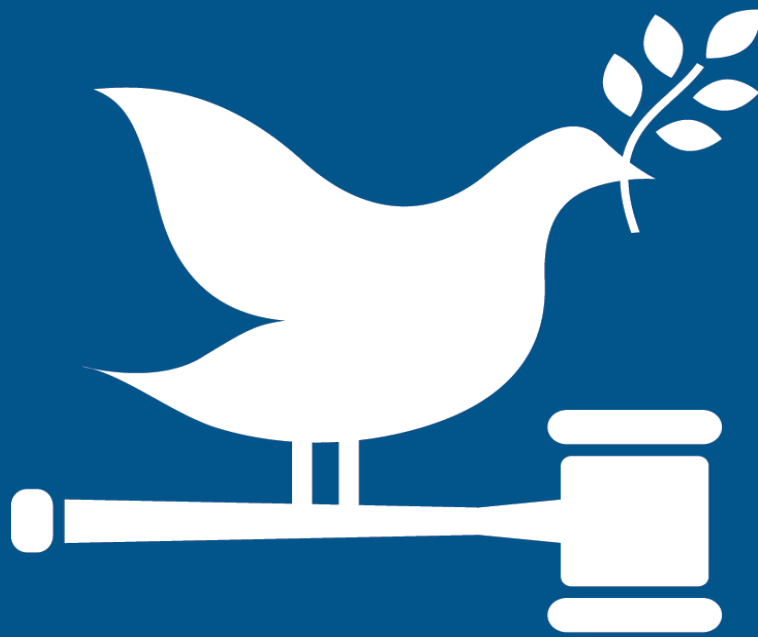


# 16 PEACE, JUSTICE AND STRONG INSTITUTIONS



## CORRUPTION AND THE SUSTAINABLE DEVELOPMENT GOALS

SHADOW REPORT  
SDG 16.4, 16.5 AND 16.10  
FOR THE NETHERLANDS



Transparency International is the global civil society organisation leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, Transparency International 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 is the Dutch Chapter of Transparency International. Transparency International Netherlands works with government, business and civil society to put effective measures in place to tackle corruption and promote integrity. This includes lobbying for better legislation to protect those who speak up against wrongdoings such as corruption and fraud.

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Every effort has been made to verify the accuracy of the information contained in this report. Nevertheless, Transparency International Netherlands cannot accept responsibility for the consequences of its use for other purposes or in other contexts.



With support from the European Commission

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## INTRODUCTION

Spearheaded by the United Nations, the Sustainable Development Goals (SDGs), as part of *the 2030 Agenda for Sustainable Development*, is a set of 17 aspirational “global goals” and 169 targets adopted in 2015 by the 193 UN member states. All UN member states, including The Netherlands, have committed to these global goals that are intended to steer policy-making and development funding for the next 15 years. Of particular relevance to the anti-corruption agenda is SDG 16: Peace, justice and strong institutions, looking into sustainable governance, most notably targets 16.4 on illicit financial flows, 16.5 on bribery and corruption, 16.6 on transparent and accountable institutions, and 16.10 on access to information. The United Nations’ introduction to SDG 16 notes that corruption, bribery, tax evasion and related illicit financial flows deprive developing countries of around US\$1.26 trillion per year, and that reducing corruption is an important component of the sustainable development agenda which all state parties have an obligation to address.

Global targets and indicators have been set for each goal with the expectation that they will be incorporated into national planning processes and policies. Countries are also encouraged to define national targets tailored to their specific circumstances and identify locally relevant indicators and data sources that will be used to measure progress towards achieving each of the SDG targets.

As part of its follow-up and review mechanisms, the 2030 Agenda for Sustainable Development encourages member states to conduct regular national reviews of progress made towards the achievement of these goals through an inclusive, voluntary and country-led process. Integrity risks across the SDG framework make it essential to monitor national progress against corruption from the outset. While governments are expected to take the lead in reviewing progress towards the Sustainable Development Goals, national-level monitoring needs to go beyond the remit of governments to include civil society and other stakeholders. Therefore, this shadow report seeks to provide an overview of national anti-corruption legislation in the Netherlands. The report has been developed in response to three key issues related to the official governmental SDG monitoring mechanisms: the multi-dimensional nature of SDG targets, data availability and perceived credibility of data generated by government agencies.

Firstly, several of the targets under Goal 16 are multi-dimensional in the sense that they measure broad concepts like “corruption” which cannot be adequately captured by a single indicator. Moreover, the indicators in the official global set do not sufficiently cover the full ambition of the targets. For instance, target 16.5 seeks a substantial reduction in corruption and bribery “in all their forms”, but the only approved global indicators measure bribery between public officials and the public or business. There are no measures of corruption within or between governments or other forms of non-governmental corruption. For some targets, the selected global indicators fail to capture critical aspects. For instance, target 16.4 seeks to combat all forms of organised crime, but there is no official indicator that measures organised crime nor an indicator related to strengthening the recovery and return of stolen assets.

Secondly, even where the official indicators are themselves capable of capturing progress towards SDG 16 targets, there is an absence of data to speak to these indicators. Many of the global SDG 16 indicators rely on data that is not regularly produced or currently have no established methodology or standards for data collection.

Finally, the official governmental assessment of progress made towards the SDG targets will rely on data generated by government agencies, particularly national statistics offices. The reliability and credibility of official data may be open to question for two reasons. First, in some settings, national statistics offices may simply be overwhelmed by the task of producing data for 169 targets. Second, politically sensitive targets, such as those related to corruption and governance, require that governments assess their own efficacy; illicit financial flows (16.4) may involve government officials, corruption (16.5) may involve government elites, while governments may be restricting information, or even targeting journalists, trade unionists or civil society activists (16.10).

The information gleaned from the shadow reporting exercise and presented here in this report can be used as an input into two key processes. At the global level, this information can be used to complement National Voluntary Reviews at the High Level Political Forum in July 2020. Nationally, this information generated can feed into the governmental SDG review processes taking place on a rolling basis in each country.

This report and the resulting scores only cover the legislative framework and the policies that have been formally established in the Netherlands and does not look into the implementation of policies and enforcement of regulations. The methodology does not provide a comprehensive assessment of the Netherlands' anti-corruption framework but seeks to reflect if and to what extent certain best practice policies have been transposed into the national legislative framework. As such, the study aims to highlight areas of the legislative framework that need to be reformed in order to create a robust anti-corruption system. While a strong legislative framework is needed to effectively address corruption risks, it is in no way sufficient without adequate capacity and resources to implement it and to ensure compliance. We emphasize that a call for action is needed in the Netherlands on implementation and enforcement.

## MAJOR FINDINGS

The overall aggregate score of the Netherlands on SDG16 is with 48% just below average. However, the assessment of each SDG-target shines a different light on the progress of the Netherlands towards accomplishing the targets of SDGs 16.4, 16.5, 16.6 and 16.10.

### **Target 16.4: By 2030 significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets, and combat all forms of organized crime**

The Netherlands scores just above average on target 16.4 with 51%. The different policy areas assessed under this target are anti-money laundering (75%), beneficial ownership (25%) and asset recovery (42%). The Netherlands scores particularly poor on beneficial ownership transparency as the country is still awaiting for the adoption of the Act on Ultimate Beneficial Ownership (UBO) and the implementation of the resulting UBO-register. The bill is currently under consideration by the Senate and the expectations are that the UBO-register will be implemented in March 2020.

### **Target 16.5: Substantially reduce corruption and bribery in all their forms**

The highest score on the SDG-targets is given to target 16.5 with 62%. This target looks into the following different policy areas: anti-corruption framework and institutions (81%), private sector (75%), transparency in lobbying (0%) and transparency in party and election campaign finance (50%). Most noticeable is the score of 0% for transparency in lobbying. This can be explained by the fact that the Netherlands lacks an official law or policy setting a framework for lobbyists and lobbying activities. For example, there is no statutory code of conduct for lobbyists, the Netherlands only holds a voluntary lobby register containing a minor percentage of the total amount of lobbyist present in the country and has no independent authority that monitors lobby activities. Even though lobbying is generally seen as an integral part of the political model (*the Poldermodel*) in the Netherlands, the countries' legislation demonstrates a clear need to enhance regulations in this area.

### **Target 16.6: Develop effective, accountable and transparent institutions at all levels**

The lowest score on the SDG-targets is given to target 16.6 with only 34%. The different policy areas assessed under this target are transparency and integrity in public administration (24%), fiscal transparency (75%), integrity in public procurement (44%) and whistleblowing (43%). The Netherlands scores particularly poor on transparency and integrity in public administration. The low score is predominantly caused by a lack of sanctions and/or oversight bodies enforcing Codes of Conducts for members of the Dutch Public Administration. Furthermore, the low score regarding the transparency of Dutch public administration is related to a lack of regulations and oversight addressing the 'revolving door' between the public and private sector.

### **Target 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements**

The Netherlands scores below average on target 16.4 with 44%. This target looks into the policy area of access to information. The below-average score can be explained by the fact that there are considerable restrictions on the right of access to information under the freedom of information act. The timelines for responding to a request are relatively long. Although anyone may apply for a request on information, there many exceptions to the right of access and therefore many possibilities for the requests to be denied on several grounds. Furthermore, an independent oversight for non-compliance on the right to access of information is lacking.

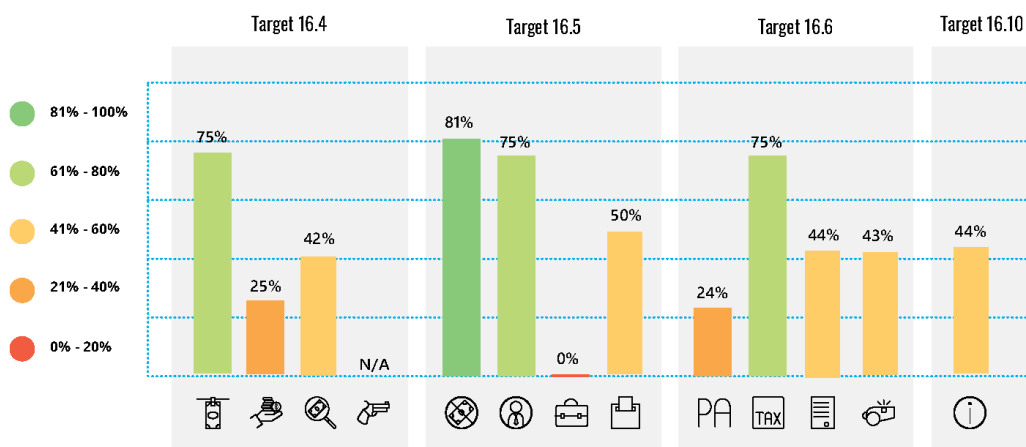
The scorecard below reflects the total scores obtained by the Netherlands regarding anti-corruption legislation per target and per policy area.

# COUNTRY LEGAL SCORECARD\*

## NETHERLANDS

### SDG AGGREGATE VALUE

Target 16.4 Score	51%
Target 16.5 Score	62%
Target 16.6 Score	34%
Target 16.10 Score	44%



### POLICY AREA

#### Target 16.4

- Anti-Money Laundering
- Beneficial Ownership
- Asset Recovery
- Arms Trafficking

#### Target 16.5

- Anti-Corruption Framework and Institutions
- Private sector
- Transparency in Lobbying
- Transparency in Party & Election Campaign Finance

#### Target 16.6

- Transparency and Integrity in Public Administration
- Fiscal Transparency
- Integrity in Public Procurement
- Whistleblowing

#### Target 16.10

- Access to Information

\* This scorecard is simply intended to assess whether a given country's legislative and institutional anti-corruption framework is in line with international best practice. It does not assess compliance with the legislative framework or the effectiveness of its implementation.

## RECOMMENDATIONS

The following recommendations represent a call to action. From this report it follows that in all areas covered, substantial improvements can and need to be made by the Netherlands in the field of anti-corruption and transparency. If the Netherlands wants to achieve serious progress towards SDG targets as laid down in 16.4, 16.5, 16.6 and 16.10, both regulation and implementation need to be improved and stepped up.

### **Target 16.4: By 2030 significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets, and combat all forms of organized crime**

- Anti-money laundering: Implement all the actions of the ‘Plan van Aanpak Witwassen’ (National Action Plan Anti-Money Laundering), including increasing the role of the financial and other institutions in detecting AML-risks.
- Beneficial ownership: Introduce an ultimate beneficial ownership (UBO) register that complies with international best practices and that is freely and publicly accessible without the limitations included in the present proposal.
- Asset recovery: Introduce a broad and effective asset recovery mechanism, also aimed at compensating the victims of corruption.

### **Target 16.5: Substantially reduce corruption and bribery in all their forms**

- Anti-Corruption Framework and Institutions: Bring the legislation in the Netherlands fully in line with the provisions of the UNCAC.
- Private sector: Investigate whether the legal framework can be extended as to prohibit collusion.
- Transparency in lobbying: Make lobbying in the Netherlands transparent by amongst others: introducing a mandatory lobby register, include a ‘footprint’ tracking and summarizing external input in all legislative proposals; review public sector and MPs’ codes of conduct.
- Transparency in party and election campaign finance: Cover political party finance at the local level and constitute a real independent oversight body to review political party finance.

### **Target 16.6: Develop effective, accountable and transparent institutions at all levels**

- Transparency and integrity in public administration: Introduce a comprehensive policy preventing a ‘revolving door’ for public officials and politicians, and create legislation addressing interest declarations and income and asset disclosure to be made available to the public.
- Fiscal transparency: Introduce international best practice in fiscal transparency.
- Integrity in public procurement: Also require the contracts itself to be published.
- Whistleblowing: Improve the functioning of the Authority for Whistleblowers; introduce a reversal of the burden of proof; provide the Authority for Whistleblowers with the power power to enforce and sanction where necessary.

### **Target 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements**

- Access to information: Shorten the timelines for responding to a request under the freedom of information act, reduce the exceptions to the right of access and introduce independent oversight against non-compliance.



## BACKGROUND

### **1.1: Has the government taken steps to develop an SDG action plan on how to implement the Agenda 2030 at the national level?**

To be able to formulate an effective strategy towards achieving all SDG-targets, the first step was to determine the starting point of the Netherlands. This was done by making an assessment of existing and already announced policies related to the SDGs.<sup>1</sup> In addition, when assessing whether existing indicators of the Central Bureau of Statistics were fit to measure progress in achieving the SDGs, it appeared that they were only able to assess approximately a third of the 230 indicators set by the UN. In order to close this gap, additional indicators that measure the current situation as well as progress made in accomplishing the SDGs were created.<sup>2</sup>

### **1.2: Which government body or bodies are in charge of the implementation of the national SDG implementation process, and in particular concerning the implementation of SDG 16?**

The implementation process is characterized as a government-wide process, meaning that all ministries contribute to achieving the SDGs most relevant to them. Coordination between the different ministries as well as other stakeholders is in the hands of the Ministry of Foreign Affairs. The general SDG coordination contact point is the SDG Charter, which "enables business, civil society & local governments in the Netherlands to cooperate effectively in achieving the UN Sustainable Development Goals, at home and abroad."<sup>3 4</sup>

### **1.3: Has civil society been able to contribute to the selection of national indicators concerning SDG 16 and have there been any formal discussions about how anticorruption targets will fit into the implementation of a national SDG plan?**

The Netherlands government expressed its willingness to include civil society in the discussion regarding the selection of national indicators in Minister's Ploumen letter to the House of Representatives outlining the strategy to accomplish the SDGs.<sup>5</sup> It is unclear, however, to what extent this intention was put in practice. Transparency International Netherlands was not invited to participate in any formal discussion concerning the selection of anti-corruption targets for example.

### **1.4: Has civil society had an opportunity to provide input or review draft version of the official national implementation reports?**

In the annual SDG implementation report, an entire chapter is dedicated to the input of civil society organizations. The information is collected through a survey conducted by Partos, the Dutch membership body for organisations working in international development. This year 38 civil society

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<sup>1</sup> [https://www.pbl.nl/sites/default/files/cms/publicaties/pbl-2016-sustainable-development-goals-in-nederland\\_1798.pdf](https://www.pbl.nl/sites/default/files/cms/publicaties/pbl-2016-sustainable-development-goals-in-nederland_1798.pdf)

<sup>2</sup> Ploumen, L. 30 september 2016. Nederland Ontwikkelt Duurzaam: Plan van Aanpak Inzake Implementatie SDGs

<sup>3</sup> <https://gateway.sdgcharter.nl/user/4545/information>

<sup>4</sup> <https://www.sdgcharter.nl/>

<sup>5</sup> Ploumen, L. 30 september 2016. Nederland Ontwikkelt Duurzaam: Plan van Aanpak Inzake Implementatie SDGs

organisations participated in the survey and concluded that the Netherlands should increase its efforts to be able to properly accomplish the SDGs in 2030.<sup>6</sup>

### **1.5: How do you assess the quality of the official assessment and the data provided in official implementation reports for targets 16.4, 16.5, 16.6 and 16.10?**

Not sufficient. The lack of indicators assessing the progress of the Netherlands government in accomplishing the SDGs related to anti-corruption efforts is the main reason this shadow study is being conducted. As of now, solely the Corruption Perception Index of Transparency International is utilized to assess progress made.<sup>7</sup>

### **1.6: Are there any salient corruption or governance issues which are omitted or not adequately addressed in the official national report?**

The Netherlands has two different reports regarding the implementation of the SDGs: one biennial report published by the Central Bureau of Statistics and one annual report including a range of actors from the public sector, the private sector, civil society and knowledge institutions. The annual report provides a broad perspective of efforts made in the past year and provides relevant actors with the opportunity to contribute to the conversation.<sup>8 9 10</sup> The biennial report published by the Central Bureau of Statistics is specifically focused on measuring Dutch progress in accomplishing the SDGs.<sup>11 12</sup>

The annual report makes virtually no mention about corruption and does not discuss specific corruption or governance issues related to corruption. The biennial report does evaluate Dutch progress in accomplishing indicators related to anti-corruption in SDG 16 but solely uses the Corruption Perceptions Index of Transparency International (CPI). Since the CPI is a composite index composed of the results from a broad survey, this measurement is too broad to address any particular corruption or governance issues.

## **RECENT DEVELOPMENTS**

### **2.1: Has the Netherlands adopted a national anti-corruption action plan?**

- *0: No, There is no national anti-corruption action plan and no apparent process to adopt one*

Despite the fact that the Netherlands is generally perceived to be one of the countries least affected by corruption, no comprehensive and cohesive national anti-corruption action plan is in place. According to an evaluation performed by Group of States Against Corruption (GRECO) in 2019, the integrity of Dutch politicians and bureaucrats is largely built on political accountability, trust and consensus. Because of this emphasis on trust, the country lacks a clear anti-corruption

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<sup>6</sup> <https://www.sdgnerland.nl/wp-content/uploads/2019/05/20190515-Derde-SDG-Rapportage-Nederland-Ontwikkelt-Duurzaam-2.pdf>

<sup>7</sup> <https://www.cbs.nl/nl-nl/publicatie/2018/10/duurzame-ontwikkelingsdoelen-de-stand-voor-nederland>

<sup>8</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2017/05/24/nederlandse-rapportage-over-de-duurzame-ontwikkelingsdoelen>

<sup>9</sup> [https://www.sdgnerland.nl/wp-content/uploads/2018/06/WEB\\_112465\\_SDG\\_rapportage-5.pdf](https://www.sdgnerland.nl/wp-content/uploads/2018/06/WEB_112465_SDG_rapportage-5.pdf)

<sup>10</sup> <https://www.sdgnerland.nl/wp-content/uploads/2019/05/20190515-Derde-SDG-Rapportage-Nederland-Ontwikkelt-Duurzaam-2.pdf>

<sup>11</sup> <https://www.cbs.nl/nl-nl/publicatie/2016/44/meten-van-sdgs-een-eerste-beeld-voor-nederland>

<sup>12</sup> <https://www.cbs.nl/nl-nl/publicatie/2018/10/duurzame-ontwikkelingsdoelen-de-stand-voor-nederland>

strategy and responsibility to prevent corruption is placed in the hands of the politicians themselves.<sup>13 14</sup> There are, however, several laws, policies and guidelines in place aiming to reduce the presence of corruption in the Netherlands.

## **2.2: What percentage of respondents state that their government performs “well” at fighting corruption in government, according to Transparency International’s Global Corruption Barometer?**

39% of the respondents in the Netherlands reported “well” in the Global Corruption Barometer 2017.

## **2.3: Has the Netherlands current political leadership made public declarations about fighting corruption in between 2017-2019? Have there been high-level commitments by the current administration to strengthen the legal framework, policies or institutions that are relevant to preventing, detecting and prosecuting corruption?**

In a reply to the GRECO report published last year, Prime Minister Mark Rutte emphasized that, although the list of recommendations was extensive, the overall message of the report was positive.<sup>15</sup> Furthermore, the government agreement that formed the current coalition in 2017 only mentions corruption in relation to sports. The governing parties, however, did pledge to increase transparency in public governance, education, healthcare, insurance and retirement.<sup>16</sup> A concrete example that members of the coalition take this task seriously is bill submitted in January 2019 that seeks to increase the government’s responsibility to proactively disclose documents containing public information.<sup>17</sup>

## **2.4: Is there evidence that laws and policies are not equally applied to all officials, resulting in an increased risk for misuse of power and grand corruption?**

The problem in the Netherlands with regards to government corruption is a lack of formal laws or policies regarding corruption for both chambers of the Netherlands parliament. This lack of enforceable written rules makes it difficult to hold politicians and bureaucrats accountable for (possible) corrupt practices. For example, it was not possible to initiate an investigation into Alexander Pechtold’s (MP and leader of the political party D66) failure to report the receipt of an apartment as a gift from a former Canadian diplomat. Pechtold’s explanation was that the gift was a private matter since he never had a political relation with the diplomat and considered him to be one of his closest friends. Since the register for gifts received by politicians excludes private gifts, it was not possible to investigate the issue any further.<sup>18</sup>

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<sup>13</sup><https://www.coe.int/en/web/greco/-/the-netherlands-needs-to-enhance-measures-to-preserve-integrity-in-the-government-and-in-the-police>"

<sup>14</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680931c9d>

<sup>15</sup> <https://www.volkskrant.nl/economie/nederlandse-aanpak-corruptie-schiet-nog-steeds-te-kort-hoe-komt-dat~bac6bf93/>

<sup>16</sup> <https://www.rijksoverheid.nl/documenten/publicaties/2017/10/10/regeerakkoord-2017-vertrouwen-in-de-toekomst>

<sup>17</sup> [https://www.eerstekamer.nl/wetsvoorstel/33328\\_initiatiefvoorstel\\_snels\\_en](https://www.eerstekamer.nl/wetsvoorstel/33328_initiatiefvoorstel_snels_en)

<sup>18</sup> <https://www.ad.nl/politiek/nederland-op-vingers-getikt-om-cadeau-gekregen-appartement-alexander-pechtold~a4ad84f8/>

The laws and policies aiming to reduce corruption that do exist, however, are generally applied equally to all officials.

**2.5: Have there been significant developments that affected the room of manoeuvre of the media and civil society, positively or negatively? Have fundamental freedoms, such as freedom of speech and assembly, been restricted?**

There have been discussions recently about the right to demonstration in the Netherlands. Demonstrations concerning controversial topics in the Netherlands, such as Black Pete and anti-Islam rallies, have been restricted more frequently on the grounds of danger to public order. When demonstrations on these issues did take place, their freedom of opinion and assembly was generally not respected by opponents of the demonstrators.<sup>19</sup> It is questionable, however, whether this is a significant development or merely an issue that occurs in every time and age.

Some recent incidents include: On 24 October, NOS TV reporter Robert Bas has been jailed until 28 October at least for refusing to answer questions as a witness in a ongoing court case in Rotterdam; the assassination by organised crime of lawyer Derk Wiersum; attacks on Telegraaf and Panorama by organised crime; launch of the multi-stakeholder Persveilig initiative as a response to increasing threats against Dutch journalist and media.

**TARGET 16.4: BY 2030, SIGNIFICANTLY REDUCE ILLICIT FINANCIAL AND ARMS FLOWS, STRENGTHEN THE RECOVERY AND RETURN OF STOLEN ASSETS AND COMBAT ALL FORMS OF ORGANIZED CRIME**

**ANTI-MONEY LAUNDERING**

**3.1: Has the Netherlands adopted a law to criminalize money laundering, in line with recommendation 3 of the FATF?**

● 0.75: Largely Compliant (LC)

Yes, according to the Law to Prevent Money Laundering and Financing Terrorism (Wwft) money laundering is illegal in the Netherlands. The Dutch legal framework is largely compliant with recommendation 3 of the FATF according to a 2011 mutual evaluation report.<sup>20</sup>

**3.2: Has the government during the last three years conducted an assessment of the money laundering risks related to legal persons and arrangements, in line with Principle 2 of TI's "Just for Show?" report? Has the final risk assessment been published?**

● 1: In 2017, a risk assessment was carried out and made available to the public.<sup>21</sup>

**3.3: Are financial institutions (banks) prohibited by law from keeping anonymous accounts and are they required to undertake due diligence on their customers, in line with FATF recommendation 10?**

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<sup>19</sup> <https://www.trouw.nl/nieuws/recht-op-demonstratie-staat-onder-druk-in-nederland~b307d07f/>

<sup>20</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Netherlands%20full.pdf>

<sup>21</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2017/12/20/aanbiedingsbrief-bij-de-rapporten-nationale-risicoanalyses-witwassen-en-terrorismedinanciering>

- *0.5: Only one of those provisions is in place: financial institutions are prohibited by law from keeping anonymous accounts or they are required to undertake due diligence on their customers.*

According to Article 5 of the Wwft, financial institutions cannot enter into a business relation with a client unless it has performed customer due diligence.<sup>22</sup> It is important to note, however, that under some circumstances it is possible for a customer to remain anonymous during transactions or to some departments/employees of the bank.<sup>23</sup>

**3.4: Are financial institutions required by law to inform relevant authorities when they suspect (or have reasonable grounds to suspect) that funds are the proceeds of criminal activity, in line with FATF recommendation 20?**

- *1: Yes, financial institutions are required by law to inform relevant authorities when they suspect or have grounds to suspect that funds are the proceeds of criminal activity, in line with FATF recommendation 20.<sup>24</sup>*

This is regulated by Article 16 of the Wwft.<sup>25</sup>

**3.5: Are designated non-financial businesses and professions (DNFBPs) – casinos, real estate agents, jewellers, lawyers, notaries, other legal professionals, accountants, and trust and company service providers – required to carry out customer due diligence, to keep records, and to report suspicious transactions to the financial intelligence unit, in line with FATF recommendations 22 and 23?**

- *0.5: There are some legal obligations for designated non-financial businesses and professions to carry out customer due diligence, or to keep records, or to report suspicious transactions. These requirements are only partially in line with FATF recommendations 22 and 23.*

The Wwft is applicable to some of the non-financial businesses and professions mentioned according to Article 1. This means that they too have to carry out customer due diligence, keep records and report suspicious transactions.<sup>26</sup>

**3.6: Does the law require financial institutions to conduct enhanced due diligence in cases where the customer or the beneficial owner is a PEP (politically exposed person) or a family member or close associate of a PEP?**

- *0.5: Yes, but the law does not cover both foreign and domestic PEPs, and their close family and associates.*

According to Article 8 of paragraph 5 of the Wwft, financial institutions are required to conduct enhanced due diligence in cases where their client is a PEP, or a family member or close associate of a PEP. However, no distinction is made between foreign and domestic PEPs.

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<sup>22</sup> <https://wetten.overheid.nl/BWBR0024282/2019-01-01>

<sup>23</sup> <https://www.toezicht.dnb.nl/binaries/50-212353.pdf>

<sup>24</sup> [www.fatf-gafi.org/media/fatf/documents/reports/mer/ER%20Netherlands%20full.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer/ER%20Netherlands%20full.pdf)

<sup>25</sup> <https://wetten.overheid.nl/BWBR0024282/2019-01-01>

<sup>26</sup> <https://wetten.overheid.nl/BWBR0024282/2019-01-01>

In addition to customer due diligence measures, institutions are required to<sup>27</sup>:

1. Receive consent of an individual part of higher managerial personnel.
2. Take appropriate measures to determine the source of the capital and resources of the professional relation or transaction.
3. The professional relation needs to be subject to additional scrutiny.

**3.7: Does the law require enhanced due diligence by DNFBPs in cases where the customer or the beneficial owner is a PEP or a family member or close associate of the PEP?**

- 0.5: Yes, but the law does not cover both foreign and domestic PEPs and their close family and associates.

Yes, Article 8, paragraph 5 applies to DNFBPs as well. This means that DNFBPs are required to conduct enhanced due diligence in cases where their client is a PEP, or a family member or close associate of a PEP. However, no distinction is made between foreign and domestic PEPs.<sup>28</sup>

**3.8: Has the Netherlands signed the multilateral competent authority agreement on the exchange of country-by-country reports on key indicators of multinational enterprise groups?**

- 1: Yes.<sup>29</sup>

**3.9: Has the Netherlands signed the competent authority multinational agreement on automatic exchange of financial account information?**

- 1: Yes, the Netherlands signed the agreement in September 2017.<sup>30</sup>

**3.10: How is the jurisdiction's performance on the exchange of information for tax purposes on request assessed by the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes?**

- 0.75: Largely compliant.<sup>31 32</sup>

**3.11: What is the Netherlands score in the Basel Institute on Governance's Basel Anti-Money Laundering Index <https://index.baselgovernance.org/>?**

The Netherlands, ranked 88<sup>th</sup>, obtained an overall score of 4.9 in 2018.<sup>33</sup> In 2019, the country ranked 82<sup>nd</sup>, acquiring a score of 4.86.<sup>34</sup>

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<sup>27</sup> <https://wetten.overheid.nl/BWBR0024282/2019-01-01>

<sup>28</sup> <https://wetten.overheid.nl/BWBR0024282/2019-01-01>

<sup>29</sup> <https://www.oecd.org/tax/automatic-exchange/country-specific-information-on-country-by-country-reporting-implementation.htm>

<sup>30</sup> <https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/MCAA-Signatories.pdf>

<sup>31</sup> [https://read.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-the-netherlands-2019-second-round\\_fdce8e7f-en#page15](https://read.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-the-netherlands-2019-second-round_fdce8e7f-en#page15)

<sup>32</sup> <https://www.oecd.org/tax/%20transparency/exchange-of-information-on-request/ratings/#d.en.342263>

<sup>33</sup> <https://www.baselgovernance.org/asset-recovery/basel-aml-index/public-ranking>

<sup>34</sup> <https://www.baselgovernance.org/basel-aml-index/public-ranking>

**3.12: What is the Netherlands secrecy score in the Tax Justice Network’s Financial Secrecy Index <https://financialsecrecyindex.com/introduction/fsi-2018-results?>**

The Netherlands, ranked 14<sup>th</sup>, obtained a secrecy score of 66 in 2018.<sup>35</sup>

**3.13: What is the estimated illicit financial outflow of funds from your country in the latest available year, according to Global Financial Integrity [http://www.gfintegrity.org/issues/ data-by-country?](http://www.gfintegrity.org/issues/data-by-country?)**

n/a. The Netherlands is not included in this research.

**3.14: Is there evidence that money laundering is effectively prosecuted?**

<b>Money Laundering<sup>36</sup></b>	2016	2017	2018
Number of registered cases of money laundering	610	700	860
Number of cases involving money laundering solved	520	585	545
Number of registered suspects	810	910	1190

It is difficult to assess the effectivity of the prosecution since it is impossible to have insight into unprosecuted money laundering cases. There is an upward trend of registered cases of money laundering.

**3.15: How many suspicious transactions reports did financial institutions and different types of DNFBPs (Designated Non-Financial Business or Profession) file in the last two years for which data is available?**

In 2018, 57,950 suspicious transactions were declared.<sup>37</sup> In 2017, the number was considerably lower with 40,546 suspicious transactions declared.<sup>38</sup>

**3.16: Have there been any noteworthy changes or developments in between 2017-2019 that indicate an improvement or deterioration in the framework or practice to prevent and fight money laundering?**

Yes, the Wwft was altered considerably due to the implementation of the fourth EU anti-money laundering directive. As a result of the implementation, the obligation to execute customer due diligence and report suspicious transaction is increasingly based on a risk-focused approach. This means that institutions should adjust customer due diligence according to the risks of the nature and

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<sup>35</sup> <https://financialsecrecyindex.com/en/introduction/fsi-2018-results>  
<sup>36</sup> <https://opendata.cbs.nl/statline/#/CBS/nl/dataset/83648NED/table?fromstatweb>  
<sup>37</sup> [https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/fiu-nederland\\_jaaroverzicht\\_2018\\_nl\\_web.pdf](https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/fiu-nederland_jaaroverzicht_2018_nl_web.pdf)  
<sup>38</sup> [https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/7238-fiu\\_jaaroverzicht\\_2017\\_eng\\_web\\_1.pdf](https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/7238-fiu_jaaroverzicht_2017_eng_web_1.pdf)



size of the institution itself as well as on the risks of a concrete business relation or transaction. It is not possible anymore to omit customer due diligence in case of a low risk. Moreover, the implementation caused the law to apply to providers of gambling services (casino's, lotteries, online gambling services) and individuals professionally occupied with trading goods that involve cash payments of at least €10,000. Previously, the maximum amount was €15,000 and solely applied to the sellers of the goods and did not include the buyers.<sup>39</sup>

Furthermore, the implementation of the fourth anti-money laundering directive increased the maximum fine for non-compliance from four million euro's to five million euro and opened up the possibility of imposing a fine related to the offender's revenue. Finally, the implementation caused the Netherlands to commit to the establishment of an ultimate beneficial owner (UBO) register, which will be discussed below.<sup>40</sup>

In addition, the Wwft will be extended to include the providers of crypto wallets and exchange platforms who offer services in the Netherlands. The law that will implement this is currently at the Council of State and is expected to enter into force in early 2020.

## BENEFICIAL OWNERSHIP TRANSPARENCY

### 4.1: To what extent does the law in your country clearly define beneficial ownership

- *0.5: Beneficial owner is defined as a natural person [who owns a certain percentage of shares] but there is no mention of whether control is exercised directly or indirectly, or if control is limited to a percentage of share ownership.*

As a result of the EU's fourth anti-money laundering directive, companies will be required from 2020 onwards to register their UBO in the UBO-register.<sup>41</sup> The current proposal aiming to regulate this process is an amendment to the Trade Register Act 2007 and the Wwft.<sup>42</sup> According to Article 1 of the Wwft, an ultimate beneficial owner is the natural person who is the UBO or exercises control over a client, or the natural person on whose account a transaction or activity is executed. No mention is made on whether control is exercised directly or indirectly.<sup>43</sup>

### 4.2: Does the law require that financial institutions have procedures for identifying the beneficial owner(s) when establishing a business relationship with a client?

- *1: Yes, financial institutions are always required to identify the beneficial owners of their clients when establishing a business relationship*

According to Article 3, paragraph 2b of the Wwft, 'An institution performs customer due diligence to identify the UBO and take reasonable measures to verify his identity and take reasonable measures to gain understanding of the ownership- and control structure of the client in case the client is a legal entity.<sup>44</sup>

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<sup>39</sup> <https://www.transparency.nl/nieuws/2016/07/internetconsultatie-vierde-anti-witwas-richtlijn/>

<sup>40</sup> <https://www.transparency.nl/nieuws/2016/07/internetconsultatie-vierde-anti-witwas-richtlijn/>

<sup>41</sup> <https://www.rijksoverheid.nl/onderwerpen/financiele-sector/ubo-register>

<sup>42</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/04/04/bijlage-1.-wetsvoorstel-ubo-register>

<sup>43</sup> <https://wetten.overheid.nl/BWBR0024282/2019-01-01>

<sup>44</sup> <https://wetten.overheid.nl/BWBR0024282/2019-01-01>



**4.3: Does the law specify which competent authorities (e.g. financial intelligence unit, tax authorities, public prosecutors, anti-corruption agencies, etc.) have access to beneficial ownership information?**

- *0.5: Only some competent authorities are explicitly mentioned in the law, decree or policy.*

The current proposal states that there will be two different forms of access to the UBO-register. First, a version of the register will be publicly accessible. This version includes the name, birth month and year, nationality, residency and nature and extent of the economic interest of the UBO and research can only be done on basis of the name of the company. Individuals requesting access to this information will have to pay a fee. Second, there will be a part of the register that can only be accessed by 'authorized authorities' and the Financial Intelligence Unit. This version of the register includes the BSN/TIN, birthday, country and place of birth, residential address, a copy of a valid identification document and a document that demonstrates the nature and extent of the economic interest.<sup>45</sup>

**4.4: Which information sources are competent authorities allowed to access for beneficial ownership information?**

- *0: Information on beneficial ownership is not available.*

The UBO-register is not yet implemented while according to EU regulations it should have entered into force on 10 January 2020. It is expected that the UBO-register will be implemented in March 2020. The UBO register will be included in the register of the Netherlands Chamber of Commerce ('Handelsregister' of the Kamer van Koophandel). Part of this will be made accessible to the public.<sup>46</sup>

**4.5: Which public authority supervises/holds the company registry?**

The Netherlands Chamber of Commerce (Kamer van Koophandel).<sup>47</sup>

**4.6: What information on beneficial ownership is recorded in the company registry?**

- *0: No information is recorded.*

The UBO-register is not yet implemented while according to EU regulations it should have entered into force on 10 January 2020. It is expected that the UBO-register will be implemented in March 2020. As mentioned above, there will be two different forms of access to the UBO-register. First, a light version of the register will be open to the public. This version includes the name, birth month and year, nationality, residency and nature and extent of the economic interest of the UBO and research can only be executed utilizing the name of the company. Individuals requesting this information will have to pay a fee. Second, there will be a part of the register that can only be accessed by 'authorized authorities' and the Financial Intelligence Unit. This part includes the BSN/TIN, birthday, country and place of birth, residential address, a copy of a valid identification document and a document that demonstrates the nature and extent of the economic interest.<sup>48</sup>

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<sup>45</sup> <https://www.rijksoverheid.nl/onderwerpen/financiele-sector/ubo-register>

<sup>46</sup> <https://www.rijksoverheid.nl/onderwerpen/financiele-sector/ubo-register>

<sup>47</sup> <https://www.rijksoverheid.nl/onderwerpen/financiele-sector/ubo-register>

<sup>48</sup> <https://www.rijksoverheid.nl/onderwerpen/financiele-sector/ubo-register>

#### **4.7: What information on beneficial ownership is made available to the public?**

● *0: No information is published or accessible information is insufficient to identify direct or beneficial owners.*

See answer to Question 4.6.

#### **4.8: Does the law require legal entities to update information on beneficial ownership, shareholders, and directors provided in the company registry?**

● *0: No, the law does not require legal entities to update the information on control and ownership.*

There is no law on the implementation of the UBO-register yet. The proposed amendment to the Wwft dealing with the obligation to update information on beneficial ownership states that Article 10b of the Wwft should be adjusted to include the following requirement<sup>49</sup>: “Companies and other legal entities should collect data concerning their ultimate beneficial owner and update this to ensure that the information is adequate, accurate and current.”

#### **4.9: Is there a registry which collects information on trusts**

● *0: No, there is no registry in which all trusts are listed.*

The Netherlands Minister of Finance acknowledged the fact that a trust-register, similar to the UBO-register, needs to be created in order to remain in adherence with EU regulations. However, there is no actual plan for implementation in place as of now.<sup>50</sup>

#### **4.10: What is the Netherlands score in the Open Company Data Index produced by Open Corporates <http://registries.opencorporates.com>?**

20/100, the Netherlands only received points for the fact that it is possible to search for basic company data.<sup>51</sup>

#### **4.11: How strong is the level of transparency of the company registry in practice?**

Please provide the following information:

- a. Is the registry easily accessible online? Is it searchable by various relevant parameters (such as addresses of registration, company name, company ID and by the names of directors and owners)?
- b. Is access free? If not, how much do you have to pay for search and receive the ownership information of one company?
- c. Are annual accounts and other filings of companies accessible to the public?

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<sup>49</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/04/04/bijlage-1.-wetsvoorstel-ubo-register>

<sup>50</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/04/20/kamerbrief-over-totstandkoming-ubo-register>

<sup>51</sup> <http://registries.opencorporates.com/>

- d. **Is registration required for the entity to be legally valid and/or allowed to operate in the country?**
- a. The registry can be found on this [link](#) (via [www.kvk.nl](http://www.kvk.nl)) and is searchable by various relevant parameters.
  - b. Access is free.
  - c. The following information is made public: the company's registration number, name, location and address data.<sup>52</sup>
  - d. Yes.<sup>53</sup>

#### **4.12: Have there been any developments in between 2017-2019 that indicate an improvement or deterioration of the transparency of corporations and other legal entities?**

In 2015, the European Union created the fourth anti-money laundering directive aimed at fighting the harmful side effects of corruption and money laundering. An important aspect of this directive was the requirement for all member states to implement an Ultimate Beneficial Ownership register before the 26th of June 2017. Since then, the Netherlands government has delayed the implementation multiple times and the register is now set to be in place in 2020.<sup>54 55 56</sup> Due to this delay, the implementation of the fourth anti-money laundering directive should be seen as the, planned, improvement of the transparency of corporations and other legal entities.

## **RECOVERY OF STOLEN ASSETS**

### **5.1: Does the Netherlands have a specific asset recovery policy?**

- *0.5: The country has adopted an asset recovery policy but it fails to address some important aspects.*

Asset recovery is partly regulated by the Direction Asset Recovery (Aanwijzing Afpakken).<sup>57</sup> In January 2019, the Netherlands public prosecutor announced that the amount of money confiscated from criminals in 2018 decreased by 50 million euros as compared to 2017.<sup>58</sup> To address this problem, the Netherlands prosecutor and FIOD (Fiscal Intelligence and Investigation Service) seek to implement a new policy that focuses on tracking suspicious money (flows) instead of investigating the criminals themselves. The investigation on suspicious money (flows) will then be utilized to get to the criminals in question.<sup>59</sup>

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<sup>52</sup> <https://www.ikgastarten.nl/bedrijf-starten/juridisch/5-vragen-en-antwoorden-over-de-kamer-van-koophandel>

<sup>53</sup> <https://www.ikgastarten.nl/bedrijf-starten/juridisch/5-vragen-en-antwoorden-over-de-kamer-van-koophandel>

<sup>54</sup> <https://www.nautadutilh.com/nl/information-centre/nieuws/invoering-ubo-register-benelux-vertraagd>

<sup>55</sup> <https://www.stibbe.com/en/news/2018/july/invoering-ubo-register-uitgesteld-naar-2019>

<sup>56</sup> <https://www.rijksoverheid.nl/actueel/nieuws/2019/04/04/ubo-register-vanaf-januari-2020-in-werking>

<sup>57</sup> <https://wetten.overheid.nl/BWBR0038996/2017-01-01>

<sup>58</sup> <https://www.om.nl/@104986/ruim-171-miljoen/>

<sup>59</sup> <https://www.nrc.nl/nieuws/2019/01/24/pluk-ze-wetgeving-justitie-meer-geld-criminelen-afpakken-a3651539>

**5.2: Has the Netherlands established a wide range of asset recovery mechanisms, including a) measures that allow for the seizure and confiscation of proceeds from money laundering without requiring a criminal conviction (non-conviction based confiscation), b) a policy that requires an offender to demonstrate that the assets were acquired lawfully, and c) the recognition/enforceability of foreign non-conviction based confiscation/forfeiture orders?**

- *0.25: The country has adopted one of the above mechanisms.*

a. According to Article 8 paragraph 1 of the Direction Asset Recovery, a prosecutor is able to settle a case on the condition that the individual in question (the suspect) pays the unlawfully acquired benefits back in money or objects. If this option is chosen, the right to prosecute will be suspended.<sup>60</sup>

b. The demonstration of lawfully acquirement is not mentioned in the law.

c. No mention is made concerning the enforcement of foreign non-conviction based confiscation orders.

**5.3: Has the Netherlands created a specialized asset recovery team or unit?**

- *0.5: There is a team, unit or agency that specializes in asset recovery and the legal framework provides either sufficient political independence or sufficient resources to carry out its responsibilities.*

There is a criminal assets recovery bureau of the prosecution service in the Netherlands (ARO) but it is unclear what their resources and responsibilities are. Furthermore, as mentioned in the background section of the Direction Asset Recovery, multiple agencies that cooperate intensively are involved in asset recovery. The public prosecutor cooperates with the National Police, Special Investigation Services (which includes the Royal Military Police, Rijksrecherche, Criminal Intelligence Teams and special investigation officers<sup>61</sup>), Tax and Customs Administration, the Regional Information Expertise Centre, the National Information and Expertise Centre, the Infobox Criminal and Inexplicable Capital (ICOV), Central Justice Collection Bureau (CJIB), Service Real Property (DRZ) and Financial Intelligence Unit (FIU-NL).<sup>62</sup>

**5.4: Is there evidence of a strong political commitment to promoting asset recovery?**

In November 2018, the Netherlands Minister of Justice and Security pledged to invest an extra 30 million euro's in asset recovery. In a TV-show, the Minister explained that jail-time simply is not sufficient to deter criminals from undertaking criminal activities. For that reason, he 'wants to confiscate everything they have'. The extra invested money will be used to employ new police investigators specialized in asset recovery.<sup>63</sup>

In addition, in a letter to the Netherlands parliament in March 2019 the Minister called for additional efforts in order to be able to constantly improve accomplishments in asset recovery. In the letter, the new strategy focusing on exposing criminal cash flows in order to uncover criminal activities was

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<sup>60</sup> <https://wetten.overheid.nl/BWBR0038996/2017-01-01>

<sup>61</sup> <https://www.autoriteitpersoonsgegevens.nl/nl/onderwerpen/politie-justitie/bijzondere-opsporing>

<sup>62</sup> <https://wetten.overheid.nl/BWBR0038996/2017-01-01>

<sup>63</sup> <https://wnl.tv/2018/11/18/minister-grapperhaus-30-miljoen-afpakken-crimineel-vermogen/>

elaborated upon. The new strategy shifts the focus of the fight against crime to financial aspects, aimed at the notion that 'crime should not pay'.<sup>64</sup>

### **5.5: Does the Netherlands actively participate in international cooperation networks focusing on asset recovery?**

The Netherlands is part of the Camden Assets Recovery Inter-Agency Network (CARIN). CARIN is an informal network of civil servants specialized in asset recovery. The network has not been created by a treaty and is apolitical in nature. The goal of the network is to increase the effectiveness of international cooperation.<sup>65</sup>

Furthermore, the Netherlands actively participates in and encourages EU cooperation on asset recovery. During the Dutch EU-presidency in 2016 the action plan concerning financial investigation was passed that aimed at strengthening knowledge concerning financial investigations.<sup>66</sup> Moreover, the EU passed the order on mutual recognition of 'freezing orders' in May 2018. Expected to come into force in 2020, the order seeks to facilitate asset recovery in the EU.<sup>67</sup>

Finally, the Criminal Assets Deprivation Bureau (BOOM) of the Prosecution Service is responsible for depriving convicted criminals of illegally obtained profits. Inside BOOM, there is one department responsible for supporting and providing advice on international asset recovery, namely the Asset Recovery Office (ARO). ARO handles international requests concerning asset recovery in the Netherlands as well.<sup>68</sup>

### **5.6: Is there public evidence of any asset recovery cases involving your country in between 2017-2019?**

In 2018, the Netherlands government recovered approximately €171 million from criminals and consisted for a large part (€100 million) of a settlement made with ING bank. The settlement involved four cases of money laundering between 2010 and 2016 where the bank did not properly adhere to the Wwft. As discussed above, the Wwft requires institutions to perform proper customer due diligence and report unusual transaction. Due to ING's negligence, the public prosecutor argued that the bank did not perform its required function as gatekeeper of the financial system which allowed its clients to utilize their ING accounts for criminal purposes. The recovered €100 million is the amount of money the bank saved by not spending sufficient resources to ensure compliance with the Wwft.<sup>69</sup>

The Fiscal Intelligence and Investigation Service (FIOD) initiated an investigation on the ING when the bank's name appeared multiple times as the suspect's bank in criminal investigations. This sparked a suspicion that the ING had a structural problem in ensuring proper customer due diligence and monitoring suspicious transactions.<sup>70</sup> As a result of the structural problems, the bank was utilized by an international telecom provider to transfer bribes to a company in which the daughter of the then-

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<sup>64</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/03/13/tk-afpakken-crimineel-vermogen>

<sup>65</sup> <https://www.om.nl/@25043/boom-nieuws-0/>

<sup>66</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/03/13/tk-afpakken-crimineel-vermogen>

<sup>67</sup> <https://www.consilium.europa.eu/nl/press/press-releases/2018/11/06/more-effective-mutual-recognition-of-freezing-and-confiscation-orders/>

<sup>68</sup> <https://www.om.nl/@25043/boom-nieuws-0/>

<sup>69</sup> <https://www.om.nl/onderwerpen/hoge-transacties/vraag-antwoord/@103953/ing-betaalt-775/>

<sup>70</sup> <https://www.om.nl/onderwerpen/hoge-transacties/vraag-antwoord/@103953/ing-betaalt-775/>

president of Uzbekistan was involved. Moreover, a trader was able to money launder approximately €150 million using his ING account. According to the prosecutor, both cases could have been prevented if the bank adopted proper customer due diligence measures and monitored accounts accordingly.<sup>71</sup>

## FIGHT AGAINST ORGANISED CRIME

### **6.1: Is there evidence of strong public trust in the integrity of the police?**

In a survey conducted by the Central Bureau of Statistics (CBS) in 2017, 74.5% of Dutch citizens claimed that they have trust in the police. In 2016, this number was lower with 70.3% of the populace displaying trust in the police. Of all the actors and institutions (populace, police, judges, military, civil servants, EU, Parliament, banks, big companies, press and churches) analysed in this study, the police enjoys the highest levels of trust by the Dutch society.<sup>72</sup>

### **6.2: Is there evidence, for example through media investigations or prosecution reports, of a penetration of organised crime into the police, the prosecution, or the judiciary? If no, is there evidence that the government is alert and prepared for this risk?**

Various cases involving penetration of organised crime into the police have been highlighted in the past few years. Especially organised crime involved in the drug trade has been able to gain a foothold in the (military) police force. In the port of Rotterdam for example, multiple military police officers have been convicted for corruption charges in the past years. Gerrit G. was sentenced to 14 years in prison in 2017 for ensuring the safe passage of cocaine (smugglers) in the port of Rotterdam and his involvement in money laundering. In the same case, three other officers were sentenced to jail time for their involvement as well.<sup>73</sup> Other than being directly involved in drug smuggling, organised crime has been able to penetrate into the police force by bribing officers for information. In the beginning of 2019 for example, a hand-written letter from a suspect in the Gerrit G. case was found that indicated that he was warned by corrupt officers about an incoming police raid<sup>74</sup>

Equally worrying, criminal organizations have made attempts to influence local government officials as well. In order to do so, they predominantly adopt the tactic of threatening with violence. In addition, criminals have attempted to bribe local government officials as well but to a much lesser extent. The (attempted) bribes cannot be considered especially substantial either. Finally, criminal organizations have attempted to infiltrate in local governments as well. In most Netherlands provinces, the percentage of municipalities where (suspected) infiltration occurred currently ranges between 20% and 30%.<sup>75</sup>

### **6.3: Is there evidence of effective policing against organised crime by (specialized) law enforcement units? Do these bodies have sufficient independence, resources, capacity and adequate integrity mechanisms to be effective?**

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<sup>71</sup> <https://www.om.nl/onderwerpen/hoge-transacties/vraag-antwoord/@103953/ing-betaalt-775/>

<sup>72</sup> <https://www.cbs.nl/nl-nl/nieuws/2018/22/meer-vertouwen-in-elkaar-en-instituties>

<sup>73</sup> <https://www.ad.nl/binnenland/corrupte-douanier-gerrit-g-voor-14-jaar-de-cel-in~a8f5c063/>

<sup>74</sup> <https://www.nrc.nl/nieuws/2019/01/27/nieuwe-aanwijzing-voor-corruptie-binnen-politie-rotterdam-a3651876>

<sup>75</sup> <https://vng.nl/files/vng/tkbijlageeindrapportagecriminelebeïnvloedingvanhetlokaleopenbaarbestuur2.pdf>

The Dutch adopt an integral approach to fight organized crime. This integral approach consists of judicial, administrative, civil, financial and social law measures. A good example of the integral approach are the Regional Information and Expertise Centres (RIEC) that aim to connect the information, expertise and strengths of government institutions. As of 2017, there were ten RIEC's and one National Information and Expertise Centre (LIEC) where municipalities, provinces, Public Prosecution, National Police, Tax and Customs Authority, Customs, FIOD, Labour Inspection (Inspection Social Matters and Employment), Royal Military Police and the Immigration and Naturalisation Service cooperate to fight organized crime.<sup>76</sup>

Especially in the Southern provinces of the Netherlands, where the crux of drug-related organized crime is located, new programmes have been implemented aimed at fighting organized crime. When the Public Prosecution noticed in 2014 that organized crime was gaining a foothold in local governments, the decision was made to intensify efforts against criminal organizations in the relevant provinces. Five new teams were created that aimed to fight criminal networks, hemp cultivation and the production of synthetic drugs. Moreover, in the province of Noord-Brabant the Taskforce B5 was established in 2010 to fight criminal partnerships, break down opportunity structures and asset recovery. Due to its initial successes, the jurisdiction of the taskforce was widened to include the province of Zeeland as well and its name was altered accordingly to Taskforce Brabant-Zeeland (BZ).<sup>77</sup>

In 2017, the government pledged to increase resources spend on fighting organized crime. The central government emphasized the importance of the integral strategy adopted, gave more responsibilities to the RIEC's and pledged to devote an extra 10 million euros annually. Moreover, the coalition agreement of Rutte III announced the creation of a fund of 100 million euros aimed at fighting organized crime and that the assets recovered from criminals will be utilized to refill the fund.<sup>78 79</sup>

## TARGET 16.5: SUBSTANTIALLY REDUCE CORRUPTION AND BRIBERY IN ALL THEIR FORMS

### EXPERIENCE AND PERCEPTIONS OF CORRUPTION

**7.1: \_\_\_% of respondents state that they or a member of their household made an unofficial payment or gift when coming into contact with public services over the past 12 months, according to Transparency International's \_\_\_ Global Corruption Barometer (or similar national surveys).**

N/A. Question was not asked in the Netherlands.<sup>80</sup>

**7.2: \_\_\_% of respondents state that corruption or bribery is one of the three most important problems facing this country that the government should address, according to Transparency International's \_\_\_ Global Corruption Barometer (or similar national surveys).**

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<sup>76</sup> <https://www.politieacademie.nl/actueel/Documents/sluiwend%20gif.pdf>

<sup>77</sup> <https://www.politieacademie.nl/actueel/Documents/sluiwend%20gif.pdf>

<sup>78</sup> <https://www.politieacademie.nl/actueel/Documents/sluiwend%20gif.pdf>

<sup>79</sup> <https://www.rijksoverheid.nl/actueel/nieuws/2018/11/16/minister-grapperhaus-verdeelt-100-miljoen-voor-aanpak-ondermijnende-criminaliteit>

<sup>80</sup> Transparency International. 2016.Global Corruption Barometer 2016.



17%.<sup>81</sup>

**7.3: \_\_\_% of respondents state that their government performs “badly” at fighting corruption in government, according to Transparency International’s \_\_\_ Global Corruption Barometer.**

Very badly: 10%

Fairly badly: 43%<sup>82</sup>

**7.4: In Transparency International’s most recent Corruption Perceptions Index, the Netherlands scored \_\_\_ points on a scale of 0 (highly corrupt) to 100 (very clean), ranking \_\_\_ out of 176 countries.**

Score: 82/100.

Ranking: 8/180<sup>83</sup>

**7.5: Has corruption experienced by people increased or decreased in recent years?**

Since the Netherlands did not participate frequently enough in the Global Corruption Barometer to assess progress, the Corruption Perceptions Index will be employed here. In 2019<sup>84</sup>, 2018<sup>85</sup> and 2017<sup>86</sup>, the Netherlands ranked 8<sup>th</sup> on the list and scored 82 out of 100. In the years between 2016 and 2012, the score was marginally higher, fluctuating between 83 and 84.<sup>87</sup>

## ANTI-CORRUPTION FRAMEWORK AND INSTITUTIONS

**8.1: Are the following offences clearly defined and banned by criminal law?**

- a. Active bribery of domestic public officials, in line with Art. 15(a) of UNCAC.
- b. Passive bribery of domestic public officials, in line with Art. 15(b) of UNCAC.
- c. Embezzlement, misappropriation or other diversion of property by a public official, in line with Art.17 of UNCAC.
- d. Trading in influence, in line with Art. 18 of UNCAC.
- e. Abuse of functions, in line with Art. 19 of UNCAC.
- f. Illicit Enrichment, in line with Art. 20 of UNCAC.
- g. Bribery in the private sector, in line with Art. 21 of UNCAC.
- h. Embezzlement of property in the private sector, in line with Art. 22 of UNCAC.
- i. Laundering the proceeds of crime, in line with Art. 23 of UNCAC.
- j. Concealment, in line with Art. 24 of UNCAC.
- k. Obstruction of justice, in line with Art. 25 of UNCAC.

a.  1: Yes, according to Article 177-178a of the Netherlands Penal Code.<sup>88</sup>

b.  1: Yes, according to Article 363 of the Netherlands Penal Code.<sup>89</sup>

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<sup>81</sup> Transparency International. 2016.Global Corruption Barometer 2016.

<sup>82</sup> Transparency International. 2016.Global Corruption Barometer 2016.

<sup>83</sup> <https://www.transparency.org/cpi2019>

<sup>84</sup> <https://www.transparency.nl/nieuws/2020/01/cpi-2019-nederland-stagneert-op-anti-corruptieladder/>

<sup>85</sup> <https://www.transparency.nl/nieuws/2019/01/cpi-2018-maatregelen-tegen-corruptie-tot-stilstand/>

<sup>86</sup> <https://www.transparency.nl/nieuws/2018/02/cpi-2017-ruim-tweederde-landen-kent-ernstige-corruptie/>

<sup>87</sup> <https://www.transparency.org/research/cpi/overview>

<sup>88</sup> <https://wetten.overheid.nl/BWBR0001854/2019-08-01>

<sup>89</sup> <https://wetten.overheid.nl/BWBR0001854/2019-08-01>



- c.  1: Yes, according to Article 359, 361, 365 and, indirectly, 227b of the Netherlands Penal Code.<sup>90</sup>
- d.  0: There are no specific provisions on trading in influence in the Netherlands legal framework<sup>91</sup>
- e.  1: The provision outlawing different forms of bribery mentioned above assist in preventing the abuse of functions.<sup>92</sup>
- f.  0: The Netherlands legal framework does not make any specific mention that bans illicit enrichment.<sup>93</sup>
- g.  1: Yes, according to Article 328 of the Netherlands Penal Code.<sup>94</sup>
- h.  1: Yes, according to Article 321 and 322 of the Netherlands Penal Code.<sup>95</sup>
- i.  1: Yes, according to Article 420bis, 420ter and 420quater of the Netherlands Penal Code.<sup>96</sup>
- j.  1: Yes, according to Article 416-417bis and 420bis to 420quater of the Netherlands Penal Code.<sup>97</sup>
- k.  1: Yes, according to Article 284, 285a, 47 Paragraph 2 and Article 187 of the Netherlands Penal Code.<sup>98</sup>

**8.2: Please provide case statistics for each of those offences, including, if available, the number of trials in each of the past two years (ongoing and finalized), the number of convictions, the number of settlements, the number of acquittals and the number of cases currently pending.**

n/a.

**8.3:**

**a. To what extent is there formal operational independence of the Anti-Corruption Agency (ACA), and what evidence is there that, in practice, it can perform its work without external interference?**

**b. To what extent does it have adequate resources and capacity to achieve its goals in practice?**

**c. To what extent are there mechanisms in place to ensure the integrity of the ACA, and to what extent is its integrity ensured in practice?**

**d. To what extent does the ACA engage in preventive, educational and investigation activities on corruption and alleged corruption cases?**

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<sup>90</sup> <https://wetten.overheid.nl/BWBR0001854/2019-08-01>

<sup>91</sup> [https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017\\_10\\_17\\_Netherlands\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017_10_17_Netherlands_Final_Country_Report.pdf)

<sup>92</sup>

[https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017\\_10\\_17\\_Netherlands\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017_10_17_Netherlands_Final_Country_Report.pdf)

<sup>93</sup>

[https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017\\_10\\_17\\_Netherlands\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017_10_17_Netherlands_Final_Country_Report.pdf)

<sup>94</sup> <https://wetten.overheid.nl/BWBR0001854/2019-08-01>

<sup>95</sup> <https://wetten.overheid.nl/BWBR0001854/2019-08-01>

<sup>96</sup> <https://wetten.overheid.nl/BWBR0001854/2019-08-01>

<sup>97</sup> <https://wetten.overheid.nl/BWBR0001854/2019-08-01>

<sup>98</sup> <https://wetten.overheid.nl/BWBR0001854/2019-08-01>

a. The anti-corruption agency in the Netherlands is the Anti-Corruption Centre of the FIOD, the government agency focused at fighting financial and economic fraud. The Anti-Corruption Centre aims to put all expertise concerning corruption available in the FIOD in one place. It mainly seeks to investigate foreign official corruption and domestic non-official corruption. The FIOD is the intelligence service of the Netherlands Tax and Customs Authority, hence little public information concerning the Anti-Corruption Centre is available.<sup>99</sup>

b. The Anti-Corruption Centre was established by the Public Prosecution Service in 2016 to be able to tackle corruption in the government and private sector more effectively. This was accompanied by an structural annual investment of €20 million from 2018 onwards to strengthen the FIOD's and OM's (Public Prosecution Service) capacity regarding anti money-laundering and corruption practices.<sup>100</sup>

c. Employees of the Anti-Corruption Centre have to adhere to the same code of conduct as other civil servants. This code of conduct will be discussed further in the section dealing with public sector corruption. Moreover, a declaration indicating that the person in question does not have a criminal record is necessary to be able to work for the organisation.

d. The Anti-Corruption Centre collects and develops and shares knowledge concerning all aspects of the investigation and prosecution of corruption. The aim is to maintain the relevance of the fight against corruption, especially in the private sector. Moreover, it seeks to investigate foreign official corruption and domestic non-official corruption.<sup>101</sup> Due to the fact that the FIOD is an intelligence service, little public information is available concerning the specific activities of the Anti-Corruption Centre.

#### **8.4:**

**a. To what extent is there formal operational independence of the audit institution, and what evidence is there that, in practice, it can perform its work without external interference?**

**b. To what extent does it have adequate resources and capacity to achieve its goals in practice?**

**c. To what extent are there mechanisms in place to ensure the integrity of the audit institution, and to what extent is its integrity ensured in practice?**

**d. To what extent does the audit institution provide effective audits of public expenditure? Are its reports, findings, and recommendations available to the public?**

a. The Algemene Rekenkamer is a legally independent institution that checks the legality and efficiency of the income and expenditure of the Netherlands national government.<sup>102</sup> There is no evidence of external interference in the Algemene Rekenkamer.<sup>103</sup>

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<sup>99</sup> <https://www.fiod.nl/wat-doet-de-fiod-tegen-corrupctie/>

<sup>100</sup> <https://www.om.nl/@98932/jaarbericht-2016/>

<sup>101</sup> <https://www.fiod.nl/wat-doet-de-fiod-tegen-corrupctie/>

<sup>102</sup> [https://www.denederlandsegrondwet.nl/id/vkaj9cwr2y9/artikel\\_78\\_wettelijke\\_regeling\\_algemene](https://www.denederlandsegrondwet.nl/id/vkaj9cwr2y9/artikel_78_wettelijke_regeling_algemene)

<sup>103</sup> <https://www.rekenkamer.nl/over-de-algemene-rekenkamer/positie-en-bevoegdheden>

b. In a letter to the House of Representatives in 2016, the Algemene Rekenkamer called for attention to the impact of the structural budget cuts the audit institution experienced from 2013 onwards.<sup>104</sup> In this letter, the budget cuts were depicted as irresponsible and putting the quality of the institution's work at risk. Between 2010 and 2016, the Rekenkamer's manpower decreased from 296 to 268.71 fte. Due to further budget cuts, the institution aimed for a formation consisting of solely 229.3 fte in 2017. This caused the organization to be faced with considerable understaffing.<sup>105</sup> As of 2018 however, the government increased the Rekenkamer's budget with 1 million euro annually, which will be increased to 3 million annually in 2022. The initial increase resulted in the ability to hire 57 new employees, which (virtually) brought the organization's capacity and quality back to its original level.<sup>106</sup>

c. In 2017, the Rekenkamer introduced new regulations regarding integrity resulting in the implementation of the international code of conduct for audit institutions, whistleblower regulations and the Gedragscode Rijk, an overview of the most important agreements of the national government regarding integrity.<sup>107</sup> In 2018, three investigations analysed the employees' perception of the new regulations and found that unclarity as to how to deal with the new regulations still existed. In order to solve this issue, a Commission Integrity was appointed.<sup>108</sup>

d. The audit institution provides an annual audit of public expenditure as well as separate investigations concerning the effectiveness of governmental policy. These findings and reports are made available to the public.<sup>109</sup>

## 8.5:

**a. To what extent is the judiciary independent by law, and to what extent does it operate without interference from the government or other actors?**

**b. To what extent are there laws seeking to ensure appropriate tenure policies, salaries and working conditions of the judiciary, and does it have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?**

**c. To what extent does the public have access to judicial information and activities in practice? To what extent is the integrity of members of the judiciary ensured in practice?**

**d. To what extent is the integrity of members of the judiciary ensured in practice? To what extent is the judiciary committed to fighting corruption through prosecution and other activities?**

a. The Netherlands judiciary is independent, and the rule of law generally prevails in civil and criminal matters according to the Freedom House. The Netherlands receives 15 out of 16 points on indicators related to the rule of law. Full points are not acquired due to the imperfect treatment of minority

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<sup>104</sup> Visser, A., and van Schoten, E. 21 september 2016. Vaststelling van de Begrotingsstaat van de Overige Hoge Colleges van Staat en de Kabinetten van de Gouverneurs voor het Jaar 2017.

<sup>105</sup> <https://www.rekenkamer.nl/publicaties/jaarverslagen/2018/03/29/verslag-2017-algemene-rekenkamer>

<sup>106</sup> <https://www.rekenkamer.nl/publicaties/jaarverslagen/2019/03/21/verslag-2018-algemene-rekenkamer>

<sup>107</sup> <https://www.rekenkamer.nl/publicaties/jaarverslagen/2018/03/29/verslag-2017-algemene-rekenkamer>

<sup>108</sup> <https://www.rekenkamer.nl/publicaties/jaarverslagen/2019/03/21/verslag-2018-algemene-rekenkamer>

<sup>109</sup> <https://www.rekenkamer.nl/over-de-algemene-rekenkamer/positie-en-bevoegdheden>

segments of the population by Dutch society. However, this does not (directly) impact the independence and integrity of the Netherlands judiciary.<sup>110</sup>

b. Judicial salaries are regulated by Chapter 3 of the Law on the Legal Status of Judicial Officials, which groups judges in 12 different categories, ranging from judge in training to the President of Supreme Court. To minimize corruption and interference of the government, judges are appointed for life.<sup>111 112</sup> In November 2018, judges sent a letter to the House of Representatives calling attention for their working conditions. Due to a failed ICT-project, the judiciary currently has a budget deficit of 40 million euros. 97% of the Dutch judges do not think that the burden of this failed project should be passed onto them. Moreover, there currently is a shortage of judges and prosecutors, which causes the available personnel to be overworked. Finally, a problem exists with the manner in which justice is financed. Currently, a fixed amount per settled case is provided that does not take the time and resources spent into account. This means the more cases, the more money will be eventually added to the budget without taking the quality of justice into account.<sup>113</sup>

c and d. The public does not have access to judicial information. However, it is able to visit a considerable amount of court cases. In addition, the right to a fair trial is constitutionally guaranteed and respected in practice. Defendants have access to legal counsel, and counsel is provided for them if they cannot afford an attorney.<sup>114</sup> In practice, integrity of members of the judiciary is ensured by the fact that judges are appointed for life and can only be fired on their own request, reaching a certain age or in specific circumstances.<sup>115</sup> There currently is no evidence of interference with the judiciary independence in fighting corruption through prosecution and other activities.

## PRIVATE SECTOR CORRUPTION

### 9.1: Is it a criminal offence under the Netherlands' laws to bribe a foreign public official?

- *1: The offence is clearly defined and banned under Article 177, 178 and 178a of the Netherlands Penal Code.*<sup>116</sup>

### 9.2: Does the Netherlands legal framework prohibit collusion?

- *0.5: The law prohibits hard core cartels, but not all major forms of collusion are banned.*<sup>117</sup>

### 9.3: Is the ban on foreign bribery enforced?

In a 2018 study, Transparency International classified Dutch enforcement of foreign bribery as 'limited'. In the period 2014-2017, the Netherlands opened at least seven investigations, commenced four cases with sanctions, including three major foreign bribery settlements with the Netherlands Public Prosecutor. In 2017, three Rotterdam-based subsidiaries of the Stockholm-based international

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<sup>110</sup> <https://freedomhouse.org/report/freedom-world/2018/netherlands>

<sup>111</sup> <https://wetten.overheid.nl/BWBR0008365/2016-01-01>

<sup>112</sup> <https://www.denederlandsegrondwet.nl/9353000/1/j9vvl1oucfc6v2/vgrnfbk7kozs>

<sup>113</sup> <https://nos.nl/nieuwsuur/artikel/2258390-brandbrief-rechters-wij-vrezen-voor-de-toekomst-van-de-rechtspraak.html>

<sup>114</sup> [https://www.denederlandsegrondwet.nl/id/vklqnbat9rrv/recht\\_op\\_een\\_eerlijk\\_proces](https://www.denederlandsegrondwet.nl/id/vklqnbat9rrv/recht_op_een_eerlijk_proces)

<sup>115</sup> <https://www.denederlandsegrondwet.nl/9353000/1/j9vvl1oucfc6v2/vgrnfbk7kozs>

<sup>116</sup> [https://wetten.overheid.nl/BWBR0001854/2019-08-01/#BoekTweede\\_TiteldeelVIII\\_Artikel178a](https://wetten.overheid.nl/BWBR0001854/2019-08-01/#BoekTweede_TiteldeelVIII_Artikel178a)

<sup>117</sup> <https://www.rijksoverheid.nl/onderwerpen/mededinging/kartel>

telecom provider Telia Company AB paid the Netherlands government US\$274 million, also in relation to bribery of foreign officials to operate in the Uzbek telecom market. This was part of a global settlement announced by US authorities, involving a total financial sanction of US\$965 million.<sup>118</sup> Moreover, The Netherlands Fiscal Information and Investigation Service has been investigating ING Bank since 2016 on suspicion of facilitating international corruption and money laundering. The two parties agreed upon a record-high settlement in 2019. The bank is suspected of failing to report, in a timely manner, unusual transactions by VimpelCom and Telia Company AB for payments into the bank accounts of Takilant.<sup>119</sup>

The Netherlands public prosecutor has yet to prosecute an individual for their responsibility in foreign bribery, the key reason given being jurisdictional limitations concerning the prosecution of foreign individuals employed by Dutch companies who committed their crimes outside the Netherlands. Instead, prosecutors opt for settlements more frequently. The system for settlements, however, is undermined by a lack of transparency, the absence of any role for an independent court, and the lack of a legal basis for Dutch settlements to include important aspects such as a monitor or obligatory future reporting to the public prosecutor. Settlement amounts in cases of foreign corruption compared to national corruption (either as a settlement or imposed by local courts) are much higher. Clear guidelines for companies on what to expect when they report or enter into settlement negotiations are lacking. In addition, there are no clear rules to ensure that forfeited amounts of proceeds of crime are returned to the countries where the profits were originally earned.<sup>120</sup>

Even though resources for enforcement have increased markedly, it remains to be seen whether the justice system is capable of effectively conducting full trials against larger Dutch companies and their management. Up to 2017, the only foreign bribery case ever brought to court, against Takilant Ltd, was a trial in absentia.<sup>121</sup>

#### **9.4: Are anti-collusion provisions effectively enforced?**

Collusion is not considered to be illegal in the Netherlands. Only in the case colluding parties perform a criminal act or the collusion results in a criminal offence, it is against the law. However, in this case it is the criminal offence in question that the parties will be prosecuted for and not collusion.<sup>122</sup>

#### **9.5: Are there specific rules or practices related to the transparency of corporations that result in high corruption risks?**

Inadequate whistleblower protection increases corruption risks by discouraging whistleblowers to alarm about corrupt practices. Even though the Netherlands implemented a whistleblowers protection framework that prescribes companies with more than 50 employees to implement a policy to protect

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<sup>118</sup> [https://www.transparency.nl/wp-content/uploads/2018/09/TI\\_Exporting-Corruption-Report\\_2018\\_Final-digital.pdf](https://www.transparency.nl/wp-content/uploads/2018/09/TI_Exporting-Corruption-Report_2018_Final-digital.pdf)

<sup>119</sup> [https://www.transparency.nl/wp-content/uploads/2018/09/TI\\_Exporting-Corruption-Report\\_2018\\_Final-digital.pdf](https://www.transparency.nl/wp-content/uploads/2018/09/TI_Exporting-Corruption-Report_2018_Final-digital.pdf)

<sup>120</sup> [https://www.transparency.nl/wp-content/uploads/2018/09/TI\\_Exporting-Corruption-Report\\_2018\\_Final-digital.pdf](https://www.transparency.nl/wp-content/uploads/2018/09/TI_Exporting-Corruption-Report_2018_Final-digital.pdf)

<sup>121</sup> [https://www.transparency.nl/wp-content/uploads/2018/09/TI\\_Exporting-Corruption-Report\\_2018\\_Final-digital.pdf](https://www.transparency.nl/wp-content/uploads/2018/09/TI_Exporting-Corruption-Report_2018_Final-digital.pdf)

<sup>122</sup> <https://zoek.officielebekendmakingen.nl/kst-28244-16.html>

whistleblowers from retaliation, it does not establish adequate standards for these arrangements. A 2017 study conducted by the Whistleblowers' Authority found that half the Dutch companies studied were not compliant with the legal requirement of an internal whistleblowing policy. This is confirmed by an assessment by Transparency International Netherlands concerning the quality of whistleblowing policies of 27 Dutch publicly listed companies. The legal framework concerning whistleblowers will be discussed at length in the Whistleblower Section.<sup>123</sup>

## PARTY AND CAMPAIGN FINANCE TRANSPARENCY

### 10.1: Is there a legal framework regulating the financing of political parties and the finances of candidates running for elected office?

- *0.5: There is a legal framework regulating the financing of political parties and the finances of candidates running for elected office but some actors or candidates are not subject to this regulation.*

The legal framework regulating the financing of political parties consists of laws regulating the granting of subsidies and the regulation of transparency of the administration of political parties. However, financing of political parties and the finances of candidates on a local level are not subject to this regulation.

In this question, the aspects of the law dealing with subsidies will be discussed. Article 7 of the Law on Financing Political Parties regulates that political parties in the Netherlands receive a subsidy if they have over 1000 members who all possess voting power and pay a minimum of 12 euro's contribution a year.<sup>124</sup> This subsidy is provided for:

- a. Activities related to political education.
- b. Provision of information
- c. Maintaining contacts with foreign sister parties and supporting their educational activities.
- d. Political science activities
- e. Activities promoting the political participation of the youth
- f. Recruiting members
- g. Involving non-members in the activities of the political party.
- h. Recruiting, selecting and supporting holders of political office.
- i. Activities related to election campaigns.

Article 8 states that the maximum amount of subsidy provided<sup>125</sup>:

- a. A basic amount of €181,947, €52,773 per seat in parliament of the political party and per member of the political party an amount that is equal to €1,992,218 divided by the total amount of members of the political party.
- b. If the political party has a political-science institute appointed as an ancillary institution, a basic amount of €127,789 and €13,135 per seat is provided.

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<sup>123</sup> [https://www.transparency.nl/wp-content/uploads/2018/09/TI\\_Exporting-Corruption-Report\\_2018\\_Final-digital.pdf](https://www.transparency.nl/wp-content/uploads/2018/09/TI_Exporting-Corruption-Report_2018_Final-digital.pdf)

<sup>124</sup> <https://wetten.overheid.nl/BWBR0033004/2019-02-23>

<sup>125</sup> <https://wetten.overheid.nl/BWBR0033004/2019-02-23>

- c. If the party has a youth organization, the political party receives per seat in parliament an amount of €512,256 divided by the total seats in parliament of political parties. Moreover, per member of the political youth organization an amount is provided as well, calculated by dividing €512,256 by the total amount of members of political youth organizations.
- d. If the party has appointed an agency for foreign activities, the party receives the basic amount of €655,183 divided by the total number of political parties that has appointed an agency for foreign activities. Furthermore, a number per seat in parliament is provided, calculated by dividing €942,824 by the total number of seats in parliament of political parties possessing an agency for foreign activity.

**10.2: Are political parties and individual candidates running for elected office required to disclose financial statements for their campaigns detailing itemized income and expenditure, as well as individual donors to their campaign finances.**

- *0.5: Political parties (and, if applicable, political candidates) are required to release income reports of political campaigns to the public and to disclose major donors who contributed to a campaign, with a threshold between 1.001 and 5.000 Euro/USD.*

Article 25 of the Law on Financing Political Parties stipulates that, before the 1st of July, political parties are required to send to the Minister of the Interior and Kingdom Relations<sup>126</sup>:

- a. A financial report of the prior year containing the received subsidies, gifts and other income as well as the capital position and debt owed by the party.
- b. An overview of a total of €4.500 or more in gifts that the party received, including the name and address of the donor, the value and date of the donation.
- c. An overview of the debt owed of € 25.000 or more including the name and address of the creditor and if applicable, information concerning the organization as well as the amount of debt owed.
- d. The written explanation of an accountant.

The information shared in b. and c. will be made public by the Minister. Of the information regarding addresses, however, solely the name of the city/town will be made public. In addition, if requested by a political party, the Minister will not disclose the name and address of a donor if, by judgement of the Minister, this is in the interest of the donor's safety.

**10.3: Are political parties and, if applicable, individual candidates running for elected office required to disclose annual accounts with itemized income and expenditure and individual donors?**

- *0.5: Political parties (and, if applicable, political candidates) are required to release annual income reports to the public and to disclose major donors, with a threshold between 1,001 and 5,000 Euro/USD in contributions over one year.*

In addition to the answer in question 2, Article 28 states that political parties participating in elections are required to disclose to the Minister, between the 21st and 14th day before elections<sup>127</sup>:

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<sup>126</sup> <https://wetten.overheid.nl/BWBR0033004/2019-02-23>

<sup>127</sup> <https://wetten.overheid.nl/BWBR0033004/2019-02-23>



- a. gifts of in total €4500 or more that the party received in a year by a single donor. This disclosure includes the same information as stated in question 2.
- b. debt of €25,000 or more including the same information as stated above.

The Minister then makes the information public a week before the elections at the latest. If the donor's personal safety is at risk, as judged by the Minister, the name and address of the donor can be kept secret.

#### **10.4: Are parties' (and, if applicable, candidates') electoral campaign expenditures subject to independent scrutiny?**

- *0.5: The campaign finances of parties and/or candidates for elected office are subject to verification, but the legal framework fails to guarantee the political independence of the oversight body and/or does not provide the oversight body with sufficient powers and resources to effectively scrutinise the statements and accounts in an effective manner.*

Financing electoral campaigns is seen as an integral part of the financial regulation of political parties mentioned above. The same laws apply here, meaning that campaigns are for a large part financed by government subsidies. Moreover, if additional gifts are received of a total value of €4500, the party is required to disclose information about the donor. No independent body is appointed to provide oversight. Instead, according to Article 28, the Minister is tasked with checking party finances prior to an election before the information can be made public.<sup>128</sup>

#### **10.5: Are the annual accounts of political parties (and, if applicable, of candidates) subject to independent scrutiny?**

- *0.5: Annual financial statements of parties and/or candidates for elected office are subject to verification, but available the legal framework fails to guarantee the political independence of the oversight body and/or does not provide the oversight body with sufficient powers and resources to effectively scrutinize the statements and accounts in an effective manner.*

According to article 25, the annual accounts of political parties are required to be scrutinized by an accountant, who needs to provide a written statement regarding the truthfulness of the annual account.<sup>129</sup> As stated in Article 393 paragraph 1 of Book 2 of the Civil Code, the accountant is appointed by the Authority Financial Markets and political parties are required to cooperate with the investigation.<sup>130</sup> After the accountant has conducted his research, the financial report is send to the Minister who, together with his/her Commission, provides an additional evaluation. Thus, the legislation is failing to guarantee the political independence of the oversight body.

#### **10.6: What is the score in the Money Politics and Transparency assessment produced by Global Integrity?**

n/a. The Netherlands was not included in the ranking.<sup>131</sup>

<sup>128</sup> <https://wetten.overheid.nl/BWBR0033004/2019-02-23>

<sup>129</sup> <https://wetten.overheid.nl/BWBR0033004/2019-02-23>

<sup>130</sup> [https://wetten.overheid.nl/BWBR0003045/2019-07-01/#Boek2\\_Titeldeel9\\_Afdeling9\\_Artikel393](https://wetten.overheid.nl/BWBR0003045/2019-07-01/#Boek2_Titeldeel9_Afdeling9_Artikel393)

<sup>131</sup> <https://data.money politicstransparency.org/>



## 10.7: Have political parties and/or candidates been sanctioned for violating political finance rules or non-compliance with disclosure requirements in between 2017-2019, according to publicly available evidence?

In 2018, journalists of the daily newspaper *NRC* discovered that a company based in Buffalo, US donating 7000 euro's to the PVV in 2016 did not formally exist in the US. The PVV, however, could easily get away without being sanctioned because the Commission is not tasked with determining the truthfulness of information regarding donors provided by political parties.<sup>132</sup>

Moreover, political parties in the Netherlands seem to be perfectly aware of the loopholes in the legal framework regarding the financing of political parties, as shown by a recent study of the newspaper *de Telegraaf*.<sup>133</sup> In the research, a journalist posed as an entrepreneur seeking to donate €15.000 to various political parties on the condition of him remaining anonymous. As stated above, however, €15.000 is well over the maximum amount of a total of €4.500 in which individuals can remain anonymous. Only four parties (Socialist Party, Party for Animals, Forum for Democracy and the Party for Freedom) abstained from recommending illegal activities or utilizing the loopholes in Netherlands legislation. The 50Plus party performed the worst in this test by advising the donor to send the money in cash to a party employee. Other parties recommended the entrepreneur to refrain from donating the money in one year and spread the donation over multiple years instead. In addition, some advised to employ middlemen to be able to send the money in one year without information of any one person becoming public.<sup>134</sup>

## LOBBYING TRANSPARENCY

### 11.1: Is there a law or policy that sets a framework for lobbyists and lobbying activities?

- 0: *There is no such framework.*<sup>135</sup>

Despite the fact that some laws and policies exist that aim to counter corruption, they are not sufficiently comprehensive and extensive to be considered a framework. It is important to note, however, that lobbying is an important and integral aspect of the Dutch manner of conducting politics, also known as *the Poldermodel*. Dutch politics is based predominantly on consensus-seeking between all relevant actors in society.

### 11.2: Is the definition of (i) lobbyists, (ii) lobbying targets, and (iii) lobbying activities clear and unambiguous? Who is covered by the definition (consultant lobbyists/in-house lobbyists/ anybody engaging in lobbying activities)?

- 0: *There is no legislative framework on lobbying.*<sup>136 137</sup>

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<sup>132</sup> <https://www.nrc.nl/nieuws/2017/11/29/donateur-van-pvv-blijkt-onvindbaar-a1582956>

<sup>133</sup> <https://www.telegraaf.nl/nieuws/2123264497/politieke-partijen-open-voor-schimmige-donaties>

<sup>134</sup> <https://www.telegraaf.nl/nieuws/2123264497/politieke-partijen-open-voor-schimmige-donaties>

<sup>135</sup> <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

<sup>136</sup> <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

<sup>137</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680931c9d>

**11.3: Is there a mandatory lobbying register? Do disclosure requirements provide sufficient and relevant information on key aspects of lobbying and lobbyists, such as its objective, beneficiaries, funding sources, and targets?**

● *0: No such information is made publicly accessible through a register;*

There is a lobby register containing approximately 110 lobbyists who have a permanent pass for parliamentary entry.<sup>138</sup> The register is voluntary, publicly available, regularly updated and outlines the name, company and actor for which the lobbying is done. The actual number of lobbyist present in the Hague however, is believed to be in the thousands.<sup>139</sup>

**11.4: Are there rules and guidelines which set standards for expected behaviour for public officials and lobbyists, for example to avoid misuse of confidential information?**

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

The Netherlands Code for Good Public Governance is such a code of ethics, which is meant for municipalities, provinces, water authorities and the public service. One of the starting principles of this Code is that government is open and honest. To achieve this, the trust of citizens and organizations in the government and transparency in general should be increased. Specific measures that address ethical lobbying are not included. More specific rules can be found in the Basic norms of Integrity (Basisnormen Integriteit). All government organizations should adhere to these rules, which state that public officials need to report ancillary activities. Mentioning such activities can prevent a situation in which a conflict of interest emerges. The document also states how to deal with gifts and other services. All gifts and services should be reported and in general the rule applies that a gift or service with a value exceeding 50 euro should not be accepted.<sup>140</sup>

The Integrity guide for politicians (Handreiking integriteit politieke ambtsdragers) also mentions certain common rules that apply to public officials and public representatives. These rules state that ancillary activities should be reported and that public officials cannot vote on matters in which they have a personal interest. The document also makes clear that public officials should be sworn in (as is obliged by law) and promise that they will adhere to certain general rules that are aimed at maintaining integrity. If any of these codes is violated, there is a mechanism in place that allows for complaints by public officials or citizens at the organization concerned to be submitted on the website of the government ([www.rijksoverheid.nl](http://www.rijksoverheid.nl)). Individuals who are dissatisfied with the handling of their complaint can contact the independent National Ombudsman.<sup>141</sup>

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<sup>138</sup> [https://www.tweedekamer.nl/sites/default/files/atoms/files/lobbyistenregister\\_d.d.\\_27\\_mei\\_2019.pdf](https://www.tweedekamer.nl/sites/default/files/atoms/files/lobbyistenregister_d.d._27_mei_2019.pdf)

<sup>139</sup> <https://www.volkskrant.nl/nieuws-achtergrond/lobbypaleis-met-een-onbekend-aantal-bewoners~b9992708/>

<sup>140</sup> <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

<sup>141</sup> <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

Besides codes of conduct promoting integrity while in office, the Netherlands established a measure against revolving doors in 1999 when the government issued a circular letter against revolving doors in the public service.<sup>142</sup> However, the scope of this measure is very limited. The measure states that a former public official who worked at a Ministry cannot be hired as a consultant by the same department until two years after resignation. This effectively means that there is no restriction on former public officials lobbying their former ministries. An exception is made for the Ministry of Defence, where high officials cannot, for two years after resignation, be a 'negotiating partner' with the Ministry on behalf of a company. For former members of the Cabinet, there is merely a general rule of conduct, entailing that departing members of the Cabinet should not create any impression that they would abuse the knowledge acquired during their term of office. MPs, judges and prosecutors have no post-employment restrictions.<sup>143</sup>

#### **11.5: Are procedures for securing compliance framed in a coherent spectrum of strategies and mechanisms, including monitoring and enforcement?**

While there are several codes of ethics for the public sector, none of the applicable rules specifically addresses lobbying. As mentioned, there is no statutory code of conduct for lobbyists. However, the Dutch Association for Public Affairs (BVPA) has a self-regulatory code of ethics for its members. One of its leading principles is that “public affairs” is a transparent profession. The Charter does not only mention openness as a goal, but also provides specific guidelines to reach this goal. While the Charter itself does not specifically mention the banning of gifts, it clearly urges members to respect the standard practices and codes of clients, employees, customers, colleagues, other professions and the public. Members and non-members of the BVPA are able to report violations of the lobbying code.<sup>144</sup>

The self-regulatory code established by the BVPA covers a lot of ground and the BVPA is serious in its endeavour to create an ethical lobbying sector. The BVPA has an important role in professionalizing the public affairs sector, by introducing educational requirements and mandatory ethics training for all lobbyists. Also, it should remain performing the network and advisory functions it currently fulfils. Nevertheless, its voluntary character and its lack of enforcement warrants that a well-funded, independent authority that should monitor the mandatory register and statutory code of conducts for lobbyists be considered.<sup>145</sup>

#### **11.6: Are there documented cases of lobbying misconduct that have been investigated in between 2017-2019? Are there documented cases of sanctions being imposed for non-compliance?**

In March 2019, the VVD initiated an investigation concerning the integrity of Senator Duthler as a result of suspicion of a conflict of interests. Duthler voted in favour of a bill that consisted (partially) of recommendations put forward by her own consultancy company, Duthler Associates. The company

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<sup>142</sup>

[http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Wet%20en%20Regelgeving/Nota\\_integriteit\\_openbaar\\_bestuur\\_bijlage\\_3.pdf](http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Wet%20en%20Regelgeving/Nota_integriteit_openbaar_bestuur_bijlage_3.pdf)

<sup>143</sup> <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

<sup>144</sup> <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

<sup>145</sup> <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

earned approximately €77.000 with the consulting job.<sup>146</sup> Since no effective regulations regarding conflict of interests existed in the Senate at the time, she could not be officially sanctioned. Her own party, however, removed her from the political presentation in the Senate.<sup>147</sup> Moreover, this particular case of lobbying misconduct resulted in the Senate reviewing their own ethical code of conduct which eventually caused new regulations concerning integrity in the Senate to be implemented. These regulations will be discussed further in the Public Sector section.<sup>148</sup>

Some Dutch senators attempted to downplay the issue by stating that cases like Duthler's have occurred numerous times. Examples include CDA Senator Marnix van Rij, who advocated for the abolishment of the dividend tax while being a partner at EY which counts Shell as one of its clients. In addition, D66 Senator Alexander Rinnooy Kan was employed by the Minister of Education to put forward recommendations as to how to improve the position of teachers. The same Senator will most likely vote for possible legislation concerning this issue.<sup>149</sup>

### **11.7: Have there been noteworthy efforts to promote transparency and integrity related to lobbying in between 2017-2019? Have there been relevant changes to the framework or its implementation?**

As mentioned above, as of June 2019 the Senate needs to adhere to a new code of conduct regarding integrity. The new code provides more clarity regarding possible conflicts of interests, indicating that senators should be aware of the additional interests they have due to the other positions they hold. Moreover, senators are required to share the additional functions they hold besides being a member of the Senate. This consists of a short description of the function, the company/organisation for which the function is performed and whether the function is paid or not. All interests that can reasonably be considered to be relevant but cannot be regarded as an official function need to be made public as well. In the case the possible appearance of a conflict of interest exists, the new code prescribes that senators should abstain from voting.<sup>150</sup>

The 'Huishoudelijke Commissie' has been appointed as the supervising authority regarding the new code of conduct. The Commission already functions as a watchdog for the interests and reputation of the Netherlands Senate in general. In case a member of the Senate is suspected to have violated the code of conduct, the Commission is able to make an official verdict.<sup>151</sup>

## **TARGET 16.6: DEVELOP EFFECTIVE, ACCOUNTABLE AND TRANSPARENT INSTITUTIONS AT ALL LEVELS**

### **TRANSPARENCY AND INTEGRITY IN PUBLIC ADMINISTRATION**

**12.1: Is there a law, regulation or Code of Conduct in place, covering public officials, employees and representatives of the national government, that adequately addresses the following issues:**

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<sup>146</sup> <https://www.ad.nl/politiek/onderzoek-eerste-kamer-na-belangenverstrengeling-vvd-senator~a6cf3009/>

<sup>147</sup> <https://www.volkskrant.nl/nieuws-achtergrond/affaire-duthler-splijt-senaatsfractie-vvd~bda30ba9/>

<sup>148</sup> <https://www.ad.nl/politiek/onderzoek-eerste-kamer-na-belangenverstrengeling-vvd-senator~a6cf3009/>

<sup>149</sup> <https://www.volkskrant.nl/nieuws-achtergrond/in-de-eerste-kamer-is-belangenverstrengeling-schijnbaar-niet-zo-raar~b5289bc3/>

<sup>150</sup> [https://www.eerstekamer.nl/behandeling/20190416/verslag\\_van\\_de\\_tijdelijke](https://www.eerstekamer.nl/behandeling/20190416/verslag_van_de_tijdelijke)

<sup>151</sup> [https://www.eerstekamer.nl/behandeling/20190416/verslag\\_van\\_de\\_tijdelijke](https://www.eerstekamer.nl/behandeling/20190416/verslag_van_de_tijdelijke)

**a. integrity, fairness, and impartiality;**

**b. gifts, benefits, and hospitality; and**

**c. conflicts of interest?**

- 1: A law, regulation or Code of Conduct is in place and addresses the aspects mentioned above.

Since being a member of the Senate is a part-time function in the Netherlands and members of the House of Representatives are employed full-time, both chambers of parliament are obliged to abide by different Codes of Conduct regarding integrity. The House of Representative's Code of Conduct revolves around six regulations. First, MPs have to take an oath declaring their loyalty to the King, the Statute for the Kingdom and the constitution. In addition, they have to state that they did not receive or (promise to) give away any favours or gifts in return for gaining their position in parliament. Secondly, there is a regulation in place to prevent conflicts of interests from occurring. This regulation is not in place in the Senate due to the part-time character of the role as senator. Thirdly, MPs have to declare their ancillary activities and income, relevant interests and offered foreign trips and gifts of a value above 50 euros. Fourthly, members of the House of Representatives have a duty of confidentiality for all meetings, either plenary or in a commission, that take place 'behind closed doors'. The fifth regulation extends this to all documents that are intended to remain confidential. Finally, the Code of Conduct regulates misbehaviour, which considers misbehaviour to be: diverting from the subject of interest, the use of offensive terms, disturbing the order and agreeing with or encouraging illegal practices.<sup>152</sup>

As of June 2019, the Senate needs to adhere to a new code of conduct regarding Integrity. The new code provides more clarity about conflicts of interests, indicating that senators should be aware of the additional interests they have due to the other positions they hold. Moreover, senators should abstain from activities that have the appearance of a conflict of interest. It is important to note that this conflict of interest only relates to a conflict of interest with regard to a specific self-interest, usually as a result of holding other functions. Senators are required to share the additional functions they hold besides being a member of the Senate as well. This consists of a short description of the function, the company/organisation for which the function is performed and whether the function is paid or not. Moreover, all interests that can reasonably considered to be relevant but cannot be regarded as an official function need to be made publicly available as well.<sup>153</sup>

The 'Huishoudelijke Commissie' has been appointed as the supervising authority regarding the new code of conduct. The Commission already functions as a watchdog for the interests and reputation of the Netherlands Senate in general. In case a member of the Senate is suspected to have violated the code of conduct, the Commission is able to make an official verdict.<sup>154155</sup>

**12.2: Is there a law or clear policy in place to address the 'revolving door' – the movement of individuals between public office and private sector, while working on the same sector or issue,**

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<sup>152</sup> [https://www.tweedekamer.nl/sites/default/files/atoms/files/integriteitsregels\\_voor\\_kamerleden.pdf](https://www.tweedekamer.nl/sites/default/files/atoms/files/integriteitsregels_voor_kamerleden.pdf)

<sup>153</sup> [https://www.eerstekamer.nl/behandeling/20190416/verslag\\_van\\_de\\_tijdelijke](https://www.eerstekamer.nl/behandeling/20190416/verslag_van_de_tijdelijke)

<sup>154</sup> [https://www.eerstekamer.nl/behandeling/20190416/verslag\\_van\\_de\\_tijdelijke](https://www.eerstekamer.nl/behandeling/20190416/verslag_van_de_tijdelijke)

<sup>155</sup> <https://www.p-direkt.nl/documenten/publicatie/2018/01/23/gedragscode-integriteit-rijk-drempelvrije-brochure>

**which may result in conflicts of interest and in former public officials misusing the information and power they hold to benefit private interests?**

- *0: There is no law or policy addressing the ‘revolving door’. The measures that do exist are not extensive enough or lack sufficient enforcement to properly address the revolving door.*

For public officials, the Netherlands established a measure against revolving doors in 1999, when the government issued a circular letter against revolving doors in the public service. The letter solely states that a former public official who worked at a Ministry cannot be hired as a consultant by the same department until two years after resignation. This effectively means that there is no restriction on former public officials lobbying their former ministries.<sup>156</sup>

A specific measure has been installed for the Ministry of Defence, due to the large financial and strategic interests at stake in the defence sector. In the Directive of the Secretary General concerning protection of integrity, high government officials of this Ministry cannot, for two years after resignation, be a “negotiating partner” with the Ministry on behalf of a company.<sup>157</sup> This measure was extended in 2017 when a two-year ban on lobbying concerning issues dealt with in their area of interest was installed for former Ministers and state secretaries.<sup>158</sup> Furthermore, cabinet members in office are required to inform and gain approval of the Prime Minister before transferring to functions outside the government.<sup>159</sup>

As noted by GRECO in the Fifth Evaluation Round of the Netherlands, no further regulations are in place to address the revolving door for individuals holding top executive functions. The organisation criticises the lack of a general ‘cooling off’ period and a transparent mechanism to regulate the transfer of high government officials to the private sector.<sup>160</sup>

**12.3: Does the law or policy that addresses the ‘revolving door’ cover all relevant public-sector decision-makers?**

- *0: No law or policy exists or an existing law or policy does not specify which positions are covered.*

MPs, judges and prosecutors have no post-employment restrictions. GRECO reported extensively on this during its Fourth Evaluation Round of Corruption Prevention in respect of members of parliament, judges and prosecutors.<sup>161</sup> For all three sectors, GRECO found that there are no post-employment restrictions in the Netherlands, and recommended “that codes of conduct for the members of both

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<sup>156</sup>

[http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Wet%20en%20Regelgeving/Nota\\_integriteit\\_openbaar\\_bestuur\\_bijlage\\_3.pdf](http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Wet%20en%20Regelgeving/Nota_integriteit_openbaar_bestuur_bijlage_3.pdf)

<sup>157</sup> <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

<sup>158</sup> <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808b322d>

<sup>159</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680931c9d>

<sup>160</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680931c9d>

<sup>161</sup> <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808b322d>

chambers of parliament be developed and adopted with the participation of their members and be made easily accessible to the public”, including rules on post-employment restrictions.<sup>162</sup>

**12.4: Is there a mandatory cooling-off period – a minimum time interval restricting former officials from accepting employment in the private sector that relates to their former position – for members of the government and other relevant high-level decision-makers?**

- *0.5: The policy contains a minimum cooling-off period of at least 6 months for certain positions and cases where the new employment of former government members and other high-level decision-makers would result in a conflict of interest.*

As noted above, a two year cooling off period exists for members for the cabinet. However, full points are not given because the measures is not effectively enforced by an independent commission and solely applies to members of the Cabinet.<sup>163</sup>

**12.5: Is there a single public body or are there designated authorities responsible for providing advice and overseeing ‘revolving door’ regulations?**

- *0: No authority or public body is charged with overseeing the implementation of the policy.*

As noted above, GRECO specifically criticised the lack of regulations aiming to increase transparency, oversight and enforcement regarding the revolving door. As of now, cabinet members in office are required to inform and gain approval of the Prime Minister before transferring to functions outside the government.<sup>164</sup>

**12.6: Are there proportionate and dissuasive sanctions for both individuals and companies that do not comply with the law or policy controlling the ‘revolving door’?**

- *0: The law (or policy) includes no sanctions.*

No independent oversight entity exists for guiding individuals and organizations in managing post and pre-employment restrictions.<sup>165</sup>

**12.7: Are the ‘revolving door’ provisions implemented and enforced in practice? Have there been any developments in the past year that indicate an improvement (or deterioration) in how the ‘revolving door’ and related conflicts of interests are addressed?**

The cooling off period of two years for former Ministers and state secretaries is the only provision regulating revolving doors in the Netherlands. As noted above, this regulation previously only applied to the Ministry of Defence but was extended to include all Ministers in 2017. There is, however, no designated ethics office overseeing or providing advice regarding the transfer of (high-ranking) public

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<sup>162</sup> <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

<sup>163</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680931c9d>

<sup>164</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680931c9d>

<sup>165</sup> <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>



officials to the private sector. Cabinet members are solely obliged to consult the Prime Minister about potential employment opportunities.<sup>166 167</sup>

**12.8: Does the legal framework require high-level public officials and senior civil servants to regularly (at least once per year) declare their interests, including any paid or unpaid positions and financial interests in companies and other entities?**

- *0.25: The legal framework requires high-level public officials and senior civil servants to declare their interests but either does not require this on at least an annual basis or does not specify how regularly declarations are required.*

In the Netherlands, different governmental sectors, such as the national government, municipalities and provinces, have drafted their own regulations regarding integrity and the disclosure of ancillary activities. Regulations for civil servants employed by the national government for example, state that anyone working for the state should disclose ancillary activities which interests could conflict with the interests of his/her public position. It does not specify, however, how regularly disclosures should be made. In order to converge regulations regarding integrity, the Civil Servants 2017 Act will replace all regulations of individual government sectors as of January 2020.<sup>168</sup> For this reason, the answers of the following questions will be answered according to the Civil Servants 2017 Act. It is important to note, however, that the Act leaves open some room for administrative orders (*maatregel van bestuur*) to finalize certain measures. The new legal framework requires high-level public officials and senior civil servants to declare their interests but does not specify how regularly declarations should be made.<sup>169</sup>

The regulations regarding integrity for members of the House of Representatives determine that MPs should, at the latest, disclose their ancillary activities and income of the previous year on the 1st of April. Nevertheless, the regulations state that MPs will not be sanctioned for refusing to disclose relevant information.<sup>170</sup> As of June 2019, the Senate needs to adhere to a new code of conduct regarding Integrity. The new code provides more clarity about conflicts of interests, indicating that senators should be aware of the additional interests they have due to the other positions they hold. Moreover, senators should abstain from activities that have the appearance of a conflict of interest. It is important to note that this conflict of interest only relates to a conflict of interest with regard to a specific self-interest, usually as a result of holding other functions. Senators are required to share the additional functions they hold besides being a member of the Senate as well. This consists of a short description of the function, the company/organisation for which the function is performed and whether the function is paid or not. Moreover, all interests that can reasonably considered to be relevant but cannot be regarded as an official function need to be made publicly available as well.<sup>171</sup>

**12.9: Do the interest disclosure requirements cover officials of all branches of government – executive, the legislature, the judiciary, and civil service as well as other relevant public bodies?**

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<sup>166</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680931c9d>

<sup>167</sup> <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808b322d>

<sup>168</sup> <https://www.wnra.nl/actueel/nieuws/2018/05/24/integriteit-onder-de-ambtenarenwet-2017-wat-verandert-er>

<sup>169</sup> <https://zoek.officielebekendmakingen.nl/stb-2017-123.html>

<sup>170</sup> [https://www.tweedekamer.nl/sites/default/files/atoms/files/integriteitsregels\\_voor\\_kamerleden.pdf](https://www.tweedekamer.nl/sites/default/files/atoms/files/integriteitsregels_voor_kamerleden.pdf)

<sup>171</sup> [https://www.eerstekamer.nl/behandeling/20190416/verslag\\_van\\_de\\_tijdelijke](https://www.eerstekamer.nl/behandeling/20190416/verslag_van_de_tijdelijke)



- 0.5: *the interest disclosure applies to two branches of government*

The 2017 Civil Servants Act does not apply to members of the judicial branch according to Article 3, paragraph b.<sup>172</sup> Instead, the Legal Status Judicial Civil Servants Act regulates this. Article 44a states that ancillary functions need to be publicly registered and annually updated.<sup>173</sup> In addition, members of the executive branch are not allowed to have ancillary functions at all, making regulations in this area unnecessary.<sup>174</sup>

**12.10: Does the legal framework require high-level public officials and senior civil servants to regularly (at least once per year) declare their income and assets?**

- 0.25: *The legal framework requires high-level public officials and senior civil servants to declare their income and assets but either does not require this on at least an annual basis or does not specify how regularly declarations are required.*

The Civil Servants 2017 Act, Article 8 paragraph 2b, requires civil servants to disclose the financial interests he/she may have only if they intersect with the interests of the public service in relation to the function of the civil servant in question. It does not, however, state how regularly declarations should be made.<sup>175</sup>

**12.11: Do the income and asset disclosure requirements cover officials of all branches of government – executive, the legislature, the judiciary, and civil service as well as other relevant public bodies?**

- 0.5: *The asset and income disclosure applies to two branches of government.*

The Civil Servants 2017 Act excludes members of the judicial branch according to Article 3 paragraph b.<sup>176</sup> Moreover, the Legal Status of Civil Servants of the Judicial Branch Act does not mention income or asset disclosure. In addition, as noted by the Fifth Evaluation Round of GRECO, Ministers and state secretaries are not required to disclose their financial interests during their time in office. Nevertheless, future Ministers and state secretaries are obliged to report plausible conflicts of interests while a new government is formed. The responsibility for truthful disclosure is largely placed with the candidates themselves.<sup>177</sup>

**12.12: Does the framework require that information contained in interest declarations and income and asset disclosures be made publicly accessible?**

- 0: *No information contained in interest declarations and income and asset disclosure forms has to be made publicly accessible.*

Article 5 paragraph c of the Civil Servants 2017 Act states that government employees are obliged to publicly disclose ancillary activities of civil servants only if they are appointed in a position that

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<sup>172</sup> <https://zoek.officielebekendmakingen.nl/stb-2017-123.html>

<sup>173</sup> <https://wetten.overheid.nl/BWBR0008365/2013-05-30>

<sup>174</sup> <https://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/integriteit-overheid>

<sup>175</sup> <https://zoek.officielebekendmakingen.nl/stb-2017-123.html>

<sup>176</sup> <https://zoek.officielebekendmakingen.nl/stb-2017-123.html>

<sup>177</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680931c9d>

necessitates public disclosure to protect the integrity of public service. No mention is made about public disclosure of relevant income and assets.<sup>178</sup>

**12.13: Does the legal framework establish an oversight body that is provided with sufficient political independence and legal powers to scrutinise income and asset disclosures?**

- *0: The legal framework does not provide for any oversight of the income and asset declarations.*

This could, however, be altered by an administrative order.

**12.14: Does the law or policy contain dissuasive and proportionate sanctions for failure to comply with interest and income and asset disclosure requirements?**

- *0: The law or policy contains no sanctions for non-submission of interest and income and asset declarations, or for incomplete or false claims made in disclosures.*<sup>179</sup>

**12.15: How do you evaluate the effectiveness of the disclosure mechanism for interests, assets and income? Is there a disclosure requirement for gifts and hospitality received by public officials and civil servants (if applicable)? Have there been any developments in between 2017-2019 that indicate an improvement or a deterioration of the disclosure mechanism?**

Since the Civil Servants Act 2017 will not enter into force until 2020, it is difficult to evaluate its effectiveness. This is amplified by the fact that the law leaves open room for further regulation regarding its specific implementation. Currently, no deadline is set on the disclosure of ancillary interests, assets and income. Moreover, the Civil Servants Act 2017 solely prescribes that the ancillary functions and interests of civil servants need to be publicly disclosed if disclosure is necessary to protect the integrity of public service. The disclosure is the responsibility of the government employer concerned and no deadline for this is currently set. Deadlines could, however, be set by administrative orders in the future.<sup>180</sup>

The Civil Servants Act 2017 applies only to civil servants, meaning that members of the House of Representatives and the Senate have their own Codes of Conduct. Due to the fact that the Code of Conduct for MPs specifically mentions that members will not be sanctioned for noncompliance, the disclosure mechanism can be considered to be ineffective. Information regarding the ancillary functions and gifts of members of parliament can be found on this [website](#).<sup>181</sup> Moreover, the Code of Conduct recommends that disclosure could be extended to relatives if considered relevant by the member of parliament in question.<sup>182</sup>

When looking at the Senate, however, the new Code of Conduct improves the transparency of ancillary functions of senators considerably. Information regarding ancillary functions is currently published on the website of the Senate in the biographies of the senators. The information consists of a short description of the function, the company/organisation for which the function is performed and whether the function is paid or not. Moreover, all interests that can reasonably considered to be

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<sup>178</sup> <https://zoek.officielebekendmakingen.nl/stb-2017-123.html>

<sup>179</sup> <https://zoek.officielebekendmakingen.nl/stb-2017-123.html>

<sup>180</sup> <https://zoek.officielebekendmakingen.nl/stb-2017-123.html>

<sup>181</sup> [https://www.tweedekamer.nl/kamerleden\\_en\\_commissies/openbare\\_registers](https://www.tweedekamer.nl/kamerleden_en_commissies/openbare_registers)

<sup>182</sup> [https://www.tweedekamer.nl/sites/default/files/atoms/files/integriteitsregels\\_voor\\_kamerleden.pdf](https://www.tweedekamer.nl/sites/default/files/atoms/files/integriteitsregels_voor_kamerleden.pdf)

relevant but cannot be regarded as an official function need to be made publicly available as well. Nevertheless, the regulations do not mention the disclosure of relevant activities of relatives.<sup>183</sup>

## FISCAL TRANSPARENCY

### 13.1: is there legislation or policy in place requiring a high degree of fiscal transparency?

- 0.75: *The legal framework requires a fairly high degree of fiscal transparency and the publication of 7 of the key budget documents (pre-budget statements, the executive budget proposal and supporting documents, the enacted budget, a citizen budget, in-year reports in budget success and execution, mid-year reviews, a year-end report and an audit report).*

A total of six documents together constitute seven of the eight key budget documents listed above. The publication of these documents is regulated by the Compatibility Act 2016<sup>184</sup> and an overview can be found on the following website: <http://www.rijksbegroting.nl/>.

First, the 'Miljoenennota' and 'Rijksbegroting' form the pre-budget statement and executive budget proposal. The Miljoenennota describes the economic and financial situation in the Netherlands as well as the expected future developments in the Netherlands and the world. Moreover, it outlines the most important plans of the cabinet for the coming year, their costs and implications for Dutch society. The Miljoenennota is accompanied by the 'Rijksbegroting', which states the budget allocated to each Ministry and their expected expenses. The two documents need approval of both Chambers of parliament. The government does not publish an enacted budget for the government as a whole after the proposed budget has passed both Chambers. As can be seen on the [website](#) providing information on the 2019 budget, the government tries to make both documents accessible for the broader public by including graphics visualizing government revenue and expenses.<sup>185 186 187</sup>

Second, the 'Voorjaarsnota' and 'Najaarsnota' together form the in-year budget reports and mid-year reviews. The Voorjaarsnota, published on June 1st, evaluates the state of the current budget. It proposes adjustments to the Miljoenennota that are considered to be necessary to accomplish the desired goals. These adjustments could be the result of unexpected expenses and revenues and need to be passed by both the House of Representatives and the Senate.<sup>188</sup> The Najaarsnota is published on December 1st and outlines any unexpected expenses and revenues. If, as a result of the unexpected expenses and/or revenues, the government budget needs to be adjusted, both Chambers of parliament need to approve the adjustments made.<sup>189</sup>

Finally, the Minister of Finance presents two documents on Accountability Day that constitute the year-end report and audit report of the national government.<sup>190</sup> The so-called 'Rijksjaarverslag'

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<sup>183</sup> [https://www.eerstekamer.nl/behandeling/20190416/verslag\\_van\\_de\\_tijdelijke](https://www.eerstekamer.nl/behandeling/20190416/verslag_van_de_tijdelijke)

<sup>184</sup> <https://wetten.overheid.nl/BWBR0039429/2019-01-01>

<sup>185</sup> <https://www.rijksoverheid.nl/onderwerpen/prinsjesdag/inkomsten-en-uitgaven-van-het-rijk-2020>

<sup>186</sup> [https://www.tweedekamer.nl/zo\\_werkt\\_de\\_kamer/van\\_prinsjesdag\\_tot\\_verantwoordingsdag/aanbieding\\_r\\_rijksbegroting\\_en\\_miljoenennota](https://www.tweedekamer.nl/zo_werkt_de_kamer/van_prinsjesdag_tot_verantwoordingsdag/aanbieding_r_rijksbegroting_en_miljoenennota)

<sup>187</sup> <https://www.rijksoverheid.nl/onderwerpen/prinsjesdag/miljoenennota-en-rijksbegroting>

<sup>188</sup> <https://www.rijksoverheid.nl/onderwerpen/overheidsfinancien/vraag-en-antwoord/wat-is-de-voorjaarsnota>

<sup>189</sup> <https://www.rijksoverheid.nl/onderwerpen/overheidsfinancien/vraag-en-antwoord/wat-is-de-najaarsnota>

<sup>190</sup> <https://www.rijksoverheid.nl/onderwerpen/verantwoordingsdag/verantwoordingsdag-wat-is-dat-ook-alweer>

contains the annual financial reports of all ministries outlining whether the ministries spent less than or exceeded their budget of the previous year. The Rijksjaarverslag needs to be approved by the National Audit Institution before the Minister of Finance is able to present the document to the House of Representatives on the third Wednesday of May.<sup>191</sup> The second document contains the annual financial report of the National government and should be seen as an additional explanation of the Rijksjaarverslag. In this report, the government evaluates the government's (financial) policy of the previous year.<sup>192</sup>

**13.2: What is the Netherlands' score and rank in the most recent Open Budget Survey, conducted by the International Budget Partnership (<http://www.internationalbudget.org/open-budgetsurvey/>)?**

n/a. The Netherlands is not included in the ranking.

**13.3: Are key budget-related documents published in practice?**

Yes, see website in the footnote.<sup>193</sup>

## PUBLIC PROCUREMENT AND GOVERNMENT CONTRACTING

**14.1: Does the law clearly define up to what threshold(s) single-sourced purchases of goods, services and public works are allowed?**

- *0.75: Thresholds concerning the single-sourcing of goods, services and public works are clearly defined by a decree (or a similar administrative standard).*

There are no national thresholds defining up to what thresholds single-sourced purchases of goods, services and public works are allowed included in the law.<sup>194</sup> Nevertheless, procuring parties have to abide by European regulations indicating to what threshold national procurement is possible. If this threshold is reached, procuring parties are obliged to offer the opportunity in an European-wide fashion.<sup>195</sup>

These general thresholds are €144,000 for most types of services and supplies by central governments and €5,548,000 for construction contracts.<sup>196</sup> More detailed thresholds can be found on the website in the footnote.<sup>197</sup>

**14.2: What are exceptions in the legal framework for public procurement that allow for single-sourced contracting above these thresholds?**

- *0.5: The law provides exceptions that may be vulnerable to misuse.*

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<sup>191</sup> <https://www.rijksoverheid.nl/onderwerpen/verantwoordingsdag/vraag-en-antwoord/wat-is-het-rijksjaarverslag>

<sup>192</sup> <https://www.rijksoverheid.nl/onderwerpen/verantwoordingsdag/vraag-en-antwoord/wat-staat-er-in-het-financieel-jaarverslag-van-het-rijk-fjr>

<sup>193</sup> <http://www.rijksbegroting.nl/>

<sup>194</sup> <https://europadecentraal.nl/onderwerp/aanbestedingen/drempelwaarden/>

<sup>195</sup> <https://wetten.overheid.nl/BWBR0032203/2019-04-18>

<sup>196</sup> [https://europa.eu/youreurope/business/selling-in-eu/public-contracts/public-tendering-rules/index\\_en.htm](https://europa.eu/youreurope/business/selling-in-eu/public-contracts/public-tendering-rules/index_en.htm)

<sup>197</sup> <https://www.pianoo.nl/nl/regelgeving/drempelwaarden-europees-aanbesteden>

The legal framework includes the following exceptions according to article 2.23 of the Public Procurement Act<sup>198</sup>:

- a. Procurement related to defence and security
- b. Procurement that applies to the Public Procurement Act on Defence and Security
- c. Procurement that does not apply to the Public Procurement Act on Defence and Security according to Articles 2.3, 2.16 and 2.17 of that Act.
- d. Procurement for civil purchases that will be placed in a third country, in the case armed forces are deployed outside EU-territory and the operational circumstances demand the procurement to be awarded to companies in the area of operation.
- e. Procurement that has been declared secret or procurement of which the execution needs to be accompanied with special security measures or where the protection of the interests of the Netherlands demand so.
- f. Procurements of which the main goal is to enable procuring authorities to make public electronic communication networks available.
- g. Procurement connected to defence or security aspects to which different international procedures apply that are set as a result of an international agreement between the Kingdom of the Netherlands and a third country.
- h. Procurement connected to defence or security aspects to which different international procedures apply that were set as a result of an international agreement with a third country in connection with the alloy of the armed forces.
- i. Procurement to which different procedures apply that were set in place by specific procedures of an international organisation.
- j. Procurement to which different procedures apply that were set by a judicial instrument that creates international law obligations.

#### **14.3: Does the legal framework require that information on public procurement above certain thresholds be published?**

- *0.5: The legal framework requires tender announcements and contract award information (including information on the procuring entity, the supplier, the number of bidders, the good/service procured, the value of the contract) to be released.*

Information on contract awards includes, according to Article 2.132 of the Public Procurement Act<sup>199</sup>:

- a. name and address of contracting authority
- b. object and value of government order and dynamic purchasing system
- c. name of selected candidates and motivation of the decision
- d. names of excluded and rejected candidates and motivation of the exclusion or rejection
- e. names of rejected tenderers and motivation of the rejection
- f. whether information was excluded from the note of information at the request of a tenderer
- g. motivations for the rejection of unusually low tenders
- h. name of the selected tenderer and motivation for the decision

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<sup>198</sup> <https://wetten.overheid.nl/BWBR0032203/2019-04-18>

<sup>199</sup> <https://wetten.overheid.nl/BWBR0032203/2019-04-18>

- i. if employed, a justification for the adoption of the procedure for competitive dialogue
- j. if employed, a justification for the adoption of the competitive procedure with negotiation
- k. if employed, a justification for the adoption of the negotiated procedure without prior publication
- l. motivation for the use of means other than electronic ones for the submission of registrations
- m. if relevant, established conflicts of interest and a description of taken measures to prevent such conflicts.

#### **14.4: Are bidders required to disclose their beneficial owners?**

- 0: *There is no requirement for bidders to disclose their beneficial owners.*

The Public Procurement Act does not include a section obligating bidders to disclose their beneficial owners. However, from January 2020 onwards companies and corporations are required to disclose their ultimate beneficial owner in the UBO-register.<sup>200</sup> This makes it possible for whoever interested to gain information regarding a bidder's ultimate beneficial owner on their own behalf.

#### **14.5: Are there legal provisions, regulations or policies in place for bidders to file complaints in case they suspect irregularities at any stage of the procurement process?**

Included in the policies implementing the Public Procurement Act 2012 is the advice regarding handling complaints (Klachtafhandeling). Consisting of two separate provisions, the advice seeks to provide all parties participating in a public procurement with an easily accessible instrument to solve disputes. The first provision seeks to set a standard procedure for filing complaints without unnecessarily resorting to judicial measures, such as going to court. It requires every contracting authority to establish an independent contact point for companies to file their complaints. The second provision establishes a Commission of Public Procurement Experts with a mandate to mediate between disputing parties or provide non-binding advice. The Commission should be seen as a last resort possibility that should only be utilized after complaints have been filed at the contracting authority in question. Only if a company is not satisfied with the manner in which the contracting authority handled the complaint, the Commission should be addressed.<sup>201 202</sup>

#### **14.6: Which information and documents related to public procurement and other relevant government contracts (such as privatizations, licenses etc.) are published proactively and are available in full text? Are any of these documents published online through a central website or database?**

The Public Procurement Act states that the publication of a prior notice of procurements, announcements of procurements, award decisions, rectification and the results of the procurement procedure is required. This requirement only applies to procurement projects above the European thresholds for the relevant sectors. According to Article 4.13, the information should be published on

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<sup>200</sup> <https://www.rijksoverheid.nl/actueel/nieuws/2019/04/04/ubo-register-vanaf-januari-2020-in-werking>

<sup>201</sup> <https://www.rijksoverheid.nl/documenten/regelingen/2013/03/07/klachtafhandeling-bij-aanbesteden>

<sup>202</sup> <https://www.pianoo.nl/nl/regelgeving/aanbestedingswet/klachtafhandeling-bij-aanbesteden>

TenderNed.nl, the Dutch version of the European publication magazine TED (Tenders Electronic Daily): ted.europa.eu.<sup>203 204</sup>

TenderNed provides contracting authorities and companies with the possibility to complete the public procurement process entirely digitally. Due to this, filing incomplete procurement offers becomes less likely, and contracting authorities and companies are able to produce reports in a standardized manner. Moreover, companies are able to save their information on the website and have the option to receive updates regarding relevant public procurement opportunities via email.<sup>205</sup>

## WHISTLEBLOWING AND REPORTING MECHANISMS

### 15.1: Is there a legal framework to protect whistleblowers from the public and the private sector who report reasonable belief of wrongdoing?

- 1: The law provides protection for whistleblowers from both, public and private sector.

The House for Whistleblowers Act, according to Article 1 paragraph h, extends to all who are employed in the public and private sector under a labour agreement. This means that employees without a labour agreement, such as interns and freelancers, are denied whistleblower protection. Moreover, Article 4 paragraph 2 of the legal framework states that the Act does not apply civil servants employed by the judicial branch as well as those involved in the execution of the Intelligence and Security Services Act 2017 and Security Investigations Act.<sup>206</sup>

### 15.2: Does the law provide for broad definitions of whistleblowing and whistleblower?

- 0.5: The law contains a definition of whistleblowing and whistleblower, that is partly in line with TI's principles but excludes some important potential cases.

Transparency International states that whistleblowing should be defined as the disclosure or reporting of wrongdoing which is of concern to or threaten the public interest, including but not limited: to corruption; criminal offences; breaches of obligation; miscarriages of justice; specific dangers to public health, safety or the environment; abuse of authority; unauthorized use of public funds or property; gross waste or mismanagement; conflict of interest; and acts to cover up any of these.

Article 1 paragraph d of the Netherlands legal framework defines whistleblowing as uncovering acts that: threaten public interest by breaching a statutory provision or form a danger to: public health, the security of individuals, the environment, the proper functioning of public service or an improper/negligent act.<sup>207</sup>

### 15.3: Does the law provide sufficient protection for whistleblowers?

- 0.5: The law fails to address some important aspects.

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<sup>203</sup> <https://wetten.overheid.nl/BWBR0032203/2019-04-18>

<sup>204</sup> <https://www.pianoo.nl/nl/metrokaart/waar-wanneer-moet-ik-publiceren>

<sup>205</sup> <https://www.pianoo.nl/nl/tenderned-onlinemarktplein-voor-aanbestedingen>

<sup>206</sup> <https://wetten.overheid.nl/BWBR0037852/2018-06-13>

<sup>207</sup> <https://wetten.overheid.nl/BWBR0037852/2018-06-13>



Weaknesses include the fact that Article 2 paragraph d and e of the Act provide for confidentiality in the reporting procedure and not for anonymity. In addition, the law prohibits retaliation of the whistleblower when the report has been made in good faith and when an internal report has been made correctly but does not clearly state how the whistleblower is protected. To be granted protection when reporting it is necessary there is ‘suspicion based on reasonable grounds’ according to Article 1 paragraph 1d or in other words: one must have seen the wrongdoing yourself or have proof that indicates social wrongdoing. A significant weakness in legislation is that the burden of proof lies entirely on the whistleblower, making it extremely difficult to protect whistleblowers against retaliation. In addition, the law does not contain any provisions regarding sanctioning perpetrators of wrongdoing.<sup>208</sup>

#### **15.4: Does the law provide for adequate and diverse disclosure procedures?**

- *0.5: The law fails to address some important aspects.*

The only clear requirements are to maintain confidentiality unless explicitly waived by the whistleblower and to ensure thorough, timely and independent investigations of whistleblowers disclosures. This means that no mention is made about transparent, enforceable and timely mechanisms to follow up on retaliation complaints.<sup>209</sup>

The statutory requirements regarding internal reporting procedures according to Article 2 require a clear procedure that states what reporters can expect if they make a report, what kind of protection they are given, how they should make the report, whether they will receive feedback, what deadlines apply, what the process looks like and who is responsible for the handling of the report. Requirements to the employer are rather limited and open to interpretation. Again, no mention is made about mechanisms concerning retaliation against disclosures.<sup>210</sup>

#### **15.5: Does the law provide for adequate remedies for whistleblowers?**

- *0: The law provides no or inadequate remedies.<sup>211</sup>*

#### **15.6: Is there an independent authority responsible for the oversight and enforcement of whistleblowing legislation?**

- *0.5: There is an independent authority, but its mandate to oversee and enforce whistleblowing legislation is limited.*

Since the 1st of July 2016 the Netherlands has an independent referral entity for whistleblowers, called the House for Whistleblowers (Huis voor Klokkenuiders). The House for Whistleblowers, established by Chapter 2 of the House for Whistleblowers Act is entitled to independently investigate reported abuse and misconduct, and advise and assist whistleblowers – in both the public and private sectors – and refer abuses to the competent authorities. The House for Whistleblowers is bound to secrecy in respect of the identity of the whistleblower and the identity of the subject(s) of the alleged abuse by

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<sup>208</sup> <https://wetten.overheid.nl/BWBR0037852/2018-06-13>

<sup>209</sup> <https://wetten.overheid.nl/BWBR0037852/2018-06-13>

<sup>210</sup> <https://wetten.overheid.nl/BWBR0037852/2018-06-13>

<sup>211</sup> <https://wetten.overheid.nl/BWBR0037852/2018-06-13>



virtue of law. The House for Whistleblowers Act furthermore introduces an obligation for companies with more than 50 employees to provide an appropriate reporting mechanism and implement a policy on how they deal internally with the reporting of abuse and misconduct. The legislation establishes that the whistleblower should first notify the alleged wrongdoing(s) internally, unless this is impossible. Furthermore, there must be appropriate protection and there are some guidelines that provide minimum requirements of the necessary whistleblowers arrangements. However, the resources allocated to the House are limited, the investigative department is understaffed and they do not have the powers to enforce.

**15.7: Where an independent authority to oversee and enforce whistleblowing legislation exists, does it have sufficient powers and resources to operate effectively?**

The House for Whistleblowers is active on three fronts in whistleblowers protection. First, the House is able to assist (potential) whistleblowers in their process of reporting wrongdoings by their company or organization. The advice department has office hours every weekday during 10.00-12.00 and 13.00-16.00 and can be reached online by filing an advice request as well.<sup>212</sup> Second, the House for Whistleblowers also has an investigative department. This department investigates professional wrongdoings of social interest and the treatment of the whistleblower in question after he/she has filed a complaint. It is important to note that members belonging to the different departments operate independently and are not allowed to discuss specific cases with each other.<sup>213</sup> Finally, the House devotes resources to educating relevant actors as to how to prevent professional wrongdoing and create ethical organisations.<sup>214</sup>

**15.8: Is there a law/policy that establishes a dedicated reporting mechanism for witnesses and victims of corruption (such as a hotline or a secure and anonymous electronic post box)? Does the law provide the body charged with operating it with sufficient independence and powers to investigate the reports it receives?**

- *0: There is no law or policy mandating that a dedicated reporting mechanism for witnesses and victims of corruption be established.*

There is no dedicated reporting mechanism in place for witnesses and victims of corruption. However, the Act requires companies that employ over 50 persons to establish a procedure for reporting professional wrongdoings. This could possibly include cases of victims or witnesses of corruption, however, it denies individuals without a professional labour agreement legal protection for 'blowing the whistle'.<sup>215</sup> Furthermore, Article 3 states that the House for Whistleblowers is an independent body that is required to share intelligence, professional and financial information solely with the Minister of the Interior and Kingdom Relations.<sup>216</sup>

**15.9: Does such a dedicated reporting mechanism for witnesses and victims of corruption exist in practice?**

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<sup>212</sup> <https://huisvoorklokkenluiders.nl/advies-bij-werkgerelateerde-misstand/>

<sup>213</sup> <https://huisvoorklokkenluiders.nl/onderzoek-naar-een-misstand/>

<sup>214</sup> <https://huisvoorklokkenluiders.nl/preventie/>

<sup>215</sup> <https://wetten.overheid.nl/BWBR0037852/2018-06-13>

<sup>216</sup> <https://wetten.overheid.nl/BWBR0037852/2018-06-13>

Whereas victims or witnesses of corruption have a reporting mechanism at their disposal, in the case they work for an organisation that employs 50 persons or more, this mechanism is not dedicated exclusively to victims and witnesses of corruption.<sup>217</sup>

**15.10: Is data and information regarding the operation and performance of such reporting mechanisms (in compliance with relevant privacy and data protection laws) published?**

n/a.

**15.11: Is there evidence that relevant state bodies have taken active steps to promote public awareness of this reporting mechanism?**

As stated above, the House for Whistleblowers has a role in raising awareness and fulfils this role by informing and cooperating with companies to improve their integrity regulations.<sup>218</sup> Furthermore, the organisation produced the Integrity Infrastructure outlining best practices in regulations regarding organisational ethics and integrity. The Infrastructure describes the seven dimensions of integrity management it considers to be of crucial importance<sup>219</sup>:

1. Leadership and strategy
2. Norms and values
3. Structures and procedures
4. Personnel and culture
5. Reporting and enforcement
6. Communication and accountability
7. Consistency and guarantees

**15.12: Have there been prominent cases in between 2017-2019 where wrongdoing and corruption were unveiled by a whistleblower or through a reporting mechanism?**

In March 2019, former Air Force Pilot Victor van Wulfen demanded the removal of an air force doctor from the doctors register. Van Wulfen claims that the doctor falsified his medical file after he blew the whistle about a lack of security procedures on a military air base in Eindhoven.<sup>220</sup> The former air force pilot informed his superiors about the absence of standard procedures in C-130 cockpits and a lack of written security procedures. Initially his claims were denied, but when Van Wulfen went on holiday something strange happened with his medical file. Despite the fact that he was on holiday until November 21<sup>st</sup> 2009, an army doctor added sessions about psychic illnesses to his file. Almost ten years and an investigation of the Investigative Council Government Integrity that found evidence for Van Wulfen's claims later, the former air force pilot seeks to remove the doctor in question from the doctor's register.<sup>221</sup>

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<sup>217</sup> <https://wetten.overheid.nl/BWBR0037852/2018-06-13>

<sup>218</sup> <https://huisvoorklokkenluiders.nl/preventie/>

<sup>219</sup> <https://huisvoorklokkenluiders.nl/integriteit-infrastructuur/>

<sup>220</sup> <https://www.omroepbrabant.nl/nieuws/2948644/Klokkenluider-Van-Wulfen-daagt-vliegarts-voor-tuchtcollege-Hij-heeft-me-voor-het-leven-beschadigd>

<sup>221</sup> <https://www.transparency.nl/nieuws/2016/11/interview-klokkenluider-vlieger-bij-defensie/>

In addition, the Netherlands public prosecutor initiated a criminal investigation on whistleblowers in the Ministry of Justice and Security after civil servants filed complaints about the disclosure of official secrets. The whistleblower in question, Marianne van Ooyen, made multiple complaints about the interference of government officials with the Scientific Research and Documentation Centre but this was to no avail. When the complaint eventually found its way to national media, the Minister of Justice and Security appointed three committees to investigate the issue. These committees were able to substantiate Van Ooyen's claim and the Minister assured his employees that the Ministry would not investigate the whistleblowers in January 2018. However, in June 2019 the Ministry backtracked on this claim and started a criminal investigation on the affair. It is important to note that the investigation is not specifically aimed at Van Ooyen but at the disclosure of governmental secrets in general.<sup>222 223</sup>

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There have been no considerable alterations/improvements to the legal framework regarding whistleblowers protection since the current legislation was introduced.

## TARGET 16.10: ENSURE PUBLIC ACCESS TO INFORMATION AND PROTECT FUNDAMENTAL FREEDOMS, IN ACCORDANCE WITH NATIONAL LEGISLATION AND INTERNATIONAL AGREEMENTS

### PROTECTION OF FUNDAMENTAL FREEDOMS

#### 16.1: What is the Netherlands' score and rating in Freedom House's Freedom in the World Rating?

The Freedom House Rating 2018 provides the following scores for the Netherlands<sup>225</sup>:

Political Rights Rating: 1

Civil Liberties Rating: 1

Freedom Rating: 1.0

Freedom Status: Free

#### 16.2: What is the Netherlands' rank and score in the most recent World Press Freedom Index, issued by Reporters Without Borders (<https://rsf.org/en/ranking>)?

In 2019, the Netherlands ranked number 4 with a rating of 8.63.<sup>226</sup>

#### 16.3: Does the legal framework contain any provisions that threaten or undermine the ability of journalists, bloggers researchers, human rights advocates and other civil society actors to exercise their fundamental rights, to uncover and report on all forms of corruption, and to hold leaders accountable?

No.

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<sup>222</sup> <https://www.volkskrant.nl/nieuws-achtergrond/justitie-doet-aangifte-van-lekken-in-wodc-affaire-ondanks-gelijk-van-klokkenluider~b2eecb67/>

<sup>223</sup> <https://nos.nl/nieuwsuur/artikel/2292055-ambtenaren-justitie-eisen-opheldering-in-klokkenluiderskwestie-wodc.html>

<sup>224</sup> <https://www.ad.nl/binnenland/klokkenluider-in-wodc-affaire-verbijsterd-na-aangifte-justitie~aaad4bbf/>

<sup>225</sup> <https://freedomhouse.org/sites/default/files/FreedomintheWorld2018COMPLETEBOOK.pdf>

<sup>226</sup> <https://rsf.org/en/ranking>

**16.4: Are any policies or practices in place that undermine the ability of journalists, bloggers researchers, human rights advocates and other civil society actors to exercise their fundamental rights, to uncover and report on all forms of corruption, and to hold leaders accountable?**

In 2018, there were three cases where the public prosecutor did not adhere to the policies in place regarding the tapping of journalists.<sup>227</sup> In the first case, the public prosecutor planned to eavesdrop a journalist talking to a source suspected of leaking confidential government information. Despite the fact that the mission was aimed at the suspect and not the journalist in question, the police still almost infringed upon the right of journalists to protect the confidentiality of their sources.<sup>228</sup> In the second case, the police did tap a conversation of a journalist with a source in an attempt to gather information on the murder of the brother of a chief witness in a case involving liquidations in the criminal environment. The public prosecutor did not follow the proper procedures before making the order to tap the conversation.<sup>229</sup> Finally, the public prosecutor did not follow the mandatory procedures when requesting access to information regarding the phone of a journalist. The information was requested in order to find out which police officer was leaking information to the journalist in question.<sup>230</sup>

**16.5: Have there been documented cases of killings, kidnappings, enforced disappearances, arbitrary detentions, torture or attacks against journalists, associated media personnel, trade unionists, human rights and civil society advocates or other people who investigated, uncovered and advocated against corruption in between 2017-2019?**

No.

**16.6: Have there been cases of attacks against NGOs, journalists, and others advocating or reporting on corruption adequately investigated and resolved in the past two years? Were perpetrators identified and held accountable?**

Yes. Attacks on the editorial offices of the daily Telegraaf and the magazine Panorama in 2018.

**16.7: Have there been documented cases of government censorship, including of online communication, or of undue political interference that limits people's ability to inform and express themselves online in the past two years?**

No.

## ACCESS TO INFORMATION

**17.1: Does the legal framework (including jurisprudence) recognize a fundamental right of access to information?**

- 0.5: *There is a limited constitutional right.*

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<sup>227</sup> <https://rsf.org/en/news/netherlands-confidentiality-dutch-reporters-sources-repeatedly-violated>

<sup>228</sup> <https://www.villamedia.nl/artikel/justitie-plande-afluisterpoging-bd-journalist>

<sup>229</sup> <https://www.villamedia.nl/artikel/openbaar-ministerie-opnieuw-in-de-fout-met-ongeoorloofde-afluisteractie-journalist>

<sup>230</sup> <https://www.villamedia.nl/artikel/politie-luistert-derde-journalist-af>

Article 110 of the Netherlands constitution states that: "In the exercise of their duties government bodies shall observe the right of public access to information in accordance with rules to be prescribed by Act of Parliament." However, the Freedom of Information Act limits this right considerably.<sup>231</sup>

**17.2: Does the right of access to information apply to all materials held by or on behalf of public authorities in any format, regardless of who produced it?**

- *0.5: The right applies to materials held by or on behalf of public authorities, but there are exceptions for "internal documents" or databases.*

According to Article 3 paragraph 1 of the Freedom of Information Act: "Anyone may apply to an administrative authority or to an agency, service or company carrying out work for which it is accountable to an administrative authority for information contained in documents concerning an administrative matter."<sup>232</sup> These request, however, can be denied on grounds that will be discussed further below.<sup>233</sup>

**17.3: To which branches and bodies does the right of access apply? The legislature, the judicial branch, state-owned enterprises, other public authorities including constitutional, statutory and oversight bodies and private bodies that perform a public function or that receive significant public funding.**

- *0.5: The right of access applies to at least four of the above-mentioned sectors, but some bodies are exempt.*

The Freedom of information act applies to the following actors according to Article 1a<sup>234</sup>:

1. Our Ministers
2. The administrative authorities of provinces, municipalities, water boards and regulatory industrial organisations
3. Administrative authorities whose activities are subject to the responsibility of the authorities referred to in subsection 1 (a and b);
4. Such other administrative authorities as are not excluded by an administrative order."

Furthermore, article 3 states that: "Anyone may apply to an administrative authority or to an agency, service or company carrying out work for which it is accountable to an administrative authority for information contained in documents concerning an administrative matter."<sup>235</sup>

This means that the law applies to the executive branch, state-owned enterprises, other public authorities (including constitutional, statutory and oversight bodies) and private bodies that perform a public function or receive significant public funding. Moreover, the law does not apply to the legislature and the judicial branch.<sup>236</sup>

**17.4: Are there clear and reasonable maximum timelines for responding to a request, regardless of the manner of satisfying the request?**

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<sup>231</sup> <https://wetten.overheid.nl/BWBR0001840/2018-12-21>

<sup>232</sup> <https://www.rti-rating.org/country-data/Netherlands/>

<sup>233</sup> <https://wetten.overheid.nl/BWBR0005252/2018-07-28>

<sup>234</sup> <https://wetten.overheid.nl/BWBR0005252/2018-07-28>

<sup>235</sup> <https://wetten.overheid.nl/BWBR0005252/2018-07-28>

<sup>236</sup> <https://www.rti-rating.org/country-data/Netherlands/>

- 0.5: Timeframe is 20 working days (or 30 days, four weeks or one month) or less.

Article 6 of the Freedom of Information Act states that: "The administrative authority shall decide on the application for information at the earliest possible opportunity, and in any event no more than four weeks after the date of receipt of the application. The administrative authority may defer the decision for no more than a further four weeks. The applicant shall be notified in writing, with reasons, of the deferment before the first four-week period has elapsed."<sup>237</sup> In practice, however, only 10% of applications are dealt with within the legal time frame, according to research by de Volkskrant (4 September 2019).

**17.5: Are exceptions to the right of access consistent with international standards? (10 points and then deduct 1 point for each exception which either (a) falls outside of this list and/or (b) is more broadly framed):**

- 0.75: 7 or 8 points.

*Permissible exceptions are: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; legitimate policy making and other operations of public authorities. It is also permissible to refer requesters to information which is already publicly available, for example online or in published form.*

Article 10 of the Freedom of Information Act states that information will not be disclosed insofar it<sup>238</sup>:

- threatens the unity of the Crown
- damages the security of the State
- concerns company and manufacturing data that was shared with the government in a confidential manner
- concerns personal data as referred to in Articles 9, 10 and 87 of the Personal Data Protection Act unless disclosure does not constitute a breach of privacy

Moreover, information will not be disclosed insofar disclosure does not outweigh one of the following<sup>239</sup>:

- the relations of the Netherlands with other states and international organisations
- the economic and financial interests of the State, other bodies constituted under public law or administrative authorities referred to in Article 1a (c and d)
- the investigation of criminal offences and the prosecution of offenders
- inspection, control and oversight by administrative authorities
- respect for personal privacy
- the importance to the addressee of being the first to receive the information
- the prevention of disproportionate advantage or disadvantage to natural or legal persons concerned or to third parties

**17.6: Is a harm test applied to all exceptions, so that disclosure may only be refused when it poses a risk of actual harm to a protected interest?**

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<sup>237</sup> <https://wetten.overheid.nl/BWBR0005252/2018-07-28>

<sup>238</sup> <https://wetten.overheid.nl/BWBR0005252/2018-07-28>

<sup>239</sup> <https://wetten.overheid.nl/BWBR0005252/2018-07-28>

- 0: No Harm test is required by law, or it does not apply to 4 or more exceptions.

A harm test is solely applied to the Unity of Crown and Security of State, all other exceptions do not include a harm test.<sup>240</sup>

**17.7: Is there a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest? Are there ‘hard’ overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity?**

- 0.25: The public interest test only applies to some exceptions.

The exceptions mentioned in paragraph 1 of Article 10 do not have to be balanced against the overall public interest. These exceptions include the disclosure of information that<sup>241</sup>:

- a. threatens the unity of the Crown
- b. damages the security of the State
- c. concerns company and manufacturing data that was shared with the government in a confidential manner
- d. concerns personal data as referred to in Articles 9, 10 and 87 of the Personal Data Protection Act unless disclosure does not constitute a breach of privacy

Article 10 paragraph 2 states that a public interest override will only occur if its importance outweighs one the following<sup>242</sup>:

- a. the relations of the Netherlands with other states and international organisations
- b. the economic and financial interests of the State, other bodies constituted under public law or administrative authorities referred to in Article 1a (c and d)
- c. the investigation of criminal offences and the prosecution of offenders
- d. inspection, control and oversight by administrative authorities
- e. respect for personal privacy
- f. the importance to the addressee of being the first to receive the information
- g. the prevention of disproportionate advantage or disadvantage to natural or legal persons concerned or to third parties

**17.8: Is there an independent Information Commission, or a similar oversight body, with whom requestors have the right to lodge an external appeal?**

- 0: No independent oversight body exists.

There is no such independent oversight body in the Netherlands. However, there is a trajectory in place to make an appeal in the case a government agency denies a freedom of information request. First, the journalist or individual making the request is able to make an objection to the decision with the government agency in question. After this, the government agency should reconsider its decision and cast a new judgement. Second, if he/she is not satisfied with the decision made regarding the objection, the next step is to go to court. This means that, if the journalist or individual has a valid case, a judge will evaluate the decision to deny a freedom of information request. Third, if the journalist or

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<sup>240</sup> <https://www.rti-rating.org/country-data/Netherlands/>

<sup>241</sup> <https://wetten.overheid.nl/BWBR0005252/2018-07-28>

<sup>242</sup> <https://wetten.overheid.nl/BWBR0005252/2018-07-28>



individual is not satisfied with the outcome of his/her court case, he/she can appeal the judge's decision once more.<sup>243</sup>

This means that despite the fact that there is no Information Commission in place, a journalist or individual making a freedom of information request can appeal to an independent body, namely the Netherlands court.

### **17.9: Does the law/policy on access to information contain minimum standards on mandatory proactive (automatic, without having to be requested) publication of information?**

- *1: the law on access to information (or another relevant law) contains requirements on the mandatory automatic publication of certain information.*

The Freedom of Information Act contains two articles on the mandatory proactive publication of information<sup>244</sup>:

Article 8 states that an administrative body should disclose information regarding its policies and the preparation and execution of these policies if this contributes to good and democratic governance. Moreover, it asserts that this disclosure should be in an easily accessible and understandable manner.

Article 9 extends the mandatory proactive disclosure of information to the recommendations of non-official advisory committees regarding policies. The disclosure should be made within four weeks of receiving the information. If a disclosure is incomplete or absent, the government agency in question should make a statement about this.

### **17.10: What is the Netherlands' score in the Right-To-Information Rating (RTI)?**

The Netherlands ranked 70<sup>th</sup> obtaining a score of 82. It is important to note, however, that this rating solely takes the legal framework and not actual practice into account.<sup>245</sup>

### **17.11: What are shortcomings of the access to information regime?**

As can be seen in the Dutch RTI Rating, the Netherlands obtains the lowest amount of points in the category promotional measures (2/16). This means that the legal framework and policies concerning freedom of information requests do not take sufficient effort to educate the general public about the possibility of requesting information of the government. For example, there is no central body responsible for promoting the right to information nor are public awareness-raising efforts required to be undertaken by law.<sup>246</sup> Moreover, whereas RTI advises countries to introduce training programs for officials regarding facilitating freedom of information requests, Dutch information access expert Roger Vleugels disclosed information stating that Dutch civil servants receive training aiming to postpone such requests.<sup>247</sup>

The effect of the lack of promotional measures can be seen in the relatively low number of freedom of information requests received by the Netherlands national government. In 2013, Roger Vleugels estimated the amount of requests (approximately 2000-2500 per year) to be around 5-10 times lower than the amount of requests in culturally similar countries like Canada and Sweden.<sup>248</sup> In an article

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<sup>243</sup> <https://wob.nl/alles-over-de-wob/>

<sup>244</sup> <https://wetten.overheid.nl/BWBR0005252/2018-07-28>

<sup>245</sup> <https://www.rti-rating.org/country-data/>

<sup>246</sup> <https://www.rti-rating.org/country-data/Netherlands/>

<sup>247</sup> <https://www.telegraaf.nl/nieuws/2727697/list-en-bedrog-rond-wob>

<sup>248</sup> <https://www.binnenlandsbestuur.nl/bestuur-en-organisatie/nieuws/ambtenaren-maken-oneigenlijk-gebruik-van-wob.9076462.lynkx?pageStart9=11>



written this year, other experts blame this difference to the relatively high levels of trust in public bodies present in the Netherlands.<sup>249</sup> Moreover, after the government removed the penalty for exceeding the legal timeframe to evaluate a freedom of information request, there is a lack of substantial mechanisms to pressure the government to evaluate a request in a timely manner. This can be seen in the fact that cases where evaluation exceeded the legal limit of two months increased to 80% of all cases, opposed to 40% when the penalty was still in place.<sup>250</sup>

Additional critique includes the lack of an independent authority evaluating freedom of information requests. Currently, requests are evaluated and approved/rejected by civil servants employed by the Ministry or organization receiving the request. These individuals can hardly be characterized as impartial and unbiased since they are likely to have an interest in denying or delaying the disclosure of information.<sup>251</sup>

**17.12: Are there any factors that, in practice, make it unnecessarily burdensome and difficult to request or gain access to information?**

Experts on Dutch freedom of information laws and policies often argue that civil servants themselves are actively trying to prevent the disclosure of information. It is the general tendency of government officials to look for ways to reject freedom of information requests and if this is not possible, to postpone disclosure. One of many examples is journalist Sjors van Beek, who received information regarding fraud with Jewish funds three years after filing the initial freedom of information request. In these three years, Van Beek's request was approved two times by the Council of State and once by a regular court.<sup>252</sup>

Until 2016, the Netherlands law contained an article implementing a penalty fee if the government did not respond within the legally required timeframe. However, instead of promoting effective and rapid evaluations of freedom of information requests, this regulation resulted in a substantial amount of individuals abusing the possibility of receiving a penalty payment. For example, government officials received documents of 1500 pages containing freedom of information requests regarding high school diplomas of public prosecutors and government policy concerning the use of 'c' or 'k' in certain words. The penalty fee was eventually abolished to put a halt to this abuse but thereby, removed the only significant mechanism available to pressure the government to respond to requests within the legal timeframe. As stated above, this doubled the cases where government bodies exceeded the legal timeframe from 40% to 80%.<sup>253</sup>

**17.13: How many requests for information were made to public authorities each year in the between 2017-2019?**

No official data available.

**17.14: Have there been any developments in between 2017-2019 that suggest an improvement or deterioration in the framework for public access to information and/or its implementation?**

In January 2016, the Open Government Act was sent to parliament aimed at increasing access to information in the Netherlands. The bill facilitates access to government information and regulates the

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<sup>249</sup> <https://pointer.kro-ncrv.nl/artikelen/nederlandse-overheid-heeft-minder-pottenkijkers-dan-andere-landen>

<sup>250</sup> <https://pointer.kro-ncrv.nl/artikelen/een-overheidsdocument-aangevraagd-daar-moet-je-soms-jaren-op-wachten>

<sup>251</sup> <https://pointer.kro-ncrv.nl/artikelen/een-overheidsdocument-aangevraagd-daar-moet-je-soms-jaren-op-wachten>

<sup>252</sup> <https://www.groene.nl/artikel/transparantie-ook-als-het-niet-uitkomt>

<sup>253</sup> <https://pointer.kro-ncrv.nl/artikelen/een-overheidsdocument-aangevraagd-daar-moet-je-soms-jaren-op-wachten>

manner of disclosure and is expected to be discussed in parliament in the fall of 2019. It broadens the responsibility of the government to actively disclose official documents to the following categories<sup>254</sup>:

1. Laws and regulations
2. Organizational data
3. Council records
4. Administrative documents
5. Documents of advisory councils
6. Covenants
7. Annual plans and reports
8. Freedom of information requests
9. Research
10. Decisions
11. Complaints

## OPEN GOVERNMENT DATA

### **18.1: What is the rank and score of the Netherlands in the most recent edition of the Open Data Barometer, produced by the World Wide Web Foundation?**

n/a. The Netherlands is not included in the edition of the Open Data Barometer.<sup>255</sup>

### **18.2: What is the Netherlands' score in the most recent available Open Data Index, produced by Open Knowledge International?**

The Netherlands ranked 20<sup>th</sup> with a score of 54%.<sup>256</sup>

### **18.3: Are there noteworthy efforts or initiatives of public bodies to automatically publish information and documents online (especially in machine-readable formats and in line with open data standards) that are relevant to deterring or detecting corruption?**

In 2020, as a result of new EU-regulations, companies are required to register their ultimate beneficial owner in the UBO-register. The register will increase transparency in Dutch companies and provide clarity regarding which person is calling the shots at a company. In the UBO-register, the full name, birthdate, nationality, state of residence and nature and extent of the financial interest of the UBO will be made public.<sup>257</sup> However, the government placed certain limitations on the accessibility of the register for the general public. For instance, citizens using the register are required to log in (and thus, show their identity) and pay a certain amount of money for every search.<sup>258</sup>

In addition, the Dutch province North Holland has started an action plan to proactively publish freedom of information requests, approvals and denials of such requests, and information disclosed. The initiative could be seen as a test case for the expected implementation of the Open Government Act discussed above. The test case will set a standard that should facilitate other government agencies to follow suit and publish freedom of information requests. Additional initiatives of Netherlands

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<sup>254</sup> <https://www.vngrealisatie.nl/roadmap/wet-open-overheid>

<sup>255</sup> [https://opendatabarometer.org/?\\_year=2017&indicator=ODB](https://opendatabarometer.org/?_year=2017&indicator=ODB)

<sup>256</sup> <https://index.okfn.org/place/>

<sup>257</sup> <https://www.rijksoverheid.nl/onderwerpen/financiele-sector/ubo-register>

<sup>258</sup> <https://www.transparency.nl/nieuws/2019/05/beperkingen-wetsvoorstel-implementatie-ubo-register/>

municipalities and provinces as well as the national government can be found in the Action Plan Open Government of the Ministry of the Interior and Kingdom Relations.<sup>259</sup>

**18.4: Are there noteworthy civil society projects or initiatives that use open government data and/or, other publicly available data sources to strengthen government accountability and help deter and/or detect corruption?**

Yes, there are various initiatives. One is the so-called Integrity Watch developed by Transparency International. This online tool increases the accessibility and usability of data on gifts and ancillary activities of MP's.

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<sup>259</sup> [https://www.opengovpartnership.org/wp-content/uploads/2018/11/Netherlands\\_Action-Plan\\_2018-2020\\_Short\\_NL.pdf](https://www.opengovpartnership.org/wp-content/uploads/2018/11/Netherlands_Action-Plan_2018-2020_Short_NL.pdf)

## APPENDIX I - METHODOLOGY

The report aims to provide an assessment of national progress towards four SDG targets linked to anti-corruption and transparency – 16.4, 16.5, 16.6 and 16.10 in The Netherlands. A number of policy areas are covered under each of these four SDG targets to provide an overview in a way that goes beyond the plain citation of the country's ranking on the Corruption Perceptions Index (CPI) as is the official practice at the moment.

Each policy area was assessed against three elements. First, there was a scored evaluation of the Netherlands' *de jure* legal and institutional framework. The final score of this evaluation is depicted in the scorecards below. Second, relevant country data from assessments and indices produced by civil society groups and international organisations was considered. Finally, the researcher looked into *de facto* efforts to tackle corruption in the Netherlands. However, these efforts were not scored as a scored assessment of implementation and compliance with *de jure* anti-corruption provisions is currently beyond the scope of the shadow reporting exercise. Instead, the report seeks to address the implementation of policies in practice in the narrative sections, including by highlighting exemplary cases and scandals, and, where available, by providing relevant statistics on compliance and enforcement.

Research for this report was conducted in May - August of 2019 and was predominantly conducted through web-based desk research. The online sources used include Dutch government websites, websites of relevant international institutions, and Dutch and international news websites.

### DE JURE LEGAL AND INSTITUTIONAL FRAMEWORK

The purpose of the scored questions is to assess the legislative framework and the policies that have been formally established. These indicators allow for an easy comparison between countries' performance on a specific question or a set of selected questions in a given year. Most of the indicators can also be used to keep track of a country's progress on introducing and improving key policies and legal provisions over time.

Each question receives a standalone score. Based on the scores awarded by the researcher, a traffic light system is used to assess the legislative framework through the use of an easily understandable scorecard:

**Dark red:** absent/non-compliant; indicates that the legislative framework on a specific issue is insufficient and not in line with international standards or with recommendations made by TI and other anti-corruption stakeholders.

**Light red:** While there are some provisions in place to address a specific issue, they are insufficient and urgently need to be strengthened.

**Yellow:** while the legislative framework partly addresses a specific issue, there is a need for further improvement.

**Light green:** while there is a solid provision in place, there is some room for improvement.

**Dark green:** compliant/strong; the country's legislative framework appears to be addressing a specific policy and is in line with acknowledged best practice.

**White:** not applicable or no data available. Where possible, the use of this option should be avoided and an explanation should be provided as to why the question has not been scored.

## AGGREGATING SCORES

The method of aggregating scores has been simplified as far as possible. Each scored question is worth a maximum of 1 point.

- 🌐 A dark green response is worth 1 point.
- 🌐 A light green response is worth 0.75 points.
- 🌐 A yellow response is worth 0.5 points.
- 🌐 A light red response is worth 0.25 points.
- 🌐 A dark red response is worth 0 points.
- 🌐 Where the “white” option (not applicable/ no data available) is selected, no score is awarded

## ASSESSMENTS AND INDICES

A number of established indices and ratings produced by civil society organisations and international organisations assess a country’s performance in specific policy areas relevant to this shadow monitoring exercise. These indices also provide scores and indicators that allow for an easy comparison between countries and many of the indices can also be used to monitor a country’s performance over time. The questionnaire makes use of data and insights collected by TI’s Corruption Perceptions Index, TI’s Global Corruption Barometer or assessments carried out by other civil society organisations, including:

- 🌐 The Basel Institute on Governance’s Basel Anti-Money Laundering Index;
- 🌐 The Tax Justice Network’s Financial Secrecy Index;
- 🌐 Estimates of illicit financial outflows by Global Financial Integrity;
- 🌐 The Open Company Data Index produced by Open Corporates;
- 🌐 Global Integrity’s Money Politics and Transparency assessment;
- 🌐 The International Budget Partnership’s Open Budget Survey;
- 🌐 The Freedom in the World report by Freedom House;
- 🌐 Reporters Without Borders’ World Press Freedom Index;
- 🌐 The Right to Information Rating, produced by Access Info Europe and the Centre for Law and Democracy;
- 🌐 The Open Data Barometer, produced by the World Wide Web Foundation; and
- 🌐 The Global Open Data Index, created by Open Knowledge International.

The scores and results of these surveys and indices generally provide a comprehensive assessment on a specific issue, supplementing the legislative scorecard.

## IMPLEMENTATION

Guided questions at the end of each policy area allowed the researcher to provide an assessment of the practice and compliance with important legislative provisions. The researcher included publicly available data that provide valuable insights, for example statistics on enforcement. Furthermore, these sections also highlight relevant cases, reforms and changes that have occurred in the past two years. As mentioned before, these questions were not part of the scored assessment of implementation and compliance as this is beyond the scope of this shadow report. Also, qualitative data are by definition difficult to cast into the shape of a score.

# 16 PEACE, JUSTICE AND STRONG INSTITUTIONS



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