invalid complaints)

Source: Raad voor de Journalistiek Jaarverslag over 2010 p.17

See also *Media, Integrity Mechanisms(practice)*. However, the Council is rather passive when the media themselves become the subject of debate.¹⁶¹⁰ Very rarely does the Council react to discussion in society on the conduct of the media. In December 2011 concerns were raised about the continued existence of the Council because the Minister of OCW announced a cessation of subsidies to the Council.¹⁶¹¹ The Council asked its members to double their fees. It is to be seen whether this will provide an adequate solution.

Ombudsman

A study into 400 questions answered by the ombudsman of the NOS, the ombudsman of the regional newspaper Rotterdams Dagblad (now AD) and the ombudsman of De Volkskrant showed that the complaints, the individual Ombudsman receives, vary extensively.¹⁶¹² Complaints about the broadcast programme NOS mostly concerned its lack of neutrality in the way it reports. The ombudsman of De Volkskrant focussed on the topic of digital communication via a blog and the concerns about the messages left by readers anonymously and without hearing the parties involved. One analyst stated that it is worrisome that

the number of ombudsmen is decreasing due to the budget-cuts required because of the decrease in resources available.¹⁶¹³ Information on the independence of these ombudsmen is not always available to the public. Not all media publish the statutes of their ombudsmen on their website, and in some cases the position of ombudsman was fulfilled by a former journalist of the TV programme and/or newspaper, which might pose a risk to independent and objective dispute settlement.¹⁶¹⁴

Critical approach

In general, media companies can be held accountable for their activities. This is done in the first place by the media themselves. For instance, the editor of the daily newspaper Trouw writes a letter to the readers every week in which he explains why certain news was or was not published in his newspaper. Several TV programmes and specials sections of newspapers follow the media rather critically. The problems concerning the British newspaper News of the World led to serious debates in the Netherlands as to whether the situation of the Dutch media differs from the situation in the UK.¹⁶¹⁵ In September 2011 an

¹⁶¹⁰ Interview with Hugo Arlman, freelance journalist, 9 December 2011.

¹⁶¹¹ De Volkskrant (2011). 'Voortbestaan Raad voor de Journalistiek in gevaar'.

¹⁶¹² <http://www.volkskrant.nl/vk/nl/2694/Media/archief/article/detail/996989/2010/03/19/Goede-ombudsman-is-waakhond-en-houdt-de-redactie-scherp.dhtml>, consulted the 21st of October 2011.

¹⁶¹³ <http://www.volkskrant.nl/vk/nl/2694/Media/archief/article/detail/996989/2010/03/19/Goede-ombudsman-is-waakhond-en-houdt-de-redactie-scherp.dhtml>, consulted the 21st of October 2011.

¹⁶¹⁴ Interview with Hugo Arlman, freelance journalist, 9 December 2011.

¹⁶¹⁵ An example: 'Nederlandse roddelpers huurt ook privédetectives in', NRC, 6th of August, 2011.

<http://www.nrc.nl/nieuws/2011/08/06/nederlandse-roddelpers-huurt-ook-detectives/>, consulted the 21st of October 2011.

investigative programme on TV showed how the biggest newspaper De Telegraaf knowingly published stories in which sources used did not exist or interviewees were in fact never interviewed.¹⁶¹⁶ This led to the resignation of one journalist who had made a complete article up.¹⁶¹⁷

Although the media are active in monitoring the way other media report, only rarely does a broadcaster, programme-maker or newspaper account for its own report. Also, journalists receiving criticism often perceive this as a direct violation of their freedom of speech.¹⁶¹⁸

Other ways of accounting

The Netherlands Public Broadcasting (NPO – Nederlandse Publieke Omroep) intends to keep the public informed of developments regarding the NPO and public broadcasting in general. It does so via a website, on the basis of public policy documents.¹⁶¹⁹ Media do usually have forums, such as blogs, chats with reporters and editors, or other ways for the public to interact with the people who collect and disseminate the news. Initiatives have been taken in which the concept of ‘civic journalism’ was used.

This concept is all about involving the public in determining topics and accounting for journalistic decisions. It is a reaction to the emergence of the Internet and the increasing political and commercial pressures on the media.

The regional newspaper Limburgs Dagblad has done this as an experiment. The readers of the newspapers appreciated it, but it did not lead to an increase in subscriptions.¹⁶²⁰

Legal action

Overall, the media correct erroneous information as necessary and in a timely manner. If necessary, they are forced by a judge to publish a rectification.¹⁶²¹ Accountability by the media is also expected and required by the public through various channels such as Internet forums and letters to the editor. The extent to which the media account through these means is rather varied.

INTEGRITY (BY LAW)

To what extent are there provisions in place to ensure the integrity of media employees?

While most public broadcasters have basic integrity provisions, these do not focus on integrity in journalism. Additionally, the commercial broadcasters and newspapers do not seem to have integrity provisions.

Statutory provisions

The NPO has a legal obligation¹⁶²² to promote good governance and integrity in itself and in national public media institutions and to establish a code of conduct.¹⁶²³ This code only covers public broadcasting and generally focuses on the broadcasting companies instead of ethics and integrity in journalism and news programmes.¹⁶²⁴ For commercial broadcasting there are no such rules. No codes of conduct were found in commercial broadcasting companies. However, in the Holland Media Group and SBS Broadcasting there is an editorial charter in which certain values are mentioned.¹⁶²⁵

1616 http://zembla.vara.nl/Nieuws-detail.2624.0.html?tx_ttnews%5Btt_news%5D=48937&cHash=0b5ab63c472536081b159979646f1115, consulted the 14th of December 2011.

1617 <http://www.volkskrant.nl/vk/nl/2694/Internet-Media/article/detail/2924477/2011/09/22/Telegraaf-schorst-sterverslaggever-na-gelogen-verhaal-moslimwijk.dhtml>, consulted the 14th of December 2011.

1618 Interview with Hugo Arlman, freelance journalist, 9 December 2011.

1619 <http://en.publiekeomroep.nl/page/organisatie/verantwoording>, consulted the 17th of August 2011.

1620 De toekomst van de journalistiek, Frans Blok (onder redactie van Nico Drok) 2007 p.39.

1621 <http://www.mediacourant.nl/?p=107577>

1622 Art. 2.3, par. 2 and 3 Mediawet.

1623 See http://corporate.publiekeomroep.nl/page/publicaties/richtlijnen_goed_bestuur, consulted the 9th of June 2011.

1624 Art. 2.3, par. 2 Mediawet.

1625 <http://www.villamedia.nl/n/nvj/docs/statuuthmg.shtm> and: <http://www.villamedia.nl/n/nvj/docs/statuutcameo.shtm>, consulted the 18th of August 2011.

Integrity provisions

There is an ethical committee for public broadcasting.¹⁶²⁶ For commercial broadcasting this has not been done. Codes of conduct for journalists are not legally required either. However, the Netherlands Press Council formulated a set of guidelines for journalists.¹⁶²⁷ There is also a Declaration of Principles on the Conduct of Journalists.¹⁶²⁸ According to an analyst, the media constitute a new form of power outside the formal constitutional order.¹⁶²⁹ This position coincides with new responsibilities. Journalists have expressed this by formulating codes of conduct, such as the Declaration of Principles on the Conduct of Journalists¹⁶³⁰ and the Code of Bordeaux.¹⁶³¹ The Dutch Society of Editors too has drafted a code of conduct for journalists. This code states that a journalist is responsible for reporting true news independently, fairly and honestly.¹⁶³² These integrity provisions cannot be enforced and can at best be considered to offer some guidance to journalists.

Statutes (editors or programme)

The statute of the board of editors (redactiestatuut) and programme statute (programmastatuut) can best be characterised as the key document regarding the identity of media organisations, since such documents usually contain (among other things) their mission statement and ethics guidelines. In some cases, it turns out to be quite hard to find these documents. For example, the newspaper Trouw has not published this information on its website, although the Persgroep

corporation which owns several newspapers, including Trouw, has published a general code of conduct on its website. Newspaper NRC Handelsblad has published a statement about the quality of their journalists and their productions on its website.¹⁶³³ No such statutes could be found on the websites of commercial broadcasters.

Integrity Commission for Public Broadcasting

The Integrity Commission for Public Broadcasting (CIPO – Commissie Integriteit Publieke Omroep) has formulated a Code of Good Governance which is composed of several directives on:

- a. promoting good governance and supervision;
- b. promoting integrity;
- c. accountability;
- d. ideological sponsorship;
- e. interactive telephone, SMS, 0900-lines and mobile Internet;
- f. email marketing.¹⁶³⁴

The recommendations on promoting good governance and supervision have found their way into the Media Act and are therefore enforceable.¹⁶³⁵ If broadcasters adhere to the provisions prescribed in the Code, they have to account for their conduct in their annual report.

Most public broadcasters have put these directives on their website and additionally have their own integrity code with provisions on side-functions of employees, financial and business interests, gifts and on how to prevent conflicts-of-interest.¹⁶³⁶

1626 <http://www.integriteitomroep.nl/>, consulted the 17th of June 2011.

1627 <http://www.rvdj.nl/rvdj-archive//docs/Guidelines%202010.pdf>

1628 <http://rjionline.org/MAS-Codes-Netherlands-Principles>, consulted the 20th of May 2011.

1629 E.W. van der Wilk – van Baren in her dissertation Macht, Media & Montesquieu (Power, Media & Montesquieu); see:

<https://openaccess.leidenuniv.nl/bitstream/handle/1887/13474/Proefschrift+Vd+Wilk.pdf;jsessionid=C188276A608B78799FFC643506428092?sequence=2>, consulted the 17th of June 2011.

1630 <http://rjionline.org/MAS-Codes-Netherlands-Principles>, consulted the 20th of June 2011.

1631 <http://www.nvj.nl/ethiek/code-van-bordeaux>, consulted the 17th of June 2011.

1632 http://www.genootschapvanhoofredacteurs.nl/het_genootschap/code-voor-de-journalistiek.html, consulted the 11th of August 2011.

1633 <http://www.nrc.nl/journalistieke-beginselen-en-gedragregels-op-nrc-nl/>, consulted on 28 October 2011.

1634 <http://www.integriteitomroep.nl/gedragscode/>, consulted the 14th of December 2011.

1635 Art. 2.142 a Mediawet.

1636 AVRO Integriteitscode via <http://avro.nl/Avro/Verantwoording/?r=1> and <http://www.tros.nl/overdetros/mediagedragscode/>, consulted the 14th of December.

No integrity provisions could be found on commercial broadcasters' websites or newspapers' websites.

INTEGRITY (IN PRACTICE)

To what extent is the integrity of media employees ensured in practice?

There is a fragmented and reactive approach to ensuring the integrity of media organisation employees. The following aspects form a part of this approach: enforcement of existing rules, inquiries into alleged misbehaviour and sanctioning of misbehaviour.

Effectiveness of integrity provisions

According to one journalist¹⁶³⁷, the code of conduct for public service broadcasting is not well-respected.¹⁶³⁸ The vice president of the NVJ also argues that codes and statutes are often not respected.¹⁶³⁹ These experts maintained that very few journalists are well aware of the content of codes, such as those of Bordeaux.¹⁶⁴⁰ But she also recognises that many journalists are 'allergic' to specific rules that say something about the content and limits of their profession. Integrity is especially mutually assured because 'you know each other'. Journalists often accept little feedback from outsiders when it comes to the quality of the way they carry out their profession. The VVOJ organises debates in this area. The NVJ and the VVOJ have selected as their

objective paying attention to journalistic ethics.^{1641, 1642} As a consequence of this, there are meetings¹⁶⁴³, discussions¹⁶⁴⁴ and surveys¹⁶⁴⁵ about ethics. These organisations, together with the Press Council and the Society of Editors, further journalism ethics and media ethics. They also provide a joint magazine where these topics are discussed.¹⁶⁴⁶ There is little evidence which suggests that the ethical committee for public broadcasting is very active.

Two analysts recently investigated whether journalistic codes are effective instruments for stimulating adherence to journalistic standards.¹⁶⁴⁷ They argue that those who try to improve the quality of journalism place the responsibility too easily on the shoulders of the individual journalist.

These attempts can only be successful if they are supported by policies at the level of editorial boards and news organisation. Codes should not only apply to individual journalists, but also to the quality at the level of the editors.

The analysts expect that in the future editors increasingly expect from journalists (permanently employed and freelance) that they have a personal commitment to journalistic standards and that they accept individual accountability to the public. They assert that a personal, more binding code can play a role. Their research also shows that education in journalistic ethics is a relatively important and effective tool.

1637 Joep Dohmen. See: http://www.vriendenrepubliek.nl/index.php?option=com_content&task=view&id=34&Itemid=27, consulted the 27th of August 2011.

1638 NRC Handelsblad d.d. June 15 and July 18, 2009.

1639 Trouw, d.d. August 15, 2011 (page 19).

1640 Interview held with Margo Smit, Director Association of Investigative Journalists (VVOJ), 31 May 2011; Interview with Hugo Arlman, freelance journalist, 9 December 2011.

1641 See articles 2 sub c en 3 sub e Statuten NVJ; to be downloaded from: <http://www.nvj.nl/over/>, consulted the 11th of August.

1642 <http://www.vvoj.nl/cms/vereniging/statuten/> (artikel 2 lid 2 sub d Statuten), consulted the 11th of August.

1643 <http://www.nvj.nl/nieuws/bericht/debat-over-journalistieke-ethiek/>, consulted the 11th of August.

1644 <http://www.vvoj.nl/cms/vereniging/profiel/doelstelling/>; see also: <http://www.vvoj.nl/cms/bio/dirk-leestmans/> and: <http://www.vvoj.nl/cms/2008/04/27/verslag-cafe-de-raad-oordeelt-strenger-dan-de-rechter/>, consulted the 11th of August 2011.

1645 <http://www.nvj.nl/nieuws/bericht/discussie-over-nvj-strategie/>; see also: http://www.nvj.nl/docs/wat_zou_u_doen_als_u_de_baas_was_van_de_NVJ.pdf

1646 <http://www.villamedia.nl/>, consulted the 17th of June 2011.

1647 Richard van der Wurff and Klaus Schönbach of the Amsterdam School of Communications Research; see: <http://media-ombudsman.nl/viewer/file.aspx?fileinfoID=19> (page 52), consulted the 11 August 2011.

Incidents

Nevertheless, the media recently reported several cases of integrity violations by the media. The reported integrity violations included phone-hacking, accepting payments and the use of private detectives.^{1648, 1649, 1650} An important characteristic of professional journalism is the application of the adversarial principle. If journalists omit applying this principle, it is possible for the victims to complain to The Netherlands Press Council. In several recent cases, complaints were declared well-founded by the Council.¹⁶⁵¹

In August 2011, a complaint against the news magazine HP/De Tijd was submitted by an MP, Mrs Mariko Peters. This magazine had reported on her conflict-of-interest in the past when Mrs Peters was working as a diplomat for the Dutch embassy in Afghanistan and provided a subsidy to a project of her then-lover and current partner. An investigation carried out at the time by the Ministry of BuZa gave ample evidence of this conflict-of-interest. According to the Netherlands Press Council, the newsmagazine was responsible for incomplete, one-sided and tendentious media coverage and also for a gross breach of privacy.¹⁶⁵²

Investigate and expose cases of corruption practice:

To what extent is the media active and successful in investigating and exposing cases of corruption?

In general, the media are rather active in investigating and exposing individual cases of corruption. However, investigative journalism is under pressure because of budget-cuts and the decline in subscriptions to newspapers. Regional newspapers hardly have any resources to be actively investigating.

Investigative journalism

Investigative journalism is a key part of the media's work. There are four public broadcasters which are known because of their investigative journalism: VPRO, VARA, KRO and AVRO. They also pay attention to corruption cases. The public broadcasting organisations (radio and television) are rather active in investigating and exposing corruption cases. Most national newspapers and some magazines have investigative journalists employed. Three national newspapers focus on investigative journalism: NRC Handelsblad, De Volkskrant and Trouw. Notwithstanding that, budget-cuts do make it more difficult for the media to investigate issues thoroughly.¹⁶⁵³ The extent to which news is 'discovered' is minimised. This concerns in particular the regional newspapers, which have seen a decrease in their subscriptions, partly due to the merger of several regional newspapers and the increase of Internet usage. The local and regional journalistic infrastructure has therefore disappeared. Hardly do journalists attend meetings of the regional and local councils any more.¹⁶⁵⁴ This puts the regional newspapers under pressure while they do still have an important role in informing citizens about what is going on in their community, thereby offering citizens the possibility to participate in the local democracy and informing them of local integrity violations. This decrease in regional newspapers is not compensated by other means.¹⁶⁵⁵ According to a study commissioned by the VVOJ, investigative journalism is too much restricted to specialised journalists and television and radio programmes. There are many situations where simple forms of investigative journalism would be possible and effective. The budget restrictions are often used as an argument for not doing this. According to this study, the culture in news organisations is not supportive of this form of journalism.

¹⁶⁴⁸ http://www.eenvandaag.nl/criminaliteit/38204/phonehacking_ook_in_nederland_, consulted the 13th of July.

¹⁶⁴⁹ <http://www.villamedia.nl/nieuws/bericht/capcom-wil-games-journalisten-omkopen/28383/>, consulted the 13th of August.

¹⁶⁵⁰ <http://www.vandaagmorgen.nl/opinie/algemeen/1064-journalisten-zijn-ook-maar-mensen-.html>, consulted the 13th of August.

¹⁶⁵¹ See: <http://www.rvdj.nl/2011/4/1>, <http://www.rvdj.nl/2011/45> and <http://www.rvdj.nl/2011/47>, consulted the 11th of August.

¹⁶⁵² <http://www.nu.nl/media/2593382/klacht-mariko-peters-bij-raad-journalistiek.html> and <http://www.rvdj.nl/2011/65>, consulted the 29th of October 2011.

¹⁶⁵³ Interview held with Margo Smit, Director Association of investigative journalists (VVOJ), interview held May 31, 2011.

¹⁶⁵⁴ Ibid., and Interview with Hugo Arlman, freelance journalist, 9 December 2011.

¹⁶⁵⁵ <http://www.media-ombudsman.nl/article/nederlandse-journalistiek-lijdt-pijn-aan-gewoeker-met-regionale-dagbladen>, consulted the 29th of October 2011.

Real cases

One of the best examples of high-profile cases of corruption investigated by journalists concerned the fraud by construction companies (referred to as the Bouwfraude).¹⁶⁵⁶

In November 2001, a television documentary entitled 'Fiddling by the Millions' from a Dutch public broadcasting corporation focussed attention on, among other things, double-entry bookkeeping, slush funds, prices which were forced up and bribery and fraud in the construction industry. There were also allegations that corrupt contacts existed between public servants and contractors. This event produced such a worrying picture that the Tweede Kamer decided to conduct a parliamentary inquiry.¹⁶⁵⁷

Another case in which investigative journalists exposed alleged corrupt practices involved the director of the Rotterdam Port Authority and a Dutch business tycoon.¹⁶⁵⁸ The suspicions were raised that the latter bribed the port director. These suspicions were aroused when a report was published by the fiscal intelligence service (FIOD). It had been investigating for years whether the former director of the Rotterdam Port Authority was involved in fraud. It had become clear earlier that the business tycoon had guaranteed bank loans to the director's company RDM with a value of EUR 150 million. RDM later went bankrupt.

A third case which has been given serious attention by the media is the Real Estate Fraud. For details on the case, please refer to Corruption Profile. All through all media reporting on this case and the on-going court proceedings, two journalists from the newspaper Het Financieele Dagblad reported in detail on the case. The newspaper's website has a special section in which all up-to-date information on the case can be found.¹⁶⁵⁹ The investigative research done by these journalists has also been collected in a book on this case of real estate fraud. Other media have paid attention to this book¹⁶⁶⁰ and several media invited these journalists to discuss this case.¹⁶⁶¹

Inform public on corruption and its impact:

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

In general, the media are rather active in informing the public on corruption and its impact.

Education of the public

There are no specific programmes run by the media to educate the public on corruption and how to curb it, but in some TV programmes such as Zembla¹⁶⁶², Tegenlicht¹⁶⁶³, Reporter¹⁶⁶⁴, and Brandende

¹⁶⁵⁶ <http://www.rnw.nl/english/bulletin/eleven-convictions-construction-fraud-case>, Interview held with Margo Smit, Director Association of investigative journalists (VVOJ), interview held 31st of August, 2011.

¹⁶⁵⁷ 'The parliamentary enquiry on fraud in the Dutch construction industry collusion as concept between corruption and state-corporate crime', Grat van den Heuvel, Faculty of Law, University of Maastricht in Crime, Law & Social Change (2005) 44: p. 133-151.

¹⁶⁵⁸ <http://nieuws.nl.msn.com/home/celstraf-voor-oud-topman-rotterdamse-haven>, See also (in English): <http://www.rnw.nl/english/article/rotterdam-port-chief-accused-taking-bribes>, consulted on the 31st of August 31, 2011.

¹⁶⁵⁹ <http://fd.nl/ondernemen/topics/vastgoedfraude/>

¹⁶⁶⁰ De vastgoedfraude. Miljoenenzwendel aan de top van het Nederlandse bedrijfsleven. Nieuw Amsterdam. Vasco van der Boon and Gerben van der Marel November 2009 (ISBN: 9789046806463).

¹⁶⁶¹ For example: An episode of Nova on the 3rd of November 2009 via <http://www.novatv.nl/page/detail/uitzendingen/7359/Honderden+miljoenen+aan+vastgoedfraude> and an episode of KRO Reporter from the 2nd of May 2010 via <http://player.omroep.nl/?afID=10913906> and a broadcast on Radio 1 the 3rd of March 2010 via <http://www.radio1.nl/contents/26848>

¹⁶⁶² http://zembbla.vara.nl/Afleveringen.1973.0.html?&tx_ttnews%5Btt_news%5D=6835&cHash=4d1c78aa1b227dfa26a9e0b871d233ce, consulted the 17th of June 2011.

¹⁶⁶³ <http://tegenlicht.vpro.nl/nieuws/2009/februari/welcome-to-the-real-singapore.html>, consulted the 17th of June 2011.

¹⁶⁶⁴ http://reporter.kro.nl/international/uitzendingen2010/100607_blatter.aspx, consulted the 17th of June 2011.

kwesties¹⁶⁶⁵ attention is paid to the topic of corruption, mostly resulting out of individual corruption cases. The same holds for the newspapers. Fraud and corruption affairs are also analysed in detail by the newspapers. In general, these programmes and news articles lead to debate in society and politics. The media attention for this topic often leads to a follow-up and/or increased attention from the parliament. MPs often use their right to question a minister about such a report in the media. This is again an opportunity to report on the topic of corruption and raise more fundamental questions regarding these incidents. Recently MPs sent questions to the respective ministers on corruption issues such as Dutch expenditures to climate programmes in foreign countries which are perceived to be corrupt,¹⁶⁶⁶ and corruption by politicians in the Dutch Antilles.¹⁶⁶⁷

Inform public on governance issues:

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

In general, the media are rather active in keeping the public informed on regular activities of the government and governance institutions. However, there are concerns regarding the investigative means available to journalist because of the restrictive attitude of governmental organisations in applying the Wob.

Daily reporting on the government

A number of public and commercial media outlets (NOS Journaal, EenVandaag, Rndom 10, RTL Nieuws, Nieuwsuur, Pauw & Witteman, Knevel en Van de Brink),

report on a daily base about government/governance activities. There are observable differences in public and commercial broadcasting, but there is no question of incorrect or incomplete reporting.¹⁶⁶⁸ The same holds for the newspapers.

All these media have a special interest in governance issues. In these programmes and articles attention is paid to potential conflicts-of-interest by the Executive. An example is the discussion about the salaries of members of the representative bodies and officials, or the reports on the new functions of former members of the government. The ministers and top managers of companies find it an honour to participate in these TV and radio programmes. There has been some debate about an alleged preference of the media for more left-oriented political parties.¹⁶⁶⁹

These criticisms led to discussions in the media. Since this debate, the media are very careful to offer both sides of an issue and the opportunity to inform the public about their perspective on that specific issue.¹⁶⁷⁰

Openness of Government Act (Wob)

There are serious concerns regarding the effectiveness of the Openness of Government Act (Wob) and the willingness of the government to provide information.¹⁶⁷¹ Often the information requested by journalists is not provided in time or not provided at all by governmental organisations.

Additionally, the Wob is difficult to enforce, appeal proceedings before the court take a long time and rarely is the refusal to provide information overruled in

1665 <http://www.avro.nl/Pages/player.aspx?maid=tcm:8-237481> (broadcasted on Saturday the 4th of December 2010 at 22.35 hours, Ned. 2, AVROTélévision).

1666 <http://www.elsevier.nl/web/Nieuws/Buitenland/295995/Miljarden-euros-klimaatgeld-onderhevig-aancorruptie.htm>, consulted the 23rd of October 2011.

1667 <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2011/03/28/aanbiedingsbrief-kamervragen-over-het-onderzoek-naar-vermeende-witwaspraktijken-en-corruptie-door-politici-op-bonaire.html>

1668 <http://igitur-archive.library.uu.nl/student-theses/2011-0223-200538/NOS%20journaal,%20RTL%20nieuws%20en%20Geert%20Wilders.pdf>

1669 Elsevier, De milieumaffia, de linkse media en Turkije, 17th of March 2005. See also: <http://www.elsevier.nl/web/1022825/Artikel/De-milieumaffia,-de-linkse-media-en-Turkije.htm>

1670 See: Publieke omroep TV links. <http://kunst-en-cultuur.infonu.nl/diversen/24035-publieke-omroep-tv-links.html>

1671 Radio-broadcast of VPRO's Argos 'De WOB op de schop' of the 1st of October via <http://weblogs.vpro.nl/argos/>

an appeal procedure.¹⁶⁷² In 2009 the VVOJ held a survey¹⁶⁷³ among its members on their experiences with the Wob. This resulted in the following figures:

Aspect of Wob	Main response	Other response	
Duration of a Wob-request	55 percent > 2 months	25 percent > 6 months	
General experience	60 percent expressed experiencing obstruction and resistance from the authority	30 percent have started a court proceeding because of resistance or delay following the request	
Information received	30 percent received the information (often under conditions)	30 percent received information partly	5 percent did not receive the information
Publishing	50 percent have published after receiving the information		
Opinion on use of exception ground (privacy protection) by authority	27 percent think that the protection of privacy is abused to prevent unwanted disclosure of information	23 percent think that to some degree the protection of privacy is abused to prevent unwanted disclosure of information	

Source: <http://www.vvoj.nl/cms/2009/12/16/een-muur-van-rubber-samenvatting-enquete/>, consulted the 28th of October 2011

The Minister of BZK stated in May 2011 that openness of governance and freedom of the press are hardly related. He has claimed that the Wob should be restricted to government decisions and not be extended to the corresponding studies and corresponding decision-making process. A representative of the NVJ criticised the minister and argued that the treaty of Tromso (Council of Europe Convention on Access to Official Document) should first of all be signed by the Dutch government, and that elected members of the Executive have a duty to

act transparently, and that not only the outcome of decisions should be made available to the public but also the considerations leading to the decisions.¹⁶⁷⁴ MP Mariko Peters has announced her plan for an initiative bill to extend the scope of the Wob in order to ensure faster Wob-procedures and to include specific provisions related to digital information.¹⁶⁷⁵ It is still to be seen if and how the Wob will be amended. Either way this will have an impact on the extent to which the media can inform the public on government issues.

1672 De Wet openbaarheid van bestuur in de journalistieke praktijk. Onderzoek naar het functioneren van de openbaarheidswet van Nederland door vergelijking met de wetgeving in België en het Verenigd Koninkrijk, Marthe Damman, Master Journalistiek Rijksuniversiteit Groningen 30th of June 2010 p.17.

1673 This survey is part of the book Een muur van rubber: de WOB in de journalistieke praktijk. The survey was held among 528 members and had a response of 31% (162 members).

1674 <http://www.nvj.nl/nieuws/bericht/donner-wob-moet-beperkt-blijven-tot-overheidsbesluiten/>, consulted the 26th of October 2011.

1675 <http://nos.nl/audio/277282-mariko-peters-wob-niet-aangepast-aan-internettijdperk.html>, consulted the 26th of October 2011.

6.12 CIVIL SOCIETY

Role in NIS

Civil society's role is to challenge the government by speaking on behalf of the people, and it is often referred to as the total sum of those organisations and networks which lie outside the formal state apparatus. It includes a variety of organisations that are traditionally labelled 'interest groups' – not just NGOs, but also religious groups, student groups, cultural societies, sports clubs and informal community groups. It is a realm in which citizens associate according to their own interests and wishes. Its motivation is a special interest, not personal profit. Civil society plays an important role in demanding accountability from government and involves the most basic questions about power, transparency, participation and democracy. It calls for a robust public policy debate, responsiveness to the demands of citizens, and receptiveness to the inputs of civil society. A strong NIS consists of a state that is open to meaningful civil society engagement and cooperation. If government is involved with civil society, mechanisms are implemented that institutionalise accountability and build public trust. Civil society, in essence, gains its legitimacy from promoting the public interest, hence its concerns with human rights, the environment, health, education, and, of course, corruption. Responsible NGOs ensure that they are run democratically and accountably. Civil society encompasses the expertise and networks needed to address issues of common concern, including corruption. Most of the corruption in a society involves two principal actors, the government and the private sector. Citizens are typically the major victim. This means that it is up to civil society to monitor, detect and reverse activities of public officials. For civil society

to function adequately, a supportive legal and regulatory framework is required that allows the necessary space for it to operate.¹⁶⁷⁶ The main focus of this report will be on the general provisions regarding civil society organisations. For some indicators specific reference is made to those organisations which play a role in anti-corruption.

Sources

The desk report for this pillar started with a general investigation into the topic of the variety of civil society organisations in the Netherlands. The applicable legal provisions and literature were examined, as well as the parliamentary documents in which civil society organisations were either the subject of debate or provided input for the debate. Additionally, a media scan was made. In-depth interviews were held with one key figure of one of the largest civil society organisations in the Netherlands. Another interview was conducted with an expert in the field of public administration. This expert was questioned for the pillar 'public sector' and 'civil society' because of his general expertise regarding accountability. This provided an insight into the integrity of civil society in practice. Both interviews were conducted face-to-face.

Interviews held:

- Mark Bovens, Professor of Public Administration and Research Director at the Utrecht School of Governance, interview held the 7th of June 2011.
- Eduard Nazarski, Director of Amnesty International Netherlands, interview held the 1st of June 2011.

¹⁶⁷⁶ Transparency International. (2003). *Pillars of Integrity: Confronting Corruption. The Key Elements of a National Integrity System.* p.25-28.

CIVIL SOCIETY

Status: Strong**Summary**

The overall legal framework in the Netherlands is conducive to civil society¹⁶⁷⁷, for civil society organisations (CSOs), and their activities. Organisations with the status of serving the public benefit obtain fiscal privileges. Despite increasing financial contributions from individuals and corporate sponsorship, state subsidies constitute a major share in the overall structure of CSO revenues. Apart from other consequences that are comfortable for the CSOs, making them less dependent on fundraising and contributions from private donors, state contributions make CSOs particularly vulnerable to state interference and create the fear that this diminishes the role of CSOs when it comes to holding government accountable. It is important to note that CSOs deal currently with diminishing income from governmental sources, due to cuts of subsidies because of changes in the political constellation and because of the economic and financial crises. At the same time, private donors and stakeholders become increasingly demanding and call for more transparency in the quality of activities, more reporting and a better establishing the societal impact of activities undertaken.

Civil society is a private and non-governmental sector, yet vulnerable to changes in public policies and support. Cooperation with business partners and greater diversification in funding sources are therefore of critical importance. Often there is no professional staff; if this comes on top of lack of time and resources from volunteers, it becomes an obstacle to preparing regular accountability reports, project documents, work plans and programs, and annual reports. Issues such as transparency, autonomy, and accountability

are at stake as well. Some organisations have certain self-regulation mechanisms in place. However, there is little anxiety about promotion of integrity in CSOs in practice. At the moment there is, besides Transparency International Netherlands, hardly any anti-corruption movement in the Netherlands, despite a number of research teams and individuals publishing information and working on issues of integrity and corruption. Education of business executives is typically provided by professional specialist consultants. Attention is also drawn to a lack of oversight, and a lack of investigation of cases of apparent corrupt behavior.

Structure and Organisation

The Dutch civil society sector is regarded as highly developed with roots in a long and rich history.¹⁶⁷⁸ The 19th and 20th century 'pillarisation' (verzuiling) in connection with further welfare state growth has brought major and long-lasting impacts to Dutch society, politics and policies. The deeply-rooted preference for private over state provision has ensured the fundamentally strong position of CSOs. The current structure and financing of the sector show the dominance of collectively organised solidarity over private charity. The share of state funding dominates over all other funding combined.

Beyond social welfare services (healthcare, education, charity, philanthropy), the vibrant social life of Dutch citizens thrives in numerous CSOs dealing with culture, leisure, sports, advocacy, international solidarity, environment, religion, and volunteering. Based on the broad definition of civil society, more than half of the adult population holds formal membership in at least one CSO. These differ in character from strongly institutionalised and professionalised, formal, and sometimes large-scale organisations with hundreds of thousands of members or financial contributors, to informal, small-scale and local structures, struggling to stay alive.

1677 Civil society is understood by TI (and in this report) as 'the arena outside of the family, the business and the state sectors which is created by individual and collective action, organisations and institutions to advance shared interests' (Transparency International, Central European Secretariat for the National Integrity System Study). This definition is similar to the one proclaimed by CIVICUS in the Civil Society Index as 'civil society is the arena, outside of the family, the state and the market, where people associate to advance common interests'. See: http://www.civicus.org/media/CSI_Netherlands_Country_Report.pdf (a 2006-report).

1678 In 1999 this was published as Chapter 7, Key Features of the Dutch Nonprofit Sector in Anheier, H.K., Salamon, L.M., List, R., Toepler, S., Sokolowski, S.W. and Associates. (1999). (pages 145-162).

Dutch civil society is highly modernised.¹⁶⁷⁹ Support for traditional organisations (church, trade unions, political parties) considerably decreased in membership primarily due to the aging of its membership, whereas organisations active in international aid, human rights, nature conservation, environmental protection, consumers' interests, and healthcare like Amnesty International, Greenpeace, World Wildlife Fund, Consumers Union and patients' interests lobby groups attracted many.

The Netherlands scores high as a volunteering country (primarily for sports and recreational associations) and on the aspect of donations (especially in the field of international aid and environment protection). Despite its leading position in Europe as regards volunteers' involvement, there appears to be a decline in the willingness to volunteer. Apparently, economic recession has played its role in decreasing levels of voluntarism and other forms of involvement.

Non-profit organisations in the Netherlands are traditionally referred to as private initiatives" or the "societal midfield".

ASSESSMENT

RESOURCES (BY LAW)

To what extent does the legal framework provide an environment conducive to civil society?

Constitution and statutory provisions

The legal framework in the Netherlands is conducive to civil society and its organisations. Freedom of association is guaranteed by the Dutch Constitution for all persons.¹⁶⁸⁰

The law defines provisions concerning associations and

foundations, which are the most common legal forms of CSOs.¹⁶⁸¹ Every individual and legal person, Dutch or foreign, may participate in the establishment of a CSO and be a member. There are no formal limitations with regard to the purpose, programme, organisation, activities, budget, or membership of CSOs except the protection of public order.¹⁶⁸² The law restricts the CSOs from distributing commercially-made profits to their founders, members or appointees to their internal bodies. All CSOs are free to engage in advocacy and/or criticism of the government.

Registering

Registering a CSO is as simple as the civil law rules on associations and foundations. Both are established by a notarial deed that includes the statutes and the house rules, without governmental involvement. Associations (verenigingen) are membership-based; this can be formal or informal.¹⁶⁸³ Natural and legal persons are free to join. Foundations (stichtingen) do not have members.¹⁶⁸⁴ Their financing comes from natural and legal persons. They can be established by any single person or group. Both may be eligible for public financing. De-registered CSOs are not prohibited. Board members of de-registered CSOs are personally liable for organisational obligations. This intrinsically applies to informal associations that are not established by notarial deed and hold limited legal capacity.¹⁶⁸⁵ Informal associations cannot be heir to an inheritance or acquire real estate or other registered goods. Foundations and associations (informal) must register at the Chamber of Commerce (Kamer van Koophandel). Administration costs are approximately EUR 27 a year. There is no requirement for a minimum capital amount for CSOs to be registered.

Public benefit status

Also under Dutch law, any foundation or association can be established for public and private benefit

¹⁶⁷⁹ http://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2009/De_sociale_staats_van_Nederland_2009

¹⁶⁸⁰ Art. 8 Grondwet.

¹⁶⁸¹ Art. 2:26 and art. 2:285 Burgerlijk Wetboek.

¹⁶⁸² Ibid., Art. 2:20.

¹⁶⁸³ Ibid., Art. 2:26.

¹⁶⁸⁴ Ibid., Art. 2:285.

¹⁶⁸⁵ Ibid., Art. 2:30.

purposes. However, if any CSO wants to be eligible for fiscal CSO privileges, it has to comply with particular requirements to obtain public benefit status. Since January 2010, the status of 'public benefit organisation' (ANBI – Algemeen Nut Beogende Instelling) is – on request – given to organisations whose purpose and actual activities serve the public interest. A problem under discussion is the definition of 'public interest'. The prevailing view is that an organisation serves the public interest 'if in reasonableness it can be assumed that the purpose that is being pursued serves the well-being of the population in the (relevant) country.'¹⁶⁸⁶ The quantitative indicator of the public benefit service part in the overall activity of an ANBI-recognised organisation was raised per 1 January 2010 from 50 to 90 percent.¹⁶⁸⁷ Additional requirements are that the organisation be based in the Netherlands, in the Dutch Caribbean, in a Member State of the European Union, or in any other country at the discretion of the Minister of Finance, and also that it fulfil the other requirements. The fiscal authority (State Revenue Office, Belasting Inspecteur) decides about awarding ANBI-status. The Inheritance Tax Act (Successiewet, 1956, renewed 1 January 2010) grants ANBIs fiscal privileges with regard to gift and death duties. For the taxpayers it is important that gifts to a CSO with ANBI-status is not taxed at the receiving end (the CSO), but also that these gifts are tax deductible for the donor/taxpayer. In the higher income-brackets this means that up to half of the gift is actually paid by the tax office as this is returned to the donor. ANBI-status applies to organisations with no restrictions as to where their activities are performed.¹⁶⁸⁸ In general, CSOs that hold ANBI-status do not have to pay company tax, unless they act like a company and create competition for commercial enterprises.

Social importance status

In 2010, a new status of 'organisation of social importance' (SBBi – Sociaal Belang Behartigende

Instellingen) was introduced. According to the Inheritance Tax Act, SBBIs are exempt from gift and death duties over inheritance and gifts they receive.¹⁶⁸⁹ The income of SBBIs from donations, contributions and investments is not subject to taxation.

The legal framework is very conducive to the existence and operations of CSOs.

RESOURCES (IN PRACTICE)

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

Funding

In general, it will be difficult to find in any country of the world a CSO willing to confirm that it has adequate financial and human resources to function and operate effectively. In the Netherlands as well, CSOs will always know and find pressing needs that cannot be fulfilled. Nevertheless, CSOs in the Netherlands are reasonably well-funded, in particular because a large part of the funding which some of them receive is legally binding. This is the case with most education, health care, radio- and TV programming, and care of the elderly. However, also for them but certainly for many other CSOs, it is correct to say that they depend on additional financial contributions from members and donors, and on time offered by volunteers.

Financial resources for CSOs established in the Netherlands historically come predominantly from the coffers of the government. In the 1990's public sector income for CSOs dominated with 59 percent. Private earnings of CSOs (fees, sales, dues and investment income) made up almost 38 percent of non-profit income. Private giving was the smallest contributor to non-profit revenues, with a share of almost 3 percent coming from state and private lotteries, capital funds

1686 'Het gewijzigde ANBI-regime per 1 januari 2010: gevolgen voor instellingen van algemeen nut die ook commerciële activiteiten verrichten', Mr. C. Vrieling, Mr. dr. H.R. Bruggink, ('The revised ANBI-rules per 1 January 2010 including the consequences for their commercial activities') see: http://www.algemeennut.nl/images/stories/bvdv/anbi-regime_per_1_januari_2010.pdf

1687 http://www.algemeennut.nl/images/stories/bvdv/anbi-regime_per_1_januari_2010.pdf

1688 <http://www.scp.nl/english/dsresource?objectid=22125>

1689 https://minfin.nl/Onderwerpen/Erven_en_schenken/Dossier_schenk_en_erfbelasting

(vermogensfondsen) and bequests. The focus of this report will be on national CSO private earnings and private giving.¹⁶⁹⁰

The civil society pillar underwent significant transformations in the first decade of the new millennium. The total amount donated more than doubled from EUR 2.2 billion in 1997 to EUR 4.7 billion in 2009.¹⁶⁹¹ The total figure is the sum of estimated contributions made in the course of the calendar year by households (41 percent), businesses (36 percent), lotteries (10 percent), bequests (5 percent), and foundations (fund-raising foundations 4 percent, and endowed foundations 5 percent). The total amount is an underestimate, because data on bequests and endowed foundations are known to be incomplete. Also incomplete is the total contributed by fund-raising foundations to good causes which was EUR 3,1 million in 2009. The 4 percent (EUR 172 million) mentioned above is only the 'income from investments', and does not include fund-raising among the Dutch population and commercial sector. The EUR 4.7 billion is 0.82 percent of the Dutch Gross Domestic Product. This low percentage seems to contradict the general impression that the Dutch are generous givers. The Dutch contribute, however, to public, social and charitable causes primarily by paying taxes. The highest recipient sector in 2009 was 'religion' with EUR 891 million, its second highest receipts since 1997, lower than the previous EUR 1.0 billion in 2007. But religion always came as top recipient (except for 1999). Nearly all of the contributions to religion come from households. 85 percent of donations from corporations went to sports and recreation. International aid got more than half a billion to spend. A spectacular rise was seen in the culture sector, from EUR 87 million in 1997 to EUR 454 million in 2009, but the amounts spent on culture are rather volatile. A fast and unstable grower is 'environment, nature, animals'.

Many NGOs receive considerable funds from the various Lotto- and Toto organisations and allow

themselves to be used for advertising. The question has arisen if such indirect lobbying to public opinion may have an impact on the parliamentary discussions on lotto legislation.

State budget-cuts

Due to the economic crisis, the government introduced huge budget-cuts which since 2010 also hit the income levels of CSOs at national and local levels. Regional and municipal authorities deal with the new situation in the same way by also cutting expenses, including personnel costs. A considerable burden of budget-cuts and savings is put on the shoulders of CSOs, the more so as governmental subsidies form a substantial part of their budgets. No CSO function, whether international aid, culture, health care, integration, or social work, is forgotten. Cuts have been made in all sectors of CSO activities. Additionally, the rules for obtaining any continuing subsidy have been tightened. For instance, a CSO applying for the international aid subsidy, needs to prove new important criteria such as cooperation, modernisation and professionalisation. Local authorities, citizens, business representatives and CSOs look for new ways to deal with the budget-cuts. It is likely that CSOs will have to become more creative in trying new initiatives, cooperate more with new partners, and attract new sponsors or donors. The position of the government is that CSOs should become less dependent on state subsidies. Discontent is growing as it becomes visible through numerous demonstrations against cuts in subsidies.

CSO-funding is strongly diversified. Some have been established by one particular company and have no other donors. Others, like Amnesty International, rely for their income on a broad membership, and will not accept government funds in order to maintain absolute independence.¹⁶⁹² Others like Greenpeace want a widespread network of donors to pay for their activities, and wish to see them also as activists in the struggle for the environment. Consumer organisations do not want business sponsorships, but claim governmental support as they deliver a common good

¹⁶⁹⁰ Bekkers, R.H.F.P., Gouwenberg, B.M., and Schuyt, T.N.M. (2011).

¹⁶⁹¹ http://www.geveninnederland.nl/file/225/summary_gin2011.pdf

¹⁶⁹² Interview with Eduard Nazarski, Director of Amnesty International Netherlands, 1 June 2011.

to all citizens. They want to be absolutely free in doing their research into the quality and price of consumer products, advocating the interests of all consumers, although it is only their members that pay the costs, the other consumers are 'free riders'.

The last decade has been marked by the emergence of a professional philanthropic sector in the Netherlands. With fund-raising income growing steadily, a process of CSO professionalisation has occurred. Fund-raisers and other charitable organisations have organised themselves into several branch umbrella organisations. More and more charitable organisations employ paid staff workers for fund-raising.

Sponsorship

Within the structure of corporate giving, sponsorship takes a leading position as opposed to gifts. Companies take part in corporate volunteer programs, in which employers contribute actively to social projects. It is interesting to note that the number of corporations that support non-profit organisations through volunteer programs has increased (so-called 'employee volunteering').

Overall, we note the presence of all the ingredients that could make corruption more prevalent and lower integrity levels: billions of euros yearly as revenue and expenditures, new rules, new donors and new partners; tax privileges if certain conditions are fulfilled.

From the point-of-view of corruption and integrity, the growth of sponsorship over gifts could become a weak point. Sponsorship has become an integral part of the marketing and communication policies of business companies. It is at their discretion to decide to (dis)continue any sponsorship. This may give unwanted exercise of power to business executives over activities that are in need of financial support and that benefit all. This development is countered by the growing interest

in corporate social responsibility programs (maatschappelijk verantwoord ondernemen), intended to assist populations in answering their needs.

Human resources

The Netherlands scores high as a volunteer country. Approximately 40 percent of the population is engaged in voluntary work.¹⁶⁹³ Although there remains a general volunteer shortage in the CSO sector, the volunteer rate and the hours volunteered have increased in recent years.¹⁶⁹⁴ More volunteers might help, but it could be as well that the general cuts in all sectors, and the growing unemployment in the labour market, lead to lower levels of volunteering. One analyst argued that additional functions such as voluntary work used to be a well-accepted positive thing, but with the stricter rules on additional functions, people are more hesitant to take on such roles.¹⁶⁹⁵

In general, most CSOs have a sustainable and diverse funding and support base.

INDEPENDENCE (BY LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

Freedom of association

Freedom of association is limited exclusively in the interest of public order. Citizens are free to get engaged in groups regardless of political ideology, religion, gender, race, education, occupation or objectives.

Discrimination against any citizen, not allowing membership if someone belongs to any of these categories, is not allowed. Government and public administration are not involved in the establishment of

1693 <http://www.rijksoverheid.nl/nieuws/2011/01/13/nederland-mag-trots-zijn-op-vele-vrijwilligers.html>; <http://www.cbs.nl/nl-NL/menu/themas/vrije-tijd-cultuur/publicaties/artikelen/archief/2008/2008-90136-wk.htm>

1694 <http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/2291881/2011/05/09/Slachtofferhulp-tekort-aan-vrijwilligers.dhtml>; <http://www.depers.nl/binnenland/220945/Tekort-vrijwilligers-aangepakt.html>

1695 Interview with Mark Bovens, Professor of Public Administration and Research Director at the Utrecht School of Governance, 7 June 2011.

associations, foundations or other CSOs, and there are no formal limitations with regard to the purposes of CSOs. Legal and natural persons have to respect the same rules and regulations based on the Constitution and to respect public authorities and the law. Registration of any CSO is compulsory only if a CSO wants to profit from tax exemptions and/or subsidies from the public purse. Dutch legislation suggests no legal barriers for CSOs to engage in advocacy or in criticising the government or public administration.

State subsidies and tax privileges

A respectful legal system protects Dutch civil society from external interference. Government has the right to demand annual reports, transparency and accountability from CSOs that are recipients of state subsidies and tax privileges, showing that they fulfil the legal requirements.

Comprehensive legal safeguards to prevent unwarranted external interference in the activities of CSOs exist.

INDEPENDENCE (IN PRACTICE)

To what extent can civil society exist and function without undue external interference?

Dependence

All CSOs with a limited number of sources of income depend in one or another way strongly on the relationship with the donor. Potentially, this is a threat to independence. A membership CSO with a broad membership-base is mostly free from this potential threat. If the financial resources of a CSO depend heavily on public subsidies and tax-privileges, changes in the political orientation of the government or changes in the political constellation at home or abroad may influence the largesse of the authorities. Whether this has consequences for the policies and activities of any CSO has still to be decided by its own membership and board. In order to safeguard income, a CSO might

be more inclined to deliver governmental priorities or to limit a critical attitude or advocacy. Additionally, it leads to practical issues. Some CSOs which receive public subsidy have to be explicit in what they will use the money for in four years' time. For CSOs which represent humanitarian causes, for instance, it is impossible to report beforehand.¹⁶⁹⁶

Pillarization

Due to the pillarization in the past, thousands of CSOs are still highly associated with the government: healthcare institutions, broadcasting corporations, international aid and development organisations, trade unions and educational institutions. The share of state funding for these organisations is considerably high, accounting for almost 60 percent of all non-profit revenue. Moreover, CSOs have to operate under market conditions and with business-like efficiency, whereas the government permanently keeps them under control through various regulations, directives, and assessment-mechanisms, which limit their autonomy. The sector of education offers a clear example. Although private education is substantially provided by private organisations, it is almost completely financed by public sources. Private schools are free to recruit personnel and to choose their ideological base, mostly a religious one. However, they have to implement directives regarding curriculum, number of pupils per teacher, credentials and salaries of teachers, construction and maintenance of buildings. The government guarantees the quality of education by setting the terms of the final examinations, and using the national school inspectorate. Numerous denominational and other umbrella organisations of non-profits provide consultation and assist government in the formulation and implementation of public policies. In line with that, the autonomy of individual schools is to a certain degree limited.

Politicisation

Another example is related to a current debate between the House of Representatives (Tweede Kamer) and the directors of Oxfam, Novib, Cordaid, ICCO en IKV Pax Christi over their activity in Israel and Palestine.¹⁶⁹⁷

¹⁶⁹⁶ Interview with Eduard Nazarski, Director of Amnesty International Netherlands, 1 June 2011.

¹⁶⁹⁷ <http://www.viceversaonline.nl/2011/06/ngo%e2%80%99s-en-kamerleden-botsen-over-werk-in-palestijnse-gebieden/> consulted 18 June 2011.

Since the beginning of the current government, the work of Dutch development-aid organisations in the Israeli-Palestinian region has become a sensitive issue because the state-subsidised development-aid organisations support local partners whose activities, according to some parties, conflict with the politically-accepted Dutch government position. The question is whether the aforementioned organisations should be worried about the subsidy they get if they support activities which are not in line with Dutch policy objectives when they stand up for their objectives (in this case for the human rights of all local citizens).

Depending on the political and social developments in the country, the position of CSOs can correspondingly change or be influenced by new political forces at play. One expert argued that in the (recent) past, ministers had told him not to criticise the government's policies too much or else subsidies would no longer be granted.¹⁶⁹⁸

There is an urgent need for a clear positioning of the Dutch CSOs as a non-governmental and non-profit sector with their own governance models which would finally lead to differentiation in funding sources. CSOs need to redefine their values and their role between the market and the state in order to keep their identity.¹⁶⁹⁹

There is as yet not much reason to think that integrity is at stake in the relations between government, politicians and public officials because of decreasing state support for CSOs. In many other countries an annual subsidy of EUR 375 million in 2011 for five co-financing development-aid organisations, lowered from EUR 425 million in previous years, still sounds rather generous.

CSOs operate freely and are subject only to reasonable oversight. However the position of CSOs can correspondingly change or be influenced by new political forces.

TRANSPARENCY (IN PRACTICE)

To what extent is there transparency in CSOs?

Growing demand

There is a growing call for transparency in the CSO sector in Dutch public and political debate. This alone is already an indication that reporting is not considered to be sufficiently transparent. As CSOs strongly depend on people's trust, members and donors should know what happens to their donations, i.e. how much is put aside for overhead costs, and where and how subsidies, donations and contributions are spent. This lack of transparency is dangerous because one occasional media report of poor performance and misallocation of funds may easily scandalise the entire philanthropic sector. Transparency is important also for continuity in support from the public (in the end they are also voters), and it is effective in the fight against corruption in recipient countries. It also offers stakeholders and beneficiaries influence on insight and co-decision-making.

Incidents

Recently, shortcomings in reporting concerned staff, directors, and members of management and supervisory boards with conflicting interests and job-incomes that did not reflect the idealistic goals these organisations set as their main values. For instance, it is no longer acceptable for the public that directors of development-aid organisations fighting poverty enjoy for themselves salaries like in private, profit-making businesses. CSOs are increasingly challenged to report about their activities, specify measurable results and the way they spend their resources. In some cases, CSOs are blamed for not effectively and not efficiently spending funds. Some fund-raising campaigns for international disaster relief, such as the Tsunami campaign (2004-2005) and the Haiti campaign (2010), raised questions regarding inefficient spending and lack of transparency in funding allocation.¹⁷⁰⁰ Generally, donors wish more trustful involvement in CSOs and communications that make the impact of their giving more visible.

¹⁶⁹⁸ Interview with Eduard Nazarski, Director of Amnesty International Netherlands, 1 June 2011.

¹⁶⁹⁹ Meindertsma, B. (2010).

¹⁷⁰⁰ Ibid.

Developments

CSO activities have already become more visible and transparent. Several self-regulation initiatives have been developed, determining benchmarks and guidance as to how organisations should implement good practices and ensure transparency in their work.

These are, for instance, 'Good governance for Good causes', '13 recommendations for good governance in sport', 'handbook Cultural Governance' and other initiatives.¹⁷⁰¹

The Central Bureau for Fundraising (CBF – Centraal Bureau Fondsenwerving),¹⁷⁰² a private foundation partly subsidised by the Ministry of Housing, Welfare, Sport and of VJ, promotes the responsible raising and disbursement of funds in the Netherlands (including moneys obtained from gaming license holders within the meaning of the Dutch Betting and Gaming Act) by and for charitable, cultural, scientific or other legal entities with public benefit goals, and promotes responsible public information provision by these entities within that framework. This is done both in the interest of the public and that of the legal entities involved.

Other activities include:

- Developing regulations for the reliable and responsible raising and application of funds, and monitoring the compliance of individual companies with these rules, at their request;
- Independently identifying and documenting issues that may be socially significant in fund-raising;
- Providing information and advice to the public, authorities and institutions.

In 2010, the CBF launched a Registry of Charities (Register Goede Doelen) aimed at the promotion of transparency for Dutch charities.

Members put financial information online. In turn, the CBF website¹⁷⁰³ offers online financial information on hundreds of fund-raising organisations. Here the annual reports of about 1,250 institutions can easily be found, as well as graphs illustrating their spending and income (funds raised), and information about volunteers, members of the board, and directors.

The Transparency benchmark (Transparantie-benchmark)¹⁷⁰⁴ and the Transparent Prize (De Transparant Prijs)¹⁷⁰⁵ initiated research about transparency in charities' activities.

The annual reporting of charities is evaluated with regard to content and the way organisations communicate their results to the public. According to a recent report on the Transparent Prize 2010¹⁷⁰⁶, the transparency score is rising slowly (2010: 5.9 compared to 2009: 5.6).

There is also a rise in the number of charities participating: in 2010, 219 participated (compared to 202 in 2009). Shortcomings noted related to late publishing of annual reports, insufficient reporting on the projects which failed to achieve their goals, missing information on client satisfaction and value-added by organisational activity, insufficient information about rewards paid to directors and members of management boards, and failure of some organisations to comply with the requirements of annual reports set by The Transparent Prize.

On the positive side is the wider use of the Internet for making reports accessible to the public (80 percent of participants). The charities find it also challenging to cover and report on the impact of their activities.

Although some shortcomings in reporting do occur, in general most CSOs make relevant information publicly available.

1701 Christine Kuiper, 'Laat zien wat je doet! Handreiking transparantie en goed bestuur in vrijwilligersorganisaties', CIVIQ, May 2006.

1702 http://www.cbf.nl/Uploaded_files/Zelf/UK/DOEL_EN_TAKEN_UK_versie_januari_2009.pdf.

1703 <http://www.cbf.nl/> & <http://www.cbf.nl/OverhetCBF/english-version.php>

1704 The Transparency benchmark is conducted annually by order of the Ministry of Economic Affairs, Agriculture and Innovation and was carried out in 2010 and 2011 by KPMG.

1705 The Transparent Prize is an initiative of PwC and Stichting Civil Society.

1706 <http://www.transparantprijs.nl/media/Rapport-van-kernbevindingen-2010.pdf>

ACCOUNTABILITY (IN PRACTICE)

To what extent are CSOs answerable to their constituencies?

Internal structures

Most CSOs intend to observe principles of democracy and accountability in their formal internal structures. This applies in particular to social welfare services like education, healthcare, and housing corporations, which publish their annual reports on their websites. Although there is no self-regulating body for the whole of the CSO sector, various umbrella organisations aim at improvements in accountability for social housing, healthcare, homes for the elderly, radio- and TV broadcasting, etc.

Fund-raising organisations

In the sector of fund-raising organisations, it is the CBF that plays a major role. Charities can voluntarily choose to have their fund-raising activities monitored by the CBF. The CBF sets special requirements¹⁷⁰⁷ regarding the position and quality of governing boards, the policy of organisations, fund-raising expenditures and accounting practices. The CBF has developed keurmerken or 'hallmarks' (certificates) obtained by fulfilling rather strict requirements on governance, transparency and accountability. There are four different seals of approval: the 'CBF Seal' (for big charities), a seal for small charities, the 'certificate of no objection', and the 'assessment of institutions involved in collecting used clothing'.

The CBF requires from organisations timely and sufficient communication with stakeholders, and reporting and accounting systems in line with the CBF criteria. Institutions have to adopt the CBF accounting guidelines as described in the Richtlijn Fondsenwervende Instellingen. This guideline aims to promote transparency primarily in financial accounting through strict formal requirements with regard to the balance sheet and the statement of revenue and expenditure.

Stakeholders

Of particular importance is sufficient communication to stakeholders about the results of CSO activities, reliable reporting about results and good governance practices. Organisational reputation is at stake, and oversight boards are increasingly outspoken about the policies of their organisations. In previous years, the CSO sector in the Netherlands has significantly improved in professionalisation. This holds for charities, but also for aid and development organisations, cultural institutions and interest organisations. Organisations have become more efficient and effective, while their internal governance has improved. In the report on the 'Transparent Prize 2010', the Dutch charities scored much higher in terms of making their policy, purposes, expenditures, governance mechanisms in use, and fund-raising efforts more visible to their constituencies than in previous years. This means also more meaningful and more regular reporting to stakeholders about their activities.

Reporting

Still, organisations face a number of dilemmas when it comes to professional approach and transparent and timely reporting. The preparation of a good annual report takes considerable time which is often needed for other core tasks. One analyst argued that the criteria for bookkeeping and liability regulations for CSOs are increasing to such an extent that it has become difficult to find a person willing to become a board member.¹⁷⁰⁸ Reporting on projects which are not so successful makes organisations vulnerable; CSOs are happy not to deliver this information. In addition, more reporting on difficult-to-measure results is also becoming an issue. Stakeholders like to see the impact of their CSOs' activity, whereas it gets more difficult for CSOs to measure and report on their direct impact. Reporting on governance within an organisation is a blind spot.

Interestingly, considering the aforementioned challenges, the Free University of Amsterdam started a new programme 'Governance of CSOs' (September

¹⁷⁰⁷ <http://www.cbf.nl/CBF-Beoordelingen/criteria-keur.php><http://www.cbf.nl/CBF-Beoordelingen/criteria-certificaat.php>

¹⁷⁰⁸ Interview with Mark Bovens, Professor of Public Administration and Research Director at the Utrecht School of Governance, 7 June 2011.

2009). The programme prepares master students to be eventually employed by CSOs or in related functions in government or business institutions. The students learn the governance grass-roots of CSOs in the changing social context, as well as theoretical insights as to how CSO governance can be depicted and critically analysed.¹⁷⁰⁹

In general, CSO boards and members are only partially effective in providing oversight of CSO management decisions.

INTEGRITY (IN PRACTICE)

To what extent is the integrity of CSOs ensured in practice?

Trust

National legislation requires good governance to be implemented by all CSOs. In order to acquire trust from the authorities and from the general public, as well as from specific sector-stakeholders, CSO conduct is in theory based on self-regulation to help build such trust, raise standards of practice, protect civil society from burdensome and inappropriate government regulation, generate opportunities for sharing and learning across organisations, and help to acquire the funds needed to pay for the delivery of the services offered. The CSO sector prefers to complement broad government regulatory efforts with sector-wide agreed self-regulation to provide for transparency and financial accountability.

In recent years, CSOs have faced increasing pressure to demonstrate their accountability, legitimacy and effectiveness. Recent financial crises also demand more efficient use to be made of available financial means. In response, a growing number of CSOs are coming together at national, regional and international

level to define common standards and promote good practice through codes of conduct, certification schemes, reporting frameworks, directories and awards. Dutch CSOs are fully involved in these developments.

The self-governing criteria are a challenging concept when it comes to Dutch civil society and in particular to core institutions of the Dutch welfare state. The autonomy of numerous CSOs (education, health care, broadcasting, etc.) is limited due to a legally-binding and high share of state funding in the needed financing of these tasks. This strong involvement of the state in the financing of CSOs and their activities, brings with it a considerable set of regulations, constraints and oversight activities.

Network

Indeed, CSOs thrive on personal commitment by members and donors. Understandably these motivated stakeholders make use of their power and influence to get things done which are otherwise or for others not within reach. A quick look at advertisements for directors and staff members, and for members of managing and supervising boards, suffices to see that often one of the requirements for a successful job-application is that the applicant has access to a large and useful network. For any CSO it is important to have good contacts at political and business level in order to get the decisions that are needed for proper implementation of the self-directed tasks and for the appropriation of needed funds.

Instruments

The major CSOs are professionalised to such an extent that they have codes of conduct, certification schemes, rating agencies, peer reviews and awards; all used in practice to ensure their integrity. CSOs commit themselves to meet all necessary principles and standards.¹⁷¹⁰ The expert from Amnesty International

¹⁷⁰⁹ Free University, Amsterdam, Faculty of Social Sciences, in collaboration with SOCIREs, Management of Societal organisations, a specialization in governance-studies (Besturen van Maatschappelijke Organisaties, een variant van de Masteropleiding Bestuurskunde), flyer, www.fsw.vu.nl & www.socires.nl. Socires, Society and responsibility, is a Dutch expertise centre that focuses on themes relating to the relationship between public and private, such as social organisations in public service delivery, the cooperation between government, market, and social organisations, and the role of religion in the public domain.

¹⁷¹⁰ Code of conduct for members of the association of foundations in the Netherlands, FIN.

Netherlands indicated that their integrity policy considers not only 'hard controls' such as the code of conduct and whistle-blower regulation, but also pays attention to 'soft controls' such as moral awareness. He indicated that this applies to most CSOs in the Netherlands.¹⁷¹¹

The problem lies with compliance. First of all, controls are lacking. Secondly, if a rule is found to be broken, too often the reaction is too soft. If misbehaviour, or indeed criminal behaviour, is found and charged, the punishments are low. All are shortcomings of monitoring.

ANBI- or SBBI-status

There are no indications that awarding ANBI or SBBI status is distorted by corrupt public officials. On the other hand, a company or natural person can legally fund a self-established CSO, for which it/he can in a legally and administratively correct way acquire ANBI-status and thus obtain a tax deduction, on the condition that the CSO serves the public interest.

The CSO sector is highly vulnerable, as integrity cannot always be guaranteed, exactly because so much of it is based on trust. CSOs have a rather reactive approach to ensuring the integrity of their staff and board.

HOLD GOVERNMENT ACCOUNTABLE

To what extent is civil society active and successful in holding government accountable for its actions?

Overall activity

In all sectors of life CSOs are active. They observe what happens to their members and to their particular CSO interests. They intervene with the appropriate authorities in defence of real or imagined rights, advocating particular proposals and their initiatives to solve problems. Millions of Dutch citizens believe in their usefulness and became members of such CSOs.

This alone is already a success. Environmental issues are campaigned for by CSOs, with altogether some 4 million members and donors.¹⁷¹² Patients, organised per illness in their own CSOs, defend their rights to good health care, and demand more means to establish better cure and care. Most parents take active part in the school-life of their children by guarding educational goals, and – maybe more importantly – defending the basic principles on which their private schools have been organised. There is also strong popular support for international aid CSOs. Organisations like churches, trade unions, and employer associations maintain their old and solid positions and try to steer public policies in directions which they desire. A more modern concept is embedded in the 'lobby industry' favouring particular needs. For any subject a lobby group may be initiated.

Issue-based CSOs

Issue-based CSOs follow state activities critically. Numerous organisations push their desired outcomes by influencing politicians and policies. The quality of arguments, as well as mass numbers of potential voters are used in debates on social, political and economic matters to exert pressure on government and other decision-makers. CSOs communicate with and deliver information to both media and parliament for holding executive powers accountable, thereby demanding and promoting governmental transparency. A success story was the project '26,000 Faces'¹⁷¹³ which concerned 26,000 asylum seekers who had been in the Netherlands for a long time and who would be sent back to their country of origin. Journalists, movie directors, several CSOs and other different media produced and broadcast short portraits of several of those asylum seekers to put pressure on the Minister of Immigration and Integration, by showing how they had been residing in the Netherlands for a long time without legal certainty on their status. In total 85 percent of these asylum seekers were granted residential status.¹⁷¹⁴ Recent cuts in state subsidies

¹⁷¹¹ Interview with Eduard Nazarski, Director of Amnesty International Netherlands, 1 June 2011.

¹⁷¹² Vroege Vogels Parade 2010.

¹⁷¹³ <http://www.26000gezichten.nl/26-000-asielzoekers>; Interview with Eduard Nazarski, Director of Amnesty International Netherlands, 1 June 2011.

¹⁷¹⁴ http://www.refdag.nl/nieuws/binnenland/generaal_pardon_levert_26_000_tevreden_gezichten_op_1_237638

could diminish civil society's and CSOs' opportunities to raise a critical voice and to hold government accountable. For instance, a foundation (Stichting Rekenschap) which until recently focussed its activity on the financial transparency of public services and politics during 1999–2005, was forced to close down its activity because of loss of financial support due to a lack of (government) funding. In all sectors, reduced subsidies for critical NGOs could considerably reduce space for civil society and concerned CSOs. One of the experts described the government's attitude towards CSOs as becoming more defensive. He argued that there is a responsibility for CSOs to account for their conduct. He saw a risk in this development leading to a less-varied and less-effective civil society.¹⁷¹⁵

In general, CSOs are active and reasonably successful in holding government to account for its actions.

POLICY REFORM

To what extent is civil society actively engaged in anti-corruption policy reform initiatives?

Transparency International

After the international launch of Transparency International in Berlin in 1993, it took the Dutch some years to establish a Dutch chapter. It is a member-based organisation with a General Assembly of members as the highest decision-making body. Membership is low and basically without members from the corporate sector. The organisation is not so much a corruption 'watchdog'. It is a non-governmental organisation which sets its goal as leading efforts to promote integrity, raise awareness of corruption and to contribute to fighting corruption.

The chapter decided in its early days following the line of Transparency International not to act in individual cases of corruption or on behalf of a person accused thereof. As a consequence, TI Netherlands did not intervene in some well-known cases of whistle-blowers (some in the military, some in the building-industry).

Dutch government

The Netherlands is often perceived as a corruption free country.¹⁷¹⁶ Mostly quoted in this respect is the annual edition of the Corruption Perceptions Index from Transparency International. However, there is little attention to the meaning of this rank-order. Often the Dutch score is considered to mean how corrupt the country is instead of its actual indication of how interviewed observers perceive the Netherlands as corrupt. It is the image that is ranked, not the reality. Nevertheless, Dutch politicians also quote the list as proof of the high level of integrity in Dutch society and the economy.

NIS 2001

In 2001, the conclusion of the Dutch researcher writing the first National Integrity Systems Country Study Report on the Netherlands was that 'there is no anti-corruption movement in the Netherlands at the moment.'¹⁷¹⁷ In 2005, the Government sent a policy paper to parliament on 'corruption prevention'. This paper summarised the view of the government with regard to corruption and integrity. *For more information on legal reform in the Netherlands, please refer to the Pillar report on the Executive.*

In general, civil society is inactive and unsuccessful in engaging with government on anti-corruption policies.

¹⁷¹⁵ Interview with Eduard Nazarski, Director of Amnesty International Netherlands, 1 June 2011.

¹⁷¹⁶ http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

¹⁷¹⁷ Huberts, L.W.J.C. (2001). National Integrity Systems Country Study Report: The Netherlands.

6.13 BUSINESS

Role in NIS

The business sector plays an important role in the NIS. In most situations where corruption is at stake, the business sector represents the active side of corruption. Due to privatisation, the role of supervising organisations and the use of PPP constructions, a strict distinction between the private sector and the public sector is difficult. These developments may lead to a greater vulnerability for corruption in both the public and private sectors.

Business organisations need to have sufficient resources to function properly. Barriers (e.g. licenses) to starting a business and doing business, especially when these barriers are complex, time consuming and dependent upon the subjective judgments of officials, will stimulate entrepreneurs to make use of corrupt practices.

Independence of companies guarantees that they are able to accept responsibility for their own deeds. When civil servants or politicians force a company to make payments or provide some sort of service to another favoured party, then the company has lost its independence. This is seen as extortion. Especially in the international context, this argument is used by businesses to pay bribes.

Transparency in the business sector makes correction of potential corrupt behaviour possible. This is perhaps the most important assurance mechanism against corruption in a society. Assurance against corruption by the business sector is best guaranteed when corporations and their management are willing to hold themselves accountable for the way corporations function. This presupposes that management has sufficient oversight over their corporations. Corporate governance forms the base for accountability in the business sector. Corruption is a systemic problem. Assurance against corruption is possible by stimulating concerted action in the different sectors of society.

Sources

The desk research for this pillar report started with a broad investigation into the complex organisation of this sector and the variety of ways in which corruption prevention is organised in the different segments of this sector. Literature was examined. Additionally, a media scan was made. In-depth interviews were held with two individuals from the business sector: an individual of the governmental centre of expertise on public procurement, and an individual from a forensic and investigation company, and with two key experts from the Social and Economic Council of the Netherlands.

Interviews held with:

- Stephan Jansen, Head of Department for Water Treatment, international consultancy and engineering firm DHV, interview held the 5th of April 2011.
- Alexander Rinnooy Kan, President of the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.
- Peter Schimmel, Partner, Grant Thornton Forensic & Investigation Services, interview held the 6th of May 2011.
- Ivo Thomassen, Senior Policy Advisor, Directorate of Public Administration at the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.
- René Werger, director of MCF Ondernemingsadviseurs B.V., interview held the 4th of May 2011.
- Henk Wijnen, project manager at PIANOo, Public Procurement Expertise Centre part of the Dutch Ministry of Economic Affairs, Agriculture and Innovation, interview held the 16th of May 2011.

BUSINESS

Status: strong**Summary**

The business sector pillar shows a varied picture where integrity safeguarding is concerned. It is relatively easy to start a company in the Netherlands, and the government has recently taken additional steps to make the legal requirements for setting up a company easier. Well-defined criteria in the licensing process and the right to appeal for the requesting party in case of a request, which has been turned down prevent unwarranted external interference in the activities of individual companies. Still, isolated incidents of licensing where subjective elements played a role do occur. A wide variety of supervisory bodies is in charge of enforcing regulations and ensuring compliance. The fact that there are so many bodies, often with overlapping competencies in individual cases, leads to a lack of oversight or contradictory decisions. There are comprehensive disclosure rules for business activities, but not all businesses make their accounts and other information publicly available. The extent to which this is done has increased over the years, but there is still room for improvement because some individual companies do not report all the information they are required to report. Although the total amount of money confiscated from criminals has slightly increased over the years, the extent to which unusual transactions are reported is still relatively low and requires further

attention. The statutory and self-regulatory provisions aimed at ensuring good corporate governance and integrity are extensive for the businesses quoted on the stock exchange and for financial institutions. However, good corporate governance provisions do not apply to SMEs.

Although overall the (larger) companies prove to have good conduct and integrity as their priorities, these topics require further embedding in the culture of these companies. Of equal importance is the creation of effective protection for whistle-blowers. Corruption cases are often seen as incidents and not as something that might be a sign of a more structural problem. The engagements of the Dutch business sector with the Dutch government and/or civil society to combat corruption is moderate. There have been some initiatives in this field, but the number of companies involved was low and this resulted in very little concrete action.

ORGANISATION AND COMPETITIVENESS

Organisation

The Dutch business sector includes 863,840 companies¹⁷¹⁸ (from 16.5 million inhabitants¹⁷¹⁹). 1.3 million entrepreneurs are active in these companies.¹⁷²⁰ Around 99 percent of these businesses are SMEs¹⁷²¹ which are responsible for 58 percent of the GNP and employ 60 percent of all people employed in a company or organisation.¹⁷²²

¹⁷¹⁸ Centraal Bureau voor de Statistiek (2011). Ondernemingsklimaat; marktwerving internationaal vergeleken.

¹⁷¹⁹ <http://statline.cbs.nl/StatWeb/publication>, consulted 22 May 2011.

¹⁷²⁰ <http://www.kvk.nl/download/Ondernemersprofiel>, consulted 22 May 2011.

¹⁷²¹ According to the EU definition of an SME: less than 250 employees and less than 50 million turnover per year.

¹⁷²² <http://www.mkb servicedesk.nl>, consulted on 20 May 2011.

Employer organisations

Per branch of industry, all companies are organised in employer organisations. These employer organisations are organised in three large associations:

Name in Dutch/Abbreviation	Name in English	Representation
Vereniging VNO–NCW	Confederation of Netherlands Industry and Employers	Represents 115,000 companies: – 80 per percent of the companies with 10 to 100 employees – 92 percent of the companies with 100 to 500 employees – almost all companies with more than 500 employees ¹⁷²³
MKB Nederland	Association of Small– and Medium–sized Enterprises	Represents over 186,000 companies
LTO	Dutch Organisation for Agriculture and Horticulture	Represents almost 50,000 agricultural entrepreneurs ¹⁷²⁴

Labour unions

In the same way, employees are organised per industry in labour unions (vakbonden). These labour unions are organised in federations. In 2008, 21 percent of employees were members of a union.¹⁷²⁵ The three major (federations of) labour unions are:

Name in Dutch/Abbreviation	Name in English	Representation
Federatie Nederlandse Vakbeweging/FNV	Federation of Netherlands Trade Unions	A federation of 19 affiliated unions, with a total of 1.4 million members
Christelijk Nationaal Vakverbond/CNV	National Federation of Christian Trade Unions in the Netherlands	A federation of 11 affiliated labour unions, with around 355,000 members
Vakcentrale voor middengroepen en hoger personeel/MHP	Federation of Managerial and Professional Staff Unions	Represents 4 affiliated unions

¹⁷²³ http://vno-ncw.nl/over_vnoncw/leden_en_regios/Pages/default.aspx, consulted the 18th of December 2011.

¹⁷²⁴ http://www.lto.nl/nl/25222769-English_Information.html, consulted the 18th of December 2011.

¹⁷²⁵ Centraal Bureau voor de Statistiek (2009). Organisatiegraad van werknemers 1995–2008.

The Social and Economic Council of the Netherlands

The Social and Economic Council of the Netherlands (SER – Sociaal-Economische Raad) is the major economic advisory council of the Dutch government. It represents the social partners (the labour unions and the employers organisations) and independent members. It forms the core organisation of the consultative economy, and is the main platform for social dialogue. The idea behind the consultative economy is that groups of people try to further their common interest through agreement, interchange, compromise and cooperation.¹⁷²⁶ The SER has three main goals for Dutch social-economic policy: to promote balanced economic growth, to promote full employment and to promote a fair income distribution. The SER is financed by levies which companies pay to the Chamber of Commerce.

Furthermore, the Industrial Organisation Act charges the SER with supervising the 17 existing commodity and industrial boards. Together these boards are referred to as the Statutory Trade Organisation (PBO – Publiekrechtelijke Bedrijfsorganisatie).¹⁷²⁷ For many industries a regulatory body has been erected. The SER heads and oversees the system of these industry-based regulatory organisations: the commodity boards (Productschappen) and the industrial boards (Bedrijfschappen). Commodity boards represent enterprises that work with the same product, from raw material to finished product. Industrial boards represent enterprises that fulfil the same function in the economy, for example all retail businesses or all hospitality establishments.¹⁷²⁸ Examples are the Commodity Board for Poultry and Eggs (Productschap Pluimvee en Eieren) and the Central Industrial Board for Retail (Hoofdbedrijfschap Detailhandel). Each Board is headed by an executive committee (or council) whose members are nominated by the employer organisations and trade unions. In general, each executive committee comprises an equal number of representatives from each of these two groups, and the chairman of each Board is appointed by the Crown.¹⁷²⁹ The members meet regularly to agree on key issues for their branch and to discuss activities

individual sectors cannot manage alone, such as food safety.

Labour Foundation

Another institution that belongs to the consensus economy is the Labour Foundation (StvdA – Stichting van de Arbeid). This is a national consultative body organised under private law. Its members are the three main trade union federations and three main employer associations in the Netherlands. The Foundation provides a forum in which its members discuss relevant issues in the field of labour and industrial relations. Some of these discussions result in memorandums, statements or other documents in which the Foundation recommends courses of action for the employers and trade unions that negotiate collective bargaining agreements in industry or within individual companies.

Industry branches

Within most branches of industry companies cooperate and have formed industry branches. Membership of these organisations is voluntary. These industry branches enter into negotiations on collective labour agreements. Through these contracts, industry branches (and trade unions) collect O&O (Opleiding en Ontwikkeling – Training and Development) funds for the education and development of employees working in the branch. Another important task of industry branches is lobbying in The Hague and Brussels. Furthermore, these branch organisations are important for promotional campaigns and for the organisation of education and training programs specifically designed for that branch of industry. Often codes of conduct are developed. These codes deal with the ethical dilemmas that are specific for these industries, for instance topics that are relevant for the image of that industry, issues with regard to competition, etc.

Professional organisations and associations

Besides the employer and employee organisations and the industry branch organisations, professional organisations play an important role. That holds for

¹⁷²⁶ Brochure 'The power of consultation. The Dutch consultative economy explained.' SER 2010 p.3.

¹⁷²⁷ Art. 128–137a Wet op de bedrijfsorganisatie.

¹⁷²⁸ http://www.ser.nl/sitecore/content/Internet/en/About_the_SER/Statutory_trade_organisation.aspx

¹⁷²⁹ http://www.ser.nl/sitecore/content/Internet/en/About_the_SER/Statutory_trade_organisation.aspx

example for accountants in the Dutch Professional Associations of Accountants (NBA – Nederlandse Beroepsorganisaties van Accountants), lawyers (Nederlandse Orde van Advocaten), medical doctors (KNMG), dentists (NMT), and veterinarians (KNMvD). These organisations have some regulatory functions as well.

Accountants, for example, have to inform the Accountants Organisation about dubious transactions. These professional organisations have their own disciplinary proceedings.

Competitiveness

The Netherlands is ranked at 8th place out of 139 countries on the Global Competitiveness Index 2010–2011.¹⁷³⁰

Compared to the Index of 2009–2010, the Netherlands moved up two positions, from the 10th to the 8th place.

Dutch businesses are highly sophisticated (ranked 5th) and are among the most aggressive, internationally, in absorbing new technologies for productivity enhancements (ranked 3rd for their technological readiness). The country's excellent educational system (ranked 8th and 10th for the two related pillars) and efficient factor markets, especially goods markets (ranked 8th), are highly supportive of business activity. The Netherlands is also characterised by a comparatively stable macroeconomic environment, improving relatively compared to last year.¹⁷³¹

The main criticism of the WEF concerns the flexibility of the labour market (ranked 80th out of 139 countries in this sub-pillar).

ASSESSMENT

RESOURCES (BY LAW)

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

Starting a business

Erecting a business requires 6 procedures.¹⁷³² On average, the whole process takes up 10 days.¹⁷³³ The founders of a BV (private limited liability company) must pay a minimum of EUR 18,000 of the share capital¹⁷³⁴, whereas the founders of a NV (public limited liability company) must pay EUR 45,000.¹⁷³⁵ The founders must be able to demonstrate that they have this amount at their disposal (bank declaration). A notarial act is required in which the statutes are to be found (costs vary from EUR 650 to EUR 1000).¹⁷³⁶ Companies will have to be registered in the trade registry (Handelsregister) of the local Chamber of Commerce. In order to start a company without legal personality, for instance as a freelancer or self-employed without staff (zzp-er), it is sufficient to register with the Dutch Tax Administration and to register with the Chamber of Commerce and, if applicable, to register with a commodity or industrial board and to receive the necessary licences from the authorities. The trade registry includes all the business information of nearly all companies in the Netherlands. A number of businesses are obliged to make their annual reports publicly available via the Chamber of Commerce.

The requirements for establishing a BV or NV will change drastically in the near future.¹⁷³⁷ The Dutch government has approved a bill that abolishes this

¹⁷³⁰ Global Competitiveness Report 2010–2011, World Economic Forum, please refer to http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf, p. 15

¹⁷³¹ Global Competitiveness Report 2010–2011. World Economic Forum.p.23.

¹⁷³² Centraal Bureau voor de Statistiek (n.d.). Opstart nieuwe onderneming.

¹⁷³³ <http://www.cbs.nl/nl-NL/menu/themas/macro-economie/publicaties/artikelen/archief/2007/2007-2234-wm.htm>, consulted the 18th of December 2011.

¹⁷³⁴ Art. 2:178 paragraph 2 Burgerlijk Wetboek.

¹⁷³⁵ Ibid., Art. 2: 64 paragraph 2.

¹⁷³⁶ <http://www.rijksoverheid.nl/onderwerpen/flexibele-bv/notariële-akte-vervalt>, consulted the 18th of December 2011.

¹⁷³⁷ <http://www.bvspecialist.nl/nieuws/57/kosteloze-oprichting-stamrecht-bv>, consulted on the 24th of September 2011.

minimum capital requirement to start a BV or a NV. In the near future the requirement of a notarial act for a BV will disappear.¹⁷³⁸

Other important changes concern the costs involved with the registration of a company at the Chamber of Commerce. In the near future this will be free of charge. Furthermore, the annual fee for the Chamber of Commerce will be abolished by 2013.¹⁷³⁹ These measures will make it easier for new entrepreneurs to establish a company.

Also from 1 July 2011 on each legal entity has been monitored permanently by the 'Dienst Justis', a monitoring department of the Ministry of Security and Justice.¹⁷⁴⁰ The monitoring is based on the new law 'Wet controle op rechtspersonen', which is implemented per 1 July 2011 and replaces the system whereby the establisher(s) of a legal entity need to present before establishment a 'declaration of no objection' ('verklaring van geen bezwaar'). Permanently monitoring is introduced to prevent and detect misuse of legal entities for criminal behaviour and specific economic crime.

Licenses from local authorities

Depending on the character of the company, specific licences are required. To minimise the complexity for companies, a number of licenses are integrated in one permit, called the 'Omgevingsvergunning'. As of the 1st of October 2010, the Wabo (Wet algemene bepalingen omgevingsrecht) is in effect. Several licenses can now be requested at the same time by companies via this one procedure.¹⁷⁴¹ This includes a building permit, environmental license and discharge license. Each municipality has set up one desk to deal with this combined license.¹⁷⁴²

The municipal authorities have to take a decision within a specific period of time. Depending on the character

of the license, this varies from 6 to 26 weeks. In case the authorities do not decide within this period of time, then they run the risk of being fined. For certain types of companies it is necessary to receive an operating license from the local authorities. This applies to companies such as bars and restaurants (horeca vergunning). Additionally, special licenses are required for companies that exploit gambling machines in public spaces. For some businesses it is necessary to receive a special permit from the ministry. For example, a company that exploits a slot machine hall (speelautomatenhal) needs a license from the Ministry of Security and Justice (VJ – Veiligheid en Justitie).¹⁷⁴³ In 2012 the Kansspel autoriteit (Ksa), a special supervisor body for the gambling sector, will be erected. From then on, the license will be released by this supervisory organisation.

For issuing a license, governmental authorities are able to ask for advice from the BIBOB office as part of a detailed investigation about the integrity of the entrepreneur.¹⁷⁴⁴ This office is part of the Ministry of VJ. The BIBOB office finds its legal basis in the BIBOB Act (Wet bevordering integriteitsbeoordelingen door het openbaar bestuur). This law makes it possible for the BIBOB office to use information available to several law enforcement agencies and to inform public authorities about possible criminal activities by an entrepreneur. The public authorities are able to use this information as a motive to withhold a license. Because this information is not based upon a court decision, the motives for not issuing a license are kept secret. However, the entrepreneur is always able to lodge an appeal against this decision to the court.

Commodity and industrial boards

Registration with the commodity or industrial Board, if relevant, is required.

1738 <http://www.rijksoverheid.nl/onderwerpen/flexibele-bv/notariële-akte-vervalt>, consulted the 18th of December 2011.

1739 Rijksoverheid (2011). Heffing Kamer van Koophandel verdwijnt.

1740 <http://www.rijksoverheid.nl/ministeries/venj/contact-met-het-ministerie-van-veiligheid-en-justitie/contact-met-dienst-justis>

1741 <http://www.rijksoverheid.nl/onderwerpen/omgevingsvergunning>

1742 <http://www.omgevingsloket.nl>

1743 This is based upon the Gambling Act (Wet op de Kansspelen).

1744 This is based upon the Wet bevordering integriteitsbeoordelingen door het openbaar bestuur (the Public Administration (Probity in Decision-making) Act), known as BIBOB.

National governmental and supervisory bodies

If a company wants to attract money via the stock market, it has to get a listing at the stock exchange. This takes more time and involves more procedures. The company has to adhere to criteria formulated by the stock exchange. This includes all relevant information about the company, its strategy, its financial situation, etc.

Furthermore, the Netherlands Authority for the Financial Markets (AFM) has to approve this listing as well. Two supervisory organisations are especially relevant for financial institutions: the Dutch Central Bank (DNB – De Nederlandsche Bank) and the Netherlands Authority for the Financial Markets (AFM – Autoriteit Financiële Markten).¹⁷⁴⁵ To operate in the financial sector, a company needs authorisation by the DNB. Such authorisation will be granted on condition that the enterprise is financially healthy (solvent) and observes principles of sound operational management.

The AFM supervises the way financial institutions deal with their customers. Institutions are not allowed, for example, to provide misleading information to consumers. The license from the AFM and DNB is also based upon an integrity investigation of the individual Board members of the financial institution.

Enforcement of contracts

Agreements are well protected by the Dutch law. Most agreements are formalised in officially-signed contracts. However, some agreements are oral agreements. Civil Law provisions provide adequate enforcement rights regarding contracts.¹⁷⁴⁶ Good faith plays an important role in civil law disputes. The generally accepted standards within economic life are the most important norm for a judge: what is reasonable for a citizen to expect (trust of principle)?¹⁷⁴⁷

The laws pertaining to the start, the operation and closing down of individual businesses are clear, straightforward and easy to apply. However there are some issues regarding regulations in practice at the local level.

RESOURCES (IN PRACTICE)

To what extent are individual businesses able in practice to form and operate effectively?

In general, to start, operate, and close down a business is very straightforward and does not involve significant time or financial resources. However, there are some problems regarding unclear provisions for applicants, especially with regard to licenses at the local level.

Starting a business

It is reasonably easy to start a business in the Netherlands. After a decrease in 2009, the number of new businesses increased in 2010, even above the level of 2008. The Chamber of Commerce registered 123,500 start-ups. The service sector was the most popular. In five years' time the number of start-ups in this sector almost doubled, from 46,100 in 2005 to 82,600 in 2010. Part of this increase in the service industry can be explained by the requirement for certain types of entrepreneurs to register their company in the trade registry.¹⁷⁴⁸ This requirement is effective as of the 1st of January 2010. The share of the Dutch adult population that sets up its own business or that owns/manages a business existing for less than 3.5 years has risen considerably from 5.2 percent in 2008 to 7.2 percent in 2009.¹⁷⁴⁹

According to the Global Entrepreneurship Monitor 2010,¹⁷⁵⁰ the Netherlands is one of the most entrepreneurial countries in Europe.

¹⁷⁴⁵ <http://www.dnb.nl> and also <http://www.afm.nl>

¹⁷⁴⁶ Art. 6:213–6:279 and Boek 7 Burgerlijk Wetboek.

¹⁷⁴⁷ Nieuwehuis, J.H. (1979); Trust in the institution of making agreements is the most fundamental characteristic of the binding character of an agreement.

¹⁷⁴⁸ Centraal Bureau voor de Statistiek, Het Nederlandse Ondernemingsklimaat in cijfers 2010, table 2.5.2: The number of starters in 2008 was 12.8 percent of the total number of companies. This figure grew compared to 2006 with 2.3 percent.

¹⁷⁴⁹ <http://www.entrepreneurship-sme.eu/>, consulted the 23rd of December 2011.

¹⁷⁵⁰ <http://www.gemconsortium.org>

This statement is based upon research into the factual start-ups in the different sectors, as well as the attitude among the Dutch population towards entrepreneurship.¹⁷⁵¹

Licenses from local authorities

The *Omgevingsvergunning* is seen as a step forward to making procedures more efficient. However, there is some criticism. Requesting the *Omgevingsvergunning* is easy for the entrepreneur, but behind the virtual desk all the steps from before the introduction of the *Omgevingsvergunning* still have to be taken, and all the agencies that were involved before, still take a decision.¹⁷⁵² The criteria for obtaining a license are clear. The time involved with these procedures is also clear. However, in situations in which local political bodies need to take a decision, subjective aspects and political motives might play a role. Furthermore, in situations where the civil servant has discretionary power, the risk of corruption is present.

Two examples: in the municipality of Culemborg there was room for only one gambling hall, according to the policy of the municipality. However, the location was still open. There were several companies interested in starting such a hall. The allocation of the license to one of the parties and thus to a location yielded many political discussions. Several legal procedures followed, and the Administrative Jurisdiction Division of the Council of State (ABRvS – Raad van State Afdeling Bestuursrechtspraak) had to take the final decision.¹⁷⁵³

Another example was the conflict of an immigrant entrepreneur with the city of Almelo. The municipality ignored several court rulings that were in favour of this immigrant entrepreneur. The affair even led to the hijacking of an alderman by the entrepreneur. The case

received a lot of media attention. Via the media, it became clear that many interests, including the private interest of a competing restaurant owner, played a role in the background.¹⁷⁵⁴

Gradually the instrument of BIBOB has been used more often by local authorities. Its original purpose of safeguarding the integrity of local government has slowly changed into fighting crimes and criminality.¹⁷⁵⁵ However, in some cases where licenses were refused based upon BIBOB information, there was criticism concerning the secrecy of the information. This law is especially used in cases where licenses are at stake for cafes and bars, where prostitution takes place, and the municipal administration suspects that the owner is involved in money-laundering. The ABRvS recently confirmed a decision taken by the municipal government, based upon secret BIBOB information.¹⁷⁵⁶

Enforcement of contracts

The binding effect of contracts is crucial for a well-functioning business sector. The legal framework is well-developed. However, there are a number of situations in which there is a potential difference between the theory of law and practical reality.

There is some criticism on the quality of the decisions of civil courts. One possible cause of quality differences, with regard to civil court decisions, is that the quality of a civil court verdict is only checked by judges at the same court.

The Project Group Visitation Protocol (Projectgroep Visitatieprotocol)¹⁷⁵⁷ of the Council for the Judiciary (Rvdr – Raad voor de rechtspraak) has developed a proposal for establishing a Review Committee Civil Judgments (Toetsingcommissie civiele vonnissen). The

1751 <http://www.volkskrant.nl/vk/nl/2800/Europese-Unie/article/detail/2866881/2011/08/25/Nederland-meest-ondernemende-EU-lid.dhtml>, consulted the 23rd of December 2011.

1752 Hein de Kort, 'Chaos dreigt bij Omgevingsvergunning', *Financieel Dagblad*, consulted on the 13th of September 2011.

1753 *Kanspelnieuws* (2006) 'Groen Licht Gokhal Culemborg'.

1754 Zembla: TV broadcast 'B & W van Almelo reageren op Zembla-uitzending' of 23 November 2008.

1755 Tappeine, I. (2011) p.686-694.

1756 Ruling of the Raad van State (Council of State). See: 'Alkmaarse burgemeester haalt gelijk via Wet BIBOB' *Volkskrant*, 21st of July 2011.

1757 Raad voor de Rechtspraak (2010) *Visitatie gerechten* 2010.

Rvdr reacted to this advice by investigating the possibility of a quality assessment framework for civil judgments.¹⁷⁵⁸ To explore this, 57 cases were reviewed based upon an analytical framework.

15 percent of the cases were perceived as insufficient. These cases received a score of two on a five-point scale. The study explicitly stated that the cases were not representative of civil judgments in the Netherlands. The aim of the pilot was to explore the possibility of such a review framework, and not to judge civil court cases in general. This goal was achieved. This framework will be further developed and will help to improve the quality of the civil court in the future.

There are other causes that might lead to a difference between the theory in law and actual practice. Process costs may form a barrier for parties to start a civil procedure. The court may sentence the party that lost the case to pay the counterparty's costs. These costs are often less than the actual costs. However, in a civil procedure it is common that each party pays its own costs, including process costs. For people with limited resources it is possible to ask for the assistance of a Pro Deo lawyer. In that case the lawyer is subsidised by the government. Due to governmental cutbacks, fees for the lawyers are too low and the system is under pressure.¹⁷⁵⁹

Another barrier to enforcing a contract via a civil procedure is the time that is involved. A civil procedure takes often several years and, including an appeal procedure, sometimes more than 10 years. Civil courts are paying attention to unreasonably long proceedings.¹⁷⁶⁰ Although it is possible for the winner of a procedure to claim costs from the other party, it depends whether the judge is willing to accept this. The process costs are normally seen as costs that every party has to carry itself.

INDEPENDENCE (BY LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

There are comprehensive legal safeguards to prevent unwarranted external interference in the activities of private businesses.

Statutory provisions

The law forbids all forms of extortion. It is illegal for a civil servant, while he is performing his duty, to ask for money or for a gift for himself, for another official or for the treasury, when this is not due.¹⁷⁶¹ There are criminal law provisions which prohibit the acceptance of a gift, promise or service by a civil servant or requesting the same.¹⁷⁶² A specific criminal law provision even forbids the acceptance of a gift, promise or service requesting the same, even if the civil servant does not violate his duty.¹⁷⁶³ It is sufficient that the civil servant knows or reasonably can suspect that the gift, promise or service is done with the intention that he would neglect his duty. Most provisions concern civil servants, ministers, state secretaries, members of the local and regional executive or members of general representing bodies.¹⁷⁶⁴

Market concentration/cartels

There are a number of Dutch laws and EU regulations which entail interference. One statutory provision entails the approval by the NMa (and/or the EU) which is required in case of mergers and acquisitions.¹⁷⁶⁵

Another task of the NMa is to investigate alleged cartels and possible abuses of a dominant market position. The Ministry of Economic Affairs, Agriculture and Innovation (EL&I – Economische Zaken, Landbouw en Innovatie) is responsible for most of the laws the NMa

¹⁷⁵⁸ Neleman, P. and Neijt, P.J. (2010).

¹⁷⁵⁹ <http://www.legallane.nl/algemeen/particulier/pro-deo-advocatuur-op-de-helling.html>, 12 January 2012.

¹⁷⁶⁰ LJN: BH4212. Hof s 's Gravenhage February 24 2009.

¹⁷⁶¹ Art. 366 Wetboek van Strafrecht.

¹⁷⁶² Ibid., Articles 362, 363, 364 and 364a.

¹⁷⁶³ Ibid., Articles 177a and 362.

¹⁷⁶⁴ Ibid., Art 362 and 363.

¹⁷⁶⁵ Ibid., Art.37 and 41.

enforces.¹⁷⁶⁶ In case of a violation, the NMa can impose fines. The NMa takes action when companies form cartels by making agreements on prices or market division, or abuse their market position. These are offences against the competition laws.

Companies have the opportunity to file objections or appeals against such fines. The NMa also regulates public companies (for instance the energy network companies) and certain markets in the transport industry that are not free (infrastructure network operators, public transport companies in the major cities in the Netherlands and Amsterdam, airport Schiphol). In these markets the NMa promotes competition as much as possible.

Licensing

When licensing is involved, entrepreneurs are subject to interpretations by officials. In administrative law this is carefully regulated. In general, the granting of licenses or permits is based upon well-defined criteria. It is the civil servant who has to determine whether the criteria are met. In all cases involving a decision of a governmental organisation, it is possible to file a complaint about the decision. If this complaint is not honoured, it is possible to start an appeal procedure.¹⁷⁶⁷ In this procedure other people than the official that took the decision will decide about the appeal. In these appeal committees politicians and sometimes specially-appointed citizens review the decision. This complaints procedure works reasonably well. It is more difficult when a civil servant wrongfully grants a license. In such a case third parties might object. Third parties can appeal a decision by an administrative body if they can show a particular interest in the decision and its consequences. Thus the legal system offers third parties a remedy against wrongful acts by the authorities which cause harm to their interests. The assurance against undue advantage is only achieved by the realisation of transparency and by the good quality of the public administration.

Licenses sometimes demand adaptation or

dispensation of (local) rules. This concerns for example the dispensation or adaptation of a zoning plan in order to make the establishment of a company possible. Such adaptations to a zoning plan are delegated to the mayor and alderman (College van Burgemeester en Wethouders). It is possible for interested parties to appeal against decisions of governing bodies. In case this appeal is not honoured, it is always possible to appeal to an independent judge. After that, it is possible to appeal to a higher court. In some cases it is possible to go directly to the ABRvS, which is the highest administrative court with general jurisdiction in the Netherlands. It hears appeals lodged by members of the public, associations or commercial companies against decisions by municipal, provincial or national government bodies.

Disputes may also arise between two public authorities. The decisions which are subject to a judgment of the ABRvS include decisions in individual cases (for example, refusal to grant a building permission) as well as decisions of a general nature (for example an urban zoning plan).¹⁷⁶⁸

There is also the Trade and Industry Appeals Tribunal (College Beroep voor het bedrijfsleven) that is the competent administrative court, deciding on the application of a number of economic laws. The Trade and Industry Appeals Tribunal, also known as Administrative High Court for Trade and Industry, is a specialised administrative court which rules on disputes in the area of social-economic administrative law. In addition, this appeals tribunal also rules on appeals of specific laws, such as the Competition Act and the Telecommunications Act.¹⁷⁶⁹

The government as supervisor

In recent decades the government has supervised the sectors of society where a public interest is at stake or where distortions may occur. Strict regulations are applied and independent experts carry out quality checks, issue licenses or grants, and monitor the implementation of regulations. Tasks like these are

¹⁷⁶⁶ <http://www.nma.nl>

¹⁷⁶⁷ Articles 9:1 and 6:4–6:24 Algemene wet bestuursrecht.

¹⁷⁶⁸ De Rechtspraak (n.d.). Judicial System.

¹⁷⁶⁹ Ibid.

entrusted to autonomous administrative authorities (ZBO – Zelfstandig bestuursorgaan). Examples of ZBOs are the Chambers of Commerce, the Netherlands Competition Authority (NMa – Nederlandse Mededingingsautoriteit), the Independent Post and Telecom Authority (OPTA – Onafhankelijke Post en Telecom Autoriteit), the DNB and the AFM. Many ZBOs only perform governmental tasks, but some carry out other activities as well.¹⁷⁷⁰ A ZBO is a government agency, which operates at a distance from its ministry. The minister has a limited role in appointing board members, issuing instructions and approving the budget. These matters are regulated when a ZBO is set up. The minister is not responsible for the decisions taken by the ZBO itself. These independent administrative bodies monitor the quality of the services and products of the companies falling under their supervision. This results in consumers having confidence in these companies and assures competition in these sectors of industry. The ZBOs issue rules and regulations and, if necessary, fine companies. Due to the fact that ZBOs exercise their role independently, regulation within these sectors is independent from political influence.

The government as contracting party

Governmental organisations spent enormous amounts of money. Not only on the building and use of its own offices, but also as a principal for infrastructural works. The government therefore forms an important market force. Civil servants and politicians have to decide about these expenses. This involves serious vulnerabilities, not only because civil servants are able to misuse their position by accepting gifts, promises or services for private gain.¹⁷⁷¹ In situations where a civil servant has to decide about the purchase of products and services, it is possible that favouritism occurs. Especially in situations where the civil servant has other contacts with representatives from companies, sometimes in the private sphere, these relationships might influence the judgment of the civil servant. It is

possible that the civil servant is not aware of the way he or she is influenced. Sometimes companies use these contacts to obtain inside knowledge that is relevant for the proposal. To be able to guarantee that the best decision is taken and that every market agent has a fair chance to sell its product or service to the government, it is necessary that certain purchase and procurement procedures will be followed. This is based upon EU regulations and translated in the Framework Law EEC Procurement Regulations from 1993 (Raamwet EEG-voorschriften aanbesteding). The rules that helps to prevent bribing of officials and guarantee equal opportunities for all market players, however, lead to complex procedures that affect the way companies function. For many companies these procedures constitute a barrier for competing for public contracts. One expert perceives the procurement procedures even as counterproductive, leading to more vulnerabilities, and as a barrier for SMEs.¹⁷⁷² *For more information on public procurement, please refer to Public Sector/Reduce Corruption Risks by Safeguarding Integrity in Public Procurement.*

INDEPENDENCE (IN PRACTICE)

To what extent is the business sector free from unwarranted external interference in its work in practice?

The state and/or other external actors occasionally interfere with the activities of the business sector. These instances are incidents, or are the consequence of a lack of transparency on the side of the administrative authorities, or have the appearance of a conflict-of-interest.

International rankings

According to the World Economic Forum, favouritism in decisions of government officials rarely occurs.¹⁷⁷³ The Netherlands is ranked 6th out of 139 countries, with a 5.2 score (on a seven-point scale). The Heritage

¹⁷⁷⁰ <http://www.overheid.nl/english/aboutgov/government/autonomous>, consulted the 18th of December 2011.

¹⁷⁷¹ This is dealt with in art 177, art 177a, art.362 and art. 363 Wetboek van Strafrecht.

¹⁷⁷² Interview with Stephan Jansen, Head of Department for Water Treatment, international consultancy and engineering firm DHV, interview held the 5th of April 2011.

¹⁷⁷³ World Economic Forum, Global Competitive Report 2010 – 2011. <http://www.weforum.org/issues/global-competitiveness> p.372

Foundation and the Wall Street Journal¹⁷⁷⁴ rank the Netherlands at a 15th position on its Index of Economic Freedom. The Netherlands owes this high world ranking, due to its freedom of investment, property rights, freedom of corruption, trade freedom and business freedom. Weak points are, according to the Index, government spending and fiscal freedom.¹⁷⁷⁵

Applying the legal requirements in practice

The laws with regard to the acceptance of and asking for gifts, promises and services are clear. However, in cases where a civil servant actually accepts a gift, promise or service it is difficult to distinguish between situations where the civil servant asks for it and situations in which the civil servant receives these gifts, promises or services offered involuntarily. It is difficult to decide who has taken the initiative. If the civil servant takes the initiative it becomes a form of extortion.¹⁷⁷⁶ In reality it is often a subtle game, where the civil servant gives hints of being open for a gift, promise or service and the private party, which is dependent on the civil servant, also suggests offering a gift, promise or service. *For more information on extortion and corruption in practice, please refer to Business/Integrity Practice.*

Market concentration/cartels

In 2010 the NMa received 83 notifications of forms of market concentration. The NMa received tip-offs, people filed complaints, or a company confessed to a cartel. But the NMa also discovers abuses of dominant positions by market research of its own. In 2010 and 2011, the NMa investigated activities primarily focussed on the processing industry, the financial and business sector and the health care sector. In 2010 the total amount of fines was EUR 137 million.¹⁷⁷⁷ The NMa is an independent governmental organisation. It is able to decide on its own whether or not a tip or a complaint leads to an investigation. It is also completely free to

determine the fine. The idea behind this is to diminish political influence. All decisions are taken by the Board of the NMa. For confidence in those decisions it is of the utmost importance that NMa and in particular the Board members be truly independent. Criticism about the integrity of a former chairperson of the NMa was therefore a serious problem for the NMa, especially because that information became public due to a court case and the news media, and not due to the integrity mechanism of the NMa.¹⁷⁷⁸ A difficult aspect is the extent to which the NMa and also the EU are able to give insight into the way in which decisions are made. Unilever CEO Paul Polman, referring to the enforced sale by the EU of Sanex in connection with the acquisition of the personal care branch of Sara Lee, stated 'The criteria on which Brussels bases its policy to prevent market concentration in different industries are not always clear. Sometimes you feel that the reasons mentioned are unjustified. And often you will not get an adequate explanation for the decisions taken.'¹⁷⁷⁹

TRANSPARENCY (BY LAW)

To what extent are there provisions to ensure transparency in the activities of the business sector?

There are comprehensive disclosure rules for business activities, in particular for financial records.

Financial reporting standards

There are comprehensive disclosure rules for business activities, in particular for financial records. Since the 1st of January 2005, all listed EU companies are obliged to report according to the International Financial Reporting Standards (IFRS). IFRS is a reporting standard that requires that all values be measured at the current value, i.e. the market value. A consequence is that the value of

1774 The Heritage Foundation and the Wall Street Journal track "the march of economic freedom around the world" with the Index of Economic Freedom. The Heritage Foundation is a Washington-based Think-tank. <http://www.heritage.org/index/>

1775 2011 Index of Economic Freedom, <http://www.heritage.org/index/Country/Netherlands>

1776 Art 366 Wetboek van Strafrecht.

1777 NMa, Annual report 2010.

1778 Radio 1 Journaal of 23 March 2011: Brisante verklaring anonieme tipgeefster.

1779 Depuydt, P. (2011) 'Europa is te veel met zichzelf bezig', Interview NRC Weekend.

the assets of a business can fluctuate enormously. This in turn may affect the value of the share.

Unlisted companies (private limited liability companies, co-operatives, etc.) that do have the obligation to report, do not have the obligation to make use of the internationally-recognised IFRS standard. Companies which meet two of the following criteria are required to report: a balance sheet of more than EUR 7.5 million, a turnover of more than EUR 15 million and/or more than 50 employees. Civil law provisions require that these reports meet 'standards that are regarded as acceptable in social life'. The companies which are obliged to report must follow the guidelines for reporting described in these civil law provisions.¹⁷⁸⁰ However, companies, regardless of whether they are listed, are allowed to report, according to the IFRS reporting standard.¹⁷⁸¹ Depending on the type of company, the report must be made publicly-accessible through the Chamber of Commerce.¹⁷⁸² For SMEs there is only a duty to publish their annual account with the Chamber of Commerce.

Several organisations promote the quality of reporting by companies and organisations.¹⁷⁸³ These include employers' associations, accounting firms and the Association of Investment Experts (VBA – Beroepsvereniging van Beleggingsdeskundigen), the Council for Annual Reporting (RJ – Raad voor de Jaarverslaglegging). This is done by the development of reporting guidelines. A recent directive is the RJ '400 Annual Report'. This directive describes the requirements CSR reports have to meet. The directive concerns substantive requirements (e.g. the social, economic and environmental impact of a company and the way in which stakeholders are involved in the policy development). Together with the directive, guidelines for the preparation of CSR or sustainability reports is published. The directive is also based on the international reporting standards of the Global Reporting Initiative.¹⁷⁸⁴

An important development for SMEs is the implementation of Standard Business Reporting (SBR).

In 2004 the Dutch government started a project to reduce the administrative burdens of SMEs. The results of this project are now known as SBR. As of the 1st of January 2013, companies have to deliver their reports electronically to the Chamber of Commerce, to the Tax authority and to their bank in line with this standard. In this way it will be possible to connect financial reporting to the electronic book-keeping system and to the billing system. SBR will lead to improvement of the quality of annual reports. The accountant will become more a process adviser than someone who is just ticking boxes.

Accountants

The accounting profession is regulated by two laws: the Law on Registered Auditors (Wet op de registeraccountants) and the Law on Accountants–Bookkeeping consultants (Wet op de Accountants–Administratieconsulenten). The Corporate Governance Code also pays attention to the role of the accountant. The title of auditor or accountant is only reserved for those recorded in the registries of the professional associations NIVRA and NOvAA (merged under the name Dutch Association of Accountants (NBA)). Academically-trained accountants use the title RA. The not-academically trained accountancy consultants use the abbreviation AA. Both the RA accountants and the AA accountants have their own code of conduct. The following five principles form the starting point for their conduct: integrity, objectivity, expertise and due care, confidentiality and professional behaviour. These codes apply to every accountant, even when a person no longer works as an accountant. The goal is to prevent the reputation of the accounting profession from being harmed. For example, public accountants are not allowed to do business with clients who are engaged in illegal or questionable activities or who make use of questionable financial reporting practices. The public accountant should also avoid conflicts-of-interest, and he must avoid any appearance that he is not independent. For an internal accountant or a

¹⁷⁸⁰ Book 2, titel 9 Burgerlijk Wetboek.

¹⁷⁸¹ Ibid., Art. 2:362 paragraph 8.

¹⁷⁸² Ibid., Art. 2:394.

¹⁷⁸³ <http://www.rjnet.nl>

¹⁷⁸⁴ <http://www.globalreporting.org>

governmental accountant it is necessary that he report directly to the senior management of the organisation so that the accountant can give his opinion freely on all aspects of the organisation. The AFM supervises the performance of accountants who audit companies that are required by law to report. These accountants must have a permit from the AFM.

Detection of criminal transactions

In 2007 the Programme Financial Economic Criminality (FINEC – Programma Financieel-Economische Activiteit) started. This programme seeks to strengthen the way financial investigations are carried out by law enforcement agencies. The programme is aimed at depriving criminals of illegally-obtained assets.

An important tool for detecting money laundering in the Netherlands is the Report Unusual Transactions (MOT – Melding Ongebruikelijke Transactie). Crucial private organisations play an important role in realising transparency for the business sector. Credit organisations, money transferors and professions such as lawyers, real estate brokers, accountants and notaries are obliged to report unusual transactions to the Financial Intelligence Unit (FIU-NL). These reports are required by the ‘Act to prevent money laundering and terrorist financing’(WWFT – Wet ter voorkoming van witwassen en financieren van terrorisme).¹⁷⁸⁵ For the reporting of unusual transactions, a number of indicators have been developed. These indicators will help those in charge of reporting these unusual transactions. The reports are sent to FIU-NL. This unit is hosted by the National Police Services Agency (KLPD – Korps landelijke politiediensten). The FIU-NL determines whether or not the unusual transactions that are reported are seen as suspicious and have to be passed on to the relevant law enforcing agencies.

TRANSPARENCY (IN PRACTICE)

To what extent is there transparency in the business sector in practice?

In general, not all businesses make their financial accounts and other information publicly available. A number of companies do not disclose relevant information. While businesses usually disclose relevant information on their activities, it is often partial and/or outdated information.

International ranking

On the Opacity Index 2009¹⁷⁸⁶ the Netherlands receives a 16th position in the world-ranking. The Opacity Index assesses the costs of small-scale, high-frequency business risks.¹⁷⁸⁷ This index is a broad tool for measuring of the effectiveness of a country’s economic and financial institutions, as well as its overall risk. Unlike other analyses that examine country risks by summarizing expert opinion, the Opacity Index uses only objective indicators such as the number of actions that are necessary to start a case in court.

According to this index, Dutch accounting standards and corporate governance are relatively weak. However, according to the researchers, the weak corporate governance does not lead to high costs for companies to function effectively.

National ranking

Annually the Ministry of EL&I in collaboration with the NBA issues its Transparency Benchmark.¹⁷⁸⁸ This benchmark analyses information on the economic, environmental and social impact of the organisation that is made available to the public via a dedicated CSR report, via the regular annual report, or for instance via

¹⁷⁸⁵ <http://www.bureaufn.nl>

¹⁷⁸⁶ Kurtzman J and Yag G. (2009).

¹⁷⁸⁷ These risks are divided into five broad categories: 1. Corruption in business and government; 2. The legal system — its protection (or lack thereof) of critical rights and its ability to quickly settle disputes; 3. The government’s economic policy and its impact on business; 4. Accounting standards and governance rules; 5. The regulatory structure of the financial system, markets and business in general. The scores of the Netherlands on the Opacity Index 2009 are: Corruption: 13; Legal system inadequacies:24; Economic Enforcement policies: 31; Accounting standards and corporate Governance: 32; Regulation: 19.

¹⁷⁸⁸ Ministerie van Economische Zaken, Landbouw en Innovatie, Transparantiebenchmark 2011; De Kristal 2011 in samenwerking met NBA, <http://www.transparantiebenchmark.nl>, consulted on the 21 st of December 2011.

a publication on the website. The information available through the Chamber of Commerce is explicitly excluded from the assessment. This benchmark assesses the transparency of companies and organisations with regard to their CSR reporting. The assessment is also based upon the RJ '400 Annual Report'. The Transparency Benchmark 2011 (about 2010) included a total of 469 companies and organisations (including the 14 Dutch universities). Overall, improvements could be noted, and in 2011 25 percent of the participants obtained the maximum score, compared to 8 percent in 2010. The weakest aspect is the extent to which companies have their reports verified by an independent external party. Only 20 percent have done so, which is a similar score as in 2010.¹⁷⁸⁹

Commodity and industrial boards

Although the SER has no competence on statutory grounds, the Minister of SZW has requested the Supervisory Board to review the annual reports of commodity and industrial Boards. Overall, the annual reports of these boards have improved in 2009 when compared to 2008. In particular on the aspects of compensation, activities and internal supervision.

Regarding the principles of good governance of boards, it was concluded that nearly all boards have included information on the topics for which there is a duty to report.¹⁷⁹⁰ Eight out of 17 boards reported in their annual report on all aspects. One board did not enclose information on compensation received by the chair of the board and another board did not account for the way in which internal supervision was done, but did so at a later stage.¹⁷⁹¹

According to the Supervisory Board other aspects required further improvement, as for instance the way effects were fed back as part of the policy cycle.

Industry branches

There are concerns regarding the transparency of the O&O funds of industry branches. The fees which have to be paid to these industry boards vary from 0.5 to 3 percent of wages. In their annual accounts the industry branches barely account for the way these tens of million euros are spent, and often an auditor's report is missing.¹⁷⁹²

SMEs

A research into the publishing of annual accounts by SMEs showed that in November 2011, 58 percent of SMEs had not provided their annual figures from 2010.¹⁷⁹³ It concluded that financial information on and by companies is insufficiently accessible.

Horizontal supervision

Since 2005 the tax authorities have been working on so-called horizontal supervision. This means that the tax authorities no longer check the tax reports of taxpayers, but they monitor the external accountant (RA and AA) or internal accountant, who has to audit the tax reports before they are sent to the tax authorities.

Through a covenant, the external or internal accountant agrees to the horizontal supervision with the tax authorities. Based upon this covenant, the accountant is obliged to work with good quality assurance systems. On this basis, the completed tax report is trusted to be reliable by the authorities. In addition, many other non-public, binding agreements are made with the taxpayer. This saves the tax authorities control costs and the taxpayers receive a quick decision on their tax reports. Yet there is some criticism. The grounds on which an enforcement covenant is concluded are inconclusive. Clear criteria are lacking. The tax authorities have in this respect a broad discretionary power.¹⁷⁹⁴

¹⁷⁸⁹ Ministerie van Economische Zaken, Landbouw en Innovatie, Transparantiebenchmark 2011. De Kristal 2011 in samenwerking met NBA p.21.

¹⁷⁹⁰ SER Toezichtsverslag 2010 p.19.

¹⁷⁹¹ Ibid., p.19.

¹⁷⁹² Cobouw. (2010). Uitgaven O&O-fonds Bouw onverantwoord.

¹⁷⁹³ <https://www.graydon.nl/nl/nieuws-en-kennis/persberichten/slechts-handvol-bedrijven-heeft-financin-cht-op-orde>, consulted 23 February 2012.

¹⁷⁹⁴ Cees Heerrooms, 'Horizontaal toezicht heeft kader nodig', Financieel Dagblad, 28 juli 2011.

Detection of criminal transactions

When an accountant detects fraud, he has to report this to the client and to the FIU-NL. It is forbidden to inform the client that the fraud case is reported as an unusual transaction to FIU-NL. In 2010 accountants reported 456 unusual transactions (617, 2009). The FIU-NL analysed that thereof 87 reported transactions has been suspicious (99, 2009).

When the accountant detects fraud during his statutory annual audit, he has to report this to the executive and/or governance Board of the entity. When they did not redress the fraud detected, he has to withdraw the audit. He also has to report his withdrawal and the details on the fraud case to the law enforcement agency.¹⁷⁹⁵ However, these cases are seldom reported. The position of the accountant regarding this requirement is complex. Reporting suspicious transactions to official bodies leads to the distrust of the client and will lead to the client withholding information. In 2004 the functioning of the chain of unusual transactions was evaluated.¹⁷⁹⁶ The results were not very positive. The reporting requirement seemed to have become a goal in itself. The reports of unusual transactions provided little knowledge about money laundering and little was done with the reports. They were mainly used as information for detecting illegal activities and much less for preventive purposes. The analysts also doubted whether there was a chain of unusual transactions.

Nevertheless the Financial Action Task Force in 2012 concluded that the Netherlands have criminalised money laundering fully in line with the requirements under the Vienna and Palermo Conventions.¹⁷⁹⁷

Despite the large amount of attention that is paid to financial investigations, confiscation of illegally obtained gains remains difficult. An audit by the Netherlands Court of Audit (AR – Algemene Rekenkamer) referred to a total of EUR 18.5 billion

which was laundered in 2006.¹⁷⁹⁸ In 2011 EUR 43 million was actually confiscated from criminals (compared to EUR 50 million in 2009 and EUR 10 million in 2003).¹⁷⁹⁹ There are serious doubts as to whether the financial sector is really cooperating with law enforcing agencies in reporting unusual transactions.¹⁸⁰⁰ The OM has announced that it wants to confiscate a total of EUR 100 million in five years' time.¹⁸⁰¹

ACCOUNTABILITY (BY LAW)

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

General statutory and self-regulatory provisions

Legal provisions for the appropriate oversight of corporate governance have been established, including rules on how companies should be governed, the formation of companies, roles of the board, management and owners, insolvency, and dissolution. In 1997 the first corporate governance code was issued. This first code had a non-binding character. It was a recommendation to listed companies. In 2003, under the chairmanship of former Unilever chief executive Tabaksblat, and after wide consultation, a new governance code was issued. This was the Code Tabaksblat. This code was effective as of the year 2004. The code contained principles and best-practice provisions that regulated the relations between the Board, the supervisory Board and the (general meeting of) shareholders. In this Code Tabaksblat, the role of the accountant was also described. This included for instance the explanation the accountant had to give during the general meeting of shareholders. The Code applied to listed companies registered in the Netherlands. The obligation to comply with this Code

1795 Art. 37 Besluit Toezicht Accountantskantoren (BTa) jo art. 26 Wet Toezicht Accountantskantoren (WTa)

1796 Faber, W. en A.A.A. van Nunen (2004). Uit onverdachte bron: Evaluatie van de keten ongebruikelijke transacties. Den Haag: WODC.

1797 http://www.fatf-gafi.org/document/50/0,3746,en,32250379_32236963_47221490_1_1_1_1,00.html

1798 Bestrijden, witwassen en terrorismefinanciering, Algemene Rekenkamer (2008).

1799 <http://www.om.nl/organisatie/landelijke/bureau/>, consulted the 21st of December 2011.

1800 Eric Smit: 'Financiële misdaad loont (nog steeds)'. See www.ftm.nl/original/financi%C3%ABle-misdaad-loont-nog-steeds.aspx.

1801 <http://www.nrc.nl/nieuws/2011/12/27/43-miljoen-euro-geplukt-van-criminelen/>, consulted 27 December 2011.

was then also laid down in the law.¹⁸⁰² This concerned for instance the role of the accountant and the audit standard that had to be used.¹⁸⁰³ The Code Tabaksblat applies, as in many other European countries, the so-called ‘comply or explain principle’. This allows companies to deviate from the code, but in case a certain principle is not applied, it is required to motivate this deviation in the annual report.

To ensure a sound implementation of the Code, the Ministers of Finance and Economic Affairs have established the Corporate Governance Code Monitoring Committee. This Monitoring Committee’s official terms of reference are to help to ensure that the Corporate Governance Code is practicable and up-to-date. The Monitoring Committee also monitors compliance by Dutch listed companies and institutional investors. In 2008 the Monitoring Commission proposed a number of changes. These were accepted and were effective as of the 1st of January 2009. The changes included the topic of diversity, the bonuses of top managers and sustainability. In 2009 a new monitoring Commission was also installed. The obligation to comply with the updated Code was also legally anchored.¹⁸⁰⁴

Corresponding supervision

There are a number of supervisors who monitor companies’ compliance with certain laws. Sometimes these supervisors need to issue certain licenses. The following supervisors are particularly important for

monitoring the financial sector: the AFM, the Financial Supervision Agency (BFT – Bureau Financieel Toezicht), the DNB and the FIOD/ECD (Fiscal Information and Investigation Service). The AFM is responsible for supervising the entire financial market sector: savings, investment, insurance and loans. This includes supervision of the stock exchange and accountants of organisations that have to publish an annual report. The aim of the AFM is to contribute to the efficient operation of these markets. The public, business and government depend on financial products that are offered in the markets for many of their activities.¹⁸⁰⁵ The BFT is a ZBO which supervises notaries and bailiffs (third party funds).¹⁸⁰⁶ The BFT also monitors compliance with the WWFT by notaries, accountants, lawyers, tax advisors and other financial and legal service-providers. The BFT is funded by the Ministry of VJ.¹⁸⁰⁷ The supervision of the DNB is aimed at ensuring a stable and reliable financial system. The DNB supervises banks, insurance companies and pension funds. Another objective of the DNB is to secure a reliable payment system. The DNB also works for a reliable financial system in which financial institutions meet their obligations.¹⁸⁰⁸ The purpose of the FIOD¹⁸⁰⁹ is to contribute to the prevention of fiscal, financial and economic fraud, to ensure the integrity of professionals and businesses and to fight against organised crime.¹⁸¹⁰

¹⁸⁰² Besluit van 23 december 2004 tot vaststelling van nadere voorschriften omtrent de inhoud van het jaarverslag and art. 2:391 paragraph 5 Burgerlijk Wetboek. For specific branches, other codes are applicable. For instance, for insurance companies the ‘Governance Principles Insurance Companies’ are applicable on grounds of Besluit van 23 augustus 2011 tot vaststelling van nadere voorschriften omtrent de inhoud van het jaarverslag van verzekeraars and art. 2:391 paragraph 5 Burgerlijk Wetboek.

¹⁸⁰³ Staatsblad 323, Royal Decree of 26 July 2008 implementing article 41 of the Directive 2006/43/EC of the European Parliament and the Council of the European Union of 17 May 2006 on statutory audits of annual reports and consolidated certifications, amending Directives No 78/660/No EEC and 83/349/EEC of the European Community and repealing Directive no. 84/253/EEC of the European Community.

¹⁸⁰⁴ <http://www.commissiecorporategovernance.nl>

¹⁸⁰⁵ <http://www.afm.nl>

¹⁸⁰⁶ The BFT was formed in 1999 and is a continuation of the former Central Bureau of Assistance (Centraal Bureau van Bijstand).

¹⁸⁰⁷ <http://www.bureauft.nl>

¹⁸⁰⁸ <http://www.dnb.nl>

¹⁸⁰⁹ In 1999 the Fiscale Inlichtingen en Opsporingsdienst (Fiscal Intelligence and Investigation Service) and the Economische Controle Dienst (Economic Investigation Service: ECD) merged. Together they formed the FIOD-ECD. In 2006 the investigative department of the UWV became part of the FIOD-ECD. Since 2010 the name has been changed into FIOD.

¹⁸¹⁰ FIOD-ECD. De opsporingsdienst van de belastingdienst. 2008.
http://download.belastingdienst.nl/belastingdienst/docs/corporate_brochure_fiod_ecd_fi0501z3edned.pdf

SER

In 2008 the SER issued a Statement on International Corporate Social Responsibility (Internationale Verklaring voor Maatschappelijk Verantwoord Ondernemen).¹⁸¹¹ In that statement, the national employer organisations and trade union federations called on businesses to develop initiatives for responsible supply-chain management based on guidelines and recommendations from the ILO, OECD and International Chamber of Commerce (ICC).

Statutory and self-regulatory provisions for commodity and industrial Boards

In 2007 the Boards jointly drafted, published and implemented the Code of Good Governance Commodity and Industrial Boards (Code Goed Bestuur product- en bedrijfsschappen). In the Code 23 principles (e.g. acting with integrity, public and transparent accountability and an accessible complaints procedure) were established, which have been further elaborated. In 2009 the statutory provision was amended so that the principles from the Code (except for principle XVI) were anchored in the statutory provision.¹⁸¹² The Code has been implemented and can be amended based on, for instance, practical experiences. The Social and Economic Council of the Netherlands, together with the commodity and industrial Boards, can assess whether amendments to the Code are required, which with the approval of the ministers involved, can become effective. The Committee Monitoring Code of Good Governance Commodity and Industrial Boards was installed in 2007 to monitor possible bottlenecks arising in the carrying-out of the Code.¹⁸¹³ The Code provides important rules on appointing Board Members to these commodity and

industrial Boards.¹⁸¹⁴ It states the incompatibilities of Board Members and obliges them to prevent conflict-of-interest and abuse of power.¹⁸¹⁵ *For more information, please refer to Business/Integrity.*

Corresponding supervision

The statutory provisions on good governance of boards prescribe the way commodity and industrial Boards account for their conduct, how they have designed their internal control and how vertical supervision takes place.¹⁸¹⁶ This vertical supervision is done by the SER and the Ministries of EL&I and Social Affairs and Employment (SZW – Sociale Zaken en Werkgelegenheid). If the SER is of the opinion that the Code is not adequately observed, it will contact the board which then either complies with the SER's vision or if it does not comply, the SER will report this to the Ministry of SZW.¹⁸¹⁷

ACCOUNTABILITY (IN PRACTICE)

To what extent is there effective corporate governance in companies in practice?

In general, investors and boards are only partially effective in providing oversight of corporate management decisions. Breaches of oversight rules by corporate management are not uncommon.

International Ranking

According to the World Economic Forum, the Netherlands is ranked 12th out of 136 with regard to the efficacy of boards. On a seven-point scale the Netherlands receives a score of 5.3.¹⁸¹⁸

1811 Interview with Alexander Rinnooy Kan, President of the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.

1812 Art. 92a Wet op de bedrijfsorganisatie.

1813 Paragraph D Code Goed Bestuur product- en bedrijfsschappen.

1814 Art. 92a Wet op de bedrijfsorganisatie and Principe I Code Goed Bestuur product- en bedrijfsschappen.

1815 Art. 92a Wet op de bedrijfsorganisatie and Principe I and Uitwerking paragraph 2 sub b and principe V Code Goed Bestuur product- en bedrijfsschappen and interview with Ivo Thomassen, Senior Policy Advisor Directorate of Public Administration at the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.

1816 Art. 92a paragraph 4 Wet op de bedrijfsorganisatie and Principe XXIII Code Goed Bestuur product- en bedrijfsschappen.

1817 Art. 92a Wet op de bedrijfsorganisatie and Principe XXIII and Uitwerking Code Goed Bestuur product- en bedrijfsschappen.

1818 World Economic Forum, Global Competitive Report 2010 – 2011. <http://www.weforum.org/issues/global-competitiveness>: How would you characterise corporate governance by investors and boards of directors in your country? p.384.

Self-regulatory provisions

There was much involvement from business in the development of the Code Tabaksblad in 2003. There are a number of issues that can lead to some doubts about the effectiveness of the Code. Each year, the topic of remuneration of executives turns out to be an issue that leads to much debate in the media. Quite a number of companies do not adhere to the code with regard to bonuses. Research on the basis of an analysis of the payment of top executives of 179 companies, listed at the Dutch Stock Exchange over a period of ten years, shows that there is virtually no evidence to suggest that the remuneration of these top executives is linked to the (real) performance of the companies managed by these executives. The introduction of the Code Tabaksblad had no influence on executive pay and bonuses.¹⁸¹⁹ According to an investigation of De Volkskrant, salaries of CEO's increased in 2010 by 8.1 percent. The average salary of the 150 highest-ranked earners was EUR 1 million. A much-debated example concerns the bonus of the former Ordina CEO. He received about EUR 1.7 million when leaving the company. That is more than 4.5 times his last-known salary. Despite the losses suffered over the past years, the company annually paid him a bonus. The bonus in 2009 amounted to a quarter of the total profit of the company that year. These bonuses are all in breach of the Code Tabaksblad that requires a maximum bonus for CEOs of one year's salary.¹⁸²⁰ The Code requires the Supervisory Board to report about the way it fulfils its supervisory role. Research shows that Supervisory Boards rarely provide this insight.¹⁸²¹ Companies need to report on their CSR policies. However, the Code does not specify the topics that need to be included in the annual report. It is up to the company to report about its anti-corruption policy and its effects. 58 percent of

top management is not aware of the rules concerning CSR reporting in the Code.¹⁸²² Another point which may be questioned about the effectiveness of the Code, concerns the lack of attention for so-called soft controls. The requirements of the corporate governance codes have focussed on the preconditions for being able to exercise control (composition, frequent attendance, independence), and less on how the supervision is conducted.¹⁸²³

Supervision

The position of the oversight bodies leads to some doubts about the effectiveness of these organisations as well. There are many oversight bodies, and the organisation of these bodies is complex. It sometimes even leads to confusion. After the debacle of the DSB Bank, two regulators, the DNB as well as the AFM, had to judge whether the former CFO of the DSB Bank, could remain in his current position as CEO of the ABN Amro Bank. Those organisations drew completely opposite conclusions. The Minister of Finance had to resolve the dispute. The solution was found by perceiving the judgment of the AFM as a recommendation for the DNB.¹⁸²⁴ Another issue regarding the accountability of companies concerns the recruitment policies of companies for supervisory boards. The board members are selected out of a very small circle of people.¹⁸²⁵

SER

In the SER's 2011 Second Progress Report on International Corporate Responsibility,¹⁸²⁶ it stated that that companies that choose non-Western suppliers pay more attention to sustainable procurement and social and environmental aspects. However, the study also identified that among these companies there were large differences. A substantial

1819 A. Verwer, 'De code Tabaksblad en de Beloning van CEO's in Nederland', Maandblad voor Accountancy en Bedrijfseconomie, 2008, 10.

1820 'Historische vertrekbonus Ordina-topman Kasteel'. NRC Handelsblad, 24 August 2011.

1821 M. Lückérath-Rovers, 'Het RvC-verslag: Weinig inzicht in toezicht', Maandblad voor Accountancy en Bedrijfseconomie, 2011, 6.

1822 Research by Protiviti: <http://www.tqc-net.nl/nieuws.asp?nieuws=314#audit>

1823 M. Lückérath-Rovers, 'Soft controls in corporate governance', Jaarboek Compliance 2010, 77– 88.

1824 NOS, 'De Jager Fluit AFM terug over Zalm', NOS Nieuws, 4 mei 2010, <http://nos.nl/artikel/141485-de-jager-fluit-afm-terug-over-zalm.html>.

1825 W. Dekker, 'Ten strijde tegen het old boys network', In: Volkskrant 24 mei 2011. See:

http://www.nationaalregister.nl/upload/docs/Volkskrant_artikel_24_mei_2011_over_NR.pdf. Consulted on 29 September 2011.

1826 SER's Second progress report on International Corporate Responsibility (Abstract) June 2011.

number of companies need more information about sustainable procurement and still regard themselves as being at the bottom or midway up the sustainability ladder. MVO Nederland could help encourage enterprises to establish or further implement their sustainable procurement policy. The study stressed the importance of making enterprises more aware of the fundamental ILO standards and OECD guidelines, and of continuing to stress the social dimension of sustainability. The national employer organisations will continue to encourage their members to meet these challenges.¹⁸²⁷

Supervision of industrial and commodity Boards

The compensation paid to the chairs of the commodity and industrial Boards is made publicly available.¹⁸²⁸ The corporate governance of these boards is generally good, although one board pays more attention to it than the others. *For more information, please refer to Business/Integrity.*

INTEGRITY (BY LAW)

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

In general, appropriate mechanisms and procedures are established for the correct, honourable and proper performance of the activities of businesses and the prevention of misconduct, and for the promotion of the use of good commercial practices among businesses. However, most statutory or self-regulatory provisions apply to large businesses and not to SMEs. Additionally, there are no adequate provisions to protect whistle-blowers in the private sector.

In 2001, the Netherlands at last adhered to the OECD convention to fight bribery. However, not until April 2006

could a tax authority refuse bribes paid as cost reducing acquisition costs. In the years between 2001 and 2006 there were no convictions for bribery abroad.

Legal framework

Active corruption, i.e. giving a gift, making a promise, or offering a service to an official with the aim that this official fails to perform his duty, is punishable.¹⁸²⁹ Gifts, promises and services to a public officials are criminal offences, even if the official does not forsake his duty.¹⁸³⁰ Making a gift or promise, or providing a service to a judge, with the intent to influence the decision in a case subject to his opinion, is made punishable in a separate article.¹⁸³¹ Bribery of politicians, public servants and judges from a foreign state or from an international organisation is dealt with in the same way as with Dutch officials and judges.¹⁸³² However, there are additional requirements, such as the principle of dual criminality, which need to be fulfilled in order for Dutch authorities to have jurisdiction. *(Please refer to the Report on Public Sector for information on passive corruption.)* The provisions for private corruption are less comprehensive, e.g. bribery of employees of private organisations is also punishable when it is reasonable to assume that the employee who accepts the gift, promise or service conceals this, contrary to the requirement of good faith towards his employer.¹⁸³³ Giving gifts or advantages in itself is not wrong, even if something is given back as a form of compensation. It is only blameworthy if it is concealed from the employer. Not everything that is concealed from the employer is punishable. It only concerns gifts, promises or services that might have an influence upon the execution of one's task, of which it is reasonable that the employer knows this and, if necessary, is able to prohibit the acceptance of the gift, promise or service. The provisions with regard to trading in influence are insufficient.¹⁸³⁴

¹⁸²⁷ Ibid., p.21 and 29.

¹⁸²⁸ SER Toezichtsverslag 2010 p.31.

¹⁸²⁹ Artikel 177 Wetboek van Strafrecht.

¹⁸³⁰ Ibid., Artikel 177a.

¹⁸³¹ Ibid., Artikel 178.

¹⁸³² Ibid., Artikel 178a.

¹⁸³³ Ibid., Artikel 328ter.

¹⁸³⁴ Grant Thornton and Norton Rose (2011). p.7.

OECD

Regarding corruption abroad, the bribing of foreign public officials is seen as a criminal offence. Although the law makes no distinction between kickbacks and bribes, prosecution policy with regard to the bribing of foreign public officials makes this distinction. According to the OECD Convention and the U.S. Foreign Corrupt Practices Act 'small facilitation payments' are excluded from prosecution.

The OECD considers this to be a matter for the local legislation. 'Small facilitation payments' are relatively small amounts of money, often used to pay lower-placed officials to assure quick service providing. On the other hand, bribes are often higher amounts paid to senior officials or politicians with decision-making power, to ensure a favourable decision for the company, for example, the awarding of a contract.

The OECD, in cooperation with business, trade unions and civil society organisations, has developed guidelines that specify what governments expect from internationally-operating companies.¹⁸³⁵ In this way a level playing field is created.

The same rule holds for all business, and this prevents distortions of competition. The OECD guidelines on corruption are the only principles that are not voluntary. These are translated into the above-mentioned laws. The OECD guidelines have recently been sharpened. Due to these more stringent guidelines, a company is also held accountable for abuses in other parts of the supply chain.

This is also relevant for companies without international activities, but as buyer of products that are produced elsewhere, deal with foreign companies. These companies are able to influence the chain and are asked to use this influence.

The Dutch government links the OECD guidelines to its subsidies for entrepreneurship abroad. The Dutch government also established a National Contact point (NCP) to promote adherence to the OECD guidelines and to mediate when there are problems. NGOs are able to report to the NCP about companies that do not comply with the OECD Guidelines. The NCP will, as an

independent mediator, try to solve the problem. The Dutch NCP perceives corruption as a part of CSR. There is also intensive cooperation by the NCP with CSR Netherlands, an organisation that helps companies with the development of their CSR policy.

Self-regulation

In the Netherlands there are codes of conduct on each level, for each industry and for each type of issue. There are also industry codes, company codes, professional codes, codes for certain target groups and for specific issues. Often such a code has the character of values and principles that describe in a very generic way how employees have to act.

Sometimes these codes describe via specific rules how to act. Sometimes these codes also have a legal status, but more often it is a document that focuses on stimulating a process, the willingness of employees to discuss dilemmas that characterise the integrity risks of that industry, the company or the profession.

Very rarely does a code refer to corruption directly, it rather includes topics such as: integrity, the accepting or offering of gifts, conflict-of-interest, whistle-blowing and reporting of abuses. Very rarely do codes refer to the values upheld in the organisation or the societal interest.

Branch of businesses

'Bouwend Nederland', the industry organisation for construction companies, has developed a model code that is offered as a recommendation to its members.

'Bouwend Nederland' also has established the Foundation Integrity Assessment for the construction industry (SBIB – Stichting Beoordeling Integriteit Bouwnijverheid). Construction companies can register here free of charge, thereby declaring their acceptance the SBIB's policy and their compliance with the SBIB code and determination to act according to SBIB rulings. Registered companies are committed to bi-yearly reports and are included in a public registry. The SBIB has also developed a complaints procedure. This concerns complaint about procurement and competition.¹⁸³⁶

¹⁸³⁵ <http://www.oesorichtlijnen.nl/wp-content/uploads/Richtlijnen/NL%20tekst%20richtlijnen.pdf>

¹⁸³⁶ <http://www.sbib.nl>

The gambling machines industry branch (VAN – Speelautomaten Branche Organisatie)¹⁸³⁷ has developed a code of conduct. Its members have to adhere to this code. There is also an ethics committee that functions as a complaints committee. The members of the VAN are also audited for compliance with this code of conduct.

The Dutch Banking Association (NVB – Nederlandse Vereniging van Banken) has developed a code that has been given a legal basis. Banks are legally obliged to comply with this code. The Dutch Association for Public Credit (NVVK – Nederlandse Vereniging voor Volkskrediet)¹⁸³⁸ has developed a code how debts should be dealt with. On the website of the NVVK a list of members who have endorsed the code can be found.

Commodity and industrial Boards

There are statutory provisions for commodity and industrial Boards about, among other things, invitations for travel and visits at the cost of a third party.¹⁸³⁹ Gifts are only allowed if integrity is not at stake.¹⁸⁴⁰ Boards are called upon to act according to the public procurement procedures and to do so in a transparent way.¹⁸⁴¹

Professional organisations

Nearly all professional organisations have developed their own professional code. This holds for example for accountants¹⁸⁴², veterinarians¹⁸⁴³ and human resource

managers.¹⁸⁴⁴ These professional organisations have often developed specific codes for certain special elements of the profession. Thus, the NIVRA, the professional organisation for accountants, drafted a code of how an accountant should behave at the general meeting of shareholders.¹⁸⁴⁵ Veterinarians have a code how to report about animal mistreatment.¹⁸⁴⁶ The Dutch Association for Human Resources Management and Organisation Development (NVP – Nederlandse Vereniging voor Personeelsmanagement en Organisatieontwikkeling) developed a code which instructs the human resources manager how to deal with applicants.¹⁸⁴⁷

Multinationals

Nearly all international companies such as Unilever¹⁸⁴⁸, Shell¹⁸⁴⁹, AkzoNobel¹⁸⁵⁰, Philips¹⁸⁵¹ and ING¹⁸⁵² have their own code of conduct. These codes are sometimes called business principles. This indicates that the code does not have the character of detailed guidelines for action, but rather encompasses general directions for these actions. These codes are often embedded in a coherent set of codes, such as the governance code and code for specific areas (for example, for the purchase department). There is also a link with the CSR or sustainability policy of the company. Furthermore, there is a conjunction with the appointment of compliance officers and confidentiality persons. There are often complaints procedures and sometimes ethics

1837 'De VAN behartigt de belangen van bedrijven die speelautomaten produceren en die speelautomaten exploiteren'.

1838 'De NVVK behartigt de belangen van gemeentelijke kredietbanken en publieke en private instellingen die mensen met schulden helpen.'

1839 Art. 92a Wet op de bedrijfsorganisatie and principe VII Code Goed Bestuur product- en bedrijfsschappen.

1840 Ibid.

1841 Ibid.

1842 http://www.nivra.nl/readfile.aspx?ContentID=40952&ObjectID=382146&Type=1&File=0000027128_Verordening_gedragscode_per_010110_def.pdf

1843 <http://www.knmvd.nl/over-knmvd/publicaties>

1844 <http://www.nides.nl/site/media/Gedragscode%20NVP.pdf>

1845 http://commissiecorporategovernance.nl/news/item/NIVRA_publiceert_gedragsrichtlijn_over_accountant_in_AvA/55?mid=100040

1846 <http://www.knmvd.nl/cms/showpage.aspx?id=2192>

1847 http://www.stvda.nl/~media/Files/Stvda/Nota/2000_2009/2009/20091007.ashx

1848 <http://www.unilever.com/images/ir20090505CoBPleafletfinaltcm1312290.pdf>

1849 http://www.shell.com/home/content/aboutshell/who_we_are/our_values/code_of_conduct/

1850 http://www.akzonobel.com/nl/system/images/AkzoNobel_codeofconduct_dutch_tcm11-4236.pdf

1851 http://www.philips.com/shared/assets/Investor_relations/pdf/businessprinciples/GeneralBusinessPrinciples.pdf

1852 http://www.ingforsomethingbetter.com/nl/our_approach/business_principles/business_principles_in_depth/

hotlines. Some companies have an ethics committee as well.¹⁸⁵³ It is urgent to create a level playing field globally characterised by fair competition. More than 120 companies have joined the World Economic Forum Partnering Against Corruption Initiative (PACI), with as main aim ‘to level the playing field through collective action with other companies, governments and civil society’.

SMEs

Of the Dutch business sector, 99 percent falls in the category of SMEs. SMEs are responsible for 58 percent of the total turnover in the business sector. In total, 60 percent of employees work in an SME.¹⁸⁵⁴ Do to the size of these companies, statutory provisions and the corresponding provisions on good governance and compliance (e.g. Code Tabaksblat) are not applicable to them. There are no rules applicable, such as those that follow from the Dutch Corporate Governance Code¹⁸⁵⁵, which ensure that employees have the possibility of reporting alleged regularities (general, operational or financial) in the company to the chairman of the management Board, or to an official designated by him, without jeopardizing their legal position.

Whistle-blowers

There is little to no protection for whistle-blowers in the private sector. The protection of whistle-blowers is considered to be derived from the requirements of ‘good employership and good employeeship’.¹⁸⁵⁶ However, there is no statutory provision against retaliation. The only real whistle-blower rules are to be found in the Dutch Corporate Governance Code, but these are only applicable to stock companies. Neither is there an independent committee for the private sector, which investigates reports by whistle-blowers. The government has announced the

establishment of an Advice and Referral Point for Whistle-Blowers (Advies- en verwijspunt voor klokkenluiders)¹⁸⁵⁷ to help potential whistle-blowers. Individuals wanting to report abuses will soon be able to ask for information and seek advice from an independent commission. This commission has been established both for the public and the private sectors. Everyone is able to contact the commission on a confidential basis, and to find out in what ways he or she must inform law enforcing organisations about abuse. MPs have scrutinised the plans of the Minister of BZK, because the commission does not investigate an abuse itself, but can only refer a potential whistle-blower to agencies that do this. Such as the labour inspection or the public prosecutor.¹⁸⁵⁸ MP Van Raak’s initiative draft bill for a House for Whistle-blowers is intended to have an investigative unit and a financial and other safety net. *(Please refer to Pillar Legislature.)*

Recently the Court of Amsterdam was of the opinion that an employee had infringed upon the contractual confidentiality clause in giving confidential information of his employer to a third party (in this case a client). The potential damage to this client could not be a sufficient justification. According to the court, the employee had to inform his superior or other managers within the company – or else (indirect) shareholders of the company – about the abuse of his employer before letting go the loyalty and discretion in relation to his employer. Only in case the employer did not react adequately, would it have been acceptable to make public the potentially serious abuse. However, in the latter case, this should have been carried out in a proportional way. Moreover this should be warranted by an important public interest. In this case the conflict between the employee and his employer did not meet these criteria.¹⁸⁵⁹

1853 An example is the Ethics Committee of the Rabobank: http://overons.rabobank.com/content/mvo/ethiek_issues/ethiek/index.jsp

1854 <http://www.mkb servicedesk.nl/569/informatie-over-mkb-nederland.htm>, consulted the 23rd of February 2012.

1855 Paragraph II.1.7 Dutch corporate governance code. Principles of good corporate governance and best practice provisions.

1856 Art. 7: 611 Burgerlijk Wetboek.

1857 <http://www.rijksoverheid.nl/regering/het-kabinet/ministerraad/persberichten/2011/04/15/advies-en-verwijspunt-voor-klokkenluiders.html>, consulted the 21st of December 2011.

1858 Binnenlands Bestuur (2011). Kamer blokkeert plan klokkenluiders.

1859 LJN: BR2582, Gerechtshof Amsterdam, 200.070.341/01, uitspraak van 14 juni 2011.

INTEGRITY (IN PRACTICE)

To what extent is the integrity of those working in the business sector ensured in practice?

In general, businesses have a comprehensive approach to ensuring the integrity of those working for them; comprising enforcement of existing rules, proactive inquiries into alleged misbehaviour, sanctioning of misbehaviour, as well as the regular training of staff/board on integrity issues. However, the focus is mainly upon extortion by public officials abroad and situations (internationally and nationally) where the company perceives corruption as costs. Despite the variety of management instruments to guarantee integrity, managers strongly rely upon the individual conscience of their subordinates.

International rankings

The integrity of Dutch companies is highly valued by the WEF Global Competitive Report 2010–2011.¹⁸⁶⁰ The ethical behaviour of Dutch firms is rated with a 9th position in the world rating list.¹⁸⁶¹ The Netherlands climbed from a third position on the Bribe Payers Index in 2008 to a shared first position (score 8.8 on a 1–10 scale) on the BPI of 2011.¹⁸⁶² The BPI 2011 ranked 28 of the leading exporting countries based on the likelihood their multinational businesses will use bribes when operating abroad. The BPI is based upon responses by

businessmen on the World Economic Forum's Executive Opinion Survey. According to the 2010–11 Executive Opinion Survey of the World Economic Forum covering 139 countries, the Netherlands has 13th position (compared to 14th position in 2005).¹⁸⁶³ The executives were asked to react to the question 'In your country, how common is it for firms to make undocumented extra payments or bribes connected with (a) imports and exports; (b) public utilities; (c) annual tax payments; (d) the awarding of public contracts and licenses; (e) obtaining favourable judicial decisions?' Respondents valued the Netherlands with a score of 6.1 (compared to 5.9 in 2005) on a 7 points scale (1 = common, 7 = never occurs).

National studies

A Dutch study showed that Dutch municipal officials assess the integrity of business organisations with a 5.2 on a scale of 1 to 10.¹⁸⁶⁴ Companies doing business in developing countries, often perceive bribery and corruption as 'intrinsic' to doing business in these countries. They perceive this as a form of extortion, the entrepreneur is not free, but is forced to act in a corrupt way.¹⁸⁶⁵ Extortion is seldom used as justification for corruption in the Netherlands. As part of a study carried out by KPMG and the Limburg Employers Association among the top 100 companies of the province of Limburg,¹⁸⁶⁶ signs of extortion, including extortion by officials, emerged. Almost 90 percent of

¹⁸⁶⁰ This competitiveness–ranking is based on the Global Competitiveness Index (GCI), developed for the World Economic Forum by Sala-i-Martin and first introduced in 2004. The GCI is based on 12 pillars of competitiveness, providing a comprehensive picture of the competitiveness landscape in countries around the world at all stages of development. The pillars are: institutions, infrastructure, macro-economic environment, health and primary education, higher education and training, goods market efficiency, labour market efficiency, financial market development, technological readiness, market size, business sophistication, and innovation. The rankings are derived from both publicly-available data and the Executive Opinion Survey, a comprehensive annual survey conducted by the World Economic Forum together with its network of Partner Institutes. The WEF Competitive Index is partly based upon an 'opinion poll.'

¹⁸⁶¹ World Economic Forum, Global Competitive Report 2010 – 2011. <http://www.weforum.org/issues/global-competitiveness>. See p. 382.

¹⁸⁶² Transparency International, Bribe Payers Index, 2008 and Bribe Payers Index 2011.

¹⁸⁶³ World Economic Forum, Global Competitive Report 2010 – 2011. <http://www.weforum.org/issues/global-competitiveness>. See p. 370 and Kaufmann, World Bank, Executive Opinion Survey 2005, World Economic Forum, 2006. In: Integrity in Public Procurement, OECD, 2007, 121.

¹⁸⁶⁴ J.H.J. van den Heuvel, L.W.J.C. Huberts, Z. van der Wal, K. Steenbergen, Integriteit van het lokaal bestuur. Raadgriffiers en gemeentesecretarissen over integriteit. Den Haag, 2010, 85.

¹⁸⁶⁵ H. Nelen and A. Nieuwendijk, Geen ABC. Analyse van Rijksrecherche onderzoeken naar ambtelijke en bestuurlijke corruptie, Boom, Den Haag, 2003.

¹⁸⁶⁶ KPMG Limburg en Limburgse Werkgevers Vereniging (LWV), Limburg Consolidated Top 100, 2000.

the companies indicated that employees were embarrassed by customers who asked for favours. With regard to public officials, this is much less. Except for the construction companies; three-quarters of the companies replied that they were confronted with pressure from officials.

According to a research study, the police annually report 80 incidents of extortion. The report also mentions a large 'dark number'. The willingness to report extortion incidents is low due to the fear of reprisals. Based on the advice of the NPC Steering Committee Extortion, the state secretary of VJ developed an integrated approach to the problem of extortion.¹⁸⁶⁷ The approach proposed by the state secretary of VJ aimed to decrease the threshold for reporting extortion incidents. Through some (pilot) projects, such as the appointment of a trustee for extortion to set up an Extortion Hotline and informing entrepreneurs about the possibilities of the Report Crime Anonymously Hotline (Meld misdaad anoniem) when extortion occurs, the state secretary wants to examine what is seen as the most effective method for dealing with extortion. Although extortion by officials is not seen as an issue, the comprehensive approach of the state secretary also offers a certain assurance against extortion by officials.

The second national threat assessment shows that, in particular, the corruption of the legal economy frequently is used by criminal networks.¹⁸⁶⁸ Here it is possible to distinguish a variety of activities, ranging from the abuse of the tax system or the licensing system to the targeted bribing of certain individuals in government, business or in professions, such as lawyers and notaries. The industries that provide opportunities

for corruption are, according to this study in particular, the hospitality business, transportation, real estate, (illegal) workers, illegal renting/selling of homes, money laundering of criminal acquired assets, courier services, airport luggage handling, containers etc.¹⁸⁶⁹

The National Contact point that promotes compliance with the OECD code, recognised a form of corruption where charity is used as cover-up for corruption. During a procurement process the offer is linked to the sponsoring of a community project in order to obtain an order. This is according to the NCP a form of political corruption, which is not easily to recognise as such.¹⁸⁷⁰ The very positive attitude from the Dutch towards charity may distract attention from the corrupt nature of this form of sponsorship.

An analysis of corruption investigations by the Rijksrecherche (National Police) in the period 2003–2007 showed that it is clear in these investigations that it is often the civil servant who initiates the corruption.¹⁸⁷¹ The study also showed that in four cases the corruption was a form of extortion. In these cases the person who was put under pressure refused to pay the bribe. In three of these cases this person reported the corruption. This led to the investigations being conducted.¹⁸⁷²

Commodity and industrial boards

In September 2010 the Supervisory Chamber (Toezichtkamer) of the SER, which supervises the commodity and industrial boards, issued its final report following its study on preventing (the appearance of) conflict-of-interest in commodity and industrial boards.¹⁸⁷³

¹⁸⁶⁷ Letter of the Minister of Security and Justice to the Tweede Kamer about extortion, 26th of April 2011.

¹⁸⁶⁸ Actualisering van dreigingen uit 2004; verslag van een onderzoek voor het Nationaal dreigingsbeeld, Korps Landelijke Politiediensten, Dienst IPOL, Zoetermeer, October 2008.

¹⁸⁶⁹ Politie Amsterdam–Amstelland, Over ondermijning. Een verkenning naar het fenomeen, de aanpak en mogelijke verbeteringen, Tweede druk, 2009.

¹⁸⁷⁰ Voorbeeld van NCP: <http://www.oesorichtlijnen.nl/best-practices/correcte-sponsoring/#more-103>.

¹⁸⁷¹ Niet voor persoonlijk gebruik. Omkoping van ambtenaren in de civiele openbare sector, Den Haag, Rijksrecherche, 2010, 22.

¹⁸⁷² Ibid.

¹⁸⁷³ Toezichtkamer SER 'Eindrapportage themaonderzoek Integriteit (Belangenverstrengeling)' 1st of September 2010 and interview with Ivo Thomassen, Senior Policy Advisor Directorate of Public Administration at the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.

The study concluded that the boards met the requirements regarding the prevention of conflict-of-interest, but that in order to consistently pay attention to good governance, attention needed to be paid to the attitude and behaviour of employees and members of the board and commissions regarding good governance. All boards have designed an integrity protocol, but the way in which boards ensure that the protocol is applied in practice differs from one board to another. Some boards use the protocol during performance talks with employees, while others do not provide the protocol to new employees.

The provisions concerning gifts, invitations and company resources are well-respected. On one hand the social control within the small circle of board members is believed to ensure violations become known, it is also considered to be the reason why board members would not address the misconduct of other members.

Most boards have taken measures on the registration of board member side-functions. In some boards there is no clear understanding of who is in charge of monitoring possible conflict-of-interest. A majority of boards have taken additional measures to ensure integrity, such as a course on integrity for new board members or the introduction of policies on subsidies.

One expert stated that the study showed that commodity and industrial boards are rather passive and should take more initiative to accomplish things, but this means a cultural change.¹⁸⁷⁴ One incident involving a board has led to increasing awareness.¹⁸⁷⁵ Another expert stated that no business sector is free of incidents, but that overall integrity is not a major theme within the SER, because there are relatively few incidents.¹⁸⁷⁶

Effectiveness of company self-regulation

Dutch companies, especially the larger companies, have ethical codes, CSR codes or sustainability codes. These are also often embedded in coherent structures. This includes dilemma training, a focus on integrity during performance interviews, trust persons and trust committees, ethics committees, whistle-blower regulations, reporting procedures, ethics audits, ethics reports, and sustainability and CSR reports. One analyst considers integrity in law to be different from integrity in practice, and describes how multinationals write a positive message in their CSR report that everything is going well, while they operate in corrupt countries such as Nigeria.¹⁸⁷⁷

From the interviews and the documents (reports) an overall picture emerges that codes and integrity systems in practice are less effective than expected. Five arguments in different forms are mentioned.

One finds the integrity instruments to be too formal

Many of these rules and management instruments are not noticed by management and employees. In many cases, it is not a question of better communication, but most managers and employees just don't seem open for it. Employees are often not familiar with the rules of the code of conduct. Behavioural norms are more implicit and are transferred during the project by more experienced colleagues to the young people.¹⁸⁷⁸

The integrity instruments take away responsibility

One expert, who as a forensic accountant has done much research into large and small corruption affairs, claims to see that the integrity policies of companies aim at 'removing the ability to think'.¹⁸⁷⁹ Integrity, in his view, is too much a matter of ticking boxes. The dilemmas behind it are often not discussed.¹⁸⁸⁰

¹⁸⁷⁴ Interview with Ivo Thomassen, Senior Policy Advisor Directorate of Public Administration at the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.

¹⁸⁷⁵ Ibid.

¹⁸⁷⁶ Interview with Alexander Rinnooy Kan, President of the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.

¹⁸⁷⁷ Thornton and Norton Rose (2011). p.23–24.

¹⁸⁷⁸ Interview with Stephan Jansen, Head of Department for Water Treatment, international consultancy and engineering firm DHV, interview held the 5th of April 2011.

¹⁸⁷⁹ Interview with Peter Schimmel, Partner Grant Thornton Forensic & Investigation Services, interview held the 6th of May 2011.

¹⁸⁸⁰ Interview with Henk Wijnen, Project manager at PIANOo, Public Procurement Expertise Centre part of the Dutch Ministry of Economic Affairs, Agriculture and Innovation, interview held the 16th of May 2011.

Too many rules lead to the opposite effects

Managers and employees experience integrity policies as an abundance of codes and regulations. There is an attitude of employees and managers of not bothering about formal legislation.¹⁸⁸¹ Rules, especially when there are too many, are counterproductive. People lose the overview.¹⁸⁸² One expert does not exclude that such an abundance of rules will only lead to the opposite effect, that tricks are used to get the invested money back.¹⁸⁸³

Codes of conduct primarily serve the interest of the employer and call on cynicism

According to several interviewees, codes of conduct are only applied when these are in the interest of the company and the top management. For example, these codes are used to lay people off, but they may also be used in the supervision of contractors; integrity can be a part of the general terms and conditions of the company.¹⁸⁸⁴

In an international context, the supply side of corruption is neglected, i.e. the offering of bribes to officials or politicians with the intention to influence the decision.¹⁸⁸⁵ This opportunism often leads to cynicism.

Codes are not valued by the market

Having a code of conduct and an effective integrity policy is not a selection criterion in tender procedures, and this is even expected by the competition laws. Companies are only reviewed on the basis of the Directive Integrity and Exclusion (Regeling Integriteit en Uitsluiting) of the Minister of EL&I.¹⁸⁸⁶ It states explicitly that it is not allowed to

exclude companies on the basis of a code of conduct in a tender procedure, 'because this would be contrary to the equality and anti-discrimination principle described in several directives and possibly even with the Treaty establishing the European Community.'¹⁸⁸⁷

The anti-corruption laws are hardly used in court cases

An important practical problem concerns the provability of corruption. The prosecution officer tends to drop the corruption aspect and only prosecutes the associated offences (fraud, acting against the competition laws, etc.).

SMEs

A study into good governance in SMEs (Small Business Governance) showed that there is little knowledge on what is considered to be 'corporate governance' within SMEs.¹⁸⁸⁸ Some typical features of the SME entrepreneur seem to make it difficult to pay attention to corporate governance. These include little possibility for delegation, primary interest in the core business, little time, little room to experiment and little response from the business environment.¹⁸⁸⁹ The OECD has called on businesses, especially SMEs, to step up their fight against bribery.¹⁸⁹⁰

Corruption cases

Thanks to a whistle-blower, the Dutch construction fraud (Bouwfraude) was publicised in 2001. A total of seven civil servants were prosecuted for corruption. The prosecutions made visible that there was a tension between competition law and criminal law. Only one company and two individuals working at companies

1881 Interview with René Werger, Director of MCF Ondernemingsadviseurs B.V., interview held the 4th of May 2011.

1882 Ibid.

1883 'Belastingdienst beboet ruim 600 bedrijven in vastgoed om fraude', NRC, 18 mei 2011.

1884 Interview with René Werger, Director of MCF Ondernemingsadviseurs B.V., interview held the 4th of May 2011.

1885 'Eindrapportage Task Force Anti-Corruptie', Kamerstuk, 23-04-2008, BZ. See also: <http://www.u4.no/pdf/?file=/themes/private-sector/documents/netherlands-action-plan.pdf>.

1886 Published in the Staatscourant on 27 February 2004.

1887 'Rijk laat gedragscode links liggen', Podium voor ontwikkelingen in en om de bouw & infra, Bouwend Nederland, jaargang 1, nr. 16, 22 september 2005.

1888 Hessels, S.J.A. and Hooge, E.H. (2006). p.63.

1889 Ibid.

1890 OECD (2010) Good Practice Guidance on Internal Controls, Ethics and Compliance.

involved were prosecuted for corruption.¹⁸⁹¹ An interesting detail is that the whistle-blower was one of the few people who were prosecuted. Several managers of construction companies have been prosecuted for acting in breach of competition law. The legislature had previously decided to distinguish between the competition law aspects and the criminal law elements, and to prosecute these separately. The legislature thereby established the primacy of competition law. The corruption within several cases of the renowned construction fraud was only visible through the criminal offence (forgery) against the competition law. It is not possible to prosecute someone twice for the same offence. Therefore, only the last offence was prosecuted.¹⁸⁹²

It is often unclear or difficult to legally qualify the alleged criminal offence(s), and therefore the Dutch statistics may seriously under-report the number of per se bribery offences. These might also have been prosecuted as fraud, money-laundering, forgery, book and record violations, tax violations, etc.

Another notable case was the conviction of the director of the Port of Rotterdam. The judge considered it to be proven that he had accepted gifts (the use and design of a luxury apartment in Antwerp), in exchange for favourable treatment.¹⁸⁹³ The active corrupt party, in this case the director or employees of the company RDM, who offered the director of the Port of Rotterdam the use and design of the luxury apartments, have not been prosecuted (yet) for corruption.

Another recent corruption case, which has been brought before the court concerns construction fraud in the province of Limburg. Here a very clear form of active corruption was prosecuted. A total of 15 people, including a former director, a former regional manager and three former employees of a construction company, and a total of nine officials, including an employee of

the province of Limburg, had to face the charges of corruption in court.¹⁸⁹⁴ The court convicted two managers of the company. Four civil servants were also convicted for corruption. Some cases are awaiting appeal before a higher court. Besides the corruption case, the NMa, imposed a fine of EUR 3 million on the company for the manipulation of eleven procurement contracts.¹⁸⁹⁵ *For more information, please refer to Chapter Corruption Profile/Corruption Cases.*

The tax authorities announced that, as a result of the investigation 'Nokvorst', they had fined 600 companies. Of the 1,291 companies surveyed, half of the cases involved irregularities, and EUR 1 billion in revenues were withheld. A total of EUR 330 million in fines and surcharges were imposed for fraud.¹⁸⁹⁶

So far three Dutch companies have been confronted with the Foreign Corrupt Practices Act (FCPA).¹⁸⁹⁷ Paradigm BV, Snamprogetti BV en Shell Nigeria Exploration and Production Company Ltd have been investigated by US public prosecution services. Most cases were dealt with by settlement, varying from USD 1 million (Paradigm BV) to USD 30 million (Shell). Shell also had to implement a compliance and ethics programme for the subsidiary company involved in the paying of a total of USD 7 million. Snamprogetti BV had to pay a fine of USD 240 million for bribing top civil servants in Nigeria. It also had to pay back a total of USD 125 million of profits and USD 30 million of settlements to the Nigerian authorities.¹⁸⁹⁸

In 2008, the public prosecutor fined seven companies among which Saybolt International, Flowserve and Organon (a former division of AkzoNobel), as part of the 'UN Oil-for-Food' corruption scandal. Together they paid fines of somewhat less than Euro 900.000 and about Euro 500.000 for illegally obtained

1891 <http://www.nieuwsbank.nl/inp/2004/10/01/F225.htm>.

1892 Vonnis bouwfraude, Parketnummer van de berechte zaak: 10/000066-03, Datum uitspraak: 9 juni 2005. Zie <http://www.rechtspraak.nl>. Verslag van een algemeen overleg vastgesteld op 11 augustus 2004 (28 244, nr. 81).

1893 Uitspraak rechtbank Rotterdam, Parketnummers: 10/996550-05 en 10/994175-09, 15 oktober 2010.

1894 De Limburger, 5th of January 2011. See: <http://www.limburger.nl/article/20110105/REGIONIEUWS01/101209588>.

1895 'Drie miljoen boete voor Janssen De Jong Infra', De Limburger, 5 Nov. 2010.

1896 'Belastingdienst beoet ruim 600 bedrijven in vastgoed om fraude', NRC, 18 mei 2011.

1897 Het Financieele Dagblad. 'Justitie VS pakt omkoping in buitenland hard aan'. 23 February 2012 p. 13.

1898 Ibid.

advantages. These cases resulted from prosecution procedures started earlier by the US authorities. AkzoNobel had to pay a fine of 2,9 million US dollar to the SEC as a penalty for the payments of bribes to an amount of about USD 280.000.¹⁸⁹⁹

ANTI-CORRUPTION POLICY ENGAGEMENT

To what extent is the business sector active in engaging the domestic government on anti-corruption?

In general, while anti-corruption features on the business sector's agenda of engagement with the government, it is generally not a priority. Only rarely are there public statements by senior business people calling on the government to do more to fight corruption.

UN Global Compact

In 2007 a Dutch chapter of the UN Global Compact (GCNL) was established. The Global Compact is based on 10 principles which are agreed upon by the participants. The tenth principle concerns fighting corruption.¹⁹⁰⁰ By the end of 2010, 68 companies, including several major multinational companies and some NGOs such as Food Fair, were member of this chapter.¹⁹⁰¹ GCNL is affiliated with the MVO Platform (CSR Platform). This is a collaboration of NGOs that critically monitor business or work together with companies as part of the CSR policy of these companies. Shell has developed for its management a so-called Management Primer¹⁹⁰² about corruption. In what way is the management able to contribute to corruption prevention? In the Management

Primer all relevant international laws and guidelines, together with concrete examples of issues managers have to face, are discussed.

National Platform for Crime Control

Since 1992 the National Platform for Crime Control has been active. This is a partnership of government and industry. The platform addresses all forms of crime in which businesses are the victim. In the platform, the Ministry of VJ, the Ministry of BZK, the Ministry of EL&I, the police, the public prosecutor (OM) and the Association of Dutch Municipalities (VNG) are represented. On behalf of business, employer organisations and representatives of several branches of industry are members of the platform. This platform deals with crime prevention, of both external and internal crime. Corruption is seen as a form of internal crime where companies perceive themselves as victims.¹⁹⁰³ From the late 90s to the present, a number of regional platforms for crime prevention have been established (stimulated by the NPC). This has created collaboration between industry and government at the local level.

Centre for Crime and Security

In 2004 the Centre for Crime and Security (CVV – Centrum voor Criminaliteitspreventie en Veiligheid) was established.¹⁹⁰⁴ Several organisations joined the CCV, such as the Ministry of BZK, the Ministry of VJ and of VNG. The CCV had corruption issue explicitly on its agenda, but there were too many initiatives on the corruption topic, which led to fragmentation. On its website very little recent activities regarding corruption could be found. One news item found, dates back to March 2011, all other items are from 2008.¹⁹⁰⁵

¹⁸⁹⁹ Karpati B., Assistant Regional Director in the Enforcement Division of the SEC, in Navigating dangerous waters, FCPA: Managing international business and acquisition compliance risk, ALM Legal Special Supplement to New York Law Journal and The National Law Journal, PWC 2008. Also www.sec.gov.

¹⁹⁰⁰ Businesses should work against corruption in all its forms, including extortion and bribery.

¹⁹⁰¹ <http://www.gcneland.nl/docs/members.pdf>

¹⁹⁰² Shell: Dealing with Bribery and Corruption: a Management Primer, 2nd edition, London 2003.

¹⁹⁰³ Boeven op de Loonlijst. Uitgave van het VNO-NCW en MKB Nederland, 2007. Deze publicatie is tot stand gekomen in het kader van het Nationaal Platform Criminaliteitsbeheersing. www.hetccv.nl/binaries/content/assets/ccv/dossiers/ondernemen/actieplan-vo/boeven-op-de-loonlijst.pdf.

¹⁹⁰⁴ CVV 2004 – 2009, Vijf jaar maatschappelijke veiligheid in beweging, 2009. http://www.hetccv.nl/binaries/content/assets/ccv/het-ccv/CCV_2004_2009.pdf.

¹⁹⁰⁵ <http://www.hetccv.nl/home>, consulted the 21st of December.

Task Force Anti-Corruption

In 2005 the government established the Task Force Anti-Corruption. This task force only focussed upon corruption abroad. In 2007, the task force delivered its final report.¹⁹⁰⁶ In this report the supply side of corruption (active corruption) was explicitly mentioned as a weak spot.

StvdA

An investigation conducted by the Ministry of Social Affairs and Employment showed that employers and employees wanted to have a code of conduct, which could provide guidance when confronted with an integrity violation.

The ministry asked the StvdA whether it could develop these rules of conduct.

In 2003, the StvdA advised employers and employee organisations that all collective agreements should include whistle-blowing procedures.¹⁹⁰⁷ The plea of the StvdA was a reaction to the Dutch construction fraud and the role of whistle-blower involved. The treatment of that whistle-blower made it clear that regulation of the position of whistle-blowers was desirable.

SUPPORT FOR/ENGAGEMENT WITH CIVIL SOCIETY

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

While the business sector occasionally cooperates with CSOs on anti-corruption reform initiatives, it does not address corruption in the Netherlands itself. A number of companies with operations abroad, are

cooperating with NGOs to combat corruption. Companies rarely provide financial support to help further initiatives.

Cooperation with CSOs on anti-corruption in the international arena

Corruption in the Netherlands is not a subject about which companies have entered into structural partnerships with NGOs. Where there is structural cooperation, it is part of the broader CSR programmes. Fighting corruption is a theme that is included into the CSR policies of companies. As part of this broader approach, companies do seek cooperation with NGOs. This is done via CSR Netherlands, a knowledge-centre and network organisation with more than 1000 companies as partners.¹⁹⁰⁸ For CSR Netherlands corruption is mainly a theme in the context of international business.

Corruption in the international context, in particular with regard to developing countries, receives much attention from NGOs. Corruption is seen as a major cause of underdevelopment.

The role of Dutch companies as providers of bribes in developing countries receives criticism. With the help of Amnesty International, Friends of the Earth, Oxfam Novib, FNV Mondiaal and the Association for animal protection (Dierenbescherming), the Guide for Honest Banks (Eerlijke Bankwijzer) was developed. This Guide for Honest Banks includes the corruption issue.¹⁹⁰⁹ Especially the Triodos Bank and ASN Bank are considered to be good banks. Many of the well-known banks in the Netherlands score low on aspects such as climate change, labour rights, tax and corruption.

¹⁹⁰⁶ See: Eindrapportage Task Force Anti-Corruptie, Kamerstuk, 23-04-2008, BZ. See also: <http://www.u4.no/pdf/?file=/themes/private-sector/documents/netherlands-action-plan.pdf>.

¹⁹⁰⁷ Stichting van de Arbeid haar Verklaring inzake het omgaan met vermoedens van misstanden in ondernemingen, 24 July 2003. Het ministerie van Sociale Zaken en Arbeid heeft deze zelfregulering in 2006 geëvalueerd. See: Coen Zoon, Mirjam Stuivenberg, Hans Nauta, Peter Donker van Heel, Ecorys, Evaluatie zelfregulering klokkenluidersprocedures, rapport in opdracht van het ministerie van Sociale zaken en Werkgelegenheid, 2006.

¹⁹⁰⁸ <http://www.mvonederland.nl>.

¹⁹⁰⁹ The theme of corruption is combined with the theme of tax. See: De eerlijke Bankwijzer. See also: J.W. van Gelder, A. Herder, D. Kouwenhoven (Profundo), De Eerlijke Bankwijzer, 10e update. Een onderzoeksrapport voor Oxfam Novib, Amnesty International, Milieudefensie, FNV Mondiaal en Dierenbescherming, <http://www.eerlijkebankwijzer.nl/>, consulted the 21st of February 2012.

Development aid and development trade

In the Netherlands 'tied aid' (gebonden hulp), the requirement that the recipients of development aid have to spend the money received on buying products from Dutch companies) has always been a major concern because of fear that it would become a 'subsidy' for Dutch businesses. This is seen as abuse of development aid. In recent years the reluctance with regard to the involvement of businesses in development cooperation has been abandoned. Development aid of the government now runs partly through co-financing of NGOs. The NGOs that receive money from the government, as part of its development cooperation programme, are called co-financing organisations (MFOs – Medefinancieringsorganisaties). Co-financing by the government also depends upon the money that is collected by the NGOs from the private sphere. For NGOs it is therefore very important to find other sources for funding in addition to government funding. In this respect the business community plays a major role. The government budget-cuts will lead to more pressure on NGOs to seek cooperation with businesses. The policy of the government is therefore aimed at promoting entrepreneurship and the stimulation of the business environment. The Dutch business community is seen as ideally suited to cooperate with NGOs on promoting

entrepreneurship in developing countries. One example is the cooperation between Ahold and ICCO in relation to the purchase of potatoes, vegetables and fruit in Third World countries. In this way, the economies of developing countries are stimulated and at the same time a fair price for the farmers in the developing countries and environmental care are assured.¹⁹¹⁰ *For more information on NGOs, please refer to Report on Civil Society.*

At present there are individual partnerships between companies and NGOs. From both sides people are working on a more systematic involvement of enterprises with development NGOs.¹⁹¹¹ An example of a more structural cooperation between Dutch companies and NGOs, together with the Dutch government in the Netherlands, as well as with companies, NGOs and governments in developing countries is the Dutch Sustainable Trade Initiative (IDH – Initiatief Duurzame Handel).¹⁹¹² This is a very successful initiative. However, corruption prevention with respect to partner selection receives no explicit attention. In an implicit way, corruption is addressed when the reliability of certification is discussed. Then it is about the reliability of information about the sustainability of products traded. This presupposes no corruption.

1910 <http://www.icco.nl/nl/ondernemen-met-icco/samenwerken-met-bedrijven/albert-heijn/aha-de-smaak-van-verantwoord-fruit>

1911 <http://www.viceversaonline.nl/2011/02/samenwerking-tussen-ngos-bedrijfsleven-en-overheid-naar-hoger-plan-getild/>

1912 <http://www.duurzamehandel.com>

7. CONCLUSIONS

CONCLUSIONS FROM THE REPORT “THE NATIONAL INTEGRITY SYSTEM ASSESSMENT OF THE NETHERLANDS 2012”

In the previous chapters we investigated to what extent the pillars of the Netherlands' National Integrity System contribute to ensuring integrity in the Netherlands. Here we looked to see whether formal provisions were present that are oriented towards promoting integrity and preventing corruption, and at the same time we looked into how these provisions actually work out in practice. The foremost conclusion that can be drawn is that the Netherlands does have a relatively strong NIS. The political, social, economic and cultural foundations are strong to very strong. Most pillars are sufficient to strong in their safeguarding of integrity. This does not diminish the fact that with each separate evaluation aspects have been identified which deserve further attention, because over the long term they could constitute a risk for ensuring integrity. At the end of the day, integrity is not anything you should just take for granted.

The remark which is deemed appropriate, is that the size of the pillars differs. It is easier to assess integrity safeguarding when a given pillar comprises of one institution, as in the case of the Tweede Kamer. An assessment of a pillar that is composed of several organisations, such as the Public Sector, Civil Society or Business pillars, will in contrast mainly regard the pillar as a whole, so that possible nuances at the meso- or organisational level are present.

CAPACITY, GOVERNANCE AND THE CONCEPT OF ROLES IN THE NETHERLANDS' NIS

Capacity

The Netherlands is characterised by great freedom for the individual to fulfil a societal role. For example, it is easy to set up a political party, to put yourself forward as a candidate and to exercise your vote in honest elections. This freedom is also visible in other pillars. It is also relatively easy in the Netherlands to establish your own company or social organisation or to report on the news as a broadcasting organisation. What is

notable is that, in general, pillars do have sufficient resources available to carry out their activities. Most pillars are on the one hand characterised by a great degree of independence with regard to other pillars, but on the other hand sufficient 'checks and balances' are provided that prevent any pillar from gaining unbridled power. From this, it can be concluded that there is sufficient capacity within pillars to ensure integrity, so that the capacity of the NIS can be judged positively.

Governance

Now the governance aspect, which can be distinguished for each pillar. If in practice a given pillar has insufficient internal correction mechanisms available, then generally speaking external correction takes place through other pillars. Sometimes this mechanism has its origin in the separation of powers whereby the legislature (Tweede Kamer) fulfils an important function in controlling the Executive (government), but often this sort of external correction is performed by a 'watchdog', as in the case of the media that keeps an eye on the integrity of the members of the legislature (Tweede Kamer). In general, sufficient legal requirements pertain to the various pillars when it comes to the way in which responsibility should be taken for their actions. For most of the pillars this will happen through the submission of an annual report and statement of accounts, but specific requirements apply to the different pillars, such as the requirement for ministries to report annually on their own integrity policy. In practice, the way in which pillars take up this responsibility turns out to be inadequate. For example, businesses often do not report in time – or at all – about their financial situation and their societal impact, and the way that social organisations take responsibility for their activities also often falls short. Another aspect of governance is the degree of transparency which the pillars strive to attain. Here as well it is true that there are sufficient legal requirements designed to enlarge transparency with regard to pillars' policy and procedures. For example, there is a requirement for (semi-)public organisations that are financed out of public funds to make known and to include in their annual financial report all top incomes that exceed the annually taxable income of a

minister. But on this point there are also shortcomings that can be demonstrated regarding the desired transparency. For example, there is often a lack of transparency when it comes to appointments to public administration positions, where membership of a political party turns out to be an important criteria although this is not openly mentioned as a selection criteria. Control mechanisms are lacking regarding (the politicisation of) the functioning of top civil servants. Another example is the lack of any clear system for allocating cases within the judiciary. Cases are allocated among judges by judicial administrators, but there is no requirement that this should be done 'at random' and there is a complete lack of insight into the process employed.

The last aspect upon which pillars' governance is judged, is the degree to which integrity provisions are present. From the research it is apparent that for most pillars this is sufficiently the case. For the public pillars the Civil Service Law applies, which prescribes the requirements that the integrity policy must fulfil. In general, these organisations indeed have developed an integrity policy, however the degree to which integrity is truly embedded within the organisational culture varies and is therefore a point of concern. For example, not every civil servant is aware of the diverse rules concerning conflict-of-interest and the duty to report violations.

For the non-governmental organisations an appeal is mostly made to self-regulation. In the business world there exist large differences in the degree to which integrity provisions are encountered. In general these are present as required in stock market listed companies. However, the legal requirements regarding good corporate governance and transparency do not apply for small- and medium-sized businesses (SMEs), nor is there serious self-regulation for realising integrity. Considering the importance of SMEs for the Dutch economy, greater attention to this is therefore necessary.

But even if integrity provisions, such as codes of conduct, are in fact present, this does not automatically lead to an ethical organisational culture, and the risk exists that such a code will remain a 'dead letter'. In order to draw conclusions about integrity within separate organisations and industries, further research need to be done. Also the integrity policies of media

and social organisations often still turn out to be in short pants. Codes of conduct here are present only to a limited extent, and relatively little attention is paid to issues such as ethical dilemmas. Giving the impression that people do not appeal to integrity issues. What is true for all pillars is that there is no adequate protection for whistle-blowers. A few regulations exist which apply to civil servants and employees of stock market listed companies. For small- and medium-sized companies this is not provided by law. The recently-changed whistle-blower regulations for civil servants does not seem to offer better protection. This limited protection and the negative image that has arisen of the consequences of 'blowing the whistle' in several sensational cases, have not contributed to the extent to which abuses are reported. The NIS methodology defines integrity within political parties as internal party democracy. The degree of internal party democracy varies. There are parties without members, parties where it is the party leader who determines the (political) course, and parties with members who can broadly participate in decisions about the course their party will follow.

Conception of role

As a final subject, the NIS research investigated to what extent the pillars could adequately carry out their specific roles. In general, this is the case for most pillars. For example, the Algemene Rekenkamer is effective in the way it carries out audits of public expenditures, so that it contributes substantially to the improvement of financial administration in government. This is also true for the Ombudsman, who is active and effective in the way he looks into citizens' complaints and at the same time knows how to create awareness among governmental agencies about the way they deal with citizens. Nevertheless, there are also tasks that are barely carried out by the pillars, or not at all. For example, the task-concept 'cooperation between public, social and private organisations in the realm of anti-corruption efforts' is evaluated as being poor for the Public Sector, Civil Society, and Business pillars. It's true that the reason here lies in the limited conception such organisations have of the extent of corruption in the Netherlands. However, even where pillars are busy individually with safeguarding integrity, cooperation would offer the chance to put this theme collectively on the agenda and to exchange knowledge and experience.

RECURRING THEMES IN THE NETHERLANDS' NIS

In addition to these general conclusions about the strength of the Netherlands' NIS and the individual pillars in the areas of capacity, governance and conception of role, we can also draw a number of notable conclusions about the Netherlands' NIS. Conclusions which on the one hand pertain to several pillars or on the other hand concern precisely the interaction between pillars.

Integrity promotion predominates

One notable aspect of the Netherlands' NIS is that attention is primarily devoted to the positive message of promoting integrity, and rather less attention is paid to the actual fighting of corruption that involves enforcement and which has a more negative connotation. For example, there are various laws pertaining to civil servant integrity, and self-regulation in the public and private sectors is also oriented mainly towards promoting integrity. The conscious choice was made to establish the Office for the Promotion of Integrity in the Public Sector (Dutch: BIOS) to support governmental agencies with setting up and implementing their own integrity policies, while the Netherlands still has no true anti-corruption agency. Furthermore, anti-corruption initiatives are seldom developed by governmental or non-governmental organisations, or by businesses. Recent corruption scandals and the perception among the Dutch population that corruption in the Netherlands has increased does indeed justify new attention for measures that are aimed at detecting and dealing with corruption, in addition to already-existing activities concerning integrity.

Corruption investigation and prosecution is difficult in practice

The above does not diminish the fact that, within government and enforcement agencies, attention is drawn to corruption. Since the 2005 White Paper on Corruption Prevention many anti-corruption measures have been initiated and changes to the law have been pushed through. In the meantime, the fight against corruption has become part of the broader effort against financial and economic crime. Among other things, this has resulted in additional resources devoted to enforcement agencies. The picture arises that there is still room for improvement, regarding the detection and prosecution of corruption. For example, it is still

uncertain whether in the Netherlands criminal charges are actually made when one has a suspicion of possible corrupt behaviour, whether in one's own organisation or elsewhere. In addition, gathering and presenting evidence of corruption remains a difficult point, so that it is often not labelled as corruption and dealt with either under criminal or administrative law. Related to that, registration of prosecutions and court sentences involving corruption is by no means maintained centrally. In this way there is no overview of the extent of prosecutions of and sentencing for corruption in the Netherlands. This situation turns out to be even more difficult when it concerns corruption in other countries. A general picture arises here of tension between the criminal justice interest in enforcement and the economic interest in avoiding criminal justice involvement, so that the priority for investigating possible corruption by Dutch firms outside the Netherlands is rather low (although this is disputed from government side). The fact is that in the case of foreign corruption, gathering evidence is a difficult matter, and recent examples make clear that cooperation with foreign investigative agencies is regularly confronted with a level of difficulty. It goes without saying that, in the first place, companies have the responsibility to distance themselves from corrupt practices in their own country and anywhere else. It emerges from international research (based upon perceptions) that Dutch and Swiss businesses are perceived as the least corrupt in comparison with the world's 26 leading exporting countries. This does not diminish the fact that Dutch firms have also been guilty of corruption or have been confronted by it. This emerges from the Global Economic Crime Survey 2011 as well as from a number of recent examples in which Dutch companies, through an arrangement with authorities in another country, have done a fine for bribery.

Internal and independent investigative bureaus

To an increasing degree organisations, when they receive signs of integrity violations or suspicions of corruption, choose to engage internal or independent investigative bureaus to put the facts together and create clarity about the matter. This has a positive side: investigation can be carried out quickly and suspicions of integrity violations can be probed much earlier since the threshold for calling in such bureaus is lower than that for calling in the official enforcement agencies. But there is also a negative side to this: the extent of

corruption becomes more difficult to see and we learn less from it. Besides the legal rights of those who are accused are unsatisfactorily assured and, if those official enforcement agencies are ultimately called in anyway at a later stage, evidence can be lost. By addressing the case privately without reporting it or without consulting the criminal justice element of the chain that is supposed to combat corruption, that chain, becomes broken and broad insight as well as a coordinated approach is no longer possible.

Dealing with corruption via the labour law

Many possible incidents of corruption are taken care of in the labour-law sphere, that is, privately. This has certain advantages. One can start working on the matter quickly, and no lawsuits are needed. A disadvantage is that corrupt incidents thereby do not become visible and it will be difficult to draw any lessons from it. At the same time, protection for the civil servant involved is limited here. Also, in this way someone who is punished by this procedure can later simply pursue activities somewhere else. For example, when corrupt practices by a civil servant are handled via disciplinary means, the civil servant involved can go pursue his activities elsewhere, while still receiving a certificate of good behaviour. The risk arises here that corrupt behaviour, remaining unnoticed, can even spread elsewhere. A similar situation is in fact present in the private sector, where the dismissal procedure for corrupt employees is more or less common.

Trust as a key concept

Another notable aspect of the Netherlands' NIS is the key concept of 'trust', when it comes to safeguarding integrity. In general, Dutch people show a high degree of trust in each other and in their institutions. The way a pillar functions, directly influences the level of trust. This is apparent from, among other things, the decrease of confidence in the judiciary after a number of sensational judicial and legal failings. On the other hand, this trust is still implicitly conceded to be present. For example, transparency concerning the financial and business interests of a policy-maker is offered only if the Tweede Kamer specifically indicates it does not approve the specific situation. Confidence in judges' integrity is also assumed to be present, although if there are serious grounds that call the independence of a judge into question, one can make use of the right of challenge. This trust, as is also made clear from analysis of the NIS'

foundations, is therefore essential for safeguarding integrity. At the same time, there needs to be a right balance between trust and control. In the absence of effective control, even the slightest incident can damage the level of trust. So it is all the more important to note that within different pillars concerns have arisen about the consequences of the economic crisis and the resulting financial retrenchment. On the one hand, here a distinction needs to be made between worries about being able to adequately carry out their particular tasks as a result of that retrenchment, as in the case of the Algemene Rekenkamer and the judiciary. On the other hand, the trust that Dutch people have in their institutions can also come under pressure now that crisis and financial retrenchment have become apparent and are being felt in people's daily lives.

Anchoring integrity in times of economic crisis

As these hard times continue, the signals that there will also be cut-backs regarding integrity form a point of concern in themselves. In recent years, in the Netherlands, there has been substantial investment in the various pillars with the purpose of developing and implementing integrity policies. Initially mainly by means of 'hard controls' (laws and regulations), but later attention was also being paid to 'soft controls' (culture, awareness, mutual supervision). What has come forward from our research is that the state of affairs with regard to this safeguarding of integrity for each individual pillar – but also within the organisations belonging to each pillar – shows great differences. However, in general it is true for all pillars that there still is no true anchoring of integrity policy. Only to a limited degree does it appear that people employed within the pillars call each other out for abuse or actively discuss integrity dilemmas. The picture that seems to arise here, of citizens in the Netherlands, is that they are finding it difficult to speak openly about their own or other people's integrity and to call each other out about any potentially unethical behaviour. The pillars themselves do challenge each other's unethical conduct. However, now that most of them are starting to feel the effects of the economic crisis, there are also signals that organisations are no longer affording integrity the highest priority. From here it emerges that integrity is often still regarded as 'something extra' and not as a basic requirement for an organisation's good functioning. It is clear that such an attitude brings along great risks for ensuring integrity.

Risks to the media's watchdog function

Reference was made earlier to the great number of watchdogs making up the Netherlands' NIS, all of which in their own way keep an eye on other pillars and so detect and publicise possible abuse or integrity violations within the pillars. The National Ombudsman, the media and social organisations, to take three examples, each in their own way play an important and effective role in monitoring the behaviour of governmental and private organisations. They thus form an important (external) correction mechanism within the NIS by detecting unethical conduct in other institutions. However, some risk still lies in the fact that these watchdogs devote relatively little attention to their own integrity. Only to a limited degree do these organisations have integrity policies of their own, and in practise, these pillars take little responsibility to report about integrity. This brings risks for their own safeguarding of integrity, but also shows the lack of awareness regarding the performance of an example role, which they are supposed to fulfil.

The same observation can be made about the Tweede Kamer. As the highest organ within the democracy, it is important that it shows willingness to give a high priority to its own integrity.

Side-functions: A plus and also a risk

A standard part of integrity policy within the pillars making up public administration is the mandatory registration of outside activities. The thought here is to make it evident, whether there is possible conflict-of-interest when someone fulfils several functions. For several pillars it is true that people employed within the pillar carry out their work independently, without losing sight of the community. Until recently, then, outside activities were seen as a way to stay in touch with what was going on in a certain community. For example, this was true for judges, who had previously been scolded for hiding out too much in their 'ivory tower'. Later, the conviction arose that outside activities side-functions could form a risk to the safeguarding of integrity. From the research it emerged that people routinely failed to report outside activities (for example, by legislative deputies and judges), which then affected the trust in these pillars, apart from the question whether or not there was in fact any actual conflict-of-interest involved. On the other hand, others employed within the pillars, out of fear for

seeming to have a conflict-of-interest, have ceased certain outside activities while both results can form a risk for the safeguarding of integrity.

Favours for friends rather than financial gain

With regard to the regulations concerning accepting official gifts, it can be noted that people employed within the pillars usually are well aware of those rules. The question is rather whether these actually serve best to ensure integrity. From empirical research into integrity violations it has usually turned out that conflicts-of-interest more often arise via one's business and personal contacts, and how one deals with those. Here financial advantage is usually not the motivation, it rather is a matter of services performed for friends for which one utilises the power with which one has been entrusted. By concentrating exclusively on ensuring integrity via registration of outside activities, it often neglects the attention to the question of how to deal ethically with one's own network and with requests for favours arising from that network.

Transparency: Not too much, not too little

Within many pillars transparency is lacking in one way or another. This research has shown that some sort of insight into a pillar's set-up, its way of working, its decision-making is important in order to ensure integrity since it enables the detection of abuse. But an excess of transparency can also degrade citizens' trust in the respective pillar. It therefore remains necessary to find the right balance between cases that should be made public and those that do not pertain to a larger interest for large scale publicity to be necessary. It is thus essential for the adequate safeguarding of integrity that appointment procedures to public administration become more transparent. At the same time it is of great importance that government documents, such as legislative proposals, are freely accessible. In the Netherlands the way of archiving official documents is a point of concern, in the same way as the previously-mentioned methods for collecting information in accordance with the Openness of Government Act.

Lack of legislation

Despite the fact that since 2005 there has been a steady stream of new legislation aimed at preventing corruption and protecting integrity, there is still a number of areas where this legislation is still

inadequate, so that the safeguarding of integrity within several pillars and within the NIS as a whole remains limited. For example, current legislation offers no adequate protection for whistle-blowers. So that there is great risk that, when there is suspicion of abuse, one will refrain from reporting it since this can have substantial negative personal consequences. A number of prominent whistle-blower cases have demonstrated that such consequences, both for one's work and one's private life, can indeed be considerable. The current whistle-blower regulations do little to detract from this impression. This point of criticism applies to all pillars within the NIS.

A second example of faulty legislation has to do with financing political parties. The proposed bill regarding this financing only relates to political parties that are represented in Parliament (the Eerste Kamer or the Tweede Kamer), and feature relatively high threshold-levels for the reporting of donations. In addition, supervision is not vested in any independent agency. This limited regulation of political party financing forms a considerable risk for ensuring the integrity of political parties and thereby for honest political decision-making.

A third faulty statute, concerning the safeguarding of integrity of several pillars, is the Openness of Government Act. In practise, the right to information that it propounds, turns out not to be realised, for government agencies often fail to react, or do so with considerable delay, to requests from journalists or citizens. There has been much criticism regarding this point from the press and the Ombudsman. It is still unclear whether the Executive or the Tweede Kamer intends to work on this.

A fourth point of concern in the area of legislation is the lack of rules for lobbyists. Lobbyists have no obligation to register and can effortlessly gain access to government buildings and to governing structures. This forms a risk to the independence of the Legislature, Executive and Public Sector pillars, and there is simply no insight as to either the scale or the extent of lobbyists' influence upon political decision-making.

Business and anti-corruption legislation

Dutch anti-corruption legislation is to be found in the articles of the criminal code. The problem is that here corruption by civil servants is central. Corruption among private parties is not punished in the

Netherlands. It's true that bribing persons who are not civil servants are punishable, but then it must be a matter of work-related non-civil-servant bribery. In addition, the bribed person must keep silent about it before his employer. This is insufficient, especially compared to other European countries where corruption in the private sector is combated. This seems to be justified as the last Corruption Perception Report from Transparency International has demonstrated that the size of corruption in the private sector is almost equal to the corruption by civil servants. Codes of conduct and compliance regulation have to do mainly with exchange-listed enterprises and financial institutions, but not small- or middle-sized firms. This makes the business world especially vulnerable to integrity violations.

Beyond corruption strictly-defined

From our research it emerged that certain sectors, such as the construction and real-estate sector, make more appearance in criminal cases having to do with corruption. Also recent cases of corruption have taken place in these sectors. On the other hand, it turns out that various pillars have their own forms of integrity violations. Often these violations cannot be categorised as corruption in the strict sense, such as in the case of inaccurate reporting by journalists, or the use of public money by a former minister to put out a newspaper, which can be regarded as a campaign activity.

These examples indicate that in some cases it is difficult to make a clear judgment as to right or wrong, or ethical versus unethical. Here it is important to look into which risks are specific to the separate pillars and/or sectors so that attention can be devoted to raising integrity awareness.

Anti-corruption authority

In the Netherlands there is no anti-corruption authority. BIOS fulfils only a facilitating role by supporting government agencies in forming their integrity policies. An agency with a preventative as well as an educational and suppressive approach towards corruption is still lacking and would be a solution for what is now an abuse-reporting system that is too fragmented. For now, as already discussed, the current whistle-blower regulations do not work, and the Commission for Government Integrity (Dutch: CIO) fails to provide adequate possibilities for investigation into abuses. Moreover, this only concerns reports of abuse

at the level of national government, so that for example no reporting is possible relating to a water authority. Persons who want to report abuse in most cases should do so internally at first, before the CIO enters the picture.

In addition, abuse can be reported via an anonymous line (Dutch: Meld Misdaad Anoniem) or by making contact with enforcement agencies. There is no comparable means of reporting for people in the private sector. This tangle of agencies makes much uncertainty over the way abuses can be reported.

And finally: Integrity and the ‘polder model’

The Netherlands is a country that strives for consensus and the creation of broad-based support – the so-called ‘polder model’. At all levels room is provided to individuals and collectives to look after their own interests. The Netherlands is also characterised by the fact that citizens actively wear several different ‘hats’ and fulfil various roles as they contribute to their society. Informal networks thereby form the cement for that society. All this is seen as one of the key strengths of the Netherlands’ as a society. But as is also always the case here, too much good can lead to pitfalls. This is the case when tending after one’s interests withdraws behind the curtain, as is the case with lobbying or with the financing of political parties. And also when those informal contacts result in using the public power with which one has been entrusted for favouring friends, acquaintances and family in some way. As soon as there is talk of misuse of (public)

competencies for the sake of financial advantage, one can speak of corruption. 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’. Here it should be taken into consideration that more rules do not always lead to more ethical behaviour. If one really wants to anchor integrity within the pillars of the NIS, then one should above all devote attention to the continual development of a moral compass by individuals, and the discussion of moral dilemmas and calling each other out over unethical conduct should become customary within Dutch society. This should not only be done with messages from the top but also with measures to make decision makers themselves at the top more accountable to each other. Only when one’s own integrity is no longer a taboo, a future proof NIS can emerge.

This country-study is intended as the starting-point for further efforts to curb corruption and promote integrity in the Netherlands. Now that the strong and weaker points of the Netherlands’ NIS are apparent, it is time to address those weaker points. The starting position in the form of what is already a fairly strong Netherlands National Integrity System should be encouraging – there is no need to start from zero, rather it is more a matter of ‘overdue maintenance’.

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Aanbestedingsreglement Werken 2005	Beleidsplan Integriteit Bureau Nationale ombudsman 2010 (internal document)
Aanbevelingslijst nieuw lid Algemene Rekenkamer, via http://www.rekenkamer.nl/Nieuws/Persberichten/2011/01/Aanbevelingslijst_nieuw_lid_Algemene_Rekenkamer	Besluit aanbestedingsregels voor overheidsopdrachten
Aanbeveling wrakingsprotocol gerechtshoven en rechtbanken 2006	Besluit algemene rechtspositie politie.
Aanwijzing inzake externe contacten van rijksambtenaren and Leidraad voor de Toepassing van de Aanwijzingen Inzake Externe Contacten van Rijksambtenaren bij Functionele Contacten met de Staten-Generaal en Individuele Kamerleden.	Besluit Financiering Rechtspraak 2005.
Aanwijzing opsporing en vervolging ambtelijke corruptie in Nederland (2011A014)	Besluit houdende de vervangingsregeling in geval van tijdelijke afwezigheid van een minister 14 th of October 2010 Stc. 2010, nr. 16543, article 5.
Aanwijzing opsporing en vervolging ambtelijke corruptie in het buitenland (2011A015)	Besluit van 15 december 2009, houdende een regeling voor het melden van een vermoeden van een misstand bij de sectoren Rijk en Politie (Besluit melden vermoeden van misstand bij Rijk en Politie). Staatsblad van het Koninkrijk der Nederlanden, 2009, 572, 1–26.
Aanwijzing taken en inzet rijksrecherche (2010A033)	Besluit van 15 mei 1990, houdende regels met betrekking tot aanstelling, schorsing en ontslag van de tot het bureau van de Nationale ombudsman behorende personen.
Aanwijzingen voor de regelgeving Staatscourant 2005, 87	Bevordering integriteitsbeoordelingen door het openbaar bestuur (BIBOB).
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Aanwijzing voorlichting opsporing en vervolging (2007A017)	Besluit rechtspositie rechterlijke ambtenaren.
Advies Kiesraad n.a.v. gemeenteraadsverkiezingen en Tweede Kamerverkiezing 2010, 22 September 2010	Bijlage bij het beleid ter zake van financieel-economische criminaliteit
Algemeen Rijksambtenarenreglement	Brief van het ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2 september 2009. Kabinetsstandpunt inzake de evaluatie van de WOPT
Algemene aanwijzingen inzake aangelegenheden van de ministerraad en onderraden	Brief van de staatssecretaris van Onderwijs, Cultuur en Wetenschap en de minister van Binnenlandse Zaken en Koninkrijksrelaties 'Selectieaanpak archieven' 17 December 2010
Ambtenarenwet	Brief ministerie van Binnenlandse Zaken en Koninkrijksrelaties Uitvoeringsprogramma Compacte Rijksdienst 14 th of Februari 2011
Archiefwet 1995	
Beheersreglement Kiesraad	
Bekendmakingswet	



Brief van de staatssecretaris van Onderwijs, Cultuur en Wetenschap en de minister van Binnenlandse Zaken en Koninkrijksrelaties 'Arhiefvisie' 30 th of June 2011 (310040 nr.1)	Guidelines for Image and/or Sound Recordings on the Tweede Kamer Premises
Brief minister van Veiligheid en Justitie 'Besluit herijking BVS' of the 24 th of March 2011.	Handelingen 2009–2010, nr. 49, Tweede Kamer, pag. 4599–4602
Brief van de minister van Veiligheid en Justitie 'Versterking professionele weerbaarheid politie' from the 27 th of June 2011	Handleiding gevoelige zaken (2007H003)
Brief van de minister van Veiligheid en Justitie bij Vaststelling begroting Ministerie van Justitie (VI) voor het jaar 2011 Kamerstukken 32500 VI nr. 64	Handleiding klachtbehandeling OM
Brief van de minister van Veiligheid en Justitie bij Vaststelling begroting Ministerie van Justitie (VI) voor het jaar 2011 Kamerstukken 32500 VI nr. 64	Hoge Raad der Nederlanden verslag over 2009–2010
Brief van de minister van Binnenlandse Zaken en Koninkrijksrelaties van 13 december 2011 over 'informatie over onderzoek RTL Nieuws naar integriteitsschendingen'	Initiatiefwetsvoorstel Subsidiering Politieke Partijen. Retrieved from the Tweede Kamer Website: http://tweedekamer.groenlinks.nl/files/Initiatiefwetsvoorstel%20Subsidi%C3%ABring%20Politieke%20Partijen.pdf
Code Goed Bestuur product- en bedrijfsschappen van maart 2007. Een uitgave van de gezamenlijke product- en bedrijfsschappen	Jaarbericht Openbaar Ministerie Rijksrecherche 2008
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European Convention on the Human Rights	Jaarverslag en slotwet van de Overige Hoge Colleges van Staat en Kabinetten 2010 Nr. 1 (IIB), presented the 18 th of May 2011
Freedom and Responsibility Coalition Agreement VVD–CDA	Kaderwet zelfstandige bestuursorganen
Gedragcode OM	Kamerstukken 2001/2002, 26 956 nr.7 (Beleidsnota Rampenbestrijding 2000 – 2004)
Gedragcode Rechtspraak	Kamerstukken 2010/2011, 29 350 nr.9 (ICT bij de politie)
Gedragregels voor Lobbyisten	Kamerstukken 2010/2011, 32710 IIB nr.2 (Rapport bij het jaarverslag 2010 van de overige hoge colleges van staat en kabinetten)
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Grondwet	Kamerstukken 2009/2010, 29 628 nr.175 (Politie)
	Kamerstukken II 2006–2007, 30800 VII, nr.25
	Kamerstukken 2007/2008, 29 911 nr.10 (Bestrijding georganiseerde criminaliteit)



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Kamerstukken 2006/2007, 30 374 nr.6 (Corruptiepreventie)	Kamerstukken 2010/2011, 32 758 nr.2 (Bezuinigingsmonitor 2011)
Kamerstukken 2010/2011, 30 880 nr.10 (Vaststelling van een nieuwe Politiewet (Politiewet 200))	Kamerstukken 2010/2011, 32 780 III nr.1 (Begrotingsstaten Ministerie van Algemene Zaken en het Kabinet der Koningin)
Kamerstukken 2007/2008, 30 990 nr.10 (Verslag van de Nationale ombudsman over 2006)	Kamerstukken 2010/2011, Aanhangsel van de Handelingen 2717
Kamerstukken 2008/2009, 31 500 III nr.8 and nr.14 (Realisatie Nationaal Ruimtelijk Beleid)	Kamerstukken 2010/2011, Aanhangsel van de Handelingen 1826
Kamerstukken 2008/2009, 31 531 nr.1 (Wetsvoorstel wijzigingen Mededingingswet)	Kamerstukken I, 32 500 VI
Kamerstukken 2008/2009, 31 700 VI nr.10 (Vaststelling begrotingsstaten Ministerie van Justitie voor 2009)	Kamerstukken 1999/2000 and 2000/2011, 26 806 (Integriteit openbaar bestuur)
Kamerstukken 2009/2010, 32 123 VI nr.2 (Vaststelling begrotingsstaten Ministerie van Justitie voor 2010)	Kamerstukken 2005/2006 and 2006/2007, 30 374 nr.2. and nr.6 (Corruptiepreventie)
Kamerstukken 2009/2010, 32 334 nr.1 (Wetsvoorstel verandering Grondwet)	Kamerstukken 2009-2010, 32 307, nr. 1 and nr. 2 (Informatiehuishouding door het Rijk)
Kamerstukken 32 500 nr.8	Kamerstukken 2010/2011, 32 752 nr.2 (Wet financiering politieke partijen)
Kamerstukken 32 500 II nr. 14	Kamerstukken 2010/2011, 32 752 nr.6 (Wet financiering politieke partijen)
Kamerstuk II, 32500 VII, nr. 105	Kamerstukken 2010/2011, 29 515 nr.330 (Kabinetsplan aanpak administratieve lasten)
Kamerstukken 2010/2011, 32500 XIII (Spoeddebat over het mogelijk inzetten van ambtenaren voor de CDA-campagne)	Kamerstukken 2010/2011, 32 500 VII nr.99 (Begrotingsstaten Ministerie van Binnenlandse zaken en Koninkrijksrelaties voor 2011)
Kamerstukken 2010/2011, 32501 nr. 2 (Trendnota Arbeidszaken Overheid 2011)	Kieswet
Kamerstukken 2010/2011, 32 550 nr.1 (Wetsvoorstel wijziging Ambtenarenwet)	Klachtenregeling van het parket van de Procureur-Generaal bij de Hoge Raad der Nederlanden
Kamerstukken 2010/2011, 32 550 nr.4 (Wetsvoorstel wijziging Ambtenarenwet)	Landelijk modelformulier Registratie integriteitsschendingen
Kamerstukken 2010/2011, 32 550 nr.7 (Wetsvoorstel wijziging Ambtenarenwet)	'Leidraad onpartijdigheid van de rechter' via www.nvvr.org
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Wetsvoorstel Regels inzake de subsidiëring en het toezicht op de financiën van politieke partijen (Wet financiering politieke partijen) (32752)

Wetsvoorstel Wijziging van de Wet subsidiëring politieke partijen met het oog op verlaging van de subsidies (31906)

Wet van 27 januari 2011 inzake wijziging van de begrotingsstaat van de Raad van State, de Algemene Rekenkamer, de Nationale ombudsman, de Kanselarij der Nederlandse Orden, het kabinet van de Gouverneur van de Nederlandse Antillen en het kabinet van de Gouverneur van Aruba (IIB) voor het jaar 2010. (wijziging samenhangende met de Najaarsnota). The marginal deviation in the final act still has to be checked.

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ANNEX I

SUMMARY TABLES OF NIS FOUNDATIONS AND PILLARS¹⁹¹³

FOUNDATIONS

Political-institutional foundations	Score: 75
Socio-political foundations	Score: 75
Socio-economic foundations	Score: 100
Socio-cultural foundations	Score: 75

PILLARS

6.1 LEGISLATURE: Overall Pillar Score: 62/100 ¹⁹¹⁴			
	Indicator	Law	Practice
Capacity	Resources	100	50
	Independence	75	50
Governance	Transparency	100	50
	Accountability	50	75
	Integrity	75	50
Role	Executive Oversight	50	
	Legal Reforms	50	

6.2 EXECUTIVE: Overall Pillar Score: 69/100			
	Indicator	Law	Practice
Capacity	Resources	NA	100
	Independence	75	75
Governance	Transparency	50	50
	Accountability	100	75
	Integrity	50	50
Role	Public Sector Management (law and practice)	75	
	Legal System	50	

6.3 JUDICIARY: Overall Pillar Score: 78/100			
	Indicator	Law	Practice
Capacity	Resources	100	75
	Independence	100	75
Governance	Transparency	50	75
	Accountability	100	75
	Integrity	75	50
Role	Executive Oversight	75	
	Corruption Prosecution	75	

6.4 PUBLIC SECTOR: Overall Pillar Score: 61/100			
	Indicator	Law	Practice
Capacity	Resources	NA	75
	Independence	75	50
Governance	Transparency	75	50
	Accountability	75	50
	Integrity	75	75
Role	Public Education	50	
	Cooperate with public institutions, CSOs and private agencies in preventing/addressing corruption	25	
	Reduce corruption risks by safeguarding integrity in public procurement	75	

6.5 LAW ENFORCEMENT AGENCIES: Overall Pillar Score: 64/100			
	Indicator	Law	Practice
Capacity	Resources	NA	50
	Independence	75	75
Governance	Transparency	75	50
	Accountability	100	100
	Integrity	75	50
Role	Corruption Prosecution	50	

¹⁹¹³ Note: this NIS study is foremost a qualitative investigation, the points given for each indicator are indicative.

¹⁹¹⁴ The overall pillar score is a simple average of the scores of the three dimensions capacity, governance and role. The dimension scores are simple averages of the respective indicator scores.

6.6 ELECTORAL MANAGEMENT BODY:**Overall Pillar Score: 65/100**

	Indicator	Law	Practice
Capacity	Resources	NA	100
	Independence	50	75
Governance	Transparency	75	75
	Accountability	75	75
	Integrity	50	75
Role	Campaign regulation	25	
	Election Administration	75	

6.7 OMBUDSMAN: Overall Pillar Score: 89/100

	Indicator	Law	Practice
Capacity	Resources	NA	100
	Independence	100	100
Governance	Transparency	50	100
	Accountability	50	75
	Integrity	50	75
Role	Investigation	100	
	Promoting good practice	100	

6.8 SUPREME AUDIT INSTITUTION:**Overall Pillar Score: 75/100**

	Indicator	Law	Practice
Capacity	Resources	NA	75
	Independence	75	75
Governance	Transparency	75	75
	Accountability	75	100
	Integrity	75	100
Role	Effective financial audits	75	
	Detecting and sanctioning misbehavior	50	
	Improving financial management	75	

6.10 POLITICAL PARTIES:**Overall Pillar Score: 61/100**

	Indicator	Law	Practice
Capacity	Resources	100	75
	Independence	100	75
Governance	Transparency	25	50
	Accountability	25	50
	Integrity	75	50
Role	Interest aggregation and representation	75	
	Anti-corruption commitment	25	

6.11 MEDIA: Overall Pillar Score: 71/100

	Indicator	Law	Practice
Capacity	Resources	100	75
	Independence	100	75
Governance	Transparency	50	50
	Accountability	75	75
	Integrity Mechanisms	25	25
Role	Investigate and expose cases of corruption practice	75	
	Inform public on corruption and its impact	75	
	Inform public on governance issues	75	

6.12 CIVIL SOCIETY: Overall Pillar Score: 65/100

	Indicator	Law	Practice
Capacity	Resources	100	100
	Independence	100	75
Governance	Transparency	50	
	Accountability	50	
	Integrity	50	
Role	Hold government accountable	75	
	Reform policy	25	

6.9 ANTI-CORRUPTION AGENCIES

No scores have been given to this pillar because there is no anti-corruption agency in the Netherlands.

6.13 BUSINESS: Overall Pillar Score: 66/100

	Indicator	Law	Practice
Capacity	Resources	75	75
	Independence	100	75
Governance	Transparency	100	50
	Accountability	100	50
	Integrity	50	50
Role	Anti-Corruption Policy Engagement	50	
	Support for/ Engagement with Civil Society	50	

ANNEX II

NIS METHODOLOGY

Each of the 12 institutions present in the Netherlands is assessed along three dimensions that are essential to its ability to prevent corruption. In short, each dimension is measured by a common set of indicators. The assessment examines both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting discrepancies between formal provisions and reality in practice.

Dimension	Indicators (<i>law and practice</i>)
1. Capacity	Resources Independence
2. Governance	Transparency Accountability Integrity
3. Role within governance system	Pillar-specific indicators

1. Capacity Dimension

As a precondition for its own integrity and for its role in promoting the integrity of the system as a whole, a pillar has to possess some basic capacities. These capacities are structural and human as well as financial, and are assessed via two indicators:

- a) Resources indicator: Assesses the extent to which the respective pillar possesses the appropriate human, financial and other resources to function with integrity and fulfil its role as a pillar of the NIS. The availability of sufficient resources is an important indicator of a pillar that is free of corruption and other integrity violations. The quality of tasks carried out by the pillar is dependent on, among other things, available resources and salaries. Sufficient budget is required to carry out the tasks assigned to the pillar. If the wages are adequate, talented people will be attracted to work for the pillar. Additionally, adequate salaries minimise the incentive for those working for the pillar to misuse the power entrusted to them to ensure they receive enough money to make a living.
- b) Independence indicator: Assesses the extent to which the respective pillar is independent, i.e. is

autonomous in its activities and decisions from external actors. The extent to which the pillar is free from external interference in its activities is considered to be an important indicator of the extent to which the pillar can carry out its tasks autonomously on the one hand while ensuring adequate 'checks and balances' on the other hand. A person working for the pillar is to serve the organisation's and/or general interest and not to be unduly influenced by personal or third parties' interests. If external interests become internalised, this forms a risk for the independence of the pillar, which then no longer serves the organisation's and/or general interest, thereby creating a threat to integrity.

2. Governance Dimension

A pillar needs internal regulations and practices, which are seen as essential to preventing the institution from engaging in corruption. The governance dimension is assessed via three indicators:

- a) Transparency indicator: Assesses the extent to which the governance of the respective pillar is characterized by transparency, i.e. the pillar has in place appropriate policies and procedures regarding disclosure and access to information. If a pillar is transparent about its activities, it becomes possible to obtain, monitor and scrutinise relevant information about the activities of the pillar to see whether it performs in a fair and impartial way. Provisions aimed at disclosing information about (for example) appointment procedures or declarations allow the public and other pillars to monitor the way money is spent and whether any undue influences impact the activities. The extent to which legal provisions oblige the pillar to disclose information is an indicator of the extent to which integrity is safeguarded. This indicator will be scored according to the availability of formal provisions, but also according to the extent to which the public is able to obtain relevant information from the pillar in practice.
- b) Accountability indicator: Seeks to assess to what extent the pillar accounts for its actions and it can be held accountable by the public and/or other pillars. This is an important indicator of integrity because it calls upon individuals working for the pillar to take

responsibility for their own actions. This is of particular importance in the case of integrity violations. The indicator is assessed according to the provisions in place which ensure that the pillar and those working for it have to report and be answerable for their actions.

c) Integrity indicator: Assesses the extent to which integrity provisions are in place and are implemented. General indicators for integrity are resources, independence, transparency and accountability. Although these indicators give an idea of the safeguarding of integrity within the pillar, they do this in a somewhat indirect way. A fifth indicator for integrity of a pillar is the presence of provisions which are explicitly designed to ensure the integrity of the pillar. Among others, these provisions are codes of conduct, whistle-blower regulations and rules on conflict-of-interest, gifts and hospitality and post-employment restrictions.

3. Role Dimension

This dimension assesses the extent to which the respective pillar fulfils its roles and responsibilities with regard to promoting the integrity of the entire institutional system. Naturally, this means that the role indicators are pillar-specific, depending on what functions each pillar is expected to play in contributing to the overall integrity of the system.

NIS Methodology

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather, it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between institutions to understand why some are more robust than others and how they influence each other. The NIS maintains that weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars also helps to prioritize areas for reform. In order to take account of important contextual factors, the NIS evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions, the foundations, on which these pillars are based (see *Chapter: Foundations of the National Integrity System*).

The NIS assessment is a qualitative research tool based on a combination of desk research, legal documents,

in-depth interviews and secondary sources (reports, dissertations). A process of engagement with key stakeholders such as the advisory groups ensures that the findings are as relevant and accurate as possible before the assessment is published. The assessment is guided by a set of 'indicator score sheets' developed by the TI Secretariat. These sheets consist of a 'scoring question' for each indicator, supported by further guiding questions and scoring guidelines for the minimum, mid-point and maximum scores. For example:

Sample indicator score sheet: Legislature Capacity – Independence (by law)	
Scoring question	To what extent is the legislature independent and free from subordination to external actors by law?
Guiding questions	Can the legislature be dismissed? If yes, under which circumstances? Can the legislature recall itself outside normal session if circumstances so require? Does the legislature control its own agenda? Does it control the appointment/election of the Speaker and the appointments to committees? Can the legislature determine its own timetable? Can the legislature appoint its own technical staff? Do the police require special permission to enter the legislature?
Scoring guidelines	
Minimum score (0)	There are no laws which seek to ensure the independence of the legislature.
25	
Mid-point score (50)	While a number of laws/provisions exist, they do not cover all aspects of legislative independence and/or some provisions contain loopholes.
75	
Maximum score (100)	There are comprehensive laws seeking to ensure the independence of the legislature.

The guiding questions for each indicator were developed by examining international best practices, employing existing assessment tools for the respective pillar as well as using the TI movement's own experience, and by seeking input from (international) experts on the respective institution.

To answer the guiding questions, the lead researcher relied on three main sources of information: national legislation, secondary reports and research, and interviews with key experts. Secondary sources included trusted reports by national civil society organisations, international organisations, governmental bodies, think-tanks and academia. A minimum of two key informants were interviewed for each pillar – at least one representing the institution under assessment and one expert external to it. In addition to the minimum number of interviewees, more key informants were interviewed for this report who had operational experience, i.e. people 'in the field'. Also, professionals with expertise in more than one pillar were interviewed in order to get a cross-pillar view. A full list of interviewees is contained in Annex III.

The scoring system

Based on the collected qualitative evidence, the second step consisted of scoring these indicators on a scale including five possible values– 0, 25, 50, 75 and 100. While the NIS is a qualitative assessment, these numerical scores are assigned in order to summarise the information and to help in highlighting key weaknesses and strengths of the integrity system.

Thus the scores are a way to see all 12 institutions, each assessed according to 12 or more indicators, as if from an aerial viewpoint. They prevent the reader from getting lost in the details and promote reflection on the system as a whole, rather than focussing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score of the pillar, which provides a general description of their overall robustness.

Very strong	81 – 100
Strong	61 – 80
Moderate	41 – 60
Weak	21 – 40
Very weak	0 – 20

All the information on the NIS–methodology (including all indicator questions) can be found in the Toolkit and corresponding Annexes at: www.transparency.org/policy_research/nis/methodology

Consultative approach and plausibility of findings

The NIS assessment process in the Netherlands had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate valid evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives. This consultative approach had three main parts: a high-level Research Advisory Group, a high level Advocacy Advisory Group, and a National Stakeholder Workshop. The members of the Research Advisory Group met four times (on 10 March 2011, 30 June 2011, 6 September 2011, and 7 October 2011). At each meeting the draft pillar reports were critically reviewed and extensive feedback was given to the lead researcher. The fourth meeting was entirely dedicated to the discussion of the key findings of the draft report and the indicator scores as assigned by the researchers. The meeting resulted in a number of further adjustments to scores and evidence.

The Advocacy Advisory Group was installed for advocacy purposes. This advisory group continues to assist with the outreach of the project; with strengthened legitimacy and buy-in of the anti-corruption community into the NIS process; with assisting in formulating recommendations based on the findings of the assessment; and with advising the national chapter on the main aspects of the project implementation. The members of the Advocacy Advisory Group met on 25 October 2011. The advisory group concluded at the first meeting that the assessment was a good starting point for advocacy-based actions and activities, i.e. further pillar-specific studies and local government assessments. The Advocacy Advisory Group stated that each pillar should ideally be responsible for improving its own integrity system. In future meetings further advocacy steps for policy initiatives and reforms will be formulated and more stakeholder support sought. All members of both Advisory Groups joined in a personal capacity.

On the 4 November 2011 TI-NL presented the methodology and emerging findings of the assessment at a National Stakeholder Workshop. The draft report was available in advance to participants and the workshop drew significant attendance from representatives of public and key governance institutions. The second half of the workshop was dedicated to participants discussing the findings and recommendations in the draft report.

Finally, the full report has been reviewed by the board of Transparency International Netherlands. An external reviewer, Dr. Alex Straathof, Lector Management of Cultural Change at the Amsterdam University of Applied Sciences, has reviewed the full report and provided comments and feedback

The NIS-assessments using the new methodology will be available at: http://transparency.org/policy_research/nis/

NIS Research Advisory Group	
Prof. dr. Ingrid van Biezen	Professor of Comparative Politics, Leiden University
Prof. mr. dr. Petrus van Duyne	Emeritus Professor specialised in researching organised crime, Tilburg University
Mr. Erik Hoenderkamp	Researcher and advisor at the National Police Internal Investigations Department
Prof. dr. Elisabeth Lissenberg	Emerita Professor in Criminology, University of Amsterdam
Prof. dr. ir. Theo de Vries	Professor 'Future of the health sector', University of Twente

NIS Advocacy Advisory Group	
Ir. Caecilia Kroon	Independent Advisor
Huub Elzerman	Former chair of the Dutch Association of Journalists
Prof. dr. Louise Gunning-Schepers	Chairwoman of the Health Council of The Netherlands
Elsemieke Havenga	Owner of PR-company 'Elsemieke Havenga Communicatie'
Mr. Albert Röell	CEO Kas Bank
Dennis Wiersma	Chair of the Dutch Youth Federation of Employees

ANNEX III

THE LIST OF INTERVIEWEES

- Marc-Jan Ahne, Alderman at the city of Deventer, interview held the 20th of June 2011.
- Hugo Arlman, Freelance journalist, interview held the 9th of December 2011.
- Melle Bakker, Secretary-Director of the Electoral Council, interview held the 20th of April 2011.
- Petra Borst, Senior Legal Officer at the National Public Prosecutor's Office, interview held the 6th of June 2011, a second meeting took place the 22nd of December 2011.
- Wouter Bos, Partner and Head the consultancy group's public sector and health service division of KPMG, and former Minister of Finance and Vice Prime Minister, interview held the 30th of August 2011.
- Mark Bovens, Professor of Public Administration and Research Director at the Utrecht School of Governance, interview held the 7th of June 2011.
- Alex Brenninkmeijer, National Ombudsman of the Netherlands, interview held the 18th of April 2011.
- Ferd Crone, Mayor city of Leeuwarden and former MP for the political party PvdA, interview held the 17th of March 2011.
- Ernest Groener, Judge at the Court of First Instance of Almelo (sector civil and criminal), interview held the 11th of May 2011.
- Jos Schipper, Information Detective at the Rijksrecherche (National Police Internal Investigations Department), interview held the 21st of April 2011.
- Anton Jansen, Partner en senior consultant at EPPA Politiek en Lobby Consultants, interview held the 19th of May 2011.
- Jon Hermans – Vloedbeld, Mayor city of Almelo, interview held the 13th of May 2011.
- Elisabeth Lissenberg, Professor (emerita) of Criminology at the School of Law University of Amsterdam, interview held the 30th of May 2011.
- Stephan Jansen, Head of Department for Water Treatment, international consultancy and engineering firm DHV, interview held the 5th of April 2011.
- Alain Hoekstra, Coordinating Policy Advisor & Researcher at National Office for Promoting Ethics & Integrity in the Public Sector – CAOP/BIOS, interview held the 24th of May 2011.
- Henk Kummeling, Chairman of the Electoral Council, interview held the 20th of April 2011.
- Henk Moorman, Judge at the Court of First Instance of Zwolle-Lelystad, interview held the 13th of May 2011.
- Ellen Nauta– van Moorsel, Director at the Bureau of the political party CDA, interview held the 1st of March 2012.
- Eduard Nazarski, Director of Amnesty International Netherlands, interview held the 1st of June 2011.
- Remco Nehmelman, Senior lecturer Constitutional and Administrative Law University of Utrecht, interview held the 17th of May 2011.
- J. Nieuwenhuis, Councillor at the regional water authority of Zuiderzeeland, interview held the 25th of May 2011.
- Henk Nijhof, Chair of the Board of the political party GroenLinks, interview held on the 21st of June 2011.

- Philip Langbroek, Professor of Justice Administration (and court system) at the Department of Law, Utrecht University, interview held the 31st of May 2011.
- Alexander Rinnooy Kan, President of the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.
- Ruth Peetoom, Chair of the Board of the political party CDA, interview held the 1st of March 2012.
- Peter Schimmel, Partner, Grant Thornton Forensic & Investigation Services, interview held the 6th of May 2011.
- Matthijs Schüssler, Legal Officer at the Bureau of the political party CDA, interview held the 1st of March 2012.
- Stephan Sjouke, Head International Affairs Bureau National Ombudsman, interview held the 18th of April 2011.
- Joost Sneller, Policy coordinator of parliamentary grouping D66, interview held the 21st of April 2011.
- Margo Smit, Director of the Association of Investigative Journalists, interview held the 31st of May 2011.
- Marinus Snijder, Chair of the Ombudscommission of the Province of Overijssel, interview held the 9th of June 2011.
- Suzanne Verheij, Policy Advisor at National Office for Promoting Ethics & Integrity in the Public Sector – CAOP/BIOS, interview held the 24th of May 2011.
- Ivo Thomassen, Senior Policy Advisor Directorate of Public Administration at the Social and Economic Council of the Netherlands (SER), interview held the 15th of March 2011.
- Gert Vrieze, Judge at the Court of First Instance Zutphen and Project coordinator for integrity of the Judiciary and former President of the Court of First Instance Zutphen, interview held the 15th of June 2011.
- Guusje ter Horst, President of the Netherlands Association of Universities of Applied Sciences (HBO-raad), member of the Senate for the political party PvdA, and former Minister of the Interior and Kingdom Relations, interview held the 2nd of May 2011.
- Frans Jozef van der Vaart, Lawyer/Partner at Kienhuis Hoving, interview held the 28th of April 2011.
- Ronald van Raak, MP for the political party SP, interview held the 31st of August 2011 via telephone.
- Jack van Zijl, National Public Prosecutor for Corruption at National Public Prosecutor's Office, interview held the 6th of June 2011.
- René Werger, Director of MCF Ondernemingsadviseurs B.V., interview held the 4th of May 2011.
- Henk Wijnen, Project manager at PIANOo, Public Procurement Expertise Centre part of the Dutch Ministry of Economic Affairs, Agriculture and Innovation, interview held the 16th of May 2011.
- Marcel Wissenburg, Professor of Political Theory at Radboud University Nijmegen, interview held the 25th of May 2011.
- Key figure 1, Senior member of staff at the Rijksrecherche (National Police Internal Investigations Department), interview held the 24th of May 2011.
- Key figure 2, Senior member of staff at the Rijksrecherche (National Police Internal Investigations Department), interview held the 24th of May 2011.
- Interviewee 5, Senior auditor at the Netherlands Court of Audit, interview held the 18th of April 2011.
- Interviewee 6, Senior auditor at the Netherlands Court of Audit, interview held the 18th of April 2011.
- Interviewee 7, Senior auditor at the Netherlands Court of Audit, interview held the 18th of April 2011.

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