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2023 Rule of Law Report
Country Chapter on the rule of law situation in the Netherlands

Accompanying the document

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

2023 Rule of Law Report

The rule of law situation in the European Union

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ABSTRACT

The justice system of the Netherlands continues to be characterised by a high level of perceived judicial independence, and several reforms to further strengthen judicial independence have advanced. Reforms are under preparation to enhance the safety of key witnesses in criminal proceedings as well as of their relatives and advisors. Judges and public prosecutors have expressed concerns regarding staff shortages and challenging working conditions due to a high workload. The level of digitalisation has improved, notably through the introduction of more digital solutions for court proceedings. The efficiency of the justice system remains high and backlogs in criminal cases have been further reduced.

The perception among experts and business executives is that the Netherlands is one of the least corrupt countries in the world. The Government has initiated consultations on a strengthened anti-corruption policy. Combating the infiltration of public institutions through corruption remains a strategic priority for the authorities as part of their programme on combatting subversive organised crime. The investigation and prosecution of corruption cases are handled effectively. Some obstacles remain in the handling of foreign bribery cases. Legislation on the screening of police officers and external consultants hired by the police during their career as well as new rules on integrity for local administrations entered into force, and the government adopted an overall integrity policy for public office. A new code of conduct for ministers and state secretaries was adopted. The revision of rules on revolving doors continued as the legislative work advanced, although the reliance of the mechanism on individual responsibility and non-binding advice might limit its effectiveness. A new policy in relation to the transparency related to lobbying ministers and state secretaries was announced, although it does not include the establishment of a transparency register. Political party financing legislation was revised, and additional revisions in relation to transparency are being prepared.

The Dutch Media Authority continues to work independently with adequate resources. The challenges previously identified with regard to transparency of media ownership persist. The independence of public service media governance and funding is guaranteed and a new advisory board is established to ensure plurality. The application of the new legislation aimed at improving access to information is still subject to criticism. Threats and physical violence against journalists remain an issue, despite the Government's continued measures to counter this phenomenon.

All three state powers continue to be engaged to address potential structural issues following the childcare allowances affair. The Netherlands Institute for Human Rights has continued to play an active role. The landscape for civil society organisations continues to be open, although some shortcomings have been reported by stakeholders regarding restrictions to the right to demonstrate.

RECOMMENDATIONS

Overall, concerning the recommendations in the 2022 Rule of Law Report, the Netherlands has made:

- Some progress on continuing to improve the level of digitalisation of the justice system, in particular as regards publication of judgments and digital solutions for court proceedings
- Some progress on completing 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
- Significant progress on adopting a Code of Conduct for ministers and state secretaries including rules on gifts, secondary activities and lobbying, as well as effective monitoring and sanctioning.
- Some progress on continuing efforts to ensure a comprehensive follow-up to the childcare allowances affair to address the potential structural issues, involving all relevant state authorities.

On this basis, and considering other developments that took place in the period of reference, it is recommended to the Netherlands to:

- Continue efforts to improve the level of digitalisation of the justice system, in particular as regards the publication of judgments.
- 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.
- Establish stricter transparency rules on lobbying for members of the Government and Parliament.
- 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.

I. JUSTICE SYSTEM

The justice system is based on a court system composed of 11 district courts, 4 general courts of appeal, 2 specialised courts[1], the Administrative Jurisdiction Division of the Council of State[2] and a Supreme Court. An independent Council for the Judiciary plays a key role in safeguarding the independence of the judiciary and is tasked with fostering the quality of the justice system, including allocating financial resources to courts[3]. Candidate judges are selected by the National Selection Committee for Judges[4] and subsequently appointed for life by the executive[5] on the proposal of the Minister of Justice[6]. The prosecution service is separate from the Ministry of Justice and Security but falls under the political responsibility of the Minister of Justice. The Netherlands Bar is established by law. It is independent from the Government and financed exclusively through lawyers' annual contributions[7]. The Netherlands participates in the European Public Prosecutor's Office (EPPO).

The level of perceived judicial independence in the Netherlands is now high among the general public and continues to be high among companies. Overall, 70% of the general population and 72% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2023[8]. According to data in the 2023 EU Justice Scoreboard, no clear trend can be identified in the evolution of the perceived level of independence among the general public since 2016. Nevertheless, this figure has decreased in comparison with 2022 (77%), as well as with 2016 (72%). The perceived judicial independence among companies remains at the same level as in 2022 and is lower than in 2016 (75%).

Several reforms to further bolster judicial independence have advanced, whereas others have been reconsidered. On 8 November 2022, a legislative proposal on the integrity and independence of the judiciary was published[9]. The proposal aims to abolish the possibility for judges to be members of the national or European Parliament, as recommended by the Group of States against Corruption (GRECO)[10]. It also introduces additional rules regulating the

1 The Central Appeal Tribunal and the Trade and Industry Appeals Tribunal.
2 The Council also has an advisory branch, which renders opinions on draft legislation.
3 This applies to 11 district courts, the 4 general courts of appeal and the 2 specialised courts. Law on Judicial Organisation. The Council for the Judiciary also gives advisory opinions on draft legislation.
4 The National Selection Committee for Judges is composed of six judges and six non-judge members, among which at least one public prosecutor and one attorney.
5 The appointment decision is adopted by Royal Decree, which is signed by the King and countersigned by the Minister of Justice and Security. The Minister solely verifies whether the applicant fulfils the legal requirements to be appointed, and the Minister has in all cases followed the recommendation by the Council for the Judiciary.
6 This procedure applies to candidate judges for the eleven district courts, the four general courts of appeal and the two specialised courts. Law on the Legal Status of the Judiciary. The Council for the Judiciary has delegated this to the National Selection Committee for Judges. The Minister of Justice and Security has in all cases followed the recommendation by the Council for the Judiciary.
7 Law on Lawyers.
8 Figures 49 and 51, 2023 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).
9 Netherlands Government, Bill 36243 - Amendment of various laws in the interest of honest, independent and impartial judiciary, 8 November 2022.
10 GRECO recommended that a restriction on the simultaneous holding of the office of judge and that of member of either Chamber of Parliament be laid down in law, see GRECO, Fourth Evaluation Round – Second Addendum to the Second Compliance Report, The Netherlands (2021), paras. 29-33.

holding and disclosure of financial interests by judges and the implementation of an integrity policy by court management boards[11]. On 6 February 2023, the Government abandoned a proposal to amend the appointment procedure of Supreme Court judges[12]. In doing so, it followed the advice of the Council of State[13], which pointed out that the 'leading role of a Committee of Supreme Court judges' in the current appointment procedure[14] already sufficiently prevents undesired political influence[15]. It also stressed the added value of Parliament's current role in the procedure from the perspective of democratic legitimacy[16]. In addition, the Supreme Court itself had expressed its appreciation for the current procedure, pointing out that in practice Parliament always based itself on the list of candidates put forward by the Committee[17].

The removal of the executive's power to give instructions to prosecutors in individual cases is under discussion[18]. Following the advice by the Council of State published on 20 May 2022[19], the Government is currently preparing its response to a proposal by a Member of Parliament aimed at enhancing the independence of the prosecution service by removing the executive's power to give instructions in individual criminal cases[20]. The Council of State considered that the proposal is not supported by sufficient evidence pointing to a need to change the current balance struck between the independence of the prosecution service and the political responsibility of the Minister of Justice. It also argued that international standards do not

[11] Article 84(2) of the Law on Judicial Organisation provides that the Council for the Judiciary consists of at least three and at most five members.

[12] Further report on the proposal for a Kingdom Act declaring that there are grounds to consider a proposal to amend the provision in the Constitution regarding the appointment of the members of the Supreme Court of the Netherlands, Official Gazette of the Kingdom of the Netherlands, 31 January 2023.

[13] Council of State, Advice on the change in the Constitution of the provision regarding the appointment of the members of the Supreme Court of the Netherlands, adopted on 7 April 2021, published on 16 June 2022.

[14] Currently, a Committee of Supreme Court judges draws up a list of six candidates and submits it to the House of Representatives, which selects and ranks three candidates and invites the first-ranked person for an interview. The selected candidate is then nominated by the Minister of Justice for appointment by the executive by Royal Decree; The Government proposal would have abolished the nomination right of the House of Representatives. Instead, a committee, consisting of one member appointed by the House and one member appointed by the Supreme Court, would have been given this right.

[15] Council of State, Advice on the change in the Constitution of the provision regarding the appointment of the members of the Supreme Court of the Netherlands, under point 2(b); Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities, para. 47.

[16] Council of State, Advice on the change in the Constitution of the provision regarding the appointment of the members of the Supreme Court of the Netherlands, under point 2(a).

[17] Information received from the Supreme Court in the context of the country visit to the Netherlands.

[18] See 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 4-5; Communication from the Commission, EU Justice Scoreboard, COM(2020)306 final of 10 July 2020, figure 55 (Instructions to prosecutors in individual cases: authority that can instruct and safeguards).

[19] Council of State, Bill by member Groothuizen (Expiration of Special Powers of Design of the Public Prosecution Service Act), 19 May 2022.

[20] Articles 127 and 128 of the Law on the Judicial Organisation; Law on the Expiration of Special Powers of Instruction for the Public Prosecution Service Act, House of Representatives documents, 35 768, nr 1, 16 March 2021; Information received from the Netherlands in the context of the country visit to the Netherlands; Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2000)19 on the independence, efficiency and responsibilities of judges, 17 November 2010.

require a change of the current rules, given the strong tradition of independence of the prosecution service in the Netherlands[21].

Following the appointment of a fifth member of the Council for the Judiciary, more than half of its members are now judges. With a fifth member having been appointed in September 2022[22], three out of five members of the Council are now judges. Discussions on the selection procedure for Council members are still ongoing[23]. The objective is to increase transparency and further limit the influence of the executive and legislative powers, which is consistent with Council of Europe recommendations[24]. The evaluation of the temporary appointment procedure for members of court management boards, which aims to increase the role of judges and court staff[25], is expected to be finalised in the summer of 2023[26].

Reforms are under preparation following failures in ensuring the safety of key witnesses as well as of their relatives and their advisors in criminal proceedings. Following the murder of a relative of a key witness in a criminal trial, as well as his lawyer and his advisor, the Dutch Safety Board produced a report in March 2023[27], which identifies a number of mistakes and shortcomings in ensuring their safety and points to lessons learnt. The Minister of Justice formally apologised for the mistakes made[28] and took up the recommendations made by the Dutch Safety Board, announcing a closer involvement of the persons under protection and a reflection on the use of key witnesses in general, taking into account the situation in other Member States[29]. The Council for the Judiciary also drew the attention to the psycho-social effects of threats and protection measures on judges and lawyers, including their willingness to work on high-risk cases[30]. The Netherlands Bar developed further initiatives to support

[21] Council of State, Bill by member Groothuizen, published on 19 May 2022; The prosecution service itself does not see the need for amending legislation, since the Minister has not used this power in practice and that the law on judicial organisation contains adequate accompanying guarantees. Information received from the Public Prosecutor's Office in the context of the country visit to the Netherlands. The Dutch Judiciary Association has however expressed its support for the draft legislation. In particular in finding that this power undermines mutual trust within the European Union based on the presumption that the prosecution office is independent from the executive. Letter of Dutch Judiciary Association to D66 party, 3 June 2021.

[22] Previously there were four members of the Council, half of which were judges.

[23] Input received from the Council for the Judiciary in the context of the country visit to the Netherlands. For a detailed description of the current appointment procedure, see 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 3-4.

[24] Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para 27: 'Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary'.

[25] See 2022, 2021 and 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 3, p. 3, and pp. 3-4 respectively.

[26] The temporary agreement that established the new appointment procedure runs until the end of 2023, and the evaluation will lead up to a new agreement on a procedure for future appointments. Information received from the Council for the Judiciary in the context of the country visit to the Netherlands.

[27] Dutch Safety Board, Surveillance and protection, lessons from three security situations, 1 March 2023.

[28] Cabinet response to monitoring and securing system renewal and response to monitoring and securing OVV report, 31 March 2023.

[29] See also the 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 15.

[30] Information received from the Council for the Judiciary in the context of the country visit to the Netherlands; ARQ Knowledge Center Impact of Disasters and Crises, psychosocial consequences of threats and security measures on lawyers and judges, 2022. Beyond organized crime, the Council also points to the need to tackle threats from violent extremism.

lawyers in ensuring their safety, including resilience trainings[31] and free safety scans of their office premises[32]. It also intends to create a 'confidant', with whom lawyers could exchange on threats and matters relating to (attempts to) criminal subversion[33]. The Minister for Legal Protection is preparing an initiative aimed at strengthening the oversight of the legal protection through the establishment of a single national supervisor[34]. As regards respect for legal professional privilege, the Netherlands Bar opposed the Government's intention to enable visual supervision during visits of lawyers to high-security prisons[35]. The Netherlands Bar will be involved in the development of a manual on how to deal with the disclosure of sensitive information to third parties, in particular to public authorities and courts[36].

Quality

Some progress has been made to improve digitalisation, notably through digital solutions for court proceedings. The 2022 Rule of Law Report recommended to the Netherlands to "continue efforts to improve the level of digitalisation of the justice system, in particular as regards publication of judgments and digital solutions for court proceedings"[37]. The level of digitalisation is advanced, in particular as regards the availability of electronic communication tools in courts[38]. More judgments have been published online, although the publication rate remains low[39]. Improved digital tools enable people to initiate and follow proceedings online[40], although there is room for improvement in civil, administrative[41] and criminal[42] proceedings.

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[31] In 2022, the Netherlands Bar offered 500 spots free of charge. Besides, a special training on resilience was organised for lawyers who work with detainees. At the beginning of 2023, the Netherlands Bar started to offer the training to increase resilience to new lawyers and trainee lawyers so that they could learn how to deal with threats and which preventive measures could be taken.

[32] An emergency notification system has also been established for lawyers, prosecutors, and judges to notify the police in case of threats; the possibility of setting up a refuge for professionals who have been threatened in their professional practice is being considered. If set up, this '*Wijkplaats*' would provide a quiet shelter to share negative experiences with violence and threats.

[33] Input received from the Council of Bars and Law Societies of Europe for the 2023 Rule of Law Report, p. 73.

[34] Letter by the Minister for Legal Protection, Enhancing the supervision of the legal profession, 26 September 2022; The Netherlands Bar is of the opinion that the supervision of lawyers is to be positioned within a public professional body, but organised independently of the State, the other bodies within the Netherlands Bar and the lawyers themselves; Information received from the Netherlands Bar in the context of the country visit to the Netherlands.

[35] Input received from the Council of Bars and Law Societies of Europe for the 2023 Rule of Law Report, p. 10.

[36] Information received from the Netherlands Bar in the context of the country visit to the Netherlands.

[37] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 2.

[38] Figures 43 and 44, 2023 EU Justice Scoreboard.

[39] The current publication rate is around 4% of all judgments. The number of published judgements rose from 45 100 in 2021 to 49 800 in 2022. It should be noted that one published court decision may relate to several cases; Information received from the Council for the Judiciary in the context of the country visit to the Netherlands, Input received from the Netherlands for the 2023 Rule of Law report See also Figure 47, 2023 EU Justice Scoreboard.

[40] Information received from the Council for the Judiciary in the context of the country visit to the Netherlands shows that currently, 40% of all court proceedings are initiated digitally. While over 95% of criminal cases are processed digitally, this is currently the case for less than 15% of civil and administrative cases. The percentages cited in the 2022 Rule of Law report were 30%, 90% and 10% respectively.

[41] Figure 45, 2023 EU Justice Scoreboard. Currently, 40% of all court proceedings are initiated digitally. While over 95% of criminal cases are processed digitally, this is currently the case for less than 15% of civil and administrative cases.

[41] Input from the Netherlands for the 2023 Rule of Law Report. See also 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 3-4.

[42] Figure 46, 2023 EU Justice Scoreboard.

Various pilot projects are currently being carried out that could further improve the level of digitalisation[43]. Therefore, there has been some progress on the recommendation made in the 2022 Report to improve the level of digitalisation of the justice system.

Judges and public prosecutors have expressed concerns regarding staff shortages and challenging working conditions due to a high workload. The Dutch Judiciary Association has estimated that there is a shortage of 800 judges and 200 public prosecutors, and that more generally the judiciary is facing challenging working conditions due to a high workload, also having an impact on the attractiveness of the profession[44]. The judiciary has started recruiting more trainee judges since 2020. In doing so, the number of training places increased from approximately 80 to 130 per year. However, there is a limit to the number of new judges that can be trained, as existing judges need to be available to supervise them[45]. The Government coalition agreement announced the intention to strengthen the entire justice system and improve access to justice, including through additional funding for criminal justice[46]. In addition, investments were made for the career development of employees in the judiciary and for communication and visibility in the labour market[47]. The Government is also preparing to extend legislation which allows retired judges to work as deputy judges, until the age of 73[48].

Initiatives to enhance access to justice, including reflections on a reform of the legal aid system are ongoing. Over the last years, concerns have been raised regarding the available funding for the legal aid system[49]. Reflections on a reform of the system, to be completed by 2025, continue on the basis of a number of pilot projects[50]. Although remunerations have been

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42 Input from the Netherlands for the 2023 Rule of Law Report. See also 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 3-4.

43 At the Courts of Overijssel and Midden-Nederland, a Digital Access pilot has started in cases regarding 'joint request for divorce'. The pilot enables lawyers to litigate digitally via the secure web portal *'Mijn Rechtspraak*'. In addition, the tax division of the Arnhem-Leeuwarden Court of Appeal has started a Digital Access pilot in state tax cases. The pilots are part of the Digital Access Project, which is aimed at low-threshold, digital access to the judiciary for litigants; Information received from the Ministry of Justice in the context of the country visit to the Netherlands.

44 In April 2022, the report on how working time is spent within the judiciary in the year 2021 was completed (Capgemini, Time-use survey jurisdiction 2021, 20 April, 2022). The results stated that judges work on average 11 to 17 hours overtime per week. The Dutch Judiciary Association has calculated that the overtime corresponds to the work of 800 judges and 200 public prosecutors. During recent collective labour agreement negotiations between the Minister for Legal Protection and the Dutch Judiciary Association, it was agreed that an independent expert will be appointed to look further into the matter of workload and present advice within six months; See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 7.

45 Information received from the Council for the Judiciary and Dutch Judiciary Association in the context of the country visit to the Netherlands.

46 In the years 2023-2025 the judiciary will receive about EUR 1 billion per year. In comparison with the previous years, it will get EUR 155 million extra intended for, among other matters, extra judges, investments in digitalisation and innovation and cases related to subversive crime; Information received from the Council for the Judiciary in the context of the country visit to the Netherlands.

47 Information received from the Netherlands in the context of the country visit to the Netherlands.

48 Ibid.

49 See 2022, 2021 and 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 6, 3 and 4 respectively.

50 Information received from the Netherlands in the context of the country visit to the Netherlands; See also 2022, 2021 and 202 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 4 p. 6, p. 4 and p. 3 respectively.

adapted since January 2022, increased inflation rates have so far not been reflected[51]. The Government coalition agreement announced that justice will be made more accessible to individuals and SMEs by reducing court fees by 25%[52]. In March 2023, the government sent the draft legislation to the Council of State for advice[53].

Efficiency

The efficiency of the justice system remains high and backlogs in criminal cases have been further reduced. The duration of proceedings for first instance civil, commercial administrative and other cases is short[54], and the clearance rate remains effective[55]. Proceedings are still lengthy at third instance, although the disposition time has decreased in 2021[56]. The rate of resolving administrative cases at first instance improved to 108% in 2021[57], clearing backlogs[58]. The total backlog of criminal cases (at first instance) has decreased slightly[59]. At the end of 2021, the backlog of cases to be scheduled for a hearing at the courts (at second instance) was 25% below the target level of 17 March 2020. A further slight decrease to 20% below the target level was achieved by 31 December 2022[60].

II. ANTI-CORRUPTION FRAMEWORK

The competence to investigate and prosecute corruption is shared between several authorities, including the National Internal Investigations Department[61] (NIID) (focusing on investigation of bribery of public officials), the Fiscal Intelligence and Investigation Service (FIOD) (responsible for the investigation of financial crimes, including foreign and commercial bribery), the National Prosecution Service (focusing on the prosecution of bribery of public officials), and the prosecution service for Serious Fraud, Environmental Crime and Asset Confiscation (responsible for the prosecution of commercial and foreign bribery). Responsibility for the prevention of corruption is spread out among many different actors[62]. There is no overall anti-corruption agency responsible for the repression and/or prevention of

[51] Input received from the Council of Bars and Law Societies of Europe for the 2023 Rule of Law Report, p. 73, 74. A labour market research titled 'The labour market for legal aid lawyers' shows concerns about the future availability of lawyers providing legal aid, including in view of the level of remuneration. See also figure 24, 2023 EU Justice Scoreboard.

[52] See also figure 25, 2023 EU Justice Scoreboard.

[53] Information received from the Council for the Judiciary in the context of the country visit to the Netherlands.

[54] Figure 5, 2023 EU Justice Scoreboard. It takes on average 76 days to resolve a case.

[55] Figure 10 (103,5%), 11 (no data for the Netherlands) and 12 (108,1%), 2023 EU Justice Scoreboard.

[56] Figure 7, 2023 EU Justice Scoreboard. It takes on average 450 days at third instance to resolve a case.

[57] Figure 13, 2023 EU Justice Scoreboard.

[58] To avoid backlogs and reduce delays, in 2020 the judiciary decided to prioritise timeliness and predictability in the justice system. In 2020, the Timely Administration of Justice programme was set up and in 2021 teams were established to reduce the backlog of cases in the areas of administrative, family and civil law. In 2021 these teams handled more than 3,000 cases for various courts and trained 30 new legal officers; Information received from the Netherlands in the context of the country visit to the Netherlands.

[59] Information provided by the Council for the Judiciary in the context of the country visit to the Netherlands.

[60] Ibid.

[61] As an investigation service, the *Rijksrecherche* is under the authority and management of the Board of Prosecutors General of the Netherlands Public Prosecution Service.

[62] Such actors include both the Ministry of Interior and Kingdom Relations as well as individual municipalities, the NIID, the Whistleblowers Authority, and others.

corruption. The cooperation between specialised anti-corruption and intelligence teams within law enforcement bodies continues.

The perception among experts and business executives is that the Netherlands is one of the least corrupt countries in the EU and the world. In the 2022 Corruption Perception Index by Transparency International, the Netherlands scores 80/100 and ranks 4th in the European Union and 8th globally[63]. This perception has been relatively stable[64] over the past five years. The 2023 Special Eurobarometer on Corruption shows that 47% of respondents consider corruption widespread in their country (EU average 70%) and 4% of respondents feel personally affected by corruption in their daily lives (EU average 24%)[65]. As regards businesses, 50% of companies consider that corruption is widespread (EU average 65%) and 14% consider that corruption is a problem when doing business (EU average 35%)[66]. Furthermore, 51% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)[67], while 38% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)[68].

The Government has initiated consultations on a strengthened anti-corruption policy. The Netherlands remains without an overall anti-corruption strategy[69]. However, the government launched in October 2022 broad consultations on how to further strengthen the overall anti-corruption policy[70]. The Platform on Fighting Corruption is meant to promote cooperation and information sharing between anti-corruption practitioners within the Government, but it was stopped during the COVID-19 pandemic and has not resumed its functions since. The Government is currently reflecting on how the platform can best be reoriented and strengthened[71]. Various networks, including the Network of Resilient Governance and the Platform for Integrity Management, remain in place and help manage

[63] Transparency International (2023), Corruption Perceptions Index 2022, pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

[64] In 2018, the score was 82 while in 2022, the score is 80. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

[65] Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

[66] Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

[67] Special Eurobarometer 534 on Corruption (2023).

[68] Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

[69] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 8. In addition, the Netherlands scores low on the OECD Public Integrity Indicator for Quality of the Strategic Framework as no strategy is in place.

[70] Information received from the Ministry of Justice and Security in the context of the country visit to the Netherlands and input from the Netherlands for the 2023 Rule of Law Report, p. 11.

[71] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 8 and Ministry of Foreign Affairs, Appreciation of the Cabinet of the European Commission 2022 Rule of Law Report, p. 9.

various aspects of anti-corruption policy[72]. Concerns remain over the lack of adequate criminalisation of trading in influence in the Dutch legal framework[73].

Preventing infiltration of organised crime groups in the civil service and police through corruption continues to be a strategic priority. The extensive programme focusing on combating subversive organised crime, which is defined as a crime that undermines the Dutch system and institutions, including by corruption of law enforcement and civil servants, was launched in 2020 and continues to be developed[74]. Overall, a structural amount of EUR 694 million is available annually for the fight against subversive organised crime, largely focusing on providing adequate resources to various law enforcement bodies. Only a part of these funds specifically supports measures in the fight against corruption[75]. For example, within a specific action plan on main ports, which supports various logistical hubs in the fight against subversive organised crime, dedicated anti-corruption measures are carried out, such as exploring the screening of high-risk occupations in ports (and if possible, implementing such measures)[76]. Research on whether legal and operational changes modelled on Italy's anti-mafia approach would contribute to the Dutch criminal law approach on organised crime was published[77] and research on corruption risks at the main ports of Rotterdam and Schiphol[78] is ongoing. Stakeholders report that current measures focus largely on the repressive side, sometimes without duly taking into account preventive aspects[79].

The investigation and prosecution of corruption-related crimes is effective, and a new cooperation structure was set up to focus on corruption linked to organised crime. The investigation and prosecution of corruption-related offences continue to function properly, including in high-level cases, with no immediate obstacles signalled by the investigators and prosecutors[80]. While a multidisciplinary intervention team in the fight against organised crime was long planned[81], authorities put a stop to its formation following disappointing results of a pilot project. Instead, a more flexible cooperation structure – the National Alliance against

[72] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 8.

[73] Ibid., p. 9.

[74] 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 8-9 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 6-7 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 8-9.

[75] Information received from the Ministry of Justice and Security in the context of the country visit to the Netherlands and input from The Netherlands for the 2023 Rule of Law Report, p. 9.

[76] Information received from the Ministry of Justice and Security in the context of the country visit to the Netherlands and input from The Netherlands for the 2023 Rule of Law Report, p. 18.

[77] The research highlights in particular the aspects of better country-wide coordination in subversive organised crime as well as the importance of witness protection and confiscation measures. Scientific Research and Documentation Centre (2023), Italian anti-mafia legislation as inspiration for Dutch approach to organised crime

[78] Input from The Netherlands for the 2023 Rule of Law Report, p. 9.

[79] Information received from Transparency International in the context of the country visit to the Netherlands.

[80] Information received from a joint meeting with law enforcement and prosecution services in the context of the country visit to the Netherlands. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 8 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 6-7 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 9-10.

[81] 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 6-7 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 9-10.

Subversive Crime (NSOC) – was set-up between various agencies[82]. The NSOC will mainly focus on tackling criminal financial flows and the underlying business structures, including issues such as money laundering and corruption. Each agency will remain responsible for its own investigative tasks[83]. The "Strong Airport" project at Schiphol continues to focus on encouraging reporting of possible corruption[84]. Problems with data logging[85] – to identify corrupt public officials that access certain information in official databases without authorisation – make the investigation and prosecution of cases of infiltration of subversive organised crime more difficult[86]. As regards public procurement, the Flash Eurobarometer on Businesses' attitudes towards corruption in the EU shows that 19% of companies in the Netherlands (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years[87].

While work on improving the investigation, prosecution and adjudication of foreign bribery cases continues, such complex cases continue to face some difficulties. Some concerns remain over the effective enforcement of foreign bribery cases in the Netherlands, as exemplified by the OECD[88]. Authorities acknowledge the concerns on enforcement but state that detection and investigation of foreign bribery cases remains a priority for the public prosecution[89]. Transparency in out-of-court settlements in foreign bribery cases has improved, with case summaries now being published [90], although the OECD points out that more could be done as not all settled cases are covered under these new transparency rules[91]. There is still no complete legal certainty about out-of-court settlements, as even though an adequate

[82] Within the NSOC, the police, the Public Prosecution Service, Customs, the Tax and Customs Administration, the Fiscal Intelligence and Investigation Service (FIOD), the Royal Netherlands Marechaussee and other units of the Ministry of Defence are collaborating to develop new methods to disrupt criminal structures and their earning models, based on shared information.

[83] Information received from the Ministry of Justice and Security in the context of the country visit to the Netherlands and input from the Netherlands for the 2023 Rule of Law Report, p. 20.

[84] Input from the Netherlands for the 2023 Rule of Law Report, p. 21.

[85] In particular, some IT systems do not seem to be able to adequately track the identity of persons that access data in an unauthorised manner.

[86] The NIID (*Rijksrecherche*) regularly addresses recommendations to the institutions concerned to improve logging within IT systems when detecting such cases. Information received from the joint meeting with law enforcement and prosecution service in the context of the country visit to the Netherlands. Media reported on a specific case where the Tax administration had difficulties identifying a corrupt employee. See NOS, Tax administration cannot find searches of employees.

[87] Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). This is 7 percentage points below the EU average.

[88] OECD (2022), Phase 4 evaluation of The Netherlands - Two Year Follow-up report, pp. 3-4. The OECD expressed some concerns over the enforcement of foreign bribery cases in its recent report. "However, the Working Group is concerned about the continued low level of foreign bribery enforcement in the Netherlands, especially in view of the size and specific risk profile of the Dutch economy. The Working Group is also concerned about the potential lack of resources in the Dutch Public Prosecution Service (PPS) and will continue to follow-up on this issue in light of proposed increases in funding announced by the government. […] In total, since the entry into force of the foreign bribery offence more than 20 years ago, the Netherlands has concluded foreign bribery investigations with sanctions by means of non-trial resolution in five cases and not a case has been concluded following a criminal conviction at trial."

[89] In particular, the Ministry points towards the overall increase in resources of the justice system. Ministry of Justice (2022), Note on the follow-up report of the OECD Working Group on Bribery, p. 2.

[90] Ministry of Justice (2022), Note on the follow-up report of the OECD Working Group on Bribery, p. 3.

[91] OECD (2022), Phase 4 evaluation of The Netherlands - Two Year Follow-up report, p. 6.

transitory regime[92] is in place, a definitive legislative amendment remains pending[93]. A study on self-reporting[94] of foreign bribery cases was finalised[95]. It recognises the value of self-investigation and self-reporting, but warns against possible risks, ranging from damages to and liability of the company, to the reliability of the information when transferred to the prosecution. The study concludes that increased regulation on self-reporting and self-investigation, in particular on the role of lawyers, the timeframe and the scope of such reports and of investigations, would be relevant[96]. The Government will need to consider the results of the study, as a recommendation by the OECD on this topic remains outstanding[97]. Legal difficulties in using large datasets continue to impact the duration of some foreign bribery investigations[98].

Legislation on screening of police officers and new integrity legislation for local authorities entered into force. Implementing rules of the new law on the improved screening of police officers and external consultants hired by the police entered into force on 1 January 2023[99]. The special manager for integrity within the police continues to mainstream integrity and to address corruption within the entire police force[100]. Further analysis on corruption risks within the police is ongoing[101]. Legislation aiming to strengthen the integrity of local and regional governments[102] also entered into force on 1 January 2023[103]. Local government officials now have to declare their interests and assets, there are stricter rules for conflicts of interest and the role of the Commissioner of the King in integrity matters at local level[104] has

[92] As an interim solution, an independent review committee was put in place to approve such settlements. However, to offer full legal certainty, legislative reforms to introduce a system of judicial oversight for non-trial resolutions are needed, which are are currently still pending.

[93] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 10 and OECD (2022), Phase 4 evaluation of The Netherlands - Two Year Follow-up report, p. 6.

[94] "Self-reporting" is the term used for companies coming forward themselves when they detect irregularities of current or former employees linked to foreign bribery.

[95] Scientific Research and Documentation Centre (2023), Press Release – What are the gains and risks of self investigation and self reporting of fraud and corruption?

[96] Ibid.

[97] Input from the Netherlands for the 2023 Rule of Law Report, p. 22. An OECD recommendation on this topic, remains unfulfilled. See OECD (2022), Phase 4 evaluation of The Netherlands - Two Year Follow-up report, pp. 5-7.

[98] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 10, Information received from joint meeting with law enforcement and prosecution in the context of the country visit to the Netherlands and Input from the Netherlands for the 2023 Rule of Law Report, p. 22. This also relates to the topic of legal professional privilege, see Section I. In essence, defence lawyers routinely claim legal professional privilege over certain datasets, sometimes preventing a full investigation.

[99] Ministry of Foreign Affairs, Appreciation of the Government of the European Commission 2022 Rule of Law Report, p. 12 and information received from a joint meeting with law enforcement and prosecution services in the context of the country visit to the Netherlands. See Ministry of Justice and Security, Decision on screening civil servants of police and police-externals of 3 October 2022.

[100] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 10-11 and Information received from the police in the context of the country visit to the Netherlands.

[101] Ibid.

[102] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 11.

[103] Input from the Netherlands for the 2023 Rule of Law Report, p. 15.

[104] The Commissioner of the King is representative of the Government at provincial level.

been expanded[105]. Additional legislation is being prepared to make it compulsory for certain local administrators to undergo a risk assessment[106].

Significant progress was made on a new code of conduct for ministers and state secretaries as it was adopted. The 2022 Rule of Law Report recommended to the Netherlands to "adopt a Code of Conduct for ministers and state secretaries including rules on gifts, secondary activities and lobbying, as well as effective monitoring and sanctioning"[107]. The Government adopted such a Code of Conduct for Ministers and State Secretaries in December 2022[108]. The Code of Conduct is a comprehensive document that bundles all current integrity rules for ministers, arising from letters to Parliament, the Integrity Code of Conduct for the Central Government Sector and the Code of Good Public Administration. This includes provisions on conflicts of interest and integrity related matters (for example gifts, outside activities, third party contacts and financial assets), both during their mandate and prior to taking it up. The topic of integrity will be discussed yearly at the Government meeting and a specific integrity training will be developed[109]. However, the code does not include an independent oversight and a sanctioning mechanism, following the advice by the Council of State according to which an external oversight and sanctioning body could be in breach of the Constitution. According to the Council of State, Parliament can exercise its scrutiny function (as a de facto "internal" oversight mechanism), as government members must resign if they lose the confidence of a parliamentary majority[110]. It would therefore be up to Parliament to take further steps in this regard. As such, disclosure of assets and interests remains largely an individual responsibility of the person in line for a ministerial-level post[111]. A sanctioning mechanism was specifically requested in the recommendation from GRECO[112]. Civil society welcomed the code as a good step forward[113]. An integrity adviser for ministers and state secretaries is scheduled to be appointed mid-2023[114]. As the Code of Conduct has been adopted there has been significant progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

A comprehensive integrity policy was adopted by the government. The government adopted an integrity policy in public office on 25 April 2023. The document, the first such text in 20 years, comprehensively sets out a vision to ensure integrity of civil servants and politicians[115]. The policy focuses largely on providing an overall framework for integrity as

[105] Ministry of Interior and Kingdom Relations (2023), Law on improving integrity and functioning of decentralised government – the most important changes as of 1 January 2023.
[106] Local administrations are already encouraged to voluntarily apply such risk analysis while awaiting the complete legislation. Input from the Netherlands for the 2023 Rule of Law Report, p. 15.
[107] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 2.
[108] Input from the Netherlands for the 2023 Rule of Law Report, pp. 6-7 and 14 and written contribution by the Ministry of Interior and Kingdom Relations in the context of the country visit to the Netherlands. The code of conduct is publicly available.
[109] Input from the Netherlands for the 2023 Rule of Law Report, pp. 6-7 and 14 and written contribution by the Ministry of Interior and Kingdom Relations in the context of the country visit to the Netherlands.
[110] Input from the Netherlands for the 2023 Rule of Law Report, pp. 6-7 and Council of State (2022), Summary of the advice on sanctioning within the Code of Conduct for Ministers and State Secretaries.
[111] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 12.
[112] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 12 and GRECO Fifth Evaluation Round – Evaluation report, paras. 66-70.
[113] Information received from Transparency International in the context of the country visit to the Netherlands.
[114] Input from the Netherlands for the 2023 Rule of Law Report, p. 12.
[115] Ministry of Interior and Kingdom Relations (2023), Integrity policy in public office, pp. 1-2.

well as creating and maintaining a culture of integrity within the civil service and government. While overall rules should be in place, they should be flexible and applicable on a case-by-case basis where needed[116]. The policy also reiterates the ongoing reforms in the areas of revolving doors and lobbying.

For the first time, a Member of Parliament was sanctioned for violating integrity rules. Regarding integrity for Members of Parliament, the College of Investigation of Integrity (which treats complaints related to the Code of Conduct for Members of Parliament[117]) received 314 complaints during 2022, although only 10 of those were admissible[118]. Two cases involved the non-reporting of extra-parliamentary functions by the same Member of Parliament and led to his suspension for one week by the Presidium of Parliament. It is the first time that a Member of Parliament is sanctioned for violating integrity rules[119]. Civil society has called for an independent body, such as the College, to be given sanctioning power, and criticised the length of the sanction in this initial case[120]. The College cannot adopt sanctions on its own, but it can recommend that the Parliament Presidium does so. The College also indicates some difficulties in investigating complaints concerning extra-parliamentary income, as it can only rely on public sources[121]. Media reported that Members of Parliament often report their additional incomes after the legal deadline[122].

Some progress has been made on revised rules on revolving doors, as a legislative reform is advancing, while the mechanism's reliance on individual responsibility and non-binding advice might limit its effectiveness. The 2022 Rule of Law Report recommended to the Netherlands to "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 announced last year[123], the government is working on a legislative proposal to complete the reform of rules on revolving doors. This proposal was submitted for public consultation in December 2022[124]. In essence, a former member of government would – for two years after leaving office – be obliged to get advice on new employment if the new function

[116] Ministry of Interior and Kingdom Relations (2023), Integrity policy in public office, pp. 8-16

[117] 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 8.

[118] Compared to 108 complaints in 2022. College of Investigation of Integrity (2023), Annual Report 2022, pp. 4-5.

[119] College of Investigation of Integrity (2022), Complaint on the non-registration of extraparliamentary functions at the Amsterdam Media Group by Members Baudet, Van Meijeren and Jansen; College of Investigation of Integrity (2022), Complaint on the non-registration of extraparliamentary functions by Member Baudet and NOS (2022), Large majority Tweede Kamer votes for week of suspension for Baudet.

[120] Written contribution by the College of Investigation of Integrity in the context of the country visit to the Netherlands, information received from Transparency International in the context of the country visit to the Netherlands and NOS (2022), Baudet suspended but Parliament worries more about his conspiracy theories.

[121] Written contribution by the College of Investigation of Integrity in the context of the country visit to the Netherlands.

[122] An access to information request by media revealed up to 90 Members of Parliament or ex-Members of Parliament missing the legal declaration deadline. NOS (2022), Dozens of Members of Parliament do not declare extra-parliamentary income in time.

[123] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 12 and GRECO Fifth Evaluation Round – Evaluation report, recommendation vi para. 96. This follows a recommendation by GRECO, which had called upon the Netherlands to "introducing general rules dealing with post-employment restrictions before persons entrusted with top executive functions seek new employment in the private sector and/or are about to enter into such employment after their termination of functions in the public sector".

[124] Input from the Netherlands for the 2023 Rule of Law Report, p. 6 and Government.nl (2022), Public Consultation – Law on Rules for former Ministers and State Secretaries.

is a management or lobby position in the private and semi-private sector. An advisory committee would then issue an opinion, which would be made public if the former government member does not follow it[125]. However, the system would nearly entirely rely on individual responsibility as there is no mechanism to verify if the former member of government requests the advice when warranted, possibly undermining its effectiveness. Furthermore, the advice is non-binding, and its publication in case of non-compliance is the only deterrent foreseen. As no further enforcement in case of non-compliance is foreseen, this could limit the effectiveness of the mechanism[126]. The proposal remains at an early stage and is not expected to go to Parliament before the end of 2023[127]. The Code of Conduct (see above) will be amended once this legislation passes[128]. Therefore, there has been some progress on the implementation of the recommendation made in the 2022 Rule of Law Report, as the rules still need to be finalised.

The government announced an updated policy on transparency of lobbying ministers and state secretaries, although it does not introduce a transparency register. The Netherlands has a voluntary and publicly available lobbying register for the House of Representatives in place since 2012[129]. Following a study published in December 2022 on how a transparency register for ministers and state secretaries could be created[130], the government set-out an updated policy in relation to lobbying of ministers and state secretaries in May 2023[131]. The policy does not call for the establishment of a transparency register but foresees softer measures, such as a more systematic publication of the agendas of ministers and state secretaries, and the inclusion of a legislative footprint in all legislation. It remains the individual responsibility of each minister or state secretary to implement these provisions[132]. As reasons for not introducing a transparency register, the government cites the difficulty to define "lobbyist" and its doubts as to the effectiveness of such a register, although without further substantiating[133]. Civil society criticised the existing rules – including the voluntary lobbying register of the House of Representatives – for not being sufficiently transparent as regards contacts with lobbyists, and recommended the introduction of a compulsory transparency register, and additional measures such as an independent authority and a code of ethics for lobbyists, for both Parliament and Government[134]. The new code of conduct for ministers and state secretaries does already include transparency provisions on contacts with third parties, including the advice to publish agendas. This, however, remains the individual responsibility

[125] Input from the Netherlands for the 2023 Rule of Law Report, p. 6.

[126] Information received from the Ministry of Justice and Security and Transparency International in the context of the country visit to the Netherlands. "Naming and shaming" is seen as the main sanctioning mechanism under this legislation.

[127] Information received from the Ministry of Justice and Security in the context of the country visit to the Netherlands.

[128] Government (2022), Code of Conduct for Ministers and State Secretaries, p. 13.

[129] 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 10 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 8.

[130] Input from the Netherlands for the 2023 Rule of Law Report, p. 13. The study included such questions as the definition, administrative burden, and legitimate influence.

[131] Input from the Netherlands for the 2023 Rule of Law Report, p. 13, and information received from the Ministry of Interior and Kingdom Relations in the context of the country visit to the Netherlands and Ministry of Interior and Kingdom Relations (2023), Reaction of the Cabinet to the study "Framework on legitimate interest representation".

[132] Ministry of Interior and Kingdom Relations (2023), Reaction of the Cabinet to the study "Framework on legitimate interest representation".

[133] Ibid.

[134] Transparency International Netherlands (2023), Lifting the lid on lobbying, pp. 7-9

of each minister[135]. The planned legislation on revolving doors would formally institute a lobbying prohibition for former ministers and state secretaries to approach their own former Ministry during a period of two years, despite this already being regulated through a ministerial letter[136].

Political party financing legislation was revised to increase transparency, while further revisions are ongoing. The revised Political Party Financing law entered into force on 1 January 2023 and introduced a prohibition on foreign donations as well as increased transparency and reporting obligations of gifts to political parties[137]. The government has put a separate draft law, on political parties, up for public consultation, which now awaits government approval. The law aims to further strengthen transparency when parties apply for state subsidies, transparency on political advertisements and transparency of the parties as regards their internal organisation. It would also introduce an independent authority to enforce the rules. Enforcement could include a prohibition of parties that undermine democracy[138]. Civil society has welcomed these reforms[139].

Whistleblowing legislation was substantially revised, although stakeholders still see room for improvement. New whistleblowing legislation, which aims at transposing the EU Whistleblower Directive, entered into force on 18 February 2023, with some provisions entering into force only later because they require further implementing legislation[140]. Following amendments by the government and Parliament, the final law has a broader scope than the initial government proposal, including a more specific mandate of the Whistleblowers Authority and a possibility for anonymous reporting (following further implementing legislation)[141]. Reactions by stakeholders focused on the limited scope of the law and the lack of support for whistleblowers[142].Following the evaluation of the Whistleblowers Authority Act (2020) and the wishes of Parliament, the government indicated that further legislation on whistleblowers, including the establishment of a fund to support whistleblowers, will be prepared in 2023[143].

III. MEDIA PLURALISM AND MEDIA FREEDOM

Constitutional and legislative safeguards continue to underpin a high level of media freedom in the Netherlands, including through a functionally independent media regulator and a high

[135] Government (2022), Code of Conduct for Ministers and State Secretaries, pp. 11-12.

[136] Written contribution by the Ministry of Interior and Kingdom Relations in the context of the country visit to the Netherlands and input from the Netherlands for the 2023 Rule of Law Report, p. 6. The ministerial letter was discussed in the 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 12-13.

[137] Input from the Netherlands for the 2023 Rule of Law Report, p. 14; 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 13 and Government (2022), Senate approves amendment to the law on Financing of Political Parties.

[138] Input from the Netherlands for the 2023 Rule of Law Report, p. 14.

[139] Information received from Transparency International in the context of the country visit to the Netherlands.

[140] Ministry of Interior and Kingdom Relations (2023), Law on whistleblower protection has entered into force

[141] Some of these provisions go beyond the requirements of the EU Directive, such as anonymous reporting. Written contribution by the Ministry of Interior and Kingdom Relations in the context of the country visit to the Netherlands.

[142] BNR (2022), Transparency International: "New law on whistleblowing is toothless tiger" and information received from Transparency International in the context of the country visit to the Netherlands.

[143] Input from the Netherlands for the 2023 Rule of Law Report, p. 16.

level of independence in public service media governance and funding. A new advisory board has been established in September 2022 to promote plurality through a revised assessment of the admission and accountability criteria for new and existing public service media providers. The Open Government Act regulates access to information held by public authorities and bodies[144].

The Dutch Media Authority continues to work independently with adequate resources. There have been no changes related to the functional independence of the media authority (the *Commissariaat voor de Media*) or to its financial situation, which is considered adequate for the accomplishment of its tasks[145].

The challenges previously identified with regard to transparency of media ownership persist. While the media regulator continues to issue the *Mediamonitor*, making media ownership information available to the public, it cannot force anyone to provide information. Recently, a major market player refused to share its ownership information[146]. The news media sector continues to be characterised by high market concentration, with three companies holding 74% of market share in the radio sector and 77% in the TV sector; 94% of market share in the newspaper sector are divided among two companies[147]. Consequently, the Media Pluralism Monitor identifies a very high risk of media concentration[148]. However, the planned merger between the rival media companies RTL and Talpa[149] has been blocked by the competition authority because it would have led to higher prices for consumers[150]. The media regulator was consulted in the process in the same way as private stakeholders[151].

The independence of public service media governance and funding is guaranteed and a new advisory board is established to ensure plurality. The Dutch system of public broadcasting traditionally comprises various broadcasters that represent different groups of society, currently 13, with a Foundation for Public Broadcasting (NPO) as the governing entity, tasked with the distribution and financing of airtime[152]. Until summer 2022, nothing had changed in relation to governance and there is adequate funding for the public broadcaster[153]. In September 2022, the Government proposed a new assessment system for (future) national public service broadcasters and set up an advisory board to advise on admission and

[144] The Netherlands rank 6th in the 2023 Reporters without Borders World Press Freedom Index compared to rank 28 in the previous year.

[145] Input from the Netherlands for the 2023 Rule of Law Report, p. 24; Contribution from the media regulator for the 2023 Rule of Law Report, p. 15; 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 14.

[146] Information received in the context of the country visit to the Netherlands from the media regulator.

[147] 2023 Media Pluralism Monitor, country report Netherlands, p. 14, where it is also noted that this development has spread to the online sector.

[148] 2023 Media Pluralism Monitor, country report Netherlands, p. 14.

[149] See 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 14.

[150] Authority for Consumers and Markets (ACM) (2023), ACM definitively blocks acquisition of media company Talpa by rival company RTL.

[151] Information received in the context of the country visit to the Netherlands from the media regulator.

[152] 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 14; Information received in the context of the country visit to the Netherlands from the public broadcaster.

[153] Input from the Netherlands for the 2023 Rule of Law Report, pp. 24-25; 2023 Media Pluralism Monitor, country report Netherlands, p. 17. For a description see 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 14-15. According to European Parliament's Flash Eurobarometer: News & Media Survey 2022 (p. 37), 57% of respondents in the Netherlands stated that they trust public TV and radio stations, above the EU average of 49%.

accountability criteria. The Government's goal is to promote plurality[154]. Currently, the only criterion for admission is the number of paying members among the citizens, which casts into doubt whether a prospective broadcaster represents a particular group of society[155]. Final recommendations from the board are expected for July 2023 and possible legislative amendments could enter into force in summer 2025[156]. The NPO can also sanction a broadcaster for failure to comply with journalistic standards laid down in the "NPO code" and interpreted (in a non-binding manner) by an Ombudsman[157].

The application of the new legislation aimed at improving access to information is still subject to criticism. The Open Government Act, which entered into force in May 2022[158], introduced an obligation to actively disclose information and established an advisory board tasked, amongst other things, with providing advice to the Government and Parliament on the implementation of regulations regarding the disclosure of public information, and with mediating between public authorities and journalists[159] who have filed a complaint with the board regarding access to public information[160]. While stakeholders assess the board's activities positively, they complain about the time it takes in practice to have a request answered and about the invocation of exceptions and report that the statutory period of four weeks which can be prolonged for another two weeks in complex cases[161] is rarely met[162]. A study by the Open State Foundation concluded that the average time was 167 days in 2022 and that authorities were not yet adopting an open attitude towards disclosure of information[163].

Threats and physical violence against journalists remain an issue of concern, despite the Government's continued measures to counter this phenomenon. The Council of Europe Platform to promote the protection of journalism and safety of journalists published four alerts for the Netherlands concerning online threats and intimidations as well as a case of 'doxing'[164].

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[154] Letter from the Dutch State Secretary for Education, Culture and Science to Parliament of 9 September 2022; Framework note of the advisory board of 15 December 2022, p. 1; Information received in the context of the country visit to the Netherlands from the media regulator.

[155] Letter from the Dutch State Secretary for Education, Culture and Science to Parliament of 9 September 2022; Information received in the context of the country visit to the Netherlands from NPO.

[156] Framework memorandum of the advisory board of 15 December 2022, p. 11; Information received in the context of the country visit to the Netherlands from the Government.

[157] Information received in the context of the country visit to the Netherlands from NPO; Article 2.14a of the Media Act of 2008. The ultimate sanction is the revocation of the license, which the NPO asked the Media Minister to do in April 2023 with regard to the new broadcaster *Ongehoord Nederland* (see: NL Times (2023), NPO asks for license to be revoked).

[158] See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 15.

[159] Or other stakeholders who requested information in a professional capacity.

[160] Chapter 7 of the Open Government Act.

[161] Article 4.4 of the Open Government Act.

[162] Information received in the context of the country visit to the Netherlands from the Association of Journalists and from NPO.

[163] Open State Foundation (2023), 'Frosted glass', p. 5; the study also concludes that the deadline was exceeded in 83 % of the cases (p. 16), whereas the Government's annual report on operational management of May 2023 indicates a percentage of 61,2 % of the cases (p. 68); see also 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 20.

[164] Council of Europe Platform to promote the protection of journalism and safety of journalists – the Netherlands. The term 'doxing' means the act of publicly providing personally identifiable information about an individual or organization, usually via the Internet. In the concrete case the journalist's home address and the address of his children's school were revealed on social media and a Nazi flag sent to his home. The platform also published a case where a camera and a tripod were robbed with the journalist being punched in the face; the motive here seems to be different from the usual attacks.

The 'PersVeilig' platform for the support of journalists, initiated by the Dutch Association of Journalists and adequately funded by the Government [165], counts 198 reported incidents in 2022, including 33 cases of physical violence[166]. In December 2022 PersVeilig published a study concerning online harassment against female journalists which revealed that 82% of female journalists reported having experienced some form of online aggression[167]. PersVeilig plans to follow up on the study before summer 2023[168]. A recent study commissioned by the Government recommends stricter compliance of police and prosecution services with the PersVeilig protocol, the promotion of media literacy, measures targeted to the specific situation of the victim and quicker removal of online hate speech[169]. The Government committed already in June 2022 to boost awareness among citizens regarding the role of journalism and to tackle online intimidation[170], with the latter objective facing difficulties vis-à-vis *Twitter*[171], the most frequently used platform by journalists[172]. In February 2023 the Lower Chamber of Parliament approved a Government bill which would make doxing a crime with a punishment of up to two years of imprisonment[173]. The Upper Chamber still has to vote on it. Stakeholders welcomed this law[174]. The Association of Journalists and NPO reported that strategic lawsuits against public participation were not a systematic issue[175]. Concerns expressed in previous years by stakeholders regarding the surveillance of journalists[176] became more pressing in June 2022 when a journalist said she discovered from information received from the intelligence services that she had been subject to their surveillance for almost 35 years[177]. Without referring to the specific case[178], the Government responded in general terms that an investigation of a journalist by the security and intelligence services is done only under special procedural safeguards in case of 'exceptional and compelling reasons regarding national security'[179]. The trial concerning the 2021 murder of crime reporter Peter R. de Vries by organised crime is ongoing

[165] Information received in the context of the country visit to the Netherlands from the Association of Journalists; Joint letter from the State Secretary of culture and media and the Minister of security and justice to Parliament of 25 May 2023 with a progress report on press freedom and press security, p. 4, pointing to the continuation of structural financing as of 2025 on.

[166] PersVeilig, Analysis of notifications. In 2021, 272 cases were reported. It has to be noted that many journalists do not report attacks (Erasmus School of Law, Images of violence – A mixed-method study into violence and aggression against journalists – Summary (February 2023), p. 6; PersVeilig, Analyse meldingen).

[167] Dutch Association of Journalists (2022), Results of research on female journalists and safety.

[168] Information received in the context of the country visit to the Netherlands from the Dutch Association of Journalists.

[169] Erasmus School of Law, Images of violence, p. 15.

[170] Joint letter from the State Secretary of culture and media and the Minister of security and justice to Parliament of 29 June 2022, pp. 5-6.

[171] Information received in the context of the country visit to the Netherlands from the Government, from NPO and from the Association of Journalists.

[172] Erasmus School of Law, Images of violence, p. 6.

[173] Draft law #36171 to criminalise the use of personal data for intimidating purposes and to add an Article 285d to the Penal Code.

[174] Information received in the context of the country visit to the Netherlands from the Association of Journalists and from NPO.

[175] Information received in the context of the country visit to the Netherlands from the Association of Journalists and from NPO.

[176] See 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 11; 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 15-16.

[177] Council of Europe Platform to promote the protection of journalism and safety of journalists – the Netherlands, Dutch Journalist Stella Braam Spied On For Almost 35 Years.

[178] According to the Government, it is legally required not to discuss details of a specific case.

[179] Council of Europe Platform, Dutch Journalist Stella Braam Spied On For Almost 35 Years, State reply.

after it had to be re-started in November 2022 for reasons of procedural law, after which four new suspects were added to the trial[180].

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

The Netherlands has a bicameral parliamentary democracy which provides for an ex-ante constitutional review of draft legislation[181]. The Parliament is composed of the House of Representatives and the Senate. Legislative proposals can originate from the Government and from members of the House of Representatives. The Council of State gives advisory opinions on draft legislation. Independent authorities and civil society play an important role in the checks and balances system.

Some progress has been made to address potential structural issues following the childcare allowances affair, with all three state powers continuing to engage, while victims' compensation is progressing slowly. The 2022 Rule of Law Report recommended to the Netherlands to "continue efforts to ensure a comprehensive follow-up to the childcare allowances affair to address the potential structural issues, involving all relevant state authorities"[182]. In April 2022, the Government announced a number of measures regarding the executive, legislative, and judicial branch in response to the recommendations made by the Venice Commission[183]. It is, for instance, preparing an amendment to the General Administrative Law to strengten the rights of individuals in relation to the State[184]. It is also seeking to improve the quality of legislation, including by identifying where legislation has had an unduly harsh impact on individuals[185]. Furthermore, on 1 July 2022, the Government sent a letter to Parliament outlining options for a system of judicial constitutional review of legislation[186]. The newly established State Commission on the functioning of the rule of law[187]

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[180] Dutch News NL, Peter R de Vries murder trial reopens with six suspects, 6 January 2023; Information received in the context of the country visit to the Netherlands from the Government. The report by the Dutch Safety Board, and the Justice Minister's response to it, both mentioned above in the context of better protection for key witnesses in criminal proceedings (in the Chapter 'Justice Systems' on p. 6) also concern that murder.

[181] Ordinary courts can carry out a decentralised form of 'constitutional' review in the absence of a centralised constitutional court. This does not include the constitutionality of Acts of Parliament and treaties, pursuant to Article 120 of the Constitution. For Acts of Parliament review is possible against directly effective treaties; Figure 64, 2023 EU Justice Scoreboard.

[182] See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 16-18.

[183] Venice Commission, *Netherlands-Opinion on the Legal Protection of Citizens*, CDL-AD (2021)03 adopted on 15-16 October 2021, paragraphs 134-137 in particular. Cabinet response to the report of the Venice Commission 'The Netherlands - Opinion on the Legal Protection of Citizens', 12 April 2022.

[184] Informal and formal (internet) consultations on the draft legislation will take place during 2023. Input from the Netherlands for the 2023 Rule of Law Report.

[185] Input from the Netherlands for the 2023 Rule of Law Report; 2022 Report on the Rule of Law in the Netherlands, p. 16.

[186] In the letter to Parliament, the Government, taking into account the opinions of the Supreme Court and Council for the Judiciary, expressed its preference for a system wherein every judge can review the compatibility of Acts of Parliament with certain freedom rights guaranteed by the Dutch constitution, see Ministry of the Interior and Kingdom Relations, Outline letter constitutional review, 1 July 2022. A concrete proposal may be expected in 2023. Input from the Netherlands for the 2023 Rule of Law Report.

[187] Decree of 10 February 2023, No 2023000264 establishing a State Commission on the Rule of Law; The State Commission is tasked with advising the Government on legislative proposals and measures to promote the rule of law, seen from a citizen's perspective, and considered in the context of the mutual relationship between the state powers; Stakeholders have welcomed the establishment of the State Commission, while indicating that this should not be a reason to delay the implementation of urgent measures necessary to address issues

is to make recommendations on structural changes needed to enhance the rule of law from a citizens' perspective by June 2024. The judiciary continues to draw lessons from the childcare allowances affair, within its competences[188]. The Supreme Court and the Council for the Judiciary are using their annual reports to flag potentially problematic rules[189]. Family law judges produced a report setting out avenues for offering children and parents sufficient legal protection in complex circumstances[190]. Following investigations indicating that the tax authorities had not respected the principle of equal treatment and non-discrimination in their approach to combat fraud, a Parliamentary Committee of Inquiry was set up in February 2023[191]. This shows that all three state powers are engaging in a follow-up to the childcare allowance affair. Most of these initiatives are still in the preparatory or adoption phase. Furthermore, delays in compensating victims of the childcare allowances affair need to be swiftly resolved[192]. The National Ombudsman has indicated that due to the delays, many victims still face uncertainty[193]. The Netherlands Bar noted that lawyers have halted their cooperation with the executive organisation responsible for the implementation of the recovery process following concerns about its long decision-making procedure[194] on compensations.

that led to the child allowances affair. Information received from the National Ombudsman and the Council for Public Administration in the context of the country visit to the Netherlands. Additionally, the Government has appointed a National Coordinator against Discrimination and Racism and established a State Commission against Racism and Discrimination on 1 May 2022. Its mandate includes an investigation into discrimination and ethnic profiling within the Government; The NIHR has called on the Government to bring government action within the scope of Equality legislation in an advice to the minister of 20 March 2023.

188 Council of State, Lessons from childcare allowance cases, Reflection report of the Administrative Jurisdiction Division of the Council of State, November 2021. One of the conclusions is that in order to avoid injustice in the future, legal protection of citizens should be given more importance vis-à-vis unity of the law and legal certainty.

189 Information received from the Supreme Court and the Council for the Judiciary in the context of the country visit to the Netherlands.

190 Doing justice to children and parents, Report of the reflection committee family and juvenile judges of the courts and tribunals, February 2023. The report states that parents feel insufficiently heard in family and juvenile law cases, that juvenile law judges must adopt a more active and curious attitude.

191 The Committee investigation will include the role of Parliament and the use of discriminatory risk profiles, concluding in January 2024. A particular issue will be the use of algorithms by public authorities that led to the childcare allowances affair has been discontinued by the national tax authorities, similar algorithms are reportedly still being used at local level. Information received from *Nederlands Juristen Comité voor de Mensenrechten* (NJCM) in the context of the country visit to the Netherlands. The Netherlands Institute for Human Rights has called upon local authorities to use a Human rights and algorithms impact assessment before implementing such algorithms. Netherlands Institute for Human Rights (NIHR), Persistent incorrect use of algorithms by governments requires a binding discrimination test, 15 July 2022.

192 Parliament frequently debates progress reports on the recovery process of parents and their children affected by the allowances' affair. Support is provided in terms of compensation for amounts wrongly reclaimed with an initial lump sum based on an 'integral assessment', potentially followed by a more in-depth assessment. Until the end of 2022, more than 59,000 people have registered as possible victims. The recovery operation was originally set up for a smaller number of parents. The executive organisation (UHT) responsible for the implementation of the recovery process has not always been able to keep up with this increase. The Government aims at increasing the UHT staff and completing 90% of the integral assessments in the first quarter of 2025, and the final 10% in the following six months. By the end of 2026, the process of objection to the first review and the integral assessment should be completed for all registered parents.

193 Information received from the National Ombudsman in the context of the country visit to the Netherlands; National Ombudsman, Report – Complaint well-founded, but no solution, 11 October 2021.

194 Information received from the Dutch Bar Association in the context of the country visit to the Netherlands; *Advocatenblad*, Lawyers 'recovery process allowances completely stuck', April 4, 2023. In particular, the Dutch Bar Association submits that the recovery operation is stalling due to the complex regulations and the unnecessary legalisation of every step in the process by the agencies involved, leading to re-victimisation and

Therefore, there has been some progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

Legislation to introduce a permanent legal basis for adopting crisis measures was adopted by Parliament. Following the adoption of the Temporary Act on COVID-19 measures[195], Parliament approved the prolongation of the duration of the Act several times upon the proposal of the Government[196]. The Senate rejected the fifth prolongation, and thus the Temporary Act expired on 20 May 2022. The Government subsequently prepared an amendment of the Public Health Act to provide for a permanent legal basis for measures to address crisis situations[197]. This legislation was adopted on 23 May 2023[198]. As regards the way in which the Government managed the COVID-19 pandemic in the period from its start until September 2020, the Dutch Safety Board has made a number of recommendations for improving the approach to addressing future pandemic situations[199]. In 2022, the Dutch Supreme Court issued various rulings related to the COVID-19 pandemic[200]. A full parliamentary inquiry will further examine the Government's handling of the COVID-19 pandemic, including the institutional implications.

The Netherlands Institute for Human Rights has continued to play an active role, despite governance issues. The NIHR, accredited with an A-status[201], has notably continued to investigate the effect of discrimination on decision-making processes by administrative authorities as a follow-up to the childcare allowances affair[202]. The budget of the NIHR hasbeen raised by about 10% since 2020[203]. In January 2023 four of the eight college members

potentially a new affair; Information received from the Dutch Bar Association in the context of the country visit to the Netherlands.

195 See 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 12.

196 The draft decision to prolong the Temporary Act is submitted to Parliament before entering into force; Parliament can decide to reject the prolongation. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 13-14.

197 Amendment of the Public Health Act in connection with combating an epidemic of infectious diseases belonging to group A1, or a direct threat thereof.

198 Act of 24 May 2023 amending the Public Health Act in connection with the control of an epidemic of infectious diseases belonging to group A1, or a direct threat thereof, Official Journal of the Kingdom of the Netherlands 2023, 184.

199 Dutch Safety Board, Approach corona-crisis – Part 1: until September 2020, 16 February 2022.

200 HR 18 March 2022, ECLI:NL:HR:2022:380; In this case, the question is at stake whether the Dutch Government was able to rightfully impose an evening curfew in the Netherlands, to avoid the spread of the Covid-19 virus; See also: HR 22 April 2022, ECLI:NL:HR:2022:628; HR 11 January 2022, ECLI:NL:HR:2022:3.

201 Accreditation is provided by the Global Alliance of National Human Rights Institutions (GANHRI); The NIHR was re-accredited in December 2020, see GANHRI Sub-Committee on Accreditation Report – December 2020. Accreditation is based on the Principles relating to the Status of National Institutions (The Paris Principles), adopted by the United Nations General Assembly resolution 48/134 of 20 December 1993.

202 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 19; Input from the NIHR for the 2023 Rule of Law Report; The NIHR determined in 2022 based on its preliminary research into the effects of the methods and processes of the Tax and Customs Administration, that the harsh fraud approach of the tax authorities in the childcare allowance, parents with a foreign background structurally more often affected than parents with a Dutch descent. The tax authorities must now demonstrate per complaint that these parents have not, or not wrongly been treated unequally. With the program Beyond prejudices, the NIHR is also committed to increasing awareness through training and awareness implementing organizations based on discrimination of race to detect and counteract; NIHR year plan 2023, p. 5.

203 Input from the Netherlands Institute for Human Rights for the 2023 Rule of Law Report. At that moment of A status re-accreditation in December 2020, the sub-committee on Accreditation Report noted that the budget was at the minimum necessary to carry out its mandate, ibidem.

complained to the Ministry of Justice about the conduct of the chair[204]. The Ministry is now having the complaints investigated by an independent committee, whose report is expected after the summer[205]. Following the temporary leave of the current chair, on 15 June 2023 an interim chair was appointed at the request of the NIHR's Advisory Board[206].

On 1 January 2023, the Netherlands had four leading judgments of the European Court of Human Rights pending implementation, a decrease of four compared to the previous year[207]. At that time, the Netherlands' rate of leading judgments from the past 10 years that remained pending was at 29% (compared to 40% in 2022), the average time that the judgments had been pending implementation is 3 years and 7 months (compared to 2 years and 10 months in 2022)[208]. The oldest leading case, pending implementation for 6 years, concerns the irreducibility of a life sentence imposed on a prisoner suffering from mental illness[209]. On 15 June 2023, the number of leading judgments pending implementation remains four[210].

The landscape for civil society organisations continues to be open, while some shortcomings have been reported regarding restrictions to the right to demonstrate. The Netherlands continues to have an open civil society landscape[211]. Some shortcomings have been reported regarding limitations to the exercise of the right to demonstrate[212]. Stakeholders reported that there is a lack of knowledge about what the right to demonstrate entails, given that the mayors often take quick decisions to curb or ban a protest based on security considerations and that certain preventive and repressive actions undertaken by the police are disproportionate[213]. The Netherlands Institute for Human Rights and the CSOs called on public authorities to promote and facilitate the exercise of the fundamental right to demonstrate and

[204] NOS news, Human rights institute crisis escalates, college 'paralysed', 24 May 2023; Netherlands Institute for Human Rights, Developments within the College, 11 May 2023.

[205] Ibid.

[206] In addition, on 16 June 2023 the Dutch Council of Ministers approved the appointment of five additional deputy Members of the College. Input received from the Netherlands for the 2023 Rule of Law Report.

[207] The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

[208] All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 6.

[209] Judgment of the European Court of Human Rights of 26 April 2016, *Murray v. the Netherlands*, 10511/10, pending implementation since 2016.

[210] Data according to the online database of the Council of Europe (HUDOC).

[211] See the rating given by CIVICUS, ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed, and closed.

[212] Fundamental Rights Agency, An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory, The Netherlands, p. 3.

[213] Amnesty International, Right to demonstrate under pressure, Rules and practice must improve, 11 November 2022; The investigative journalism collective Investico found that protesters and their family members are extensively profiled and that in certain cases, protesters are pre-emptively arrested by the police; Investigo, Research: Demonstration rights under pressure, from coffee to being beaten, 22 March 2023; Amnesty International, Netherlands: Unchecked Power: ID Checks and Collection of Data from Peaceful Protesters in the Netherlands 31 May 2023.

to limit the use of criminal law measures against protesters given their chilling effect[214]. Following criticism of the draft legislation aimed at preventing undesirable foreign influence by an increased scrutiny of the funding of CSOs[215], the Government modified the draft, which is now pending in Parliament[216]. Furthermore, stakeholders drew attention to existing and draft legislation expanding the possibilities to ban certain CSOs in the interest of public order[217] and as well as to developments regarding draft legislation that grants additional powers to the national Coordinator for Counterterrorism and Security (NCTV) to collect personal information for anti-terrorism purposes[218].

[214] Netherlands Institute for Human Rights, Demonstration law under pressure, according to arrest of climate activists, January 31, 2023; Information received from the *Nederlands Juristen Comité voor de Mensenrechten* (NJCM) in the context of the country visit to the Netherlands.

[215] See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 20.

[216] In the draft legislation, the distinction based on the origin of donations to CSOs has been removed and it has been clarified that a court has to confirm the use of sanctioning powers. According to stakeholders, certain concerns remain, notably as regards the wide margin of appreciation that mayors would have in deciding to request information from CSOs on donations and to impose penalty payments to enforce such requests.

[217] Legislative initiative-Kuiken, Van Wijngaarden, Van der Graaf and Van der Staaij Administrative Prohibition Subversive Organisations Act; See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 20.

[218] Changes to the proposed law have been announced by the Minister of Justice on 17 March 2023. According to the minister the "analysing function" of the NCTV, which involves the collection and analysis of (sensitive) personal data, is to be scaled down and will be in place only where it is necessary to support the "coordination function" of the NCTV. Also a Data Protection Officer will be put in place. The contents of the new proposal or amendment are not yet published; Information received from *Nederlands Juristen Comité voor de Mensenrechten* (NJCM) in the context of the country visit to the Netherlands.

Annex I: List of sources in alphabetical order*

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Annex II: Country visit to the Netherlands

The Commission services held virtual meetings in March and April 2023 with:

- Commissariaat voor de Media
- Dutch Foundation for Public Broadcasting
- Huis voor Klokkenluiders
- Fiscale Inlichtingen- en Opsporingsdienst
- Nederlands Juristencomite voor de Mensenrechten
- Netherlands Government
- Nederlandse Orde van Advocaten
- Nederlandse Vereniging voor Rechtspraak
- National Ombudsman
- National Police
- National Internal Investigations Department
- Prosecution service
- Raad voor de Rechtspraak
- Raad voor het Openbaar Bestuur
- State Commission on the functioning of the rule of law
- Supreme Court
- Transparency International

* The Commission also met the following organisations in a number of horizontal meetings:

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU