

Vergaderjaar 2023–2024

35 295

EU en de rechtsstaat

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BRIEF VAN DE MINISTER VAN BUITENLANDSE ZAKEN

Aan de Voorzitter van de Eerste Kamer der Staten-Generaal

Den Haag, 15 januari 2024

Mede namens de Minister van Justitie en Veiligheid, de Minister voor Rechtsbescherming, de Staatssecretaris van Binnenlandse Zaken en Koninkrijksrelaties en de Staatssecretaris van Onderwijs, Cultuur en Wetenschap, deel ik hierbij graag met uw Kamer de Nederlandse inzending op de vragenlijst van de Europese Commissie (hierna: de Commissie) in het kader van de toetsingscyclus voor de rechtsstaat 2024.

In het jaarlijkse rechtsstaatrapport doet de Commissie verslag van de rechtsstatelijke situatie in de Europese Unie als geheel en in de lidstaten afzonderlijk, waarbij wordt in gegaan op belangrijke ontwikkelingen in elke lidstaat sinds juli 2023. Dit doet de Commissie aan de hand van vier pijlers: 1) justitieel stelsel, 2) corruptiebestrijding, 3) pluriformiteit en vrijheid van de media en 4) andere institutionele kwesties die verband houden met *checks and balances*. Het rapport vormt de basis van het rechtsstaatmechanisme: een instrument waarmee de rechtsstaat in de Unie preventief en structureel gemonitord wordt om in een vroeg stadium eventuele problemen in de Unie te kunnen identificeren, te bespreken en gezamenlijk tot oplossingen te komen. Dit jaar zijn hiervoor 59 indicatoren opgesteld.

In de vragenlijst wordt aan de lidstaten specifiek gevraagd welke stappen er worden genomen om opvolging te geven aan de aanbevelingen die vanaf 2022 in de landenhoofdstukken van het rechtsstaatrapport zijn opgenomen. Nieuw is dat de lidstaten worden verzocht om, waar van toepassing, aan te geven wanneer de beschreven ontwikkelingen zijn gekoppeld aan investeringen uit de Herstel- en Veerkrachtfaciliteit. Ook is er in vergelijking met vorig jaar een aantal vragen verder uitgebreid en/of nader gespecificeerd. De specifieke vragen over COVID-19 zijn verwijderd en vervangen met een meer algemene vraag (vraag 47) over de regels rondom de toepassing van de noodtoestand. Ook is er een vraag (vraag 53) toegevoegd over het nationale proces rondom de prejudiciële procedure (artikel 267 TEU). In de beantwoording is rekening gehouden

met wat Nederland voorgaande jaren reeds indiende, en wordt nader ingegaan op de aanbevelingen die Nederland in 2023 ontving.¹ Het (virtuele) landenbezoek van de Commissie aan Nederland zal plaatsvinden op 18 en 19 maart 2024, waarbij de Commissie op ambtelijk niveau zal spreken met de meest betrokken vakdepartementen en met relevante (beroeps-)organisaties die actief zijn op het terrein van de rechtsstaat. De Commissie is voornemens om, op basis van onder meer de verkregen input, het rapport in juli 2024 te publiceren. De horizontale ontwikkelingen op het gebied van de rechtsstaat in de EU worden vervolgens besproken tijdens de jaarlijkse rechtsstaatdialoog in de Raad Algemene Zaken. Ook de landenhoofdstukken worden tijdens landenspecifieke dialogen besproken in de Raad Algemene Zaken. In lijn met de voorzitterschapsconclusies over de evaluatie van de rechtsstaatdialogen aangenomen tijdens de Raad Algemene Zaken van 12 december 2023, wordt de frequentie van de landenspecifieke dialogen verhoogd naar drie per jaar, waarbij per keer de staat van de rechtsstaat van vier lidstaten wordt besproken.² De bespreking van het Nederlandse landenhoofdstuk is voorzien voor het najaar van 2024. Daarnaast is de verwachting dat, in lijn met de Nederlandse inzet, ook dit jaar thematische onderwerpen uit het rapport bij de Raad Justitie en Binnenlandse Zaken aan de orde komen. Het kabinet blijft zich er voor inzetten dat het rechtsstaatrappport ook in deze vakraad op structurele basis wordt besproken.

De Minister van Buitenlandse Zaken,
H.G.J. Bruins Slot

¹ Zie ook de kabinetsreactie op het rechtsstaatsrapport 2023, Kamerstukken, 2022–2023, 21 501-02, nr. 27722.

² Kamerstuk 21 501-02, nr. 2791.

European Rule of Law Mechanism: input from Member States 2024 Rule of Law Report

I. Justice System

1.

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system (if applicable)

Recommendation 1: Continue efforts to improve the level of digitalisation of the justice system, in particular as regards the publication of judgments.

With regard to the availability of electronic means of communication in courts progress has continued, and more judgements were published online albeit on a slower pace than intended. Improved digital means enable citizens to initiate and follow proceedings online, and several pilot projects are currently underway that could further improve the digitisation level. Taking this into account, the Commission has recommended the Netherlands to continue efforts to improve the level of digitalisation of the judicial system, in particular regarding the publication of court judgments.

The introduction and implementation of the Digital Access program («programma Digitale Toegang») has a broad scope and needs to find a balance between the complex implementation in various existing work processes of the judiciary, the substantially increased workload at the registries and lack of capacity in the courts. Each time, the participating courts have to make the difficult choice between maintaining focus on the Digital Access program or deploying employees in such a way that the workload at the clerks' offices does not increase. Steady progress is being made.

As for the publication of court judgments, policy preparations for a legislative project started in 2023. The purpose of the envisaged law is to provide for the legal enshrinement of the principle that court judgments are published unless exceptions specified by law occur. By doing so, the Act further aims to contribute to the public nature (and thus verifiability) of the judiciary, better and more equal access to the law and wider availability of data for research into legal developments. This does not alter the fact that the judiciary continues to implement the «More and Responsible Publishing» program («Meer en verantwoord publiceren»).

A. Independence

2.

Appointment and selection of judges⁴, prosecutors and court presidents (incl. judicial review)

Appointment and selection of judges (incl. judicial review):

There have been no significant developments since last year's report.

Appointment and selection of court management boards and the council for the judiciary (incl. judicial review):

As mentioned in last year's questionnaire, the judiciary has established a temporary procedure for the appointment of court management boards which applies until 31 December 2023. The evaluation of the temporary procedure will be completed by the end of 2023. A similar temporary

procedure has been drawn up for the reappointment of court management boards, which also applies until 31 December 2023.

The procedure for appointing members of the Council for the Judiciary is currently also being reviewed within the judiciary. The results of the study will be presented to the Minister for Legal Protection early 2024.

The proposal for the prohibition of the simultaneous holding of the office of judge and membership of Parliament has been sent to Parliament. This ban is intended to ensure that there is a greater separation of powers between the legislature and the judiciary. In addition, this proposal introduces provisions on the possession and reporting of certain financial interests for a specific group of judicial officials. This minimizes the risk of financial conflicts of interest and the risk of improper use of price-sensitive information by judicial officials.

Appointment and selection of prosecutors:

There have been no significant developments since last year's report.

3.

Irremovability of judges; including transfers (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

Dismissal and retirement regime of judges (incl. judicial review):

On 16 November 2023, the law for a temporary provision to allow judges and counselors who reach the statutory dismissal age of 70 to remain employable as deputy judges or deputy counsel until the age of 73 has come into effect. The law will be evaluated to see whether certain elements can be made structural.³

Irremovability of judges (incl. transfers):

There have been no significant developments since last year's report.

Dismissal and retirement of Court presidents (incl. judicial review):

There have been no significant developments since last year's report.

Dismissal and retirement of prosecutors:

There have been no significant developments since last year's report.

4.

Promotion of judges and prosecutors (incl. judicial review)

There have been no significant developments since last year's report.

5.

Allocation of cases in courts

In the Netherlands, the absolute and relative competence of courts is codified in law. While article 20 paragraph 1c of the Judicial Organisation Act stipulates that the board shall adopt administrative regulations which contain rules on the allocation of cases to the members of the single and

³ Tijdelijke voorziening benoemen rechters-plaatsvervangers na wettelijke ontslagleeftijd van zeventig jaar (36 358) – Eerste Kamer der Staten-Generaal

multiple chambers, the criteria used to allocate these cases are not stipulated by law. The court management boards allocate the cases. In order to provide objective, transparent and verifiable criteria to comply with international requirements, the Council for the Judiciary has drawn up a case allocation code.

This code first entered into force on 1 April 2021 and is currently being reviewed by the Council for the Judiciary to see if the case allocation criteria need to be refined. The review is expected to be finalised in the first half of 2024. Once finalised, the outcome will be discussed with the Minister for Legal Protection and Parliament will be informed.⁴

6.

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

Independence Council for the Judiciary:

As mentioned in the answer to question 2 above, the procedure for appointing members of the Council for the Judiciary is currently being reviewed. No other substantial changes have occurred in 2023.

Independence Supreme Court:

On 6 February 2023, the government renounced a proposal to change the appointment procedure of judges of the Supreme Court. In doing so, it followed the advice of the Council of State, which pointed to the «leading role of a committee of judges of the Supreme Court» in the current appointment procedure that already sufficiently prevents unwanted political influence. The Supreme Court also emphasised the added value of the current role of parliament in the procedure from the perspective of democratic legitimacy. Moreover, the Supreme Court itself had expressed its appreciation for the current procedure, pointing out that in practice Parliament has always relied on list of candidates proposed by the committee.

Independence Council of State:

With regard to both the judiciary and the Council of State, the Ministry of Justice and Security and the Ministry of the Interior and Kingdom Relations are working on a bill containing a system for the notification and research of a suspicion of wrongdoing or irregularities within the judiciary and the Council of State. The legislative proposal has recently been published for public consultation.

7.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

The Ministry of Justice and Security and the Ministry of the Interior and Kingdom Relations continue to work on a bill containing a system for the notification and research of a suspicion of wrongdoing or irregularities within the judiciary and the Council of State (whistle-blower act). The legislative proposal has recently been published for public consultation. The proposal for the prohibition of the simultaneous holding of the office of judge and membership of Parliament has been sent to Parliament. This ban is intended to ensure that there is a greater

⁴ Code zaakstoedeling | Reglementen, procedures en formulieren | de Rechtspraak

separation of powers between the legislature and the judiciary. In addition, this proposal introduces provisions on the possession and reporting of certain financial interests for a specific group of judicial officials. This minimizes the risk of financial conflicts of interest and the risk of improper use of price-sensitive information by judicial officials.

8.

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

There have been no significant developments since last year's report.

9.

Independence/autonomy of the prosecution service

With regards to the executive's power to give instructions to prosecutors in individual cases the House of Representatives' private member's bill is still awaiting plenary debate in Parliament.

10.

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

The supervision of lawyers will be strengthened by the establishment of a single national supervisor («Onafhankelijke Toezichthouder Advocatuur») who will be responsible for the supervision of all lawyers in the Netherlands. This means that local deans will no longer be responsible for supervision in their own district. The establishment of the OTA is still being discussed with the legal profession to ensure the independence of the supervisor. The ministry of Justice and Security is currently working on the new bill.

11.

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

There have been no significant developments since last year's report.

B. Quality of justice

12.

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

Court fees:

In April, the proposal for an act to lower court fees («Wet verlaging griffierechten») was approved by the Raad van State (council of state)⁵. Under the proposal, court fees would be reduced by 25%. However, due to budget cuts announced in April 2023, financial resources for this reduction were no longer available. Instead the Dutch General Administrative Law Act (Algemene wet bestuursrecht) and the Dutch court fees (civil cases) act (Wet griffierechten burgerlijke zaken) will be amended in the so-called Verzamelwet JenV 2024.⁶ This Verzamelwet JenV will inter alia codify the possibility to waive court fees in administrative law for litigants who are unable to pay them and change the provision on indexation in the Awb to allow for a decision not to index court fees in administrative law. In

⁵ <https://www.raadvanstate.nl/adviezen/@136772/w16-23-00087-ii/>

⁶ Wijziging van enkele wetten op het terrein van Justitie en Veiligheid in verband met enkele aanpassingen van overwegend technische aard (Verzamelwet JenV).

December 2023 the government also announced that court fees (excluding fees for civil law cases with claims above 100.000 EUR and court fees in the Netherlands Commercial Court) will not be indexed for 2023 and will be indexed with a smaller percentage (1,83%) in 2024. Through this measure the court fees will be circa 13,5% lower than they would have been otherwise.

Legal aid:

The government scheme referred to as «RATZ» (Tijdelijke Regeling Adviestoevoeging Zelfredzaamheid) has been extended until a permanent provision is enacted within the amendments of the Legal Aid Act pursuant to the broader efforts to reform the system of Legal Aid in the Netherlands.

Language:

With regard to the use of the Frisian language in court hearings: On 1 January 2024, an amendment on Article 14 of the Frisian Language Use Act (Wet gebruik Friese Taal) will come into force. As a result, Frisian used during a hearing in a case as referred to in Article 11 of that Act, will be stated in that language if an official record of the hearing is drawn up. The court may order a Dutch translation.

Furthermore, the Northern Netherlands District Court (rechtbank Noord-Nederland) and the Arnhem-Leeuwarden Court of Appeal have made an overview to outline the actions they have taken and plan to take to further facilitate the use of the Frisian language in court proceedings, along with an overview of how these courts implement what is legally stipulated with regard to the Frisian language. The complete overview will be added as an attachment to chapter 3.1 of the administrative agreement on the Frisian language and culture (BFTK) 2024–2028, a five-year agreement between the Dutch government and the province of Frisia (Friesland), concerning the Frisian language and culture.

13.

Resources of the judiciary (human/financial/material⁶)

As mentioned in the previous questionnaire, the Council for the judiciary reaches an agreement every three years with the Minister for Legal Protection on the budget for the judiciary. The recent agreement was reached in September 2022. Since 2023 the budget for the judiciary is increased by € 155 million per year.

14.

Training of justice professionals (including judges, prosecutors, lawyers, court staff, clerks/trainees)

In 2023, the Council for the Judiciary has first opened a two-year trainee programme for young talented professionals who have graduated no more than two years ago, to educate them on the rule of law and administration of justice and to therewith train them to be independent legal professionals with a broad social and constitutional orientation. With this trainee programme the Judiciary aims to strengthen its own position on the labour market for young legal professionals and to achieve more diversity in the composition of its staff.⁷

⁷ Traineeprogramma Rechtspraak – Werken bij de Rechtspraak.

Furthermore the judiciary focuses on the career and development of the administrative staff. The aim of this phase is to clarify what career and development opportunities exist for employees within the administration. By stimulating the conversation between employee and manager, clarity is provided opportunities for career development.⁸

15.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, procedural rules, access to judgments online)⁷

With regard to the access to judgments and digital access to information within the court system, please find the update given in question 1.

Online (supported) Dispute Resolution Pilot

The judiciary is conducting a small-scale experiment with Online (Supported) Dispute Resolution. In 2023, a website was built and commissioned as a pilot. The information on the website offers people support in settling disputes independently. In case they do not manage to settle the dispute themselves, they can get guidance from a case supervisor through the website. The case supervisor is impartial and represents both parties. The case supervisor helps them to solve their problem quickly, affordably, and effectively. The help may consist of bringing the different parties together to discuss possible solutions, organizing tailor-made counselling (e.g. by a mediator or an expert) and involving the courts if necessary. This facility is currently available for problems within flat owners' associations (Verenigingen voor Eigenaren) and is offered in the working area of the North Holland District Court.

Preparations on the implementation of the E-Justice Regulation and Directive

With the adoption of the E-Justice regulation and directive, the Netherlands is currently outlining the steps needed to implement the regulation and directive in a timely manner.

16.

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

The Council for the Judiciary has had first experiences with the instrument IAMA (Impact Assessment for Human Rights in the Use of Algorithms) in relation to the use of algorithms. The Council is now working on a quick scan to evaluate whether a tool (an algorithm) should be subjected to a (time-consuming) IAMA.

17.

Geographical distribution and number of courts/jurisdictions («judicial map») and their specialisation, in particular specific courts or chambers within courts to deal with fraud and corruption cases.

There have been no significant developments since last year's report.

⁸ Jaarplan 2023 (rechtspraak.nl)

C. Efficiency of the justice system

18.

Length of proceedings

Specifics on the length of proceedings in different instances and fields of law will be delivered by the Council for the Judiciary in the submission for the 2024 EU Justice Scoreboard.

In order to shorten case processing times, the Timely Justice Programme («Programma Tijdige Rechtspraak») was launched in 2020. Supported by the Timely Justice Programme, the courts are working on shortening the procedures, eliminating backlogs, more efficient scheduling and planning, and increasing the predictability of processing times through better communication with the litigants. The program was initially launched for a period of three years. At the same time, courts are still facing staff shortages and high workloads and the Covid-crisis has had a major impact on caseloads as well. As a result, it takes more time to yield the desired results, which is why the program has been extended by two years.

Other – please specify

II. Anti-corruption framework

19.

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the anti-corruption framework (if applicable)

Recommendation 2: Complete the revision of rules on revolving doors involving former Ministers and state secretaries, including a two-year cooling-off period and restrictions on paid activities.

As stated in the input of 2022, the government is preparing a legislative proposal (wetsvoorstel regels gewezen bewindspersonen) that includes an obligation for former Ministers to request advice on the admissibility of a follow-up position in the private and semi-public sector, codification of the lobbying ban and a revolving door ban. The legislative proposal was sent to the Council of State for advice in July 2023. The government is still awaiting the advice by the Council of State.

Recommendation 3: Establish stricter transparency rules on lobbying for members of the Government and Parliament.

The Netherlands recognises the importance of transparent interest representation. Partly for this purpose, the agendas of Ministers have been public for several years. As improvements are still needed in this regard, the Directive on public agendas for Ministers (Uitvoeringsrichtlijn openbare agenda's) has been tightened following a parliamentary motion.⁹ The Directive states that every appointment a Minister has, has to be published – barring certain exemptions. The publication must include at least the subject and an explanation of the appointment, as well as a contact person in case more information is required.¹⁰ Ministers are responsible for maintaining their own agendas.

⁹ Kamerstukken II, 2022/23, 28 844, nr. 261.

¹⁰ <https://open.overheid.nl/documenten/c016d765-eb5a-4a74-9295-6a87869029a0/file>

In the government's opinion, improving the public agendas of Ministers and the so-called lobbying paragraphs in legislation will de facto meet the underlying idea behind a lobby register, namely providing insight into contacts with third parties (transparency) and letting people know in what way the input from third parties influences the decision-making (accountability).¹¹ This government position is based on the research report by Prof. Dr. C. Braun and Dr. B. Fraussen on the possible introduction of a lobby register.¹² Prof. Braun is currently conducting research into whether the improvement of the public agendas of Ministers and the lobby paragraphs in legislation have sufficient effect. If this turns out not to be the case, the cabinet will still consider to look into the possibility of creating a lobby register.¹³ The results of the study are expected during 2024. In the meantime, the government is exploring which parts of lobby registers are effective and feasible elsewhere. If, as a result of the evaluation or through a new coalition agreement, a lobby register is chosen, then ideation has already started.¹⁴

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

OECD Working Group on Bribery

As mentioned in previous reports, the Organisation for Economic Cooperation and Development's Working Group on Bribery in International Business Transactions (OECD WGB) reviewed the Dutch anti-corruption efforts in 2020. In October 2022, the plenary session of the OECD WGB reported that of 25 recommendations made by the OECD in 2020, the Netherlands has fully implemented 8 recommendations, 11 recommendations partially and 6 recommendations have not been implemented. In October 2023, the Netherlands further reported to the OECD on the implementation of specific recommendations regarding the subjects of whistleblower policies, self-reporting, legal privilege claims and non-trial resolutions. The progress made has been reported on the OECD WGB website. In January 2024, the Minister of Justice and Security informed the Parliament of these findings and the governmental response to the report.¹⁵ In that letter the government also outlines what further efforts will be made. Please see the report and the governmental response for a comprehensive state of play. Some specific points from this report are also discussed in the sections below.

GRECO

As previously reported, in December 2022 the Netherlands submitted a written Situation Report to the Group of States against Corruption of the Council of Europe (GRECO) regarding their progress on the implementation of recommendations issued in the Fifth Round Evaluation Report from 2018. This resulted in a second compliance report on measures taken to prevent corruption and promote integrity in governments (top executive functions) and law enforcement agencies, adopted in June 2023. The report is accessible through GRECO's website.¹⁶

¹¹ Kamerstukken II 2022/23, 28 844, nr. 266.

¹² Kamerstukken II 2022/23, 36 101, nrs. 15 and 16.

¹³ Kamerstukken II 2022/23, 28 844, nr. 269.

¹⁴ Kamerstukken II 2022/23, 21 501-02, nr. 2772.

¹⁵ Kamerstukken II 2023–2024, 29 911, nr. 431.

¹⁶ Netherlands – Pays-Bas – Group of States against Corruption (coe.int)

In the Second Evaluation report, GRECO concludes that the Netherlands has satisfactorily implemented six out of eight recommendations regarding law enforcement agencies (LEA's). Two recommendations have been partially implemented. In October 2023, the Minister of Justice and Security informed the Parliament of these findings and the governmental response to the report.¹⁷ We refer to this letter for a discussion of further efforts to implement the remaining recommendations. Relevant developments in 2.023 are discussed below.

UNCAC

In 2023 the UN Convention on Anti-Corruption (UNCAC) evaluation reached its final stage. The evaluation started with a virtual on-site visit in November 2020. The executive summary has since been finalised and was formally distributed in August 2023. Contrary to the estimated timeline presented in last years' Rule of Law evaluation (publication of the report in the first quarter of 2023), at the time of writing no final report has yet been received by the Netherlands. The UNODC secretariat has informed the Netherlands that they aim to present the report in 2023. The evaluation report will be made public on the website of the UNODC.¹⁸ Relevant measures taken in 2023 which regard recommendations made by the UNCAC to improve the situation as it was in 2020 will be discussed below.

Scientific research regarding corruption risks mainports

As mentioned in the last report, there is an ongoing research by the Research and Documentation Centre (Wetenschappelijk Onderzoek- en Documentatiecentrum; WODC) regarding corruption risks at the mainports of the Port of Rotterdam and Schiphol Airport. The report has been subject to increasing delays. It is currently expected that the report will be published in the first quarter of 2024.

Scientific research regarding the Italian approach to combating organised crime

Last year's input referenced the exploration of the implementation of Italian anti-mafia approach in Dutch criminal law to combat organised crime. The WODC has published their research on this subject.¹⁹ No objectives have emerged from this in the field of corruption.

Scientific research regarding integrity violations in the Special Caribbean municipalities

At the request of the Minister of Justice and Security, in 2023 the WODC has presented a report concerning administrative integrity violations in the Special Caribbean municipalities. The report was published on December 14th 2023.²⁰

20.

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention, detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic and with foreign authorities. Indicate any

¹⁷ Kamerstukken II, 2023/24, 36 410-VII, nr. 16.

¹⁸ Country Profile (unodc.org)

¹⁹ Hoofdlijnen van de bestrijding van maffiacriminaliteit in Italië (wodc.nl)

²⁰ Ambtelijk-bestuurlijke integriteit in Caribisch Nederland (wodc.nl)

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

Please refer to last year's input with regards to the relevant authorities and the cooperation between those authorities. Information on international cooperation not discussed in previous responses is given below. Additionally, developments from 2023 are addressed.

The Public Prosecution Office (PPO)

Cooperation with foreign authorities is an important part of the work of the Netherlands Public Prosecution Service and law enforcement agencies, especially when it concerns foreign bribery and/or asset recovery. Many criminal (financial) investigations rely on mutual legal assistance with foreign authorities. Therefore, the Netherlands Public Prosecution Service and law enforcement agencies try to strengthen this cooperation, e.g. through international networks and organisations, such as the IACCC (see *FIOD* below) and the OECD Working Group on Bribery.

Please see the parts of the following evaluation reports that concern international cooperation and mutual legal assistance in criminal matters:

- <https://www.oecd.org/netherlands/netherlands-oecdanti-briberyconvention.htm> (especially chapter 6 of the Phase 4 evaluation report)
- chapter V of the evaluation report that will be published soon about the implementation in the Netherlands of the United Nations Convention Against Corruption.
- <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-netherlands-2022.html> (especially IO2)

National Internal Investigations Department (NIID: Rijksrecherche)

In the framework of its investigations the NIID cooperates closely with national justice and security sector partners, such as the National Police and other investigative services, for instance regarding forensic expertise, technical support, and surveillance and infiltration trajectories. The NIID also has connections with counterpart organisations in various European countries. The NIID is part of an international network called the Internal Criminal Investigations Network – ICIN.²¹ Established in 2020, this network brings together professionals who investigate law enforcement corruption and other public sector corruption. ICIN facilitates discussions among peers about case studies, investigation methodologies and techniques, and good practices. All with the aim to support the professionals working in ICIN member organisations to put up a better fight against corruption and serious organised crime.

European Public Prosecutors Office (EPPO)

In response to a request by the European chief prosecutor, in 2023 the Minister of Justice and security has agreed to recruit a third Dutch European delegated prosecutor. The Dutch PPO is looking for an eligible candidate.

Fiscal Intelligence and Investigation Service (FIOD)

Since its establishment in 2016, the Anti-Corruption Centre (ACC) of the FIOD has consisted of a team of approximately 30 fulltime employees. From 2024 onwards, a second dedicated team consisting of up to 24

²¹ ICIN – Internal Criminal Investigations Network | The Swedish Police Authority (polisen.se)

fulltime employees will come into force, nearly doubling the capacity on corruption cases.

Within the legal frameworks, the FIOD/ACC works closely with investigative services from European and non-European countries to detect corruption crimes, monitor money flows and collect evidence of corruption. To further international collaboration, as of September 2023 the FIOD/ACC has become an official member of the International Anti-Corruption Coordination Centre (IACCC). The IACCC brings together specialist law enforcement officers from multiple agencies around the world to tackle allegations of grand corruption. The IACCC is currently assisting domestic grand corruption investigations in over 40 different jurisdictions around the world. In 2022 alone, the IACCC identified more than GBP 380 million of stolen and hidden assets.²²

21.

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

There have been no significant developments since last year's report.

22.

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

Coherent policy on public integrity

On 25 April 2023, the Minister of the Interior and Kingdom Relations informed the House of Representatives about the policy on integrity of political office holders at decentralised and national level.²³ With this policy document the Minister of the Interior and Kingdom Relations intends to make the integrity policy for officials and administrators more effective and coherent. The document starts by presenting figures on integrity of the public administration, explains how the policy has evolved and describes its purpose and direction as well as responsibilities for its development. At the end, the Minister proposes several measures, such as clearer knowable standards and frameworks, the uniformisation of rules where necessary and a better support to political office holders.²⁴

Anti-corruption framework

In 2023, the Netherlands has continued its ongoing effort to improve national anti-corruption policies, taking into account the prevailing Dutch legal principles. An adequate anti-corruption framework requires close cooperation within the government, and where possible, with the private sector and civil society. In order to establish this, the conversations with civil society and the relevant government bodies announced in last year's input have taken place in 2023. In these conversations, both preventive and repressive measures have been explored. Among others, the potential lack of resources in the Dutch Public Prosecution Service previously addressed by the OESO WGB has been reaffirmed, a National Risk Assessment on corruption has been introduced (see below nr. 27 second bullet), and the Ministry of Justice and Security has taken steps to introduce a biannual conference on anti-corruption measures, taking place

²² Dutch financial crime agency to join International Anti-Corruption Coordination Centre – National Crime Agency

²³ Kamerstukken II 2022/23 28 844, nr. 254.

²⁴ Kamerstukken II 2022/23, 36 410 VII, nr. 16

for the first time in 2024. Additionally, the importance of a diverse pallet of preventive measures and controls has been reaffirmed, emphasising that single measures are unlikely to solve or prevent corruption risks.

In 2023, the exploration mentioned above has mainly focused on public sector corruption. In 2024, private sector corruption is scheduled to become part of the discussion.

B. Prevention

23.

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training).

Discussion of the subject of integrity regularly occurs in the Council of Ministers. For example, the Council of Ministers recently discussed integrity in relation to possible follow-up positions: which rules must be observed? These rules can be found in the Code of Conduct on the Integrity of Ministers and the Ministerial Handbook (The Blue Book). Before the start of the new cabinet, a session is being prepared on integrity and possible dilemmas. It is important that ideas on this subject can be exchanged in an open atmosphere. In addition, the government is working on appointing a confidential counsellor for integrity dilemmas.

On a local and provincial level there are several rules to promote the integrity of elected representatives and appointed officials. According to the Dutch Municipalities Act it is not allowed to hold some public offices simultaneously. For example it is prohibited to simultaneously be King's Commissioner, mayor, Minister, et cetera (onverenigbare betrekkingen). Besides, there are rules prohibiting appointed officials from engaging in certain economic activities that result in a conflict of interest. For some of those activities, dispensation by a higher governing body is possible (verboden handelingen). The Municipalities Act obligates also to withhold from taking part in deliberation and voting in case an elected representative or a appointed official has personal interests in the issue that is being discussed in the decision-making process (stemonthouding). Another important instrument is the code of conduct the council has to adopt for themselves, the executive and the mayor. Most of the codes include rules on conflict of interest, acceptance of gifts and lobbying. However, in the end it is up to the council to determine which rules are part of the code of conduct (gedragscode).

Furthermore, other measures to enhance the integrity are taken. For example, a lot of local governments have implemented a risk analysis which takes place before local administrators are being appointed. The aim of this risk analysis is to provide more insight in potential integrity vulnerabilities of appointed officials as well as to contribute to the integrity awareness of all those involved. As reported in the previous Rule of Law report the Dutch government is working on a proposal for a bill to make this risk analysis mandatory for all local governments. Mayors and King's Commissioners are screened by the General Intelligence and Security Service and the tax authority. In addition, local governments arrange many activities to promote integrity such as awareness meetings and integrity training sessions, but it is up to them to decide which activities they organise. This legislative proposal was recently published for public consultation: <https://internetconsultatie.nl/tweedewetintegriteitdecentraalbestuur/b1>.

Integrity rules for central government civil servants

For central government civil servants, continued attention is paid to the current set of integrity rules. For example, there is a code of conduct for central government civil servants²⁵ which is updated periodically and at every Ministry there are integrity coordinators and confidential counsellors. Within the central government, there is also a lot of attention for a culture of civil craftsmanship and dialogue and ethics. In addition, a lot of attention is paid to the conversation between civil servants about integrity and social safety. Experience has been gained with instruments that should make it easier to talk about integrity (dilemmas). This includes the Government Code of Conduct for Integrity (GIR) app²⁶, but also various workshops and the annual Integrity Week, organised by the Ministry of the Interior and Kingdom Affairs.

In the annual report on the operations of central government²⁷ the number of detected integrity breaches is reported. Overall, this shows a downward trend when it comes to the number of detected integrity breaches in central government over the last years. This report shows which integrity breaches have been reported, but it does not provide insight into which integrity risks were the biggest. The Ministry of Interior is currently talking to experts about risk management within central government, in accordance with the commitment made in the parliamentary letter that was sent to the House of Representatives in April 2023.²⁸

24.

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

Regarding lobbying, please see the answer given to question 19. There have been no other significant developments since last year's report.

25.

Rules and measures to prevent and address conflicts of interest in the public sector. Please specify the features and scope of their application (e.g. categories of officials concerned, types of checks and corrective measures depending on the category of officials concerned)

The Code of Conduct on the Integrity of Ministers contains rules on the integrity of Ministers, for example on the publication of relevant financial assets. The sanction mechanism for Ministers lies in the rule of confidence deriving from the ministerial responsibility. The rule of confidence concerns the confidence of parliament in the Minister as political office holder. Confidence is therefore not only related to the policy pursued by the Minister, but can also depend on the conduct of the Minister in his private life, which is separate from his responsibilities as Minister. Ultimately, the question is whether a majority of parliament still has confidence that a Minister is suitable as a person for the performance of his duties. Lastly, the Council of Ministers may decide to dismiss a Minister or State Secretary in accordance with Article 4 of the Rules of Procedure for the Council of Ministers. Regarding civil servants and

²⁵ <https://www.rijksoverheid.nl/documenten/richtlijnen/2017/12/01/gedragscode-integriteit-rijk-gir>.

²⁶ <https://play.google.com/store/apps/details?id=nl.rijksoverheid.gir>

²⁷ Jaarrapportage Bedrijfsvoering Rijk 2022: Kamerstukken II 2022/23, 2023D20560 (page 29 shows the number of detected integrity breaches).

²⁸ Kamerstukken II 2022/23, 36 410-VII, nr. 16.

representatives on a local and provincial level, please see the answers given to 23.

26.

Measures in place to ensure whistleblower protection and encourage reporting of corruption, including the number of reports received and the follow-up given

With regards to last years' input, the following updates are applicable:

Encourage reporting of corruption

As mentioned in the input for the 2023 Report, in 2022 the Ministry of Justice and Security initiated conversations with FIU-NL, FIOD/ACC, the PPO, the representatives of the legal profession (the Netherlands Bar Association and the Royal Dutch Association of Civil law Notaries) and their supervisory authority to consider how awareness of reporting obligations for unusual transactions related to foreign bribery can be further increased. In 2023, these conversations resulted in the development of guidelines regarding the Anti-Money laundering(AML)-reporting obligations in connection with red flags for foreign bribery-based money laundering. The guidelines were created in collaboration with the FIU-NL, and intend to lead to reports of unusual transactions at the FIU-NL. More specifically, the involved parties have developed a document providing illustrative cases and guidance on this topic, which was provided to the legal profession via, among others, journal publications (specifically in *Advocatenblad*²⁹), newsletters, websites, training and courses.

Furthermore, together with the representative body for accountants (Koninklijke Nederlandse Beroepsorganisatie voor Accountants; NBA), the guideline regarding corruption risks is being updated. The FIOD/ACC has contributed to this guideline. The renewed guideline aims to increase understanding by accountants of corruption in order for them to better recognize and report occurrences. A draft version of the guidelines for online consultation was published in Augustus 2023.³⁰ The consultation period ended in October 2023. At the time of writing, the NBA is reviewing the responses and editing the guidelines. They attempt to publish the final version in the first quarter of 2024.

The FIOD/ACC has mentioned the «Criminal Intelligence Team» of the FIOD in several publications regarding corruption in the healthcare sector as an option for informants who wish to report signs of corruption anonymously.

Dutch Whistleblower Authority Act

The Dutch Whistleblower Authority Act has been amended to implement the EU Whistleblower Protection Directive 2019/1937 in February 2023. The law to implement the EU-Directive was published in the Dutch Official Gazette on 3 February 2023.³¹ The majority of the Whistleblowers Protection Act entered into force on 18 February 2023. The entry into force decree for the implementation act was published in the Official Gazette on 17 February 2023.³² This means that all mandatory provisions of the EU

²⁹ For the article on corruption and bribery (in Dutch), see Hoe herken je corruptie en omkoping? – *Advocatenblad* 2023 09

³⁰ Consultatie NBA-handreiking 1137 – Corruptie, werkzaamheden van de accountant

³¹ Stb. 2023, 29.

³² Stb. 2023, 52.

Whistleblower Protection Directive have been fully implemented in Dutch legislation since 18 February 2023.

Some provisions of the Whistleblowers Protection Act did not come into force yet, because they require research and further regulation. On the one hand, this concerns provisions requiring employers to deal with anonymous reports of suspected abuse. On the other hand, this concerns provisions on new supervisory and sanctioning tasks and associated powers for the Whistleblowers Authority. These further regulations will be developed further in 2024. A legislative proposal to amend the Whistleblowers Protection Act is also being prepared. This will include the evaluation of the Whistleblowers Authority Act³³, proposals from MP Omtzigt's own-initiative note³⁴ and technical amendments.

Since 1 September 2022, psychosocial support has been offered to (potential) reporters of abuse through *Slachtofferhulp Nederland*. This support will be at least subsidised until 1 September 2025. Additionally, a regulation for legal aid will come into force in 2024 on the basis of which (potential) reporters of abuse who come into conflict with their employer after making a report, can qualify for support by a lawyer or mediator through the Legal Aid Board. To receive support, a referral by the advisory department of the Whistleblowers Authority is required. A regulation for legal aid has been drawn up to this end, that will apply for four years. The legal and psychosocial support for whistleblowers will be monitored and evaluated.

Furthermore, several activities and meetings were organised in 2023 as part of the *campaign promoting safe working and reporting climate* with the aim of promoting knowledge about the Whistleblowers Protection Act and raising awareness of the importance of a safe working climate. The campaign will continue in 2024.

In the Netherlands, no data are available at central government level on the number of reported corruption cases (and the follow-up given).

27.

Sectors with high risks of corruption in your Member State:

- Measures taken/envisaged for monitoring and preventing corruption and conflict of interest in public procurement

The Netherlands has recently reported to the OECD Working Group on Bribery on this topic (OECD Anti-Bribery Convention).³⁵ Below you will find a short summary of our input.

With regard to the exclusion grounds, contracting authorities must not conduct business with economic operators that have been convicted of certain types of offences, including corruption and conflict of interest. The Dutch Public Procurement Act 2012 contains a list of exclusion grounds in line with the European Public Procurement Directives (e.g., 2014/24/EU). A contracting authority can apply this list to ensure that convicted economic operators are excluded from participating in a public procurement procedure.

³³ Kamerstukken II 2022/23, 33 258, nrs. 48 en 51 (including annexes).

³⁴ Kamerstukken II 2022/23, 36 079, nrs. 2 en 3.

³⁵ Please see our input on the implementation of recommendation 11 (a) and 11 (b) in the follow-up report phase 4 of the Netherlands [netherlands-phase-4-follow-up-report.pdf](https://www.oecd.org/netherlands-phase-4-follow-up-report.pdf) (oecd.org)

In practice, the voluntary exclusion grounds are nearly always applied along with the mandatory exclusion grounds by contracting authorities in the Netherlands. This means that all grounds, including corruption and conflict of interest, will lead to an economic operator being excluded from a public procurement procedure.

In order for a contracting authority to (fairly) easily check whether an economic operator has been (criminally) convicted or whether any other exclusion grounds apply, a contracting authority may request a GVA from economic operators. A GVA stands for «Gedragsverklaring Aanbesteden», which translates to certificate of conduct for public procurement. Contracting authorities are informed and kept up to date about the latest developments via the PIANOo website (the expertise centre for public procurement).

Justis, the screening authority of the Ministry of Justice and Security, is responsible for the assessment of the database of convictions and for granting the GVAs in the Netherlands. Justis consults the Ministry of Justice and Security's database of convictions and checks whether any relevant decisions have been taken by the Dutch Authority for Consumers and Markets and the European Commission. Furthermore, the Ministry's database not only includes Dutch records but also includes registers of convictions in other EU member states as well as from countries who the Netherlands has a treaty with.

To raise further awareness among contracting authorities of the exclusion grounds in relation to bribery convictions and conflict of interest, an integrity session, with around 60 participants, was held in 2021 at the annual PIANOo-congress for contracting authorities/public buyers, during which attention was paid to exclusion grounds and the GVA. In addition, PIANOo pays extensive attention to these subjects in its educational activities. An example of such an educational activity is the bi-annual public procurement law course, taught by PIANOo-jurists/professors. The framework for exclusion grounds and the GVA are an extensive part of the course. On average, 25 jurists and 25 public buyers participate in this course. Another example is two bi-annual courses (one for jurists, one for public buyers) and lectures taught by PIANOo-jurists/professors at the Vrije Universiteit (VU) of Amsterdam, of which the lecture is specifically on exclusion grounds. In addition, PIANOo is intending to organise a series of smaller courses throughout each year for public buyers.

- list other sectors with high risks of corruption and the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. healthcare, citizen/residence investor schemes, urban planning, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

The measures reported last year with regards to the risks addressed are being further developed and implemented. The FIOD/ACC continues to focus on corruption in the healthcare sector and aims to generate media attention to create awareness on this subject. Additionally, presentations were held for hospitals and the accountancy sector to draw specific attention to corruption in the healthcare sector.

National Risk Assessment Corruption

Previous input stated that the Netherlands does not conduct an overall risk-assessment on corruption across all sectors to determine which sectors are most at risk. Each sector is responsible for setting up its own

systems to prevent corruption. While this decentralised approach has not substantially changed, in 2023 the Minister of Justice and Security has requested the WODC to conduct a national risk assessment on corruption in 2024.³⁶

Programme: Resilience against subversive crime

Last year's input referred to the risk that public officials could be used for or involved in organised crime. Measures taken to prevent the abuse of public officials have been further developed. As part of a programme *Weerbaarheid tegen ondermijnende criminaliteit* («Resilience against subversive crime»), in 2023 the Tax and Customs Administration has further implemented measures to increase resilience within the organisation against corruption, subversive crime and infiltration. Among others, in the third quarter of 2023 the online training «*wanneer je benaderd wordt*» («when you are approached») has been added to the training curriculum. Additionally, authorisations of employees to access information have been reviewed and withdrawn when deemed unnecessary. In July 2023, the State Secretary of Finance informed Parliament of the different aspects of the programme and measures introduced in it.³⁷ For a more detailed description of the programme, please see this letter.

28.

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

In addition to the information presented for indicator 26 and 27 and last year's input, the following measures (non-exhaustive) are relevant with regards to the prevention of corruption in the public and private sector:

GRECO

The Netherlands' second compliance report in the context of the fifth evaluation round of the Group of States against Corruption of the Council of Europe (GRECO), on preventing corruption and promoting integrity in governments (top executive functions and law enforcement agencies), was adopted in June 2023. GRECO concludes that some steps have been taken to implement GRECO's recommendations with respect to top executive functions. Regarding law enforcement agencies, six out of eight recommendations have been implemented satisfactorily. The second compliance report was published in October 2023 on the GRECO website.³⁸ Also in October 2023, a parliamentary letter including a response from government to the second compliance report³⁹ was sent to the House of Representatives.

NIID

As mentioned in last year's input, the NIID – in close collaboration with the National Public Prosecutor's office – has the prerogative to report on findings and recommendations to strengthen the resilience of the public sector authority concerned. These administrative reports have impact and are generally appreciated by the recipients. In 2023, the NIID submitted four of such reports that, among others, related to the system of application and issuance of passports and other identification documents,

³⁶ Kamerstukken II, 2022/23, 22 112, nr. 3752; Kamerstukken II, 2023/24, 36 410 VI, nr. 2.

³⁷ Kamerstukken II, 2022/23, 31 066, nr. 1271.

³⁸ <https://www.coe.int/en/web/greco/evaluations/netherlands>.

³⁹ Kamerstukken II 2022/23, 36 410 VII, nr. 16

logging and access management in governmental information systems, and compliance with agreements regarding ancillary activities of civil servants. See the response to indicator 23 regarding these subjects.

National police

In January 2023 continuous screening of Police Officers has been ensured through the implementation of the legislation Screening of Police Officers and External Police Staff Decree (*Besluit screening ambtenaren van politie en politie-externen*). Integrity screenings take place before starting at the NPN and at regular intervals thereafter. Additionally, screenings can take place when an employee's (personal) circumstances have changed. Moreover, by the first of September 2023, a director Integrity has been instated at the strategic level within the *Staf Korpsleiding Politie*.

Furthermore, the joint and structured approach referred to in last year's input has been further developed and operationalised. In order to streamline the process of collaboration and dialogue among the several partners and to gather knowledge and experience required to create an adequate anti-corruption framework to combat corruption among police officials, five lines of development have been identified. Below, each line of development is briefly addressed.

National Intelligence Pattern – Police Corruption (Nationaal Intelligencebeeld – Politie Corruptie)

In collaboration with intelligence organisations, data on (possible) police corruption is gathered in order to gain insights in vulnerabilities, risks and threads caused by police corruption (the national intelligence pattern on police corruption). Based on the outcome of the data collection, adequate measures can be taken to increase the safety and resilience of both police employees specifically and the police organisation in general.

Field Lab – Police Corruption

In collaboration with several police units, learning-, experimenting- and development environments (Field Labs) are used to research which interventions can be applied to identify and combat corruption in its early stages.

Insider Threat Intelligence

Part of the sector information security, Insider⁴⁰ Threat Intelligence (InTI) actively monitors improper use of police information systems.⁴¹ As is the case with police corruption, both individual- and organisational factors influence the creation of an insider threat. By integrating information/ indicators of police corruption in the InTI, a holistic approach is taken in order to better detect unusual behaviour.

Collaboration with the sciences

To better assess and understand the nature and size of police corruption, collaboration with the sciences is important. Due to the continuous evolution and adjustment to changing circumstances of both corruption itself and human behaviour, new (research)questions and challenges are

⁴⁰ As Insiders are considered all natural persons who, as part of their responsibilities, have access to information systems, police locations and/or other police assets.

⁴¹ For further reference, see: Kamerstukken II, 2021/22, 29 628, nr. 1053; Kamerstukken II 2020/21, 28 844, nr. 220.

posed constantly. This requires a continuous process of scientific research on police corruption.

Collaboration to strengthen resilience

Resilient employees are invaluable to prevent and combat corruption. Employees should be able to recognize both the situations where corruption takes place and its different appearances. In order to increase the resilience of employees against corruption, in 2024 two police units will start a trial consisting of a number of workshops in which several case studies of corruption are discussed. The goal of the workshops is to interactively see what corruption is, what the consequences of corruption are and which actions can be taken to prevent it.

C. Repressive measures

29.

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

There have been no significant developments since last year's report.

30.

Data on the number of investigations, prosecutions, final judgments and application of sanctions for corruption offences (differentiated by corruption offence if possible)⁹, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds¹⁰.

Data on the PPO will follow as soon as possible.

Data on final judgements:

In relation to the number of final judgements of corruption offences, articles 177 SR, 178 SR, 328ter SR and 363 SR have been examined. We can report final decisions in first and second instance.⁴²

- In the first instance, we report 6 cases in 2023 (01-01-2023 – 04-12-2023) in which one or more of the articles mentioned above have been proven by the court and of which the rulings are final.⁴³
- In the second instance, we report 15 cases in 2023 (01-01-2023 – 04-12-2023) in which one or more of the articles mentioned above have been proven by the court and of which the rulings are final.⁴⁴

31.

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

As mentioned in last year's input, protected processes for assessing legal privilege claims over large datasets obtained in the context of investigations, and the lack of a comprehensive legal framework for self-reporting

⁴² These figures relate to the preparation of, attempts to, or completed offences. In addition, they may also relate to participation in co-perpetration, complicity, incitement, or commission of the offense. This may affect the count of cases. These figures are indicative. They provide the best possible representation based on the information available at 04-12-2023 in the management information systems of the Judiciary.

⁴³ PSK, 04-12-2023.

⁴⁴ InfoRM, 04-12-2023.

pose obstacles for detecting and sanctioning foreign bribery. Additionally, the UNCAC evaluation addressed the possibility of an asset recovery handbook to improve cross-border cooperation. Updates on last year's input are included below.

Legal privilege

As mentioned last year, the case law regarding the assessment of legal privilege claims «*is continuously developing*». In an interlocutory ruling of May 2023, the Court of Appeal considered that the basis for legal privilege lies in the fact that «*the public interest that the truth be revealed in court must give way to the public interest that everyone should be able to turn to them for assistance and advice freely and without fear of disclosure of what has been discussed*» and ruled that (in this particular case) the right of non-disclosure had been violated in a structural manner.⁴⁵ The Court of Appeal decided to use the recently established possibility to submit preliminary questions to the Supreme Court to shed its light on the matter, because these questions concern a fundamental principle of law and are important for the exercise of investigative powers by the PPS in many (ongoing) criminal investigations. Meanwhile, the Court of Appeal has imposed an interim measure that a public prosecutor will leave the selection, filtering and assessment of data to the examining magistrate in question when it is expected that digital data obtained from a service provider on the basis of Article 126ng/ug DCCP (e.g. e-mails) may contain material that is entitled to legal privilege.

Earlier, the Public Prosecution Service (PPS) had drawn up a draft Directive on dealing with material that is possibly subject to legal privilege.⁴⁶ In January 2023 the consultation process has started for interested parties to give their views on the draft. The PPS will consider those views and determine whether this gives cause to make any changes. The Dutch Bar Association has taken the position that the draft Directive offers insufficient protection to the right of non-disclosure.⁴⁷ Further consultations are now on hold awaiting the ruling of the Supreme Court on preliminary questions regarding legal privilege. The opinion of the Supreme Court could lead to more clarity and certainty about the procedures that have to be followed and (thus) could be of importance for further shaping the draft directive. Eventually this could also address the delays caused by the processes for assessing legal privilege claims.

The Netherlands further reported on this topic to the OECD in October 2023.

Self Reporting

As announced in last year's input, in 2023 the WODC presented their research on self-investigations and self-reporting in relation to public sector fraud and corruption.⁴⁸ The Minister of Justice and Security is discussing the desirability, appropriate form and reach of the regulation with representatives from the public sector, civil society and the PPO.

⁴⁵ <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBOBR:2022:1035> (Dutch).

⁴⁶ *Handleiding verwerking geheimhouderinformatie aangetroffen in inbeslaggenomen voorwerpen en in digitale bestanden* (2014). (Dutch)

⁴⁷ <https://www.advocatenorde.nl/nieuws/voorgestelde-werkwijze-om-biedt-onvoldoende-bescherming-aan-het-verschoningsrecht> (Dutch).

⁴⁸ For the full report «Zelfonderzoek en zelfmelden van fraude en corruptie door bedrijven», see: *Zelfonderzoek en zelfmelden van fraude en corruptie door bedrijven* (wodc.nl)

Asset recovery

In order to improve mutual legal assistance in asset recovery procedures and in line with recommendations made in the UNCAC evaluation, in 2023 the Netherlands has started the development of an asset recovery handbook to provide practitioners outside of the Netherlands with an overview of the possibilities regarding tracing, freezing and confiscation of criminal assets. The handbook is expected to be finalised in 2024. In due course, the handbook will be published in the Publication Library of the Stolen Asset Recovery Initiative of the UNODC and the World Bank.⁴⁹

32.

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

There have been no significant developments since last year's report.

Other – please specify

III. Media pluralism and media freedom

33.

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding media pluralism and media freedom (if applicable)

Not applicable

A. Media authorities and bodies

34.

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

In September 2023, the public broadcasting advisory committee set up by the Dutch government released a final report. The task of the advisory committee was to advise on a balanced, scientifically substantiated and broadly supported proposal for admission and accountability criteria for the national public broadcaster, where the interests of contemporaneity, quality, pluralism and social support are guaranteed. In addition to the demand for admission and accountability criteria, the advisory committee also looked at how the public broadcasting system can be designed in a future-proof manner. The end result is a thorough advice with fifty recommendations. The policy response and further elaboration of the advice will be left to the new administration.

35.

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

There have been no significant developments since last year's report.

36.

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

⁴⁹ Publications Library | Free access to asset recovery books and guides produced by StAR and external sources (worldbank.org)

There have been no significant developments since last year's report.

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

37.

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

There are no new updates with regards to political advertisements. The fair and transparent allocation of state advertising is one element of the proposal for a European Media Freedom Act. Depending on the final text of the Act some new measures might be taken next year(s).

38.

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)

There have been no significant developments since last year's report.

- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions

The independence of the management of the public service media is one element of the proposal for a European Media Freedom Act. Depending on the final text of the Act some new measures might be taken next year(s).

- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licences, company operation, capital entry requirements, concentration, and corporate governance

There have been no significant developments since last year's report.

39.

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

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

40.

Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications, referring also, if applicable, to follow-up given to alerts lodged with the Council of Europe's Platform to promote the protection of journalism and safety of journalists.

To improve the safety of journalists, measures are being taken into consideration to shield visiting addresses of a company in the Trade Register and personal data in the Cadastre from persons who are faced with (probable) security risks. As of 20 November 2023, the Cadastre has taken additional measures to protect the safety of, among others, journalists. The possibility has been created that a person – belonging to a certain profession and for which agreements have been laid down in covenants – can request that his personal data are shielded if the threat

can probably be expected as a result of a certain professional practice. Journalists are one of these professions. The Cadastre has also limited the possibilities to search in the registers to find real estate by the entrance of a name (in Dutch: «Zoeken op naam»). Further measures are likely to follow to ensure that any person, therefore also a journalist, can request his personal data to be shielded if there is a concrete threat.

In July 2022, the Minister of Justice and Security presented a bill to Parliament to make the use of personal data for intimidating purposes («doxing») a criminal offense. The House of Representatives passed the bill on February 7th, 2023, followed by the Senate on July 11th, 2023. The bill will enter into force on January 1st, 2024.

In March 2023, the scientific research and documentation centre for the Ministry of Justice and Security published a research report on violence and aggression against journalists.⁵⁰ The study was conducted by the Erasmus School of Law. The report provides valuable insight into the phenomenon of violence and aggression against journalists. The research indicates that violence against journalists is a multifaceted issue, interwoven with broader social problems and perceived differently by individual journalists. The violence often appears to stem from emotion, which is why the researchers recommend to focus on measures that prevent emotionally charged situations and the creation of barriers that prevent emotions being converted directly into aggressive behaviour. Some journalists experience violence more often and in more extreme forms than other journalists. The researchers identified four so-called contexts that explain these differences. This provides valuable insights into the most common types of situations in which journalists encounter violence and enables the development of appropriate policies. A comprehensive, sustainable and collaborative approach to violence and aggression against journalists is necessary. This violence cannot be separated from the violence that takes place against other authority figures and persons with public duties. The government is dedicated to safeguard individuals engaged in public discourse, whether in the virtual or physical domain. The government remains especially attentive to groups subject to aggressive behaviour and violence, such as journalists. An annual report on the progress of press freedom and safety is submitted to the House of Commons.⁵¹ This letter provides an update on announced measures and lists relevant developments in ongoing policies.

The project PersVeilig (started in 2019) plays an important role in strengthening the journalistic community and protect them from physical assault, online harassment and legal disputes.

PersVeilig has established a protocol outlining the actions each party must take to ensure the safety of journalists. The PersVeilig project is being evaluated. The evaluation's primary objectives will involve assessing the effectiveness and structure of the *PersVeilig* project, the *PersVeilig* protocol, the Flexible Protection Package for freelancers and the *Balie PersVeilig*. The results will be available in 2024 and will be used for the development of the arrangements for structural financing. The aim is to establish a structural organisation from 2025 with ongoing support from the government.

⁵⁰ Kamerstukken II 2022/23 31 777, nr. 34, Kamerstukken II 2022/23 31 777 nr. 49

⁵¹ Kamerstukken II 2022/23 31 777, nr. 54

In December 2022 PersVeilig presented a study on threats among female journalists⁵².

Eight out of ten (82%) of the group of female journalists interviewed have experienced some form of intimidation, aggression or insult. Half of the women questioned state the threats have strongly increased and they have a different character, namely more explicit and more threatening. Of the different forms of intimidation, online verbal aggression occurs the most. 24% percent takes place on X. The aggression and threats affect (amongst others) the behaviour, job satisfaction and mental health. The interviews also show that incidents affect the way journalists do their work: being more careful, choosing words more carefully and feeling less free in doing the job. Nearly four out of ten (37%) of the female journalists which had to deal with aggression, intimidation or threats have not discussed this with anyone. 49% discussed it with colleagues. A third (32%) shared their experiences with their employer or client. Only four percent reports the incidents to authorities such as PersVeilig (4%).

As a response PersVeilig is developing tailor made trainings for women. A new female project member is being hired to enforce the project and especially to develop a specific policy frame handling threats and aggression towards women.

Alerts lodged with the Council of Europe's Platform

With regards to the alerts lodged with the Council of Europe's Platform to promote the protection of journalism and safety of journalists (hereafter «Platform»), the Netherlands has received four alerts from the Platform in 2023. This represents a decrease of 20% compared to 2022. Of the four alerts, two have been deemed severe by the Platform, which are considered «Level 1» alerts covering the most severe and damaging violations of media freedom. The two remaining alerts are considered a «Level 2» alert covering all other serious threats to media freedom. Two of the four alerts have been classified as falling under the category of «harassment and intimidation of journalists», the third as «attacks on physical safety and integrity of journalist» and the fourth as «detention and imprisonment of journalists». Of the four alerts lodged in 2023 a reply is expected for two alerts. The Netherlands has currently not yet replied to the two lodged alerts. This is due to an internal verification of the legal basis for the sharing of information on the personal data and investigation concerning the involved journalists and/or media outlets. The Ministry of Justice and Security is currently invested in addressing the delays and is aiming on resuming its responsibilities to the Platform in the first quarter of 2024. This delay has been communicated to the Platform.

41.

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

There are no significant updates to report in 2023 regarding the capacity of law enforcement. With regard to demonstrations, a framework is in place consisting of agreements between police and journalists concerning their role and safety during protests. In advance of an upcoming demonstration journalists can reach out to the police to discuss their safety situation. Sometimes measures can be taken in order to guarantee safety.

42.

⁵² Vrouwelijke journalisten en veiligheid, I&O research, PersVeilig, 2022

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

Since the Open Government Act (Wet open overheid; Woo) came into force on May 1 2022, important progress has been made toward a more transparent government. All governing bodies are actively engaged in implementing the Woo. Since the law was enacted in 2022, different measures have been taken, such as allocating resources to invest in implementation⁵³, increasing personnel and using support tools such as search-and-find software and redaction software. In 2023, several policy measures were announced and initiated, aimed at preserving work-related chat messages from government officials (political officials and government leaders).⁵⁴ In addition, the Advisory Board on Public Access and Information Management issued its first advisory opinions the past year, including a requested opinion on the preservation of chat messages⁵⁵ and a survey on journalists' experiences with the Woo.⁵⁶ The Advisory Board also completed its first mediation cases.

One year after the implementation of the Woo, the government recognizes that despite efforts, there are challenges in implementing the law. As also stated in the 2023 Commission report⁵⁷, steps need to be taken to accelerate the processing of Woo requests. Towards this end, pilots were conducted earlier this year with the goal of gaining insight into what measures contribute to faster and better processing of information requests.⁵⁸ Furthermore, an implementation review («invoeringstoets») on the Woo was conducted. The review identified challenges faced by citizens, journalists and administrative bodies regarding the law, as well as best practices. In addition, the external research agency formulated several recommendations on the identified challenges.

Following the publication of the implementation review, the Advisory Board and the Government Commissioner for Information Management have been asked to reflect on the outcomes of the review issue advices. Based on these advices, the outcomes of the implementation review, and the Woo pilots, a Cabinet response will follow in 2024 on measures to improve the implementation and enforceability of the Woo. This will include a consideration of the outcomes and recommendations of the Advisory Board's survey of journalists on access to public information.

Important for an accelerated and improved processing of information requests is also the government's information management. The steps the government plans to take to enhance its information management are outlined in the Multi-Year Plan for Transparency and Information Management («Meerjarenplan Openbaarheid en Informatiehuishouding»),

⁵³ For the implementation of the Open Government Act, the government has allocated € 60 million incidentally and € 140 million for decentralised authorities, in addition to € 48 million structurally for the central government and € 51 million for decentralised authorities. In addition, from 2021 to 2026, € 787 million has been allocated for the central government to improve information management.

⁵⁴ Kamerstukken II 2022/23, 32 802, nr. 67; Kamerstukken II 2022/23, 32 802, nr. 75.

⁵⁵ <https://www.acoi.nl/adviezen/chatberichten/>

⁵⁶ <https://www.acoi.nl/actueel/nieuws/journalisten-kritisch-over-de-afhandeling-van-Woo-verzoeken/>

⁵⁷ https://commission.europa.eu/system/files/2023-07/44_1_52625_coun_chap_netherlands_en.pdf

⁵⁸ Kamerstukken II 2023/24, 32 802, nr. 80.

published and shared with parliament in December 2023.⁵⁹ Furthermore, the government recognizes the importance of monitoring the handling of Woo requests. Therefore, starting this year, an annual overview of the handling of information requests at departments is provided in the Annual Report on Operational Management («Jaarrapportage Bedrijfsvoering Rijk»⁶⁰).

Regarding proactive disclosure, another key component of the Woo, a number of important steps have been taken in the past year. Governing bodies are proactively disclosing more and more information of their own accord based on the general proactive disclosure obligation in the Woo.⁶¹ In addition, the Woo mandates the proactive disclosure of seventeen information categories by all governing bodies.⁶² Preparations for this obligation began this year, for example, working groups are currently testing and refining the definitions of the seventeen categories of information.⁶³ In addition, «Woo Index» has been operational since June 2023. This is a digital infrastructure in the form of a referral index, designed to allow users to browse and search all proactively disclosed documents in one central place.⁶⁴ In the coming period, work will continue on the Woo Index by having more administrative bodies connect to it and adding the search function.

Next to improving the implementation of the Open Government Act, the Dutch government is also working to become a responsive government. We are doing this in part by collaborating with civil society organisations, local governments and knowledge institutions to improve government transparency through the Open Government Action Plan. The Open Government Action Plan 2023–2027, which the Ministry of the Interior and Kingdom Relations periodically draws up as part of its membership in the Open Government Partnership (OGP), was sent to the House of Representatives in August of this year.⁶⁵ The implementation of the Action Plan involves a collaborative approach, involving relevant stakeholders from different layers inside and outside government. This collaboration will continue unabated in the coming period.

43.

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

PersVeilig has conducted an investigation into legal threats to journalists. The survey, completed by 858 journalists and 39 editors-in-chief, shows 80% of the journalists have never been involved in legal action due to their work or a publication. The survey also shows that 25% is more careful with publishing to avoid the risk of legal action. Half of the group of journalists have faced the threat of legal action at least once following a publication. 20% actually resulted in legal charges or prosecution. 6% indicated to have modified their publication due to the risk of legal consequences, and 4% refrained from publication. 60% says the threats don't affect their work. 12 of the editors-in-chief stated that legal threat had sometimes lead to a modification or to the decision not to publish. The majority of the threats came from private parties (54%), or a lawyer

⁵⁹ Kamerstukken II 2023/24, 32 802, nr. 344.

⁶⁰ Kamerstukken II 2022/23, 31 490, nr. 328.

⁶¹ Article 3.1 of the Open Government Act

⁶² Article 3.3 of the Open Government Act

⁶³ Kamerstukken II 2022/23, 32 802, nr. 73.

⁶⁴ Kamerstukken II 2022/23, 32 802, nr. 73.

⁶⁵ Kamerstukken II 2022/23, 32 802, nr. 74.

on behalf of an individual (30%); followed by companies (41%) or a lawyer from a company (38%). Just over 10% of the journalists received a legal threat from (a lawyer for) the government.

23 editors do not have a protocol or procedures for employees to address legal harassment. Most of the editors hire lawyers in case of a threat. Not all editors have sufficient resources for this. A small proportion of the journalists interviewed are familiar with the Press Freedom Fund. Also, only a small proportion used the Press Freedom Desk. For the interpretation of the numbers mentioned above, it is very important to mention that within the survey no distinction is made between *strategic* lawsuits against public participation and *other* lawsuits against public participation. Dutch procedural law offers guarantees against strategic lawsuits against public participation, for example under the heading of abuse of procedural law.

In the coming years the implementation of the EU directive and EU recommendation on SLAPPs will be in preparation. This will be shared responsibility of the ministry of Justice and Security, ministry of Interior and Kingdom Affairs and the ministry of Education, Culture and Science, supported by the ministry of Foreign Affairs.

Other – please specify

IV. Other institutional issues related to checks and balances

44.

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the system of checks and balances (if applicable)

Recommendation 4: Further continue the comprehensive follow-up to the childcare allowances affair, involving all relevant state authorities, building also on the work of the State Commission on the Rule of Law

The government continues its effort to accelerate the compensation of the affected parents and children harmed by the childcare allowances affair.⁶⁶ The affected parents and their children have suffered a great injustice and this can unfortunately never be fully compensated. Parents and children must be able to make a new start. At the same time, the recovery operation takes too long for a number of parents. The government is well aware of the urgency to ensure that the recovery operation runs better and faster. Various measures to accelerate and improve the recovery operation have been implemented, aimed at speeding up the completion of the integral assessments and objections and the earlier and better provision of files.⁶⁷ Based on the approach of arriving at new out-of-the-box solutions for the recovery operation⁶⁸, the government has announced an alternative damage route to give parents more control and clarity more quickly.⁶⁹ Adjustments to accelerate and improve the aforementioned efforts have also recently been initiated at the Actual Damage Commission (CWS).⁷⁰

⁶⁶ Kamerstukken II 2023/24, 31 066, nr. 1291.

⁶⁷ Kamerstukken II, 2022/23, 31 066, nr. 1165; Kamerstukken II, 2022/23, 31 066, nr. 1235

⁶⁸ Kamerstukken II 2022/23, 36 338, nr. 1.

⁶⁹ Kamerstukken II, 2022/23, 31 066, nr. 1235; Kamerstukken II, 2022/23, 31 066, nr. 1254

⁷⁰ Kamerstukken II, 2023/24, 31 066, nr. 1282.

As mentioned in the 2023 rule of law report, the State Committee on the rule of law has started its preparations in 2023. The past year, the State Committee has already made efforts to gain the citizens' perspective on the rule of law by organizing a conference on the topic and by entering into conversation during an open forum and twelve organized talks with citizens in every province. Furthermore, the general public, more than 50 experts and several organizations have been requested to either respond via internet consultation or send letters to the State Committee directly, presenting their opinion on the rule of law and ideas for improvement. All documents are available on the website of the State Committee: www.staatscommissierechtsstaat.nl. Furthermore, the State Committee sent an intermediate conclusion to the informer for the new Government in December 2023, after the November elections.⁷¹ The State Committee will continue its work in 2024 by consulting both professionals and civil society and will present its recommendations in June 2024.

A. The process for preparing and enacting laws

45.

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'¹²/public consultations (including consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase.

Since last year the Beleidskompas (Policy Compass)⁷² has been launched in March 2023. The Policy Compass provides a guiding structure that helps to properly shape the policy preparation process with the aim of good policy quality. For example, by early and equal involvement of the implementing partners. Moreover, the website Internetconsultatie.nl – that enables consultation of the general public on all bills and orders in council that are drafted by the government – has been overhauled, with a view to enhance its usability and comprehensibility.

Furthermore, the Netherlands participates in the project «Building capacity for evidence informed policymaking in governance and public administration in post-pandemic Europe» which started in March 2023. This project supports seven EU Member States in building capacity to improve the effectiveness of their public administrations, through greater capacity for supply and uptake of scientific knowledge, evaluation, and evidence in policymaking. The expected long-term effect of this project (impact) is the reinforced institutional integration of the use of evidence, science and evaluation for policymaking.

46.

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).

The Bill, required under emergency law, to continue the emergency legal framework that was used in 2022 to receive displaced persons from Ukraine was enacted into law.⁷³

⁷¹ Brief aan de informateur: Tussenconclusie Staatscommissie rechtsstaat | Brief | Staatscommissie rechtsstaat

⁷² <https://www.kcbr.nl/beleid-en-regelgeving-ontwikkelen/beleidskompas>

⁷³ Kamerstukken II 2023–2024, 36 394, nr. 6

The regular, temporary bill, which is to succeed the use of emergency legislation, is pending before Parliament. Furthermore, regular legislation entered into force to control future pandemics⁷⁴, a matter covered by emergency regulations, emergency law, and temporary legislation during the COVID-19 crisis.

47.

Rules and application of states of emergency (or analogous regimes), including judicial review and parliamentary oversight

Please see the answer to question 46.

48.

Regime for constitutional review of laws

As reported in the Rule of Law Report 2022, the Government is still working on a proposal for the introduction of constitutional review of laws along the lines indicated in that report. However, following the elections of 22 November 2023 for the Second Chamber of Parliament in the Netherlands, the new Government may choose to either pursue the previously proposed system of constitutional review of laws, or make amendments. Whether and in what form the proposal for constitutional review of laws will be elaborated, in terms of both content and proceedings, shall be decided after the new Government is formed.

B. Independent authorities

49.

Independence, resources, capacity and powers of national human rights institutions («NHRIs»), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions¹³

As reported in last years input, following a complaint filed at the Ministry of Justice and Security against the Chair of the Netherlands Human Rights Institute, an independent committee was formed in the first half of 2023 to investigate the complaint. The independent committee's report had been postponed by the committee to Q1 2024.

In the past months further arrangements have been made, in close co-operation with the Netherlands Institute for Human Rights, to further strengthen its capacities and tasks. In addition to its existing responsibilities, the Institute will undertake preparations to expend its current mandate to review individual complaints concerning the Dutch Equal Treatment Act to also include complaints in the Caribbean part of the Netherlands. The Dutch Government filed a proposal in Parliament to amend the Law on the Netherlands Institute of Human Rights accordingly. Also, preparations will be made in 2025 for the Institute to formerly take over the National Preventive Mechanism based on the Optional Protocol to the United Nations Convention against Torture. The Netherlands Institute of Human Rights had been provided appropriate funding for both additional tasks.

50.

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years.

⁷⁴ Stb. 2023, 184

There have been no significant developments since last year's report.

C. Accessibility and judicial review of administrative decisions

51.

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

Access to public information of the Dutch government bodies is generally regulated by the Open Government Act (Wet open overheid; WOO). The government bodies have a best efforts obligation, within boundaries of disproportionate effort or costs, and reasonable interest, to publish their information, specifically information concerning their policy. The WOO also entitles citizens to request and receive information from the government on specific topics, free of charge. This includes the methods and data that are used to make an administrative decision. Excluded from open access is information where there is a compelling interest in non-disclosure, like state security.

52.

Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review).

In administrative law, one can first raise objections against a decision at the administrative body that made the decision. Thereupon one can appeal the decision at an administrative court. The highest competent courts in administrative law are the Administrative Jurisdiction Division of the Council of State, the Trade and Industry Appeals Tribunal (economic administrative law), and the Administrative High Court (social insurances, social services and civil servant-related cases). Each provided decision contains information about the available legal remedies.

Since the last Rule of Law report a draft bill has been published that aims to strengthen the position of citizens in administrative procedures. The main goal of the bill is to ensure that government decisions better meet the needs of citizens. There will be regulations for personal contact with a citizen about his application. Decision should be understandable to the specific addressee. The deadlines for addressing an appeal against decisions are extended and applied more flexible. Also there will be more possibilities for citizens to correct errors and to provide evidence for statements in court. The draft will be published for consultation in the beginning of 2024.

The following website contains more information about the Dutch judicial system: <https://e-justice.europa.eu/523/EN/legalsystemseuandnational>

53.

Rules and practices related to the application by all courts, including constitutional jurisdictions, of the preliminary ruling procedure (Art. 267 TFEU)

The courts have established tools and protocols for the working method when submitting preliminary questions to the European Court of Justice. The Training and Study Centre for the Judiciary (the SSR) – the training institute that is primarily responsible for the training/continuous education of judges in the Netherlands – offers the course «Preliminary Judicial Procedure». A coordinator for European law has been appointed at each court who functions as a source of information in the field of European

law in its own court. Judiciary staff can subscribe to European law newsletter in which relevant rulings of the European Court of Justice and other EU developments are highlighted.

54.

Follow-up by the public administration and State institutions to final (national/supranational, including the European Court of Human Rights) court decisions, as well as available remedies in case of non-implementation

As of January 1st, 2024 seven judgments of the European Court of Human Rights remain to be (partly) implemented. The time needed for the implementation of these judgments varies. If only individual measures are required such as the granting of a residence permit or the payment of compensation, then a judgment can be fully implemented within a few months. If, however, the judgement requires changes in legislation then implementation can require a period of a few years. The judgment that has awaited implementation the longest, namely eight years, concerns the immutability of a life sentence, imposed on a prisoner with a mental illness in Aruba and Curacao. In a case concerning Sint Maarten, a judgement of the Court has contributed to a decision to completely overhaul the detention system with the construction of an entirely new prison. Naturally this also requires a significant period of time.

Any judgement of the European Court of Human Rights in which the Court finds a violation of the European Convention on Human Rights by the Kingdom of the Netherlands is very carefully assessed by the Agent of the Kingdom of the Netherlands before the European Court of Human Rights together with the relevant Ministry. Relevant elements of this analysis include an examination of the cause of the violation established by the Court, whether this case concerns an incidental violation which is unlikely to be repeated or whether this violation points to more structural problem which requires structural measures. In the latter case, an additional question is whether new legislation or amendments to legislation are required or whether a change of policy or guidance, training or other measures are sufficient. In any event, given the direct effect of the European Convention on Human Rights in the Dutch domestic legal order and its precedence over even formal legislation, judicial and other remedies are readily available to prevent further violations. The Netherlands ensures that the Department for the Execution of Judgements of the Council of Europe is regularly informed of all steps taken.

D. The enabling framework for civil society

55.

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

There have been no significant developments since last year's report.

56.

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

Legal threats (incl. SLAPPs)

In the coming years the implementation of the EU directive and EU recommendation on SLAPPs will be in preparation. This will be shared responsibility of the ministry of Justice and Security, ministry of Interior and Kingdom Affairs and the ministry of Education, Culture and Science, supported by the ministry of Foreign Affairs.

57.

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

In May 2023, a modification (nota van wijziging)⁷⁵ to the draft bill on transparency of civil society organisations (Wet transparantie maatschappelijke organisaties, Wtmo) was introduced in the lower house of Parliament to enable the public prosecution office to request the court to order measures against civil society organisations where they undermine public order or the Dutch democratic order. There are no further developments to report as of yet.

58.

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

Please see the answer to question 45.

E. Initiatives to foster a rule of law culture

59.

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society, education initiatives, etc.)

Regarding the State Commission on the rule of law, please see the answer given to question 44. Furthermore, The Netherlands celebrated the 175th anniversary of the Constitution of 1848. This Constitution forms the basis of the Dutch parliamentary democracy. This anniversary was commemorated this year through various initiatives for professionals and the public. For example, a «Week of the Rule of Law» was organised.⁷⁶ During the Week of the Rule of Law, all kinds of lectures for professionals were organised around the theme «The future of our constitutional state». The week ended with a Rule of Law Tour on Saturday, in which everyone could participate. On that day, various institutions opened their doors to provide information about the democratic constitutional state. It was possible to visit the Academy for Legislation, the Supreme Court, the King's Cabinet, the National Archives, the Council for the Judiciary, the Council of State, the Senate and House of Representatives on this day.

⁷⁵ <https://zoek.officielebekendmakingen.nl/kst-35646-7.html>

⁷⁶ <https://rechtenoverheid.nl/week-van-de-rechtsstaat>.

The ministry of the Interior and Kingdom Relations launched an information campaign about the Constitution and the importance of the Constitution in everyday life, see <https://www.rijksoverheid.nl/onderwerpen/grondwet-en-statuut/175-jaar-grondwet>.

Other – please specify