

Contribution to the European Commission's 2021 Rule of Law report

We are giving our contribution as: "civil society/NGO"

Organisations names:

Netherlands Helsinki Committee

Commissie Meijers

Free Press Unlimited

Nederlandse Vereniging van Journalisten

Transparency International Nederland

Main Areas of Work: Justice System, Anti-corruption, Media Pluralism

Websites of the organisations:

www.nhc.nl

www.commissie-meijers.nl

www.freepressunlimited.org

www.nvj.nl

www.transparency.nl

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Horizontal developments

In the year since the consultation for the last rule of law report was initiated, the Court of Justice in the European Union has dealt with several important cases concerning rule of law backsliding in EU Member States (Joined Cases C-558/18 and C-563/18, *Miasto Łowicz and Prokurator Generalny*, Case C-78/18 (*Commission v. Hungary*), Case C-791/19 R (*Commission v. Poland*)). A decision by the CJEU in the latter is expected in the first half of 2021.

In Case C-78/18 the CJEU issued a judgment on 18 June 2020 which states that restrictions imposed by Hungary (the so-called 'Transparency Law') on the financing of civil organisations by persons established outside the Member State do not comply with EU law. Until now, the Hungarian government has not taken any steps to end this violation of EU law. The Commission has recently raised pressure on Hungary to implement the ruling of June 2020 in the 'Lex CEU' case.¹

In December the CJEU ruled on preliminary questions posed by the Court in Amsterdam concerning the suspension of European arrest warrants of Polish suspects (Joined Cases C-354/20 PPU and C-412/20 PPU). The Luxembourg Court decided that the existence of evidence of systemic or generalised deficiencies concerning judicial independence in Poland (or even just evidence of an *increase* in such deficiencies) cannot in itself suffice to justify a refusal to execute European arrest warrants (EAWs) issued by Polish courts. The Amsterdam District Court however refused to surrender a Polish citizen who is suspected of trafficking in and importing drugs in his native country. The Amsterdam District Court ruled that there is a risk that his fundamental right to a fair trial will be violated if he is to stand trial in Poland. Another ruling concerning the suspensions of EAWs due to concerns about independence of the judiciary in Poland following its justice reforms was the decision of the Higher Regional Court of Karlsruhe in Germany of 17 February 2020 which also concluded that a real risk of fair trial infringements in Poland exist in this specific case and thus did not execute the EAW.

In December 2020, Advocate General Tanchev stated in his opinion that the Polish law excluding legal review of the National Council of the Judiciary's assessment of judicial candidates to the Polish Supreme Court violates EU law. The opinion concerns a reference for preliminary ruling by the Polish Supreme Administrative Court in the context of legal proceedings of candidates against the appointment procedure of the National Council of the Judiciary (Case C-824/18, *A.B. and Others*). The AG also harshly condemns recent Polish legislation that denies the referring court both the possibility of successfully initiating preliminary ruling proceedings before the CJEU as well as the right to wait for a ruling from the CJEU.

In January 2021, the CJEU stated in case C-808/18 that Hungary failed to fulfil its obligations under EU law in the area of procedures for granting international protection and returning illegally staying third-country nationals. Hungary infringed EU law in particular by restricting access to international protection procedures, by illegally detaining applicants in transit zones, by moving third-country nationals to border areas, and by not observing guarantees concerning return procedures. The CJEU rejected Hungary's arguments that the migration crisis justified such derogations from EU rules as they were necessary for maintaining public order and internal security.

And finally, the Advocate General's opinion in Case C-650/18 on the European Parliament's decision to initiate Article 7 TEU proceedings against Hungary, AG Bobek advises the CJEU to dismiss the Hungarian application for annulment as unfounded. However, both Article 7 disciplinary procedures, which were launched against Poland and Hungary, are still stuck in the Council of the EU, where some countries have shown reluctance to take steps that could lead to sanctions.

¹ <https://www.euractiv.com/section/justice-home-affairs/news/commission-pushes-hungary-to-implement-ngo-judgement-among-worries-it-is-too-little-too-late/> (18 February 2021).

Member State covered: The Netherlands

I. Justice System

Other

Laws are in place recognising the right to request government information, and they are generally enforced, although critics contend that long delays in responding to requests for information are common. The COVID-19 crisis was used in a number of cases as an additional reason for delay.² A bill initiated in 2012 that would require the government to make documents available online rather than by request continued to await parliamentary discussion.

Disclosures continued³ about the Tax Administration's illegal practices on childcare allowances between 2014 and 2016. The official privacy watchdog entity concluded that discriminatory use had been made of data on the (double) nationality of applicants⁴. In May, the Government filed a formal complaint to the public prosecutor, asking for investigation of Tax Administration officers for extortion and discrimination in the exercise of their function⁵.

In December, a special parliamentary committee on the matter issued its report.⁶ The report, entitled "Unprecedented Injustice", described fraud-fighting measures gone in overdrive, with final political responsibility shifted around between different actors, the administrative court not safeguarding general legal principles of proper governance, and parliamentarians being denied access to relevant documents.

The return to families of the sums to which they were entitled started during the year, but got bogged down in bureaucracy, until in response to the "Unprecedented Injustice" report, government decided on an interim generic compensation EUR 30,000. Between 9,000 and 26,000 families would be entitled to this amount.⁷ Procedures for full compensation and debate about political consequences for the affair were carried over into 2021. As a result of the childcare scandal, the Government resigned in January 2021.

II. Anti-corruption framework

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

18. List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Please indicate the resources

² <https://www.trouw.nl/nieuws/ministeries-schorten-wob-verzoek-op-door-coronavirus~beac6dfe/>

³ E.g. <https://www.rtlnieuws.nl/nieuws/nederland/artikel/5191442/toeslagenaffaire-van-huffelen-gedupeerden-compensatie>

⁴ <https://nltimes.nl/2020/07/17/tax-authority-discriminated-parents-dual-nationality-privacy-regulator>

⁵ <https://www.ad.nl/binnenland/ministerie-doet-alsnog-aangifte-tegen-belastingdienst-wegens-handelen-in-toeslagenaffaire~a0b13908/>

⁶ <https://nltimes.nl/2020/12/17/parents-faced-unprecedented-injustice-years-childcare-subsidy-scandal>

⁷ <https://www.omroepgelderland.nl/nieuws/6669588/30-000-EUR-voor-getroffen-gezinnen-Eerst-zien-dan-geloven>

allocated to these (the human, financial, legal, and practical resources as relevant), e.g. in table format.

The anti-corruption agency in the Netherlands is the Anti-Corruption Centre of the FIOD (Fiscale Inlichtingen- en Opsporingsdienst), the government agency focused at fighting financial and economic fraud. The Anti-Corruption Centre aims to put all expertise concerning corruption available in the FIOD in one place. It mainly seeks to investigate foreign official corruption and domestic non-official corruption. The FIOD is the intelligence service of the Netherlands Tax and Customs Authority. The FIOD has a total budget of about 120 M EUR for all of its activities.⁸ Their mandate has changed substantially over the years, increasingly focusing on international financial flows. The Anti-Corruption Centre of the FIOD was established by the Public Prosecution Service in 2016 to be able to tackle corruption in the government and private sector more effectively. This was accompanied by a structural annual investment of 20 M EUR from 2018 onwards to strengthen the FIOD's and OM's (Public Prosecution Service) capacity regarding anti money-laundering and corruption practices.⁹

The Rijksrecherche is responsible for investigating domestic cases of corruption related to civil servants. Investigations are carried out under supervision of the Prosecution office, in practice Prosecutors of the National Prosecution's Office (LP) or the National Public Prosecutor's Office for Financial, Economic and Environmental Offences (FP). Pursuant to the Money Laundering and Terrorism Financing (Prevention) Act (Wwft), FIU-the Netherlands is the organisation to which entities with an obligation to report should report unusual transactions. With its analysis of reported unusual transactions, FIU-the Netherlands uncovers money flows that can be linked to money laundering, the financing of terrorism, or underlying crimes. After the transactions have been declared suspicious by the head of the FIU-the Netherlands, they are put at the disposal of various law enforcement and investigative services.

B. Prevention

19. Integrity framework including incompatibility rules (e.g.: revolving doors)

Since being a member of the Senate is a part-time function in the Netherlands and members of the House of Representatives are employed full-time, both chambers of parliament are obliged to abide by different Codes of Conduct regarding integrity.

The House of Representative's Code of Conduct revolves around six regulations. First, MPs have to take an oath declaring their loyalty to the King, the Statute for the Kingdom and the constitution. In addition, they have to state that they did not receive or (promise to) give away any favours or gifts in return for gaining their position in parliament. Second, there is a regulation in place to prevent conflicts of interests from occurring. This regulation is not in place in the Senate due to the part-time character of the role as senator. Third, MPs have to declare their ancillary activities and income, relevant interests and offered foreign trips and gifts of a value above 50 EUR. Fourth, members of the House of Representatives have a duty of confidentiality for all meetings, either plenary or in a commission, that take place 'behind closed doors'. The fifth regulation extends this to all documents that are intended to remain confidential. Finally, the Code of Conduct regulates misbehaviour, which considers misbehaviour to be: diverting from the subject of interest, the use of offensive terms, disturbing the order and agreeing with or encouraging illegal practices.¹⁰

⁸ <https://www.transparency.nl/wp-content/uploads/2018/03/Working-Paper-Handhaving-2017.pdf>

⁹ <https://www.transparency.nl/nieuws/2020/06/onderzoek-sdg-16-nederland-lange-weg-te-gaan/>

¹⁰ https://www.tweedekamer.nl/sites/default/files/atoms/files/integriteitsregels_voor_kamerleden.pdf

As of June 2019, the Senate needs to adhere to a new code of conduct regarding integrity. The new code provides more clarity about conflicts of interests, indicating that senators should be aware of the additional interests they have due to the other positions they hold. Moreover, senators should abstain from activities that have the appearance of a conflict of interest. It is important to note that this conflict of interest only relates to a conflict of interest with regard to a specific self-interest, usually as a result of holding other functions. Senators are required to share the additional functions they hold besides being a member of the Senate as well. This consists of a short description of the function, the company/organisation for which the function is performed and whether the function is paid or not. Moreover, all interests that can reasonably be considered to be relevant but cannot be regarded as an official function need to be made publicly available as well.¹¹

The 'Huishoudelijke Commissie' has been appointed as the supervising authority regarding the new code of conduct. The Commission already functions as a watchdog for the interests and reputation of the Netherlands Senate in general. In case a member of the Senate is suspected to have violated the code of conduct, the Commission is able to make an official verdict.¹²

Rules on integrity and disclosure have a non-binding character. Members of parliament are not allowed to hold other public offices, but there are no rules on private enterprises. Since 2020, they are required to report their earnings from extracurricular activities. An integrity commission can investigate cases of fraud. However, the commission cannot implement sanctions when the rules are violated and are unable to investigate on their own accord. It is only after a complaint has been filed by either civil society or a member of parliament that they are allowed to investigate the case.

For public officials, the Netherlands established a measure against revolving doors in 1999, when the government issued a circular letter against revolving doors in the public service. The letter solely states that a former public official who worked at a Ministry cannot be hired as a consultant by the same department until two years after resignation. This effectively means that there is no restriction on former public officials lobbying their former ministries.¹³

A specific measure has been installed for the Ministry of Defence, due to the large financial and strategic interests at stake in the defence sector. In the Directive of the Secretary General concerning protection of integrity, high government officials of this Ministry cannot, for two years after resignation, be a “negotiating partner” with the Ministry on behalf of a company.¹⁴ This measure was extended in 2017 when a two-year ban on lobbying concerning issues dealt with in their area of interest was installed for former Ministers and state secretaries.¹⁵ Furthermore, cabinet members in office are required to inform and gain approval of the Prime Minister before transferring to functions outside the government.¹⁶

As noted by GRECO in the Fifth Evaluation Round of the Netherlands, no further regulations are in place to address the revolving door for individuals holding top executive functions. The organisation

¹¹ https://www.eerstekamer.nl/behandeling/20190416/verslag_van_de_tijdelijke

¹² <https://www.p-direkt.nl/documenten/publicatie/2018/01/23/gedragscode-integriteit-rijk-drempelvrije-brochure>

¹³ http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Wet%20en%20Regelgeving/Nota_integriteit_openbaar_bestuur_bijlage_3.

¹⁴ <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

¹⁵ <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808b322d>

¹⁶ <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680931c9d>

criticises the lack of a general ‘cooling off’ period and a transparent mechanism to regulate the transfer of high government officials to the private sector.¹⁷

20. General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

There is no legislative framework on lobbying.¹⁸ It is important to note, however, that lobbying is an important and integral aspect of the Dutch manner of conducting politics, also known as the *Poldermodel*. Dutch politics is based predominantly on consensus-seeking between all relevant actors in society.

The lobby register contains 110 lobbyists who have a permanent pass for parliamentary entry. The register is voluntary, publicly available, regularly updated and outlines the name, company and actor for which the lobbying is done. The actual number of lobbyists present in The Hague however, is believed to be in the thousands.¹⁹

The Netherlands Code for Good Public Governance is a code of ethics meant for municipalities, provinces, water authorities and the public service. One of the starting principles of this Code is that government is open and honest. To achieve this, the trust of citizens and organisations in the government and transparency in general should be increased. Specific measures that address ethical lobbying are not included. More specific rules can be found in the Basic norms of Integrity (Basisnormen Integriteit). All government organisations should adhere to these rules, which state that public officials need to report ancillary activities. Mentioning such activities can prevent a situation in which a conflict of interest emerges. The document also states how to deal with gifts and other services. All gifts and services should be reported and in general the rule applies that a gift or service with a value exceeding 50 EUR should not be accepted.²⁰

The Integrity guide for politicians (Handreiking integriteit politieke ambtsdragers) also mentions certain common rules that apply to public officials and public representatives. These rules state that ancillary activities should be reported and that public officials cannot vote on matters in which they have a personal interest. The document also makes clear that public officials should be sworn in (as is obliged by law) and promise that they will adhere to certain general rules that are aimed at maintaining integrity. If any of these codes is violated, there is a mechanism in place that allows for complaints by public officials or citizens at the organisation concerned to be submitted on the website of the government (www.rijksoverheid.nl). Individuals who are dissatisfied with the handling of their complaint can contact the independent National Ombudsman.²¹

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

¹⁷ <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680931c9d>

¹⁸ <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

¹⁹ <https://www.volkskrant.nl/nieuws-achtergrond/lobbypaleis-met-een-onbekend-aantal-bewoners~b9992708>

²⁰ <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

²¹ <https://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands-1.pdf>

Political parties need to disclose donations above 4,500 EUR and the name of the person donating the money. They are allowed to receive money from outside the EU, with no limit. The Dutch parliament is currently considering a law that aims to prohibit donations from outside the EU and full transparency of donations from EU member states.²²

21. Rules on preventing conflict of interests in the public sector

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22. Measures in place to ensure whistle blower protection and encourage reporting of corruption

On 1 July 2016, the Dutch government implemented The Whistle blowers Authority Act. This law stipulates, among other things, that all companies with more than 50 employees are obliged to implement a whistleblowing procedure to handle disclosures of alleged wrongdoing within the organisation. The employer is required to provide a written or electronic statement of the procedure to everyone in his/her employment. At the same time, the employer must provide information about the circumstances in which an alleged wrongdoing can be reported outside the organisation and the legal protection for an employee when reporting an alleged wrongdoing. In addition, the law requires that employees who report misconduct should be protected against retaliation.

However, the law provides little requirement for the content of a whistleblowing procedure (for example, who to report to and the possibility of receiving (pro bono) advice). Implementation of an

²² <https://www.tweedekamer.nl/downloads/document?id=cd541801-fbdd-4cce-b774-3a3fa97b1b8d&title=Voorstel%20van%20wet.pdf>

effective whistleblowing framework is all the more relevant since in December 2019, the EU Directive on the protection of persons who report breaches of Union Law (“Whistle blower Protection Directive”) entered into force. The Netherlands, like all other EU Member States, is required to transpose the Whistle blower Protection Directive into national law before 17 December 2021. This will bring along extra legal obligations for whistleblowing frameworks under Dutch law.²³ Details will, however, depend on the implementation of the Whistle blower Protection Directive into national law. However, the first signals of the Dutch implementation are worrying as the Dutch government issued a draft law that creates a special whistle blower regime – running parallel to the existing one – for areas covered by the Directive.²⁴

23. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, other).

There are no national thresholds defining up to what thresholds single-sourced purchases of goods, services and public works are allowed included in the law. Nevertheless, procuring parties have to abide by European regulations indicating to what threshold national procurement is possible. If this threshold is reached, procuring parties are obliged to offer the opportunity in a European-wide fashion.²⁵

These general thresholds are 144,000 EUR for most types of services and supplies by central governments and 5,548,000 EUR for construction contracts.²⁶

During the COVID-19 epidemic we have seen a lot of potential corruption in the Netherlands. We have identified risks at the Ministry of Public Health, Welfare and Sports. According to the research of OCCRP and Follow the Money, the Netherlands suspended its usual public procurement rules, resulting in large amounts of spending that remain mostly hidden from the public. Some smaller tenders are available in TenderNed but the prices are hardly disclosed. The Netherlands is listed as a virtual black hole of information as it has rejected reporters’ data requests.^{27,28}

Recently it was also found that contracts have been given to consultancy firms to assist in the execution of the handling of the corona pandemic. There were no public tenders for these contracts.²⁹

²³ <https://www.transparency.nl/wp-content/uploads/2020/05/Whistleblowing-Frameworks-2019-TI-NL.pdf>

²⁴ <https://www.transparency.org/en/blog/the-netherlands-are-showing-other-eu-countries-what-not-to-do-when-transposing-the-eu-directive-on-whistleblower-protection>

²⁵ <https://wetten.overheid.nl/BWBR0032203/2019-04-18>

²⁶ https://europa.eu/youreurope/business/selling-in-eu/public-contracts/public-tendering-rules/index_en.htm

²⁷ <https://www.tenderned.nl/tenderned-tap/aankondigingen>

²⁸ <https://www.occrp.org/en/coronavirus/europes-covid-19-spending-spree-unmasked>

²⁹ https://goodlawproject.org/news/deloitte/?utm_source=Twitter&utm_medium=social%20media&utm_campaign=deloitte%20tw%201402

We also find that there are a lot of risks in the export of corruption. The Netherlands has trouble combatting international corruption cases. This was exemplified by the case of ING Bank.³⁰

24. Measures taken to address corruption risks in the context of the COVID-19 pandemic.

Very little has been done so far to address the corruption risks. As of yet the Dutch government has provided little to no insight in the contracts that have been awarded. It seems that there is very little imperative to do so.

25. Any other relevant measures to prevent corruption in public and private sector
Not to our knowledge.

C. Repressive measures

26. Criminalisation of corruption and related offences

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

Especially in the Southern provinces of the Netherlands, where the crux of drug-related organised crime is located, new programmes have been implemented aimed at fighting organised crime. When the Public Prosecution noticed in 2014 that organised crime was gaining a foothold in local governments, the decision was made to intensify efforts against criminal organisations in the relevant provinces. Five new teams were created that aimed to fight criminal networks, hemp cultivation and the production of synthetic drugs. Moreover, in the province of Noord-Brabant the Taskforce B5 was established in 2010 to fight criminal partnerships, break down opportunity structures and asset recovery. Due to its initial successes, the jurisdiction of the taskforce was widened to include the province of Zeeland as well and its name was altered accordingly to Taskforce Brabant-Zeeland (BZ).³¹

In 2017, the government pledged to increase resources spend on fighting organised crime. The central government emphasized the importance of the integral strategy adopted, gave more responsibilities to the RIEC's and pledged to devote an extra 10 M EUR annually. Moreover, the

³⁰ <https://www.reuters.com/article/us-ing-money-laundering-hamers-idUSKBN2492DQ>

³¹ <https://www.politieacademie.nl/actueel/Documents/sluipend%20gif.pdf>

coalition agreement of 'Rutte III' announced the creation of a fund of 100 M EUR aimed at fighting organised crime and that the assets recovered from criminals will be utilized to refill the fund.³²

27. Data on investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds.

Various cases involving penetration of organised crime into the police have been highlighted in the past few years. Especially organised crime involved in the drug trade has been able to gain a foothold in the (military) police force. In the port of Rotterdam for example, multiple military police officers have been convicted for corruption charges in the past years. Gerrit G. was sentenced to 14 years in prison in 2017 for ensuring the safe passage of cocaine (smugglers) in the port of Rotterdam and his involvement in money laundering. In the same case, three other officers were given prison sentences for their involvement as well. Other than being directly involved in drug smuggling, organised crime has been able to penetrate into the police force by bribing officers for information. In the beginning of 2019 for example, a hand-written letter from a suspect in the Gerrit G. case was found that indicated that he was warned by corrupt officers about an incoming police raid.³³

Equally worrying, criminal organisations have made attempts to influence local government officials. In order to do so, they predominantly adopt the tactic of threatening with violence. In addition, criminals have attempted to bribe local government officials as well but to a much lesser extent. The (attempted) bribes cannot be considered especially substantial either. Finally, criminal organisations have attempted to infiltrate in local governments as well. In most Netherlands provinces, the percentage of municipalities where (suspected) infiltration occurred currently ranges between 20% and 30%.³⁴

In a 2018 study, Transparency International classified Dutch enforcement of foreign bribery as 'limited'. In the period 2014-2017, the Netherlands opened at least seven investigations, commenced four cases with sanctions, including three major foreign bribery settlements with the Netherlands Public Prosecutor. In 2017, three Rotterdam-based subsidiaries of the Stockholm-based international telecom provider Telia Company AB paid the Netherlands government US\$274 M, also in relation to bribery of foreign officials to operate in the Uzbek telecom market. This was part of a global settlement announced by US authorities, involving a total financial sanction of US\$965 M.

Moreover, The Netherlands Fiscal Information and Investigation Service has been investigating ING Bank since 2016 on suspicion of facilitating international corruption and money laundering. The two parties agreed upon a record-high settlement in 2019. The bank is suspected of failing to report, in a timely manner, unusual transactions by VimpelCom and Telia Company AB for payments into the bank accounts of Takilant.

28. Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

Recently there have been reports in the Dutch press that the Netherlands' ambassador in Nigeria shared confidential information with Shell about an investigation on location in Nigeria by Dutch

³² <https://www.rijksoverheid.nl/actueel/nieuws/2018/11/16/minister-grapperhaus-verdeelt-100-miljoen-voor-aanpak-ondermijnende-criminaliteit>

³³ <https://www.nrc.nl/nieuws/2019/01/27/nieuwe-aanwijzing-voor-corruptie-binnen-politie-rotterdam-a3651876>

³⁴ <https://vng.nl/files/vng/tkbijlageeindrapporagecriminelebeïnvloedingvanhetlokaleopenbaarbestuur2.pdf>

financial police. The whistle blower who exposed the information, a local staff member of the Netherlands embassy, was subsequently dismissed. Following the VimpelCom case, covered in the Exporting Corruption Report 2018, there were three related cases in the Netherlands, two involving banks and one involving an accounting and consulting firm (VimpelCom is now called VEON).

Except for one case, the NPPS has yet to prosecute individuals for their responsibility in foreign bribery. The key reason given is jurisdictional limitations concerning the prosecution of foreign individuals employed by Dutch companies who committed their crimes outside the Netherlands. The system for settlements is undermined by lack of transparency, the absence of any oversight role for an independent court and the fact that Dutch settlements cannot currently include important aspects, such as a monitor or obligatory future reporting to the NPPS. There is a large difference in settlement amounts in cases of foreign corruption compared to national corruption (either as a settlement or imposed by local courts), with much higher settlements in foreign corruption cases. Clear guidelines are lacking for companies on what to expect when they report or enter into settlement negotiations. In addition, there are no clear rules to ensure that forfeited amounts of proceeds of crime are returned to the countries where the profits were originally earned. There is a proposal before Parliament to provide for judicial oversight of non-trial resolution of criminal proceedings. However, this has yet to be considered. In the meantime, there is a proposal to adopt an interim approach by establishing an independent Assessment Committee to oversee settlements, instead of the Minister of Justice and Security.

Even though resources for enforcement have increased markedly, it remains to be seen whether the justice system is capable of effectively conducting full trials against larger Dutch companies and their management.

III. Media pluralism

B. Transparency of media ownership and government interference

33. Rules governing transparency of media ownership and public availability of media ownership information

The Netherlands lacks legal provisions that require information in regard to media ownership to be actively disclosed to the public. However, information is generally disclosed through the media and recent findings from (independent) journalists show that the Dutch media landscape is characterized by a high concentration of media ownership. Where in 1980 the Netherlands hosted 25 publishing houses, this number was reduced to a total of 6 in 2020.³⁵ Of these six publishing houses, two have an absolute majority share in the Dutch media sector, whereby 21 out of the 25 daily newspapers are owned by two Belgian publishers: Mediahuis and DPG.³⁶ The latest development of 2020 was the purchase of NDC by Mediahuis, thereby expanding their market share even more.

Provisions for extra subsidies to support local journalism and experimentation in the journalism have been granted. However addressing the market failure in the information sector and organising

³⁵[https://www.svdj.nl/hoenederland-eeen-dagblad-duopolie-kreeg/#:~:text=Mediahuis%20werd%20in%202015%20eigenaar,Meulenhoff%20\(PCM\)%20had%20overworven.](https://www.svdj.nl/hoenederland-eeen-dagblad-duopolie-kreeg/#:~:text=Mediahuis%20werd%20in%202015%20eigenaar,Meulenhoff%20(PCM)%20had%20overworven.)

³⁶[https://www.svdj.nl/hoenederland-eeen-dagblad-duopolie-kreeg/#:~:text=Mediahuis%20werd%20in%202015%20eigenaar,Meulenhoff%20\(PCM\)%20had%20overworven](https://www.svdj.nl/hoenederland-eeen-dagblad-duopolie-kreeg/#:~:text=Mediahuis%20werd%20in%202015%20eigenaar,Meulenhoff%20(PCM)%20had%20overworven)

markets in a way that supports the business model of quality journalism by market regulation is absent from the cabinet and parliament discussion.

C. Framework for journalists' protection

34. Rules and practices guaranteeing journalist's independence and safety

Some concerns exist as regards the amended national security services Act (Wiv 2017) of July 2017, dubbed the “dragnet Act”. The law allows for national intelligence agencies to collect internet and telephone data from citizens in bulk for investigation needs. Multiple organisations, among which Free Press Unlimited and the NVJ - the Dutch Association of Journalists - have expressed concern that this could undermine the protection of journalistic sources. Recent evaluation reports from the independent supervisory authority for the Dutch intelligence agencies found that there indeed had been multiple breaches of journalistic source protection. Also, information regarding journalists and their sources had been requested to be disclosed to foreign intelligence agencies, even though the information was not eligible for such disclosure. It is not clear if such information was actually disclosed in the end. However, to this day the law remains intact and the amendments to the law are still in the legislative process of Dutch parliament.

35. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

The Netherlands has the PersVeilig protocol, a covenant in which the media sector, journalists united in the NVJ, the editors in chief, the General prosecutors office and Dutch police have joined forces to take action against intimidation and violence towards journalists. Police and the general prosecutor's office have agreed upon priority handling of violence against the media and ask for increased charges against offenders.

Persveilig is also a point of contact for journalists who face threats, harassment and intimidation and provides safety training and prevention tips and reported a strong increase in cases since it was installed in 2019. The most recent publications from PersVeilig indicate that in January 2021 alone, more than 30 cases had been reported. That is a quarter more than the total amount of threats over 2020 as a whole. In part, this increase in reporting is due to the growing awareness of PersVeilig, which is a positive development. More and more journalists and stakeholders are aware of the tool and are increasingly using it. However, a staff member at PersVeilig stated that the increase mostly is due to the fact that the number of incidents and attacks on journalists has been increasing drastically since autumn 2020. Not only have the numbers increased, but also the form of threats are changing for the worse. Of the 34 cases that are reported to PersVeilig, 10 include cases of physical violence against journalists.

36. Access to information and public documents

Back in 2012, two Dutch parties submitted a draft proposal for a law to replace the current Government Information Act (Wob). The new law is supposed to create more transparency in regard to the government by making information easier to find, share and archive. The major difference is that the draft law requires active publication of government information, as opposed to the current passive publication (only on request).

The recent child care allowance scandal in the Netherlands, which eventually led to the Cabinet's resignation, sparked the discussion once again and underlined the necessity of more transparency in regard to governmental actions. At this moment, the legislative proposal is still in parliament, albeit with stricter requirements after the scandal. The proposal now encompasses the appointment of an

Ombudsman whom journalists can address if they cannot access government information (fast enough). Experts on open government remain critical about parts of the new legislation and doubt it will increase citizens' right to information. With the new law, which still has to pass the first chamber of parliament, the Netherlands still does not meet the Tromso-standards for access to information.

IV Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

41 COVID-19: provide an update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic

The COVID-19 'intelligent lockdown' put in place between mid-March and the end of May 2020 and the perspective of a continued enforcement for a longer period of at least a number of the restrictive measures led to substantial discussion of the legal and decision-making regime governing these measures. A specific COVID-19 emergency legislative proposal was released for consultation in June, an adapted version was formally submitted in July and adopted after yet further changes in September by the Second Chamber and in October by the First Chamber.

More up-front involvement of parliament and a softer regime of fines for rules transgressions were the main changes compared to the measures taken in the first phase of the crisis. The new legislation still allowed on grounds of public health emergency for the government to issue measures without prior approval by parliament. This facility was used in mid-December, when a lockdown similar to the March to May one was imposed.

Public discussion of constitutional rights and their implementation expanded greatly, with both well-informed debates taking place and the cloaking in human rights terms of a radical rejection of governmental COVID-19 policies.

B. Independent authorities

42. Independence, capacity and powers of national human rights institutions

The Netherlands has antidiscrimination laws and hate speech laws on the books. While Dutch society is known for its tolerance, rising anti-immigrant sentiment in recent years has been accompanied by more open expression of anti-Islamic views.

Muslims and people with a migrant background experienced harassment and intimidation. Persistent labour market discrimination on ethnic grounds, of older people, of pregnant women, and of disabled people continued to be documented.³⁷ The National Human Rights Institute (College voor de Rechten van de Mens) called for more forceful government policies to counter discrimination in the public space.³⁸

³⁷ https://nicm.nl/wp-content/uploads/2020/04/Dutch_NGOs_contribution-CERD.pdf

³⁸ <https://mensenrechten.nl/nl/publicatie/5ee058401e0fec037359c28b>; English summary at <https://publicaties.mensenrechten.nl/file/c3fc7f3d-2089-4943-a981-0d4a857c32ad.pdf>

Actions by NGOs on ethnic profiling by the police focused in particular on the Royal Marechaussee, a gendarmerie force, whose tasks include border controls and checks on illegal residents.³⁹ Racist language by Rotterdam police officers was reported several times.⁴⁰

By using a registration category “nationality unknown” as opposed to “stateless”, a practice reportedly affecting more than 13150 children, their rights to nationality and to the related legal protections, was violated, the UN Human Rights Committee said.⁴¹ Dutch asylum policies have long drawn criticism for being unduly harsh. Increasing delays in decision-making on asylum applications led to reportedly EUR 1 million being demanded in administrative penalties per week by the asylum seekers concerned. Emergency legislation was introduced in July to stop new asylum seekers from demanding these penalties.⁴²

Contrary to a number of the other EU member states, the Netherlands authorities continued to refuse to accept an extra contingent of young asylum seekers from camps on the Greek islands. After the fire at Moria camp in September, the government decided to invite 100 persons from the camp. This number though was subtracted from the already existing quota of 500 refugees that are annually invited to be resettled from around the world to the Netherlands.⁴³

D The enabling framework for civil society

45. Measures regarding the framework for civil society organisations (e.g. access to funding, registration rules, measures capable of affecting the public perception of civil society organisations, etc.)

In the light of the widespread and sometimes systematic repression of civil society within and outside Europe, legislation that limits the space for civil society organisations must include safeguards against arbitrariness, abuse, and discrimination. Civil society organisations expressed their concerns in relation to several pending bills:

1. The proposed bill to criminalise persons travelling to areas controlled by terrorist organisations (*wet strafbaarstelling uitreis naar terroristisch gebied*), would entail a restriction of the right to freedom of movement. The proposed bill requires the permission of the minister to travel to an area controlled by terrorist organisations. The Red Cross, journalists and aid organisations would be exempted to ask permission before travelling to such an area. Human rights organisations are not exempted. The proposed bill criminalizes behaviour that is not in itself dangerous or illegal. As indicated by civil society organisations, an exception for the Red Cross and a generic permission for aid organisations and journalists via policy rules will not remove the dangers that local groups will equate the professionals with the Dutch authorities. The bill passed in parliament. At the time of writing the Senate

³⁹ <https://controlealtdelete.nl/blog/lawsuit-against-royal-netherlands-marechaussee-because-of-ethnic-profiling>, <https://nltimes.nl/2020/02/26/border-patrol-accused-ethnic-profiling-amnesty-international-case>

⁴⁰ <https://www.dutchnews.nl/news/2020/07/police-launch-investigation-into-rotterdam-officers-racist-whatsapp-group/>, <https://dutchreview.com/news/crime/racism-rotterdam-police-investigation/>

⁴¹ <https://news.un.org/en/story/2020/12/1081062>, <https://www.theguardian.com/world/2020/dec/29/un-finds-netherlands-violated-human-rights-of-stateless-child>

⁴² <https://www.rtlnieuws.nl/nieuws/nederland/artikel/5170035/ind-dwangsommen-eerste-kamer-asielzoekers-trage-afhandeling>

⁴³ <https://nltimes.nl/2020/09/11/netherlands-take-100-people-greek-refugee-camp>

announced that it will keep the law on its agenda until it received feedback on the meeting planned between the Minister and NGO's scheduled during the first months of 2021.

2. The proposed bill for Amendment of the Civil Code to broaden the possibilities for banning legal entities (*Wijziging van Boek 2 van het Burgerlijk Wetboek ter verruiming van de mogelijkheden tot het verbieden van rechtspersonen*), aims to expand the possibilities to ban what are considered to be "radical organisations". The proposal is not limited to legal entities but also extends to any other body or consortium emerging as an independent entity or organisation. This proposal reduces the burden of proof for the Prosecution Service to prohibit and dissolve legal entities that are considered disruptive for society. It also reduces the burden of proof for prosecutors to demonstrate that an organisation incites hatred and violence or poses a threat to national security. In the Memorandum of Reply of 26 January 2021 the Minister gave the example of a legal entity of which the Public Prosecution Service has proven that it incites hatred. This organisation will have to demonstrate that, although incitement to hatred has been the case, the declaration of prohibition is not proportional or necessary in the light of the circumstances of the case. For example, by demonstrating that measures have been taken by the legal entity to prevent a recurrence in the future, such as the dismissal of (part of) the (board) members.

International research shows that states often classify organisations and activists as dangerous to the state when they criticize the government or otherwise challenge the status quo, without their activities posing an immediate threat to society or the rule of law. Despite some clarifications in the Memorandum of Reply, concerns of civil society organisations remain. The Minister does not sufficiently explain why the amendment of the civil code is necessary to achieve goals such as the protection of public order and national security. The bill has far-reaching consequences, not only for the right to freedom of association, expression and religious freedom of the organisations involved. The prohibitions and criminalisation can have a paralyzing effect on the exercise of the freedoms of other civil society organisations. The bill was adopted by the House of Representatives in October 2020 and is pending at the Senate.

3. The proposed Civil society organisations transparency act (*Wet transparantie maatschappelijke organisaties*), authorises the mayor of the municipality where a civil organisation is established or carries out activities and the public prosecutor to request information from an organisation about geographic origin, purpose and size of a donation from outside an EU Member State in the context of maintaining public order. If it appears to be substantial donations, the mayor may also request personal data. The proposal has practical consequences, as organisations will have to register donation data from donors from outside the EU / EEA in the manner desired by the government for seven years. Civil society organisations point at the fact that there is no proof of substantiated problems within civil society organisations whilst the proposal restricts the freedom of association and entails an additional administrative burden for all organisations, as a distinction must be made between donors from within and outside the EU / EEA and additional data must be administered for the latter group. Originally the government intended to burden all civil society organisations with the obligation to disclose donors of donations exceeding 4,500 EUR but decided in November 2020 to revise this proposal. The proposal is pending in the House of Representatives.

The aforementioned proposals are indicative of the trend to restrict civil society organisations. Next to the pending bills mentioned above civil society organisations point at disturbing language used by politicians when speaking of organisations supporting refugees. Negative sentiments towards civil society are not restricted to wording only. In November 2020 a motion was adopted by the House of

Representatives. The motion calls for the removal of a clause in the EU Migration Pact. The clause would exclude criminalisation of humanitarian assistance at sea. According to the motion the humanitarian assistance would supposedly have a pull effect for migrants and refugees to cross the sea. On November 24, dozens of organisations responded with an urgent letter calling on MPs to stop the potential prosecution of rescue workers.

E. Initiatives to foster a rule of law culture

46. Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, etc.)

Report of the Co-Rapporteurs on Rule of Law Developments in the European Union 2020

In October 2018, the European Affairs Committee of the House of Representatives of the Netherlands introduced a rapporteurship into rule of law developments in the European Union. The rapporteurship regularly publishes reports on its work and raises the subject of the rule of law at a number of planned commission activities. Due to the COVID-19 pandemic, the rapporteurs had to cancel a visit to Hungary as well as a visit to Brussels to meet with Commissioners Reynders and Jourova. However, the rapporteurship has engaged in various activities aimed at fostering the dialogue about the rule of law in the EU and has presented its plans for the future in a recent report.⁴⁴ A summary of their findings:

- Dialogue between members of national parliaments within the setting of COSAC in order to establish a permanent working group on the rule of law in the EU. In 2020, the Dutch delegation organised a side-event on the rule of law with a number of parliaments who are active on this subject, and a follow-up event.
- Informal video meeting with like-minded parliamentarians and Dutch civil society representatives in December 2020 after having established the willingness to cooperate and exchange knowledge on the topic of rule of law in COSAC meetings. Especially the possibilities to enforce legislation concerning rule of law infringement by national parliaments were discussed.
- Plans to hold a parliamentary committee debate in the Dutch Parliament twice a year on recent EU rule of law developments.
- The rapporteurship calls upon the Dutch government to promote making Council debates on rule of law public.
- Recommendation to the Dutch Parliament that the EU rule of law developments rapporteurship be instituted anew after the elections in March 2021.

Motion to start interstate-procedure against Poland by Dutch Parliament

In November 2020, three members of the Dutch parliament filed a motion to start an interstate-procedure according to Article 259 TFEU against Poland due to the serious threat to the rule of law caused by the changes in the Polish judiciary. The resolution referred to the 'political interference in the appointment of judges' as well as the still-active Supreme Court's disciplinary chamber which has been declared unlawful by the CJEU. In their motion, the Dutch parliamentarians asked the government to cooperate with like-minded Member States in order to bring Poland before the Court

⁴⁴ Tweede Kamer, Report of the Co-Rapporteurs on rule of law developments in the European Union, 18 January 2021, Parliamentary Document 21 501-02, No. 2258.

of Justice for undermining judicial independence. On December 1 2020, the Dutch House of Representatives adopted the resolution with a large majority.⁴⁵ In accordance with the request of the House of Representatives, the Netherlands did enter into consultations with like-minded member states to jointly explore the risks and opportunities with regard to the possible use of Article 259 TFEU. However, it became clear that there is no willingness among like-minded member states to seriously consider the state complaint option at this time because (a) it would undermine the Commission's role as the guardian of the treaties if Member States were to 'start infringement procedures', (b) individual Member States do not have the necessary expertise and capacity that the Commission does to delve deeply into the judicial systems of other member states, and lastly (c) that the use of Article 259 TFEU against another member state is a politically heavy and rarely used instrument which could seriously jeopardise interfere the bilateral dialogue with the Member State concerned - Article 259 TFEU should thus only be used as a last resort.⁴⁶ The Dutch minister of foreign affairs, Stef Blok, added to these reasons that action in this matter is especially not urgently necessary since the Commission took a next step in the infringement proceedings against Poland concerning the muzzle law.⁴⁷

Seeing the Commission's hesitance to properly act upon rule of law violations, the initiation of an Article 259 procedure serves as a good alternative for active Member States (and parliamentarians) to cooperate in order to counteract the current rule of law backsliding.

⁴⁵ <https://www.tweedekamer.nl/kamerstukken/detail?id=2020Z22968&did=2020D48543>

⁴⁶ Reactie op de motie van het lid Groothuizen c.s. over onderzoek om Polen voor het Europese Hof van Justitie te dagen (Kamerstuk 35570-VI-58),
<https://www.tweedekamer.nl/kamerstukken/detail?id=2021Z01938&did=2021D04274>

⁴⁷ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_224.