



## Contribution to the European Commission's 2024 Rule of Law report - The Netherlands

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

### Organisations names:

Netherlands Helsinki Committee (NHC)

Free Press Unlimited (FPU)

Transparency International Nederland (TI-NL)

Nederlands Juristen Comité voor de Mensenrechten (NJCM)

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

### Websites of the organisations:

[www.nhc.nl](http://www.nhc.nl)

[www.freepressunlimited.org](http://www.freepressunlimited.org)

[www.transparency.nl](http://www.transparency.nl)

[www.njcm.nl](http://www.njcm.nl)

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(Submitted by Netherlands Helsinki Committee on behalf of all the above-mentioned organisations)

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## General introduction to the Rule of Law Report:

On a general note, we would like to draw your attention to the results of the recent parliamentary elections. More specifically, the landslide victory of Geert Wilders' Party for Freedom. In the past, Geert Wilders and his party members introduced legislation that is incompatible with the rule of law and the international treaties that the Netherlands has committed to. While Wilders has indicated to have moderated his tone, we believe that there is still a chance that the liberal values which European Union is built upon could come under increasing pressure: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

## I. Justice System

### A. Independence

*Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)  
(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)*

At Hof Den Bosch, some judges in the criminal and tax law teams were not sworn in correctly because the correct text was not used when taking the oath of office. Instead of the form intended for judicial officers (judges and counsellors), the form for the swearing in of court officials (civil servants of the state) was used. Because of this imperfection, the Attorney General to the Supreme Court filed a cassation in the interest of the law. This raises the question of whether a judgment should be set aside if it was (partly) rendered by a counsel who did not take the oath or promise in accordance with the form for judicial officers. The Tax Chamber of the Supreme Court, referring to a concurrent judgment of the Criminal Chamber (ECLI:NL:HR:2022:1438), answered this question in the negative.

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

The Minister for Legal Protection has decided to extend the employability of judges and counsellors over 70 years of age for 3 years. To this end, he submitted a bill to the House of Representatives on May 16, 2023. It was accepted without an official vote on 12 October 2023 (as a so-called 'hamerstuk', a 'rubber-stamp agreement').<sup>1</sup> Currently, the status of the bill is 'awaiting a note in response to the report', and it remains unclear when this bill will be implemented.<sup>2</sup>

### *Allocation of cases in courts*

In January of 2020, the Judiciary published a Case Allocation Code, a principle-based instrument (not legislation). It aims to ensure that cases are allocated to a particular judge based on predetermined objective criteria. The code should make it verifiable why a certain judge handles a certain case. The Code incorporates the ECtHR rulings regarding clarity, transparency, judicial independence and impartiality of assigning court cases: important requirements for guaranteeing the right to a fair trial (article 6 ECHR). Article 3 of the Code dictates that the allocation of cases shall happen in an

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<sup>1</sup>[https://www.tweedekamer.nl/debat\\_en\\_vergadering/plenaire\\_vergaderingen/details/activiteit?id=2023A06651](https://www.tweedekamer.nl/debat_en_vergadering/plenaire_vergaderingen/details/activiteit?id=2023A06651)

<sup>2</sup><https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A36358>

objective manner that ensures the impartiality and independence of timely and competent justice. Article 4 adds that allocation is to be done randomly.

Courts have adopted case allocation rules for different sectors, including exceptions: cases that are not allocated randomly because their allocation requires tailor-made solutions. Examples include (potentially) high-profile cases, 'mega cases' and cases that transcend jurisdictions. The Explanatory Memorandum accompanying the code does give examples of cases that require a tailor-made approach, but also states that a precise description of such cases cannot be given. This makes the category of 'tailor-made cases' potentially limitless and indeterminate, and calls into question the value of the code in the context of randomisation and thus fair administration of justice. According to a legal analysis in the Dutch Lawyers Magazine (Nederlands Juristenblad), 'a first impression of the drafted case allocation schemes is not hopeful in this respect, as rather broad categories of tailor-made case allocation seem to be designated'. Pursuant to Article 21 of the Judicial Organization Act, the board of each court adopts case allocation regulations. These determine for each place of session the categories of cases for which hearings are held in that place of session. In doing so, the board of the court takes into account the importance of good accessibility to justice.

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

The national ombudsperson provides for a complaint system in concerning the acts of the Public prosecutor. For judges this is not possible. Also, the prosecutor (not personally) can as body of the State be civilly sued (this is not common).

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

Judges and prosecutor remunerations are limited as stipulated in Wet normering topinkomens (Law on standardization of high-level incomes). The judiciary and the prosecutor's office publish an annual report that provides insight into salaries. The most recent reports concern the year 2022. The maximums are adjusted annually by ministerial regulation (indexed). In 2024, the general maximum is €233,000 including taxed expense reimbursements and employer pension contribution. Per letter from 24th February 2023 the Minister voor Rechtsbescherming (Minister for Legal Protection) reacted on the report Research on Pay Disparities.

The Government report "Research on Pay Disparities" shows that female judges and prosecutors earn on average 3.5% less than their male colleagues at the start of their training. Upon appointment as a judge or prosecutor, this pay gap no longer exists. The study looked at all judges and prosecutors who started their training between 2016 and 2021. At that start, there appears to be an unadjusted difference of 7.7% on average in salary between men and women. That difference can be partly explained by factors other than gender, such as age, hours of work and experience.

When corrected for these factors, an average wage gap of 3.5% remains in favour of men at the start of training. When further disaggregated, it can be seen that there are differences in the pay gap at age groups. At higher age categories, a larger average pay difference is found in favour of the male employee, while at the lowest age categories (26 to 35) no significant difference is found. Once judges and officers are appointed, there is no difference in salary between men and women.

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

Currently, the bill "Adaptation of the Lawyers Act and some other laws in connection with the position of the legal profession in the legal order and revision of the supervision of lawyers (Law on the Position and Supervision of the Legal Profession)" is pending. According to the proposal, the advocate profession should come under the supervision of a single independent national regulator, the newly created Independent Supervisor of the Legal Profession (Onafhankelijke Toezichthouder Advocatuur, OTA).

The supervisor is to supervise and enforce all lawyers registered in the Netherlands, independent of both the government and the profession. The OTA will be a body of the public law professional organization the Netherlands Bar Association (NOvA) but will carry out its work as supervisor independently of the legal profession. The supervisor will have the possibility to file a disciplinary complaint with the disciplinary court or to impose a fine or order under penalty. Lawyers cannot invoke their duty of confidentiality towards the supervisor, as the supervisor will have a similar duty of confidentiality and right to privilege.

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

Court decisions on complex and sensitive matters impacting the policies of the State. Such as climate cases revolving around state liability following 'the Uganda-case'. Critics argued that judges venture into the realm of politics. Other examples are: proceedings of "Vluchtelingenwerk Nederland" seeking improvement of the quality of the reception of asylum seekers, rulings of Administrative Law Division of the Council of State on the Nitrogen Action Programme and proceedings about COVID-19 measures. In February 2023, a parliamentary majority [agreed](#) to a [motion](#) to impose further representativeness requirements on interest groups representing general interests in lawsuits against the State.

In April, the minister for legal protection wrote a letter<sup>3</sup> to the second chamber about the motion, in which he provides an explanation regarding the implementation of the motion and emphasizes the importance of access to justice for interest groups undertaking collective actions. He also discussed the amendment of the Mass Damages in Class Actions Act (WAMCA), where the requirements for interest groups have been tightened, including the representativeness requirement. The letter mentions that the WAMCA will undergo an evaluation in 2025, with representativeness being a part of it. Additionally, reference is made to the annual meeting involving relevant parties to monitor the functioning of the new regulation.

In May, the commission for Justice and Safety submitted a report of a written consultation regarding the response to the amended motion from Member Stoffer.<sup>4</sup> Since then, there have been no further documents submitted or mentions of the motion made. It is now to the government still to be formed to continue with the motion.

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<sup>3</sup> (<https://open.overheid.nl/documenten/ronl-5a25c7f357c15d7e273284ae0ff94758ffa3b611/pdf>)

<sup>4</sup> <https://www.tweedekamer.nl/kamerstukken/detail?id=2023D22430&did=2023D22430>

## B. Quality of justice

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

The administration is considering measures aimed at removing the financial incentives for no cure no pay companies to initiate proceedings and reducing the litigation costs and intangible damages payable to them. The no cure no pay companies depend on the litigation fees paid and compensation for immaterial damages when the handling time of legal proceedings is exceeded. This is a modus operandi and revenue model that encourages as many eligible litigation acts as possible. On March 23, 2023, the State Secretary for Finance - Taxation and Revenue sent a plan of action to the House of Representatives containing six measures to limit aforementioned practices.

The Minister for Legal Protection by letter dated 27 June 27 2023 set out the measures to improve access to justice. According to the Minister, access to justice means:

(i) having access to reliable information about rights and obligations;

The Minister says he wants to contribute to objective information about citizens' rights and obligations by ensuring better information about different ways of resolving disputes. That is somewhat different from information about rights and obligations, the pillar under which the Minister places this measure. This also shows that the Minister is expressly heading for conflict resolution, not by the courts.

(ii) being able to obtain advice and support in exercising rights

One of the measures referred to is De stelselvernieuwing rechtsbijstand (The Legal Aid System Renewal). Other measures include the encouragement of mutual agreement by increasing a starting fee for mediation from the judiciary and an exploration of Online Dispute Resolution (ODR). The Minister is thus explicitly setting his sights on encouraging parties to find agreement.

(iii) resolving disputes; being able to obtain a decision from a neutral body.

The Minister mentions a measure the provision of additional funding for the Foundation for Consumer Disputes Committees. Therefore, he provides additional money for out-of-court dispute resolution. Other measures mentioned concern the judiciary. For example, he wants to reduce court fees. The reduction of court fees can therefore contribute to external accessibility. The Minister has now proposed a 25% reduction for claim under €100,000.

### *Legal aid system*

On 20 April 2023 the Minister for Justice and Security sent a letter to Parliament detailing his plans for the legal aid system, which entail amongst others the raising of tariffs and the review of the amount of hours to be compensated per case.<sup>5</sup>

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<sup>5</sup> Minister van Veiligheid en Justitie, Kamerbrief - Plan van aanpak sociale advocatuur, 20 April 2023, <https://open.overheid.nl/documenten/ronl-88a9aa33359b661ea90415ef0e230dd84d6db3c3/pdf>.

As it stands, the plans prove to be insufficient to cover inflation. As stated by the Association of Legal aid attorneys (Vereniging Sociale Advocatuur Nederland - VSAN), the inflation since the year 2011 is 33%, whereas the tariffs have only be raised by 6,6%.<sup>6</sup> The association calls on the Government to compensate the remaining loss of 25%.

On 8 November 2023 the Minister sent another letter to parliament detailing certain aspects of financial compensation of legal aid professionals. In this letter the Minister said he would set up a committee that will evaluate the average time spent on a case by legal aid professionals in 2022 and 2023 with the aim of possibly amending the system as of 1 January 2025. While we welcome this development, we deem it unnecessary to create a separate committee. The necessary information may be more easily and efficiently obtained from the Council for legal aid (Raad voor de Rechtsbijstand) and the Dutch Bar Association (Nederlandse Orde van Advocaten).

Furthermore, also in 2023 the number of legal aid professionals has slightly decreased. In November and December 2023 4380 persons were registered as active legal aid attorneys, active meaning that the attorney has handled at least one legal aid case that month. Also the training of young legal aid attorneys is lagging behind. The government has started subsidising the training of such attorneys, but the subsidy, coupled with the non-indexed tariffs make it difficult for social law firms to train young attorneys. These factors also make the profession of legal aid attorneys very unattractive for young legal professionals.

Hence, we urge the government to provide full compensation of inflation and a fair compensation of the time spent on each case. Moreover, we call upon the government to closely monitor the training of young legal aid attorneys and to increase the subsidies if needed. Whereas we welcome initiatives by commercial law firms to assist legal aid firms, like the VSAN we are opposed to the suggestion by the government that commercial law firms should be obliged to financially support legal aid firms. The duty and obligation to maintain a functioning legal aid system rests upon the government, who cannot delegate or transfer this duty upon private parties such as other (commercial) law firms.

#### Administrative

As of 4 December 2023, digital litigation is possible on appeal and appeal for all tax cases. This applies to citizens and to lawyers and other professionals. The Immigration and Naturalization Service (IND) digitally exchanges information with the Judiciary in immigration cases.

In regular immigration cases, lawyers can choose whether to litigate digitally or on paper. Lawyers have been required to litigate digitally in asylum and detention cases since 2017. As from 4 December 2023 the Courts facilitate Digital proceedings.

#### Civil

Since 27 November 2023 one can litigate digitally in civil juvenile law (youth protection cases) and in custody and visitation cases at the District Court of Gelderland. Lawyers have been able to litigate digitally in summary proceedings in commercial and family cases at the District Court of Rotterdam since October 2023. After a successful pilot, the other courts will also start digital access for this case flow. Lawyers can communicate digitally in compulsory care cases at all courts since June 2022. Since April 2022, lawyers at the District Court of Midden-Nederland (location Utrecht) and the District Court of Overijssel (location Almelo) can submit a joint divorce petition digitally. Since May 2023, this has also been possible at the Amsterdam District Court. And since November 2023 at the

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<sup>6</sup> VSAN, Brief aan de Voorzitter van de Tweede Kamer der Staten-Generaal, 21 April 2023, <https://www.vsanadvocaten.nl/nieuws/2023/reactie-kamerbrief-plan-van-aanpak-sociale-advocatuur..>

district courts of Rotterdam, Limburg and Midden-Nederland (location Lelystad). The Child Protection Council and certified institutions exchange digital information with the Judiciary in cases concerning Supervision and Removal from Home.

#### Supreme Court

Digital proceedings (via Webportal) is possible in criminal, administrative and civil proceedings. In principle digital proceedings is mandatory at the Supreme Court

#### Publishing more judicial decisions.

According to the annual report of the judiciary 2022 (the latest annual report) the number of published judicial decision has increased from 45,100 to 49,800. The upward trend in terms of the number of judgments published on rechtspraak.nl continues. At the end of 2021, the More and Responsible Publishing program was launched. The goal of this program is to publish the vast majority of all court decisions. The programme should gradually ensure that publication of judgments on rechtspraak.nl will be the starting point.

### C. Efficiency of the justice system

#### Freedom-restricting measures in general

In general, taking freedom-restricted measures is a violation of fundamental rights, such as Article 5 and Article 8 of the European Convention on Human Rights, Article 3, Article 19 and Article 37 of the Convention on the Rights of the Child. Also, Article 15 of the Dutch Constitution stipulates that no one may be deprived of his liberty unless it is permitted by law. This means that freedom-restricted measures in youth care can only be deployed on a legal basis, such as the Youth Act,<sup>7</sup> by providers of closed youth care for children and young people, in case there has been a youth care authorization issued by the juvenile court, and the measure is included in a treatment plan.

From a study by Defence for Children *Uithuisgeplaatst, en dan?* it appears that freedom-restricting measures are applied in closed and open youth care in the Netherlands. The same research states that the rules and definitions regarding the application of freedom-restricted measures in institutions for youth care or psychiatric care, are unclear, which could be problematic since a stay in an institution for children is drastic enough. Freedom-restricted measures should be therefore avoided as much as possible. This research also shows that in practice it is not sufficiently clear what freedom-restricted measures are and when these measures are pedagogically permissible.<sup>8</sup> Defence for Children suggested therefore that a uniform definition of freedom-restricted measures is needed to be included in the legislation or regulations.<sup>9</sup> Hereafter, both the open as well as the closed residential youth care in the Netherlands will be discussed briefly.

#### Freedom-restricting measures in open residential youth care

The Inspectorate Health Care and Youth, and the AKJ held conversations with divers' children, young people, and professionals during their visits to multiple open youth care providers where these children and young people regularly face freedom-restricted measures.<sup>10</sup> It seemed to be that these

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<sup>7</sup> See Article 6.1.2 sub 2, sub 3, sub 4, sub 5, sub 6, sub 7 and sub 8 of the Juvenile law

<sup>8</sup> M. Berger, J. de Groot van Embden and E. Huls, 'Uithuisgeplaatst. En dan? Een onderzoek naar de toepassing van vrijheidsbeperkende maatregelen in zorginstellingen voor kinderen', Defence for Children 2019, p. 5

<sup>9</sup> Ibid., p. 72

<sup>10</sup> Inspectie Gezondheidszorg en Jeugd, ministerie van Volksgezondheid, Welzijn en Sport, 'Vrijheidsbeperkende maatregelen in open residentiele jeugdhulp', *Rijksoverheid.nl* May 2023 [www.rijksoverheid.nl](https://www.rijksoverheid.nl) (search on:

measures are sometimes taken, because it is not clear for youth care providers what the measure contains, while there is no appropriate help available. In that case, a freedom-restricted measure seems to be the solution.

Besides this, there seems to be a group of children and young people for whom their freedom is occasionally or temporarily restricted due to auxiliary reasons (for example for their own safety). All these restrictions are usually happening with no legal basis. That is why the Inspectorate Health Care and Youth and AKJ are pointing out that legal changes are needed to make occasional restrictions on freedom of these children possible, if this is in the best interests of that child or young people.<sup>11</sup>

The Council for the Administration of Criminal Justice and Protection of Youth states in its recent advice to the Dutch government that freedom restricted measures cannot be used in open youth institutions except in cases of emergency. The RSJ notices that the restriction of freedom of young people is regulated differently in different laws: Chapter 6 of the Youth Act, the Compulsory Mental Health Care Act and the Care and Coercion Act.<sup>12</sup>

Regarding the long term the RSJ advises to combine all legislation for care and support for children and young people in residential youth care into one law and to strengthen their legal position. When a child is placed in an institution where deprivation of liberty is applied a court order is needed.

#### Freedom-restricting measures in closed residential youth care

Research by The Forgotten Child from 2022 shows that many children are isolated. For example, 78% of the young people that were surveyed, spent time in solitary confinement. It is unknown what percentage was included in the assistance plan. Of this 78%, 38% were taken in an isolation cell daily or weekly. The reasons for isolation were mental problems such as panic attacks, self-harm, or suicidal thoughts. It showed that the isolation was counterproductive because these young people were alone with their thoughts. In other situations, young people were taken to an isolation cell as punishment if they had said something wrong, were aggressive or didn't cooperate with their supervisors. For young people who were isolated daily or weekly, the report didn't mention any reasons other than the above. There were also cases where young people were isolated upon arrival in a closed institution. In addition, 89% of the children were sometimes locked in their own room. Of these children, 68% were locked in their room on a daily or weekly basis. This happened as punishment, for protection, or when care providers had to perform administrative work.<sup>13</sup>

The Dutch government aims with a legislative proposal to improve the legal position of children and young people in closed youth care. It also prevents the restriction of freedom of children and young children as much as possible by having a policy plan drawn up by your care provider.<sup>14</sup> According to this legislative proposal,<sup>15</sup> a freedom-restricted measure may only be imposed if it is aimed at guaranteeing the safety of children, young people, or others, or at achieving the goals included in the care plan, or at averting danger to the health of children, young people or others.<sup>16</sup>

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vrijheidsbeperkende maatregelen jeugd ggz), p. 1

<sup>11</sup> Ibid

<sup>12</sup> 'RSJ: Geen vrijheidsbeperking in open residentiele jeugdhulp', *Nji.nl* last seen 15th of December 2023, [www.nji.nl](http://www.nji.nl) (search on: vrijheidsbeperking jeugdhulp)

<sup>13</sup> Het Vergeten Kind, *'Ik ben het niet waard, dus droppen ze mij maar hier. Een onderzoek naar de ervaringen van jongeren in en na de gesloten jeugdzorg'*, 2022, specifically p. 12.

<sup>14</sup> Article 6.3.1.3 of the legislative proposal, *Kamerstukken II 2021/22, 35942, nr. 3*

<sup>15</sup> This will enter in force on the 1<sup>st</sup> of January 2024, see *Wet rechtspositie gesloten jeugdhulp van 17 mei 2023 (Stb. 2023, 182)*

<sup>16</sup> See footnote 12.



## II. Anti-Corruption Framework

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

GRECO has published the second compliance report<sup>17</sup> for the Netherlands regarding the recommendations made in its fifth round of evaluation<sup>18</sup>. We regard recommendations four (iv) and six (vi) as the most noteworthy recommendations that have not been fully implemented.

Firstly, GRECO states that the government has to take further steps in regulating the contact between ministers/state secretaries (henceforth: public officials) and lobbyists. GRECO points out that regulating lobbying activities is still a key point of concern for the Netherlands, where not enough action has been taken.<sup>19</sup> In line with GRECO, we believe that the government should take concrete steps towards increased transparency by introducing a legally binding lobbying register. Research by Transparency International shows that lobby transparency is still inadequate and lags behind other Western EU states.<sup>20</sup> A majority of parliamentarians has already supported the idea of a lobby register<sup>21</sup>. The issue was also mentioned on several occasions during the election campaign and gained increasing traction in the public debate.<sup>22</sup> Furthermore, the legislative footprint should be enshrined in law to make it a more effective tool that gives insight into the input from third parties that underlie decisions made in legislation. The existing legislation, publishing the agendas of public officials and the lobbying paragraph, is non-binding and inadequately implemented by the government.<sup>23</sup> The government has promised to improve the existing rules. However, we believe that minor adjustments will be insufficient to address the concerns about opaque interest representation in the Netherlands.

Secondly, GRECO states that more has to be done when it comes to post-term employment restriction for public officials. Following GRECO's conclusions, our recommendation is that the body of oversight for post-term employment rules (*Advisory board on the Legal status of public officials*) gains the ability to independently instate sanctions for public officials who neglect a negative advice for post-term employment in the private sector after the end of their term. As they are no longer in function, this recommendation fits within the boundaries for sanctioning public officials that the Council of State has set with regard to the Constitution. This step will further aid in the successful implementation of GRECO's recommendation. Our reservations about the current commitment of the government on these points can be found under Section B.

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

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<sup>17</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680acf3dc>

<sup>18</sup> <https://www.coe.int/en/web/greco/evaluations/netherlands>

<sup>19</sup> <https://nos.nl/l/2497749>

<sup>20</sup> <https://www.transparency.nl/wp-content/uploads/2023/02/Lifting-the-Lid-on-Lobbying-Formatted-31-01-2023.pdf> and see <https://www.oecd.org/corruption/ethics/lobbying-21-century.htm>

<sup>21</sup> <https://www.transparency.nl/nieuws/2021/11/goed-nieuws-tweede-kamer-stemt-in-met-lobbyregister/>

<sup>22</sup> <https://nos.nl/l/2497749>

<sup>23</sup> <https://openstate.eu/nl/2023/11/onderzoek-open-state-wijst-uit-agendas-van-ministers-zijn-minder-transparant-geworden/>

In the field of corruption, the Commission recommended the Netherlands should ‘*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.*’ The proposed revolving door legislation (*Wet regels gewezen bewindspersonen*), that is still up for consultation at the Council of State includes non-binding cooling-off rules. The proposal prescribes that ministers and state secretaries request advice on the admissibility of a new function in the private sector. The advice is provided by the Advisory board on the Legal status of public officials (*Commissie Rechtsregels politieke ambtsdragers, CPRA*). This committee bases its advice on a questionnaire to be filled out by a public official in advance. If the public official accepts their new position, the advice is publicly published online. As stated above, the body of oversight is unable to sanction public officials that do not adhere to the advice. The government argues that naming and shaming is seen as a sufficient deterrent.

Furthermore, the Commission recommended that the Netherlands should ‘*establish stricter transparency rules on lobbying for members of the Government and Parliament.*’ Since then, the government has commissioned a research report investigating the possibility of a lobbying register.<sup>24</sup> Based on the report the government concluded that, instead of introducing a lobbying register, it is better to focus on further improving the publication of public officials’ agenda’s and including a lobbying paragraph in each bill. The government argues that they are not able to effectively define a lobbyist and adds that a mandatory lobbying register would lead to an unwanted restriction of access for normal citizens to public officials. Again, our reservations about these decisions can be reviewed under Section B.

Interestingly, as noted above, both of these recommendations from the European Commission were flagged in GRECO’s second compliance report as key points of concern that have not yet been addressed sufficiently by the Dutch government.

## B. Prevention

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

As mentioned above, the government provided a proposal for the cooling-off period (*Wet regels gewezen bewindspersonen*)<sup>25</sup>. The bill is still up for consultation at the Council of State. We are concerned that the government does not follow international best-practices. The proposal should include a mandatory cooling-off period with adequate sanctions to deter undue influence and prevent conflict of interest through the revolving door between the public and private sector. One of our primary concerns is that the advice on post-term employment has a non-binding character. The government argues that the mechanism of ‘*naming and shaming*’ provides enough of a deterrent for public officials to not neglect the advice. However, such a system relies too heavily on individual responsibility and out-sources sanctioning to the public. They government hopes that the public will provide pressure to revisit a negative outcome. We argue that mandatory rules would set a clear standard and reduce ambiguity. In addition, the body of oversight does not have the remit to conduct an independent review, instead it depends on the information provided by the public

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<sup>24</sup> <https://www.rijksoverheid.nl/documenten/rapporten/2022/12/01/afwegingskader-legitieme-belangenvertegenwoordiging>

<sup>25</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/02/20/concept-wet-regels-gewezen-bewindspersonen>

officials. This one-sided information position should be addressed by giving the advisory board sufficient investigative capacities. GRECO's second compliance report has underlined that the proposed legislation fails to meet their requests and is not up to par with international best practices.

The *Wet gewezen bewindspersonen* contains an exemption clause that enables ministers to provide lenience with regards to the lobby prohibition (het *lobbyverbod*) and the revolving door rules (*draaideur*). However, if the minister deems it necessary to provide this leniency, we think that the advice from Commissie Rechtsregels Politieke Ambtsdragers (CPRA) should be binding. It should not be possible for a minister to make this decision unilaterally. Currently, involving the CPRA is optional.

Furthermore, for the second time, the body of oversight for the code of conduct of House of Representatives (*College Onderzoek Integriteit*) advised the House of Representatives to vote in favour of a seven-day suspension of an MP for breaching the rules.<sup>26</sup> The house voted in favour of a breach on the 19<sup>th</sup> of December.<sup>27</sup> Once more, the advice concerns a breach of failing to provide ancillary positions and additional income, by the same MP (Thierry Baudet) who got sanctioned last year. However, this time the advice also includes the suspension of two other MPs from the same party. We are concerned about this development as the previous punishment clearly did not lead to a change in the MPs' behaviour. We continue recommending that the government equip the body of oversight with the ability to independently institute investigations and sanctions. The current process requires House of Representatives to vote on the advice for sanctioning. This method of sanctioning is political in nature, which undermines the legitimacy of the results. If the oversight body would be able to independently sanction breaches, the integrity of the process gets protected from the allegation that the sanctions are politically motivated. On top of this, an increase in the penalty for neglecting the political integrity rules seems necessary, as the current regime is not sufficiently deterring violations.

We also emphasise the need for additional rules in Senate (Eerste Kamer). Currently, there is no adequate sanctioning mechanism for integrity violations in the Senate. Based on the code of conduct, the president and vice presidents (Huishoudelijke Commissie) of the Senate play a supporting role in the assessment of breaches of the code of conduct and supports Senators with the declarations on the Senate website. There is also a confidant people can speak to. However, we would recommend instituting an independent oversight body that is at an appropriate distance from day-to-day politics, that can administer sanctions and can investigate breaches provided by citizens.

There are no still no provisions on trading in influence in the Netherlands' legal framework. The legal framework does not make any specific mention that bans illicit enrichment.

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

As noted above, the government focuses on improving the publication of public officials' agendas and including a lobbying paragraph in each bill.<sup>28</sup> In June 2023 a stricter implementing directive was

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<sup>26</sup> <https://nos.nl/artikel/2496995-integriteitscommissie-kamer-wil-schorsing-drie-kamerleden-forum-voor-democratie>

<sup>27</sup> <https://www.nu.nl/politiek/6294750/volledige-kamerfractie-fvd-geschorst-vanwege-niet-melden-nevenfuncties.html>

<sup>28</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/07/07/kamerbrief-verbetering-openbare-agenda-s-bewindspersonen-en-paragrafen-in-memories-van-toelichting>

introduced to aid in improving the registration of the agendas of public officials. However, research from NGO *Open State Foundation* has shown that the transparency of public officials' agendas has deteriorated over the past year.<sup>29</sup> Only 12% of all registered meetings have been published with complete information. Furthermore, a large discrepancy between the number of registered meetings between the public officials gives rise to the question of whether all meetings even get registered in the first place. With regards to the legislative footprint (*lobbyparagraaf* in Dutch), no systematic review has been undertaken (it has been announced) and we are yet to see improvement. In its current form it is not compatible with GRECO recommendations and insufficient to detect undue influence via lobbying.

Amendments of the Political Finance Act (*Wet Financiering politieke partijen or Wfpp*) have led to the prohibition of financing or financial support for political parties by foreign entities, Dutch citizens living abroad are excluded from these measures. Furthermore, a cap on donations was introduced at €100.000 EUR from a single donator per year, and donations and gifts surpassing €10.000 EUR from a single donator in one year have to be published within three days. The new Law on Political Parties (*Wet op politieke partijen or Wpp*), which is currently under consultation, bundles current provisions and adds new legislation. The law introduces small subsidies for local level political parties and local departments of political parties have to comply with the transparency rules that apply at the national level. The new law further provides for an independent authority of oversight that will be responsible for enforcement of the rules and payment of subsidies. We consider the steps towards stricter legislation and independent authority as steps in the right direction. However, we emphasize the need to involve civil society stakeholders in the policy making process and want to stress the need to make financial information publicly accessible in an easy-to-read format or dedicated website. Centralized and easy-to-access information will aid civil society *and* the authority of oversight in their functions of supervision and control. Effective oversight with the ability to examine political financing is just as important as implementing stricter regulation.<sup>30</sup>

The Netherlands is one of the worst performing countries in the EU with regards to beneficial ownership transparency. After the ruling by the ECJ, the Dutch government decided to stop the provision of information from the beneficial ownership register with immediate effect and announced it wants to definitively close it down for the public.<sup>31</sup> Currently, only a few parties, such as the investigative services and the tax authorities, can access the Dutch BO register. Following the ruling, only banks, notaries, certain authorities, journalists and civil society with a legitimate interest would be able to access the register under certain conditions. A recent study by Transparency International shows that one year after the ECJ ruling the Netherlands, along with Cyprus, Malta and Greece, has consistently denied access to the register, even if journalists and civil society demonstrate their legitimate interest.<sup>32</sup> A concern that is further amplified by the fact that the Netherlands holds the 12<sup>th</sup> place on the Financial Secrecy Index scoring extremely high on the scope the legal- and judicial system allow for financial secrecy.<sup>33</sup> In contrast, many other European countries still have a publicly accessible BO register or have sound provisions to facilitate access for journalists and civil society with a legitimate interest. We are concerned about this development, as

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<sup>29</sup> <https://openstate.eu/nl/2023/11/onderzoek-open-state-wijst-uit-agendas-van-ministers-zijn-minder-transparant-geworden/>

<sup>30</sup> <https://www.nporadio1.nl/fragmenten/geld-of-je-leven/57ad78da-eb89-403a-aa27-d0f325be30e4/2023-10-24-hoe-komen-partijen-aan-hun-campagnegeld>

<sup>31</sup> <https://nos.nl/artikel/2498192-kabinet-wil-toegang-tot-anti-witwasregister-definitief-beperken>

<sup>32</sup> [https://www.transparency.org/en/blog/eu-court-ruling-on-beneficial-ownership-registers-legitimate-access?utm\\_source=twitter&utm\\_medium=social&utm\\_campaign=dirtymoney](https://www.transparency.org/en/blog/eu-court-ruling-on-beneficial-ownership-registers-legitimate-access?utm_source=twitter&utm_medium=social&utm_campaign=dirtymoney)

<sup>33</sup> <https://fsi.taxjustice.net/>

beneficial ownership data allows journalists and civil society to detect conflicts of interest, trace hidden assets, as well as serving as a tool in sanctioning Russian elites. The access to BO register for journalists and civil society in the Netherlands, and the rest of Europe, is therefore of indispensable value in the battle against corruption.

*Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)*

See the measures on the cooling-off period in the section above. In addition, the government published a handbook that promotes the integrity of public officials. The policy document is a bundling of existing rules, no new rules have been added. The same has been done for public officials in the lower levels of government (*province, municipality*). In addition, the code of conduct for public officials will be discussed yearly in the council of ministers, which will be preceded by integrity training. Furthermore, a confidant regarding potential conflicts of interest for public officials has been introduced. In doing so, the government has complied with GRECO's recommendation for the provision of an ad hoc reporting mechanism dealing with situations of conflict of interest that have arisen.

*Measures in place to ensure whistleblower protection and encourage reporting of corruption*

In the Netherlands, the Whistleblower Authority (Huis voor Klokkeluiders) is responsible for the practical implementation of the law protecting whistleblowers, currently the Whistleblower Protection Act. This law came into effect in February 2023. It shifts the burden of proof to the employer and provides for the protection of a wider range of reporting entities. Furthermore, it makes it possible to directly report externally, instead of first having to report internally. Additionally, it provides an extension of the ban on disadvantage and provides stricter requirements for the internal reporting mechanism. However, research by Transparency International shows that the Netherlands is one of the 19 countries whose legislation is not up to par with the EU Whistleblower Protection Directive (WPD). We therefore strongly recommend the government to revise the legislation and amend it in line with the WPD. For the Netherlands this means strengthening further support for whistleblowers on a legal and psychosocial level, as well as including full compensation for the damages incurred on the whistleblower in the process and providing optimal and effective protection. Additionally, employers that retaliate whistleblowers, who do not have or have an incomplete reporting mechanism, do not comply with or violate the law or breach the confidentiality of the whistleblower should be sanctioned. When revising the legislation, the government should steer away from, once again, deciding on a minimal interpretation of the WPD, and strive for full implementation of the directive and compliance with international best practices. This calls for an urgent and transparent legislative process that timely includes relevant stakeholders and civil society.

Furthermore, we'd like to address the fraud with EU funds by a foundation linked to the University Medical Hospital Leiden (LUMC). The Board of Directors of the hospital knew about the fraudulent practices of the foundation as early as 2018 after an internal investigation had concluded that the foundation knowingly committed fraud for financial gain.<sup>34</sup> Additionally, a PhD student, whose contract got affected by the scheme, blew the whistle on the fraudulent practices in 2022 and got no support from the responsible department. It was only after she reported it to the European Research Executive Agency (REA) in the same year that the fraudulent practices were uncovered. The case underlines the need for the sound implementation of internal whistleblowing mechanisms. Under the new Whistleblower Protection Act, procedures for internal reporting have been tightened. Its

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<sup>34</sup> <https://www.omroepwest.nl/nieuws/4775713/onderzoek-top-lumc-wist-al-jaren-van-fraude-maar-deed-niks>

effectiveness, however, falls or stands with the compliance of organisations. The ability that the Whistleblower Authority has under the new legislation to instate administrative fines when the Whistleblower Protection Act is breached should function as a deterrent *and* ex post punishment. All in all, this case should further ignite the governments' urgency for getting its whistleblower legislation up to par with the EU WPD.

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

The Netherlands does not publish sufficient data on public procurement. An analysis by Follow the Money shows that more than 60% of procurement contracts are not published online.<sup>35</sup> This makes the Netherlands the worst performing country in Europe. The Netherlands only publishes contracts above the European threshold of 140.000 EUR, which leads to a low publication rate, less than 90% of the total amount of money spent on procurement is published online. Whereas other European countries have made efforts to improve procurement systems and the subsequent quality of the published data, the Netherlands has made no such efforts. This leads to inadequate reporting and substantial gaps in the visibility of public procurement contracts. This is especially striking given that during the pandemic a contract had been awarded to a company providing faulty PPE masks. The Dutch government should improve transparency in public procurement contracts like many of its European peers have done. A recent example is the work done by the Ukrainian government, that has created an interactive platform where insight is given into the details of all public procurement contracts.<sup>36</sup> This underlines that public procurement doesn't have to be opaque and we strongly recommend that the government sets up *or* supports a similar transparency mechanism in the Netherlands.

Furthermore, in the Council of Ministers, the Netherlands should be a champion of the anti-corruption package proposed by the Commission. Modernising the existing EU anti-corruption legal framework and enhancing the sanctioning toolbox under the CFSP are key steps in the joint fight against corruption. At the same time, to effectively fight corruption, the Netherlands *has* to facilitate access for journalists and civil society with a legitimate interest to the UBO-register, as mentioned above. Additionally, the current law for the prevention of money laundering and terrorism financing (Wwft) provides that institutions and professional groups that deal with cash flows, or the purchase and sale of goods should monitor clients and report suspicious transactions. The new action plan for money laundering was set to further lay down a ban on cash payment for goods surpassing €3.000 EUR, improve the effectiveness of signalling suspicious transactions by improving the information exchange between banks and monitoring institutions. However, after the current cabinet resigned, these plans have been marked as controversial, which means no action can be taken until a new cabinet has taken office. We strongly recommend that the baton in this legislative process is taken up as soon as possible. Going forward, the government should take up more responsibility in a coordinating role in the battle against money laundering, instead of a *laissez-faire* approach.

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<sup>35</sup> <https://www.ftm.nl/artikelen/nederland-meest-intransparante-eu-land-bij-openbare-aanbestedingen>

<sup>36</sup> <https://dream.gov.ua/en>

### C. Repressive Measures

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

Transparency International finds in its 2022 annual report “Exporting Corruption” that the Netherlands still falls in the category of limited enforcement.<sup>37</sup> In the period 2018-2021, the Netherlands opened 11 corruption investigations, commenced two cases and concluded three cases with sanctions. The main weaknesses are the tendency to enter into settlements that are opaque; a failure to increase prosecution of individuals with responsibility for foreign bribery; the decentralised organisation of enforcement and the inadequacy of complaints mechanisms and whistleblower protection. There are no published, updated statistics on foreign bribery enforcement. An annual enforcement report contains overall developments, statistics and data but does not have separate foreign bribery enforcement data. Our recommendations are to publish clear statistics about foreign bribery cases; avoid settlements to allow for greater transparency in the enforcement of foreign bribery and increase overall awareness and confidence in enforcement; further increase the protection of whistleblowers; and increase transparency and involvement of stakeholders by publishing information about ongoing investigations and decisions/settlements.

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<sup>37</sup> [https://images.transparencycdn.org/images/2022\\_Report-Full\\_Exporting-Corruption\\_EN.pdf](https://images.transparencycdn.org/images/2022_Report-Full_Exporting-Corruption_EN.pdf)

### III. Media Pluralism and Freedom

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

Despite some concerns regarding media pluralism and media freedom, that we have shared in our earlier contributions, no particular recommendations were made to the Netherlands in the 2023 Rule of Law report regarding media pluralism and media freedom.

#### A. Media authorities and bodies

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

The main self-regulatory body for the media is the Council for Journalism (Raad voor de Journalistiek). This is an independent body, where interested parties can submit complaints about journalistic activities. The Council assesses whether a journalist has done his work carefully and whether a publication has exceeded the boundaries of journalistic ethics. The Council can only provide an opinion, they do not have the ability to impose rectifications or sanctions. A number of media are no longer recognising the Council, they argue that the Council is unequipped to assess complex investigative journalism. Furthermore, the Council has received criticism for 'juridification'. Several media argue that the Council is abused by some complainants as a 'gateway' for a real trial. A hearing at the Council provides the complainant with a lot of information that can be useful later in a real trial and a 'victory' at the Council can be used by the complainant in court as an argument. Following these criticisms, the Council announced several reforms in November 2023 to address the concerns voiced. In December 2023, broadcaster BNNVARA (who suspended collaboration with the Council 3 years ago), announced they would be recognising the Council again.

On the digital front, an important development took place in August 2023 when the Digital Services Act (DSA) entered into force in all EU member states for the largest digital services, including platforms such as Facebook/Meta, Twitter/X, Instagram, TikTok, LinkedIn and Youtube. The DSA is an important step forward in protecting press freedom and the safety of journalists in the online space. On the 17th of February 2024, all EU Member States need to have appointed a Digital Services Coordinator for compliance supervision. In the Netherlands, this will be under the Dutch Consumers & Market Authority (Autoriteit Consument & Markt) who will monitor the compliance of platforms established in the Netherlands. A small part of the supervision regarding personalized advertisements will be under the Dutch Data Protection Authority (Autoriteit Persoonsgegevens).

Aside from the formal supervision, a public-private partnership was set up called The Online Content Moderation Project ([PrOCOM](#)) to ensure citizens, the government and the internet sector can more easily act against online content that is illegal, causes damage, or has undesirable social impact. The majority of very large platforms (including Meta, Google/Youtube, Microsoft, and TikTok) are part of this partnership. X has not joined the partnership, which is concerning as there is significant illegal content on X. Furthermore, in cases where it impacts journalists, it has been cited that it is impossible to get into contact with X's content moderation team.

In line with the pro-active action against illegal content via PrOCOM, we would welcome similar pro-activeness for harmful content. Most online violence has not (yet) been defined as illegal in national legislation, even though it is incredibly harmful and can result in offline attacks and self-censorship. Additional measures are therefore needed to fight against the rise of harmful online content.



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

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

State advertisements are subject to specific regulations to ensure they are transparent, fair and not misleading. In the Netherlands, guidelines have been drawn up to regulate government communications. The Dutch Media Authority and the Advertising Code Committee (Reclame Code Commissie) supervise and enforce these guidelines.

Every year, the Dutch Media Authority (Commissariaat voor de Media) allocates the amount of airtime to political parties on radio and television. When there are elections for the House of Representatives, which was the case in November 2023, the Dutch Media Authority allocates election broadcasting time to political parties to ensure the airtime is distributed equally and balanced. The available times are allocated through a lottery system by an independent notary.

However, in the running up to the November 2023 elections, there were concerns with political advertisements on social media through microtargeting. The Dutch Data Protection Authority argued that the effects of this could lead to unfair election results. It is for this reason that the Ministry of Interior has been working on a law that would restrict micro-targeting for political parties. The Political Parties Act (WPP) will include a special chapter on transparency rules for political advertisements and microtargeting.

*Safeguards against state / political interference, in particular:*

- *safeguards to ensure editorial independence of media (private and public)*
- *specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions*
- *information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration, and corporate governance*

The Dutch Media Authority (Commissariaat voor de Media) monitors compliance with the Dutch Media Law to ensure editorial independence and issues licenses to broadcasters. By law, the Dutch Foundation for Public Broadcasting (NPO) is not mandated to concern itself with media content as public broadcasters have editorial autonomy. NPO does address compliance with (among other things) the journalistic quality requirements. As an example, in 2022, financial sanctions were imposed twice against broadcaster Ongehoord Nederland! (ON!) by NPO for violating the journalistic ethics code and for a lack of collaboration within the public broadcasting system. Following research into ON! by the NPO Ombudsperson, the NPO requested the Ministry to retract the broadcasting license of ON!, which the state secretary of Culture & Media declined as she lacked legal grounds for such a decision. This was confirmed by her successor who stated that the ethical code of the NPO is not a compulsory requirement. The secretary considers ways to include compulsory signatory to the ethical code in the future. This demonstrates that there is a gap in the validating and sanctioning of ethical standards at the moment at the NPO.

In 2022, the Dutch Media Authority announced upcoming research into the processes at national public broadcasters that must guarantee the reliability of journalistic productions. This would be

combined with a research into editorial independence. In a recently published research<sup>38</sup>, the Media Authority has made an inventory outlining the ways in which broadcasters guarantee the reliability of their productions. In the research, the Media Authority refrains from judging the actual reliability of the media offering, as this falls within the responsibility of the broadcasters. The study also does not assess the effectiveness of current safeguards. The results of the research have been discussed with the Dutch Foundation for Public Broadcasting, the College of Broadcasters (het College van Omroepen) and the editors-in-chief of all broadcasters. In addition, another research was conducted into conflict of interest risks for the media<sup>39</sup>. The Media Authority highlighted that while there are some measures to avoid conflict of interest, there is room for improvement. A set of 'good practices' was identified and developed into a handout for media organisations.<sup>40</sup>

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

On a yearly basis, the Dutch Media Authority publishes a Media Monitor. The 2023 report signals that there is an increasing market share with fewer media companies. Furthermore, the Dutch media landscape is characterized by a high concentration of (foreign) media ownership.

In June 2021, RTL Group announced its intention to take over Talpa Network. In March 2023, the Dutch Consumers & Market Authority rejected the planned merger due to concerns over competition in the advertising market. The Consumers & Market Authority concluded that the merger would result in one party having too much power, which could enforce higher prices of television advertisements and the retransmission of channels.

In April 2023, Mediahuis announced the takeover of Radio Veronica from Talpa Network. The media company Radiocorp, the owner of 100%NL, Slam! and Sunlite, was also taken over by Mediahuis. In addition, Mediahuis announced the bundling of their various news companies in the Netherlands under one overarching organisation. Mediahuis Nederland (owner of De Telegraaf and Mediahuis Regional), Mediahuis Noord and Mediahuis Limburg merged into one organization. NRC Media, under the name Mediahuis NRC, will remain a separate entity.

In 2023, a cabinet decision on FM frequencies went into effect. This means commercial radio providers will be allowed to own a maximum of three FM frequencies to ensure it is not possible for one or two radio providers to dominate the market. In December 2023, DPG Media announced its intention for an acquisition of RTL Group. This raises concern about the highly concentrated media landscape in the Netherlands, as this acquisition would lead to even further media concentration.

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

*Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications, referring also, if applicable, to follow-up given*

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<sup>38</sup> <https://www.cvdm.nl/wp-content/uploads/2023/11/Overzicht-Inzicht-in-betrouwbaarheid-DEF.pdf>

<sup>39</sup> <https://www.cvdm.nl/nieuws/tegengaan-belangenverstrengeling-krijgt-aandacht-van-sector-commissariaat-ziet-nog-wel-ruimte-voor-verbetering/>

<sup>40</sup> <https://www.cvdm.nl/wp-content/uploads/2023/11/Handreiking-Voorkomen-van-belangenverstrengeling-bij-mediaorganisaties.pdf>

*to alerts lodged with the Council of Europe's Platform to promote the protection of journalism and safety of journalists.*

In 2019, PersVeilig (PressSafe), a project and joint effort of the Dutch National Association for Journalists, the Dutch Society of Chief-Editors (Nederlands Genootschap van Hoofdredacteuren), the police and the public prosecutor was set up with the aim to reduce violence against journalists. After concerns about the vulnerability and sustainability of PersVeilig, in 2023, the Dutch government ensured structural funding for the initiative. Furthermore, funding was made available to increase the capacity of PersVeilig and reduce the vulnerability of it being led by one person only. The vacancy for this new position was announced in September 2023.

In July 2023, the Dutch Senate passed a bill to criminalize doxing. Doxing is widely used to intimidate journalists by distributing personal information (such as addresses, phone numbers, and information about family members) in app groups and on social media. This can lead to severe offline attacks and threats. The law will enter into force on the 1st of January, 2024.

In October 2023, it was revealed that journalists from De Correspondent were wiretapped in 2022 by the Public Prosecution Office (OM) during a conversation with Sywert van Lienden and his business partners. Sywert van Lienden has been taken to court by the Dutch government for a disputed deal on providing face masks during the Covid19 pandemic. At the time, De Correspondent was conducting a major investigation into the face masks deal. After the revelation, the Public Prosecution Office released a statement that it only became clear the evening before the meeting that journalists from De Correspondent would be present. They have argued that the wiretapping was allowed according to internal guidelines, even with journalists present.

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

There are increasing concerns of transnational threats and repression of journalists in the Netherlands. Former China correspondent for the Volkskrant, Marije Vlaskamp, faced severe threats and harassment. However, many of these threats and harassment acts were subtle and not criminal offenses. That makes the threshold for reporting them at the police high, even though it does have a chilling effect on journalists. In the case of Vlaskamp, false bomb threats were made under her name, including at the Chinese Embassy in The Hague. Following these particular threats, a criminal investigation was opened by the Public Prosecution Service, but has been put on hold "for lack of further leads".

This is not a standalone incident. In 2020, Pakistani exiled journalist Ahmad Waqass Goraya was attacked and threatened with his life in Rotterdam. Furthermore, there are reports of other foreign journalists, such as Turkish and Russian journalists, facing direct intimidation and threats in the Netherlands.

Foreign journalists in the Netherlands often fall through the cracks in existing support mechanisms such as those of the Dutch Journalist Association and PersVeilig whose mandate is restricted to Dutch journalists. Furthermore, investigating foreign threats (be it to Dutch or foreign journalists), especially when they are very subtle, is complicated. It needs to be ensured that law enforcement is well equipped to investigate and protect targets of foreign threats and intimidation.

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

In October 2021, the new Open Government Act (Wet Open Overheid) was adopted and replaced the Government Information Act (Wet Openbaarheid van Bestuur) as of May 2022, after increasing pressure from (civil) society and the childcare allowances affair. The Open Government Act is intended to create more transparency and to make government information easier to find, share and archive. However, concerns still exist regarding the actual improvement of this law, especially in terms of sensitive information. Also, the response time under the new law is still below average compared to Tromsø requirements and other countries.

Under the new law, there will be two types of information management: active and passive disclosure. Active disclosure is a new obligation and means that certain government information must pro-actively be made public. More specifically, as of May 2022 government institutions must start actively disclosing eleven categories of information - including in relation to external legal advice, information requests, recommendations and subsidies. For all other types of information, passive disclosure will remain the norm, meaning that journalists will still need to request to retrieve information. In practice, this means that for the majority of (sensitive) information, nothing will change.

In 2023, a research was commissioned by the Advisory Board on Public Access and Information Management (ACOI) (Adviescollege Openbaarheid en Informatiehuishouding) to evaluate the functioning of the new Open Government Act (Woo). The results highlight some important concerns from journalists. They have indicated that active disclosure has not yet improved and that government cooperation is not satisfactory when it comes to Woo requests. Furthermore, journalists expect deliberate, politically motivated delays when the legal deadline to process a Woo request is not met, and believe that the government does not always apply grounds for exception correctly.

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

In March 2023, the Dutch National Association for Journalists and PersVeilig published a research on the legal intimidation of journalists in the Netherlands that shows almost 50% of journalists, and over 90% of editors have been legally intimidated due to a publication. The chilling effect of this is that journalists are more careful with publishing, adapt publications, or sometimes refrain from publishing at all.

Furthermore, the Coalition Against SLAPPs in Europe (CASE), the Media Freedom Rapid Response (MFRR), and the Dutch National Association for Journalists identified and deplored a current SLAPP in the Netherlands: a case against Het Financieele Dagblad by business owner Willem Blijdorp that was initiated in April 2023. The organizations argued this case to be a SLAPP due to the abusive tactics that are being used. Blijdorp did not opt for summary or preliminary relief proceedings (kort geding), the common route in the Netherlands for cases legitimately aimed at limiting reputational damage

following a publication, but instead started main proceedings (bodempcedure, i.e. proceedings on the merits). These proceedings are much longer than a kort geding and will unnecessarily drive up the legal costs for Het Financieele Dagblad. Blijdorp also asked the journalists to present all their sources to the court. In addition, Blijdorp claims an excessive amount of €150.000 for non-material damages, while material damages will be calculated in separate proceedings. In a concerning development on June 20, 2023, Blijdorp filed a petition to summon witnesses, including the journalist and possible sources. Furthermore, several sources received letters from Blijdorp's lawyers – prior to the lawsuit – requesting them to urgently clarify which information the FD provided to them before giving their testimony.

Despite the concerning results from the survey, several ongoing SLAPP cases, as well as concerns in Parliament, the Dutch government has yet to start an investigation into the number and scale of SLAPPs in the Netherlands (this was supposed to start in 2019). Furthermore, the Dutch government has not yet announced any anti-SLAPP / anti legal intimidation measures to address this rising concern for the safety of journalists, aside from transposing the EU anti-SLAPP directive that will be officially adopted in 2024.

Finally, slander and defamation remain punishable under the Dutch Criminal Code as well as Dutch Civil Code. This raises serious concern for the safety of journalists in the Netherlands. While in-depth research is needed on this, anecdotal evidence suggests that this does affect journalists and makes them the subject of criminal investigations.

## IV. Other institutional issues related to checks and balances

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

### A. The process for preparing and enacting laws

*Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (including consultation of judiciary and other relevant stakeholders on judicial reforms and transparency and quality of the legislative process both in the preparatory and the parliamentary phase*

*[1] This includes also the consultation of social partners.*

Stakeholders and civil society are usually consulted during the drafting processes of legislation or policies, often by means of internet consultation. However, this has not remained without criticism. The excessively tight deadlines such organisations are sometimes given to submit their views, for example, have remained an issue<sup>41</sup>

#### *Regime for constitutional review of laws*

In 2022, the Minister of Home Affairs and the Minister of Justice drafted a memorandum outlining constitutional review. In 2023, a committee debate in the Second Chamber of Parliament took place regarding this proposal. The Minister committed to the Second Chamber to provide a clearer specification during the summer concerning which classic fundamental rights could be assessed. However, the Minister has yet to fulfil this commitment. On December 13th, 2023, a motion was passed in the Second Chamber of Parliament regarding the establishment of a temporary committee for fundamental rights and constitutional review by the Second Chamber.

### B. Independent authorities

### C. Accessibility and judicial review of administrative decisions

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

In Dutch public law, it's obliged to publish most administrative decisions online in the 'Staatscourant'. Public sanctions are often not published, because that is seen as 'naming and shaming'.

The area of prevention of money laundering and terrorist financing and enforcement of anti-money laundering regulations differs from the aforementioned principle. The (administrative) regulators of The Prevention of Money Laundering and Financing of Terrorism Actis, in principle, have a publication obligation for penalty decisions (par Par. 4.3 Wwft.). Regulators are the Nederlandsche Bank (DNB), Authority for the Financial Markets (AFM), the Financial Supervision Office (BFT), the Netherlands Gaming Authority (Ksa) and the deans of the Netherlands Bar Association (NOvA), and a specific department of the Tax and Customs Administration.

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<sup>41</sup> See the letter by the NJCM and several other NGOs to the government of 3 September 2021, <https://www.wo-men.nl/kb-bestanden/1630934478.pdf>.

Also irrevocable penalty fines imposed by the Tax and Customs Administration for complicity in tax evasion and benefits fraud may be disclosed as of January 1, 2020. The Regulation on the Disclosure of Penalty Fines<sup>42</sup> discloses the factors that the inspector or the Belastingdienst/Toeslagen must in any case take into account when weighing interests when disclosing a penalty.

#### D. The enabling framework for civil society

*Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)  
Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online–, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services*

Civic space in the Netherlands is classified as open but has remained under pressure since the last report. Several bills remained a source of concern for civil society, as these bills put pressure on the independent role such organisations play within a democratic society. Examples are the bill on the Transparency of Civil Society Organisations (wetsvoorstel Transparantie Maatschappelijke Organisaties)<sup>43</sup> and the bill on the criminalisation of staying in areas controlled by terrorist organisations (wetsvoorstel strafbaarstelling verblijf in door terroristische organisaties gecontroleerd gebied)<sup>44</sup>.

The motion from the MP Chris Stoffer that asked the government to impose further representativeness requirements on interest groups representing general interests in lawsuits against the State, as mentioned earlier in this report, is another example of the pressure on civic space. The proposal did not only potentially restrict the access of CSOs to a judge, but also questioned the legitimacy and independence of CSOs. In parliamentary debates and interviews at the time of the proposal the question was raised to what extent CSOs act in the public interest. Proposals like these therefore also contain a risk of stigmatising CSOs and damaging their reputation. Although the minister of legal protection dismissed the motion, it was supported by all parties (VVD, Omtzigt (now leader of the new party NSC), PVV, BBB) that are now exploring forming a new government coalition. The need for an extra representativeness requirement was event explicitly mentioned in the BBB party programme.

Furthermore, in 2023 the right of peaceful assembly continued to be under pressure. An investigation by several journalists revealed that the Dutch police systematically collect the personal data of protesters and activists, including their address, social security number (BSN) and date of

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<sup>42</sup> <https://www.inview.nl/openCitation/id08cd3147b70d43469d81732bd2b8168e/regeling-openbaarmaking-vergrijpboeten?ctx=f13c57a9323d074a032bc341dc748129>

<sup>43</sup> See the letter by the NJCM and several other NGOs to the government of 29 June 2021, <https://njcm.nl/wp-content/uploads/2021/07/reactieconsortiumnotawijzigingWTMO.pdf>.

<sup>44</sup> See the letter by the NJCM and Amnesty International to the government of 19 May 2021, [https://njcm.nl/wp-content/uploads/2021/06/20210519\\_143-Wetsvoorstel-strafbaarstelling-verblijf-in-door-terroristische-organisaties-gecontroleerd-gebied.pdf](https://njcm.nl/wp-content/uploads/2021/06/20210519_143-Wetsvoorstel-strafbaarstelling-verblijf-in-door-terroristische-organisaties-gecontroleerd-gebied.pdf).

birth.<sup>45</sup> Another report concluded that the police conducted unlawful surveillance of peaceful protesters. The use of force by the police during peaceful protests has also been a worrying trend.<sup>46</sup>

Municipalities regularly introduce restrictions or conditions to organisers of protests that are not proportionate to the scale of the protests. This can discourage groups from organising a protest.<sup>47</sup> Different groups of protesters are not always treated equally. Climate activists are particularly affected by the concerns mentioned above in comparison with other protesters. In January 2023 six climate activists from Extinction Rebellion were arrested and their houses were searched. They were arrested the week before a planned peaceful protest, during which they wanted to block a road in The Hague, based on charges of incitement because they were promoting the XR road blockade. The climate activists were forbidden from going near the place of the protest. A group of almost 40 civil society organisations spoke out against these arrests, stressing the intimidating effect these arrests can have on people's ability to exercise their right to peaceful protest and freedom of expression.<sup>48</sup> The Dutch National Human Rights Institute also expressed their concerns.<sup>49</sup>

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

The same challenges in the funding landscape for CSOs as reported last year remain. In addition to this, large budget cuts were announced to the development aid budget which also affects funding for human rights work of a large number of Dutch CSOs.<sup>50</sup> The election in November resulted in a big win for parties that expressed support for even bigger cuts in the development aid budget, making further reductions of the budget likely. While there are still other streams of government funding accessible for CSOs, this could have a big impact on the financial health and sustainability of many established human rights and development organizations and increase competition amongst CSOs for government funding.

Regulations against terrorism financing and money laundering are creating difficulties for CSOs to open bank accounts or receive and make bank transfers.<sup>51</sup>

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

As mentioned above and in earlier reports, the consultation and engagement of stakeholders, in particular grass roots CSOs, in policy making can still be improved.

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<sup>45</sup> <https://www.platform-investico.nl/artikel/politie-verzamelt-op-grote-schaal-persoonsgegevens-demonstranten/>

<sup>46</sup> <https://www.amnesty.org/en/latest/news/2023/05/the-netherlands-police-violate-rights-of-peaceful-protesters/>; <https://monitor.civicus.org/explore/police-use-water-cannons-on-climate-activists-new-report-reveals-surveillance-of-protesters/>

<sup>47</sup> <https://www.amnesty.nl/wat-we-doen/demonstratierecht-in-nederland/rapport>

<sup>48</sup> <https://www.nhc.nl/nhc-steunt-protest-om-recht-van-demonstratie-te-verdedigen/>

<sup>49</sup> <https://www.mensenrechten.nl/actueel/nieuws/2023/01/31/demonstratierecht-onder-druk-blijkt-uit-aanhouding-klimaatactivisten>

<sup>50</sup> <https://www.partos.nl/nieuws/bezuinigingen-kabinet-treffen-allerarmsten-wereldwijd/>

<sup>51</sup> <https://www.hscollective.org/assets/20220930-brief-tijdelijke-maatregel-de-risking-zonder-contactgegevens.pdf>



## E. Initiatives to foster a rule of law culture

The parliamentary debates on the rule of law in the Netherlands and EU as mentioned in the previous report, continue to take place. 3 November 2023 marked the 175<sup>th</sup> anniversary of the Dutch constitutions. Around this moment several events were organised reflecting on the constitution and a series of essays was published by legal experts.

The recent election outcome does raise some concern for the promotion of a rule of law culture in the Netherlands. The PVV, the party that won the elections, has been promoting unconstitutional proposals that do not fit within a democratic rule of law. Although they have promised to respect the constitution and the rule of law if they would form a government, it does not contribute to fostering a rule of law culture in the Netherlands.

Also other political parties presented plans in their party programmes that could lead to erosion of the rule of law or violate the fundamental rights of citizens. This is in particular the case for the plans related to migration, many of which are not in line with international and European human rights treatise. Multiple parties (for example VVD, NSC, BBB and PVV) suggest we should revise, ignore or choose and 'opt-out' for international and EU legislation and treatise. It remains to be seen if any of these plans will actually be implemented, but it does raise concern in the perspective of a global trend where the legitimacy of international human rights treatise is being called into question.

Other – please specify

### Widespread use of government algorithms

Despite the *Toeslagenaffaire*, the Dutch government persists in using algorithms that jeopardize essential human rights like privacy and non-discrimination. Moreover, transparency issues, highlighted in both the 2022 General Audit Office report<sup>52</sup> and the July 2023 Algorithmic Risks Report<sup>53</sup> by the new Department for the Coordination of Algorithmic Oversight (DCA) at the Dutch Data Protection Authority (AP), hinder the monitoring and addressing of these risks.

The DCA highlights several high-risk algorithms. First, the Crime Anticipation System (CAS) currently utilized by the Dutch police, which globally is the only predictive policing system operating on a national scale. Its effectiveness and risk of group discrimination has been debated, e.g. by the EU's Fundamental Rights Agency<sup>54</sup>. Also, the DCA describes signals received by the National Coordinator against Discrimination and Racism (NCDR) in April 2023 regarding discrimination from financial institutions using algorithms to monitor Dutch payment transactions. Lastly, despite the SyRI-case (2020), municipalities in 2023 continue to recklessly deploy algorithms for assessing welfare fraud risks.

This DCA has been active since January 2023 to i.a. oversee the government's algorithm registry. However, the AP is not yet done setting up the DCA oversight<sup>55</sup>. Six months after its launch the algorithm registry is barely being filled in and the information it does contain is not very accessible.

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<sup>52</sup> <https://www.rekenkamer.nl/onderwerpen/algorithmes/documenten/rapporten/2022/05/18/algorithmes-getoetst>

<sup>53</sup> <https://www.autoriteitpersoonsgegevens.nl/documenten/rapportage-algoritmerisicos-nederland-ran-voorjaar-2023>

<sup>54</sup> [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2022-bias-in-algorithms\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-bias-in-algorithms_en.pdf)

<sup>55</sup> <https://www.digitaleoverheid.nl/kabinetsbeleid-digitalisering/werkagenda/iedereen-heeft-regie-op-het-digitale-leven/algorithmes-reguleren/acties-prioriteit-3-3/>

Then, the registry contained 123 algorithms, whereas today it contains 258. The completion is only projected for 2025<sup>56</sup>, and if organizations do fill it out, often data on the criteria used for citizen selection, crucial to identify algorithmic discrimination, remains undisclosed.

In July 2023, the Netherlands Institute for Human Rights (CvdRM), published a position paper advocating for a legal obligation to provide transparency. According to the CvdRM, current governmental algorithm use creates an information gap and puts human rights to due process and protection against discrimination under pressure. Also, the importance of confidentiality of fraud detection methods may be recognized only when counterbalanced by a thorough and binding prior human rights review by an outside body. It seems the advice of the CvdRM has not yet been implemented. In December 2023, a publication standard and accompanying guide for the algorithm registry were introduced, but no fields are mandatory yet, due to lacking legal requirements.

Also this year, a framework named “Responsible use of algorithms”<sup>57</sup> was initiated. It outlines vital norms and actions for government organizations to align algorithm development with human rights, public values, and ethical data practices. It brings together existing instruments like the Human rights and algorithms impact assessment (IAMA)<sup>58</sup> and the 'non-discrimination by design'-manual. However, its implementation is projected for the end of 2025.

In February 2022, it was agreed that the IAMA must become mandatory. However, the execution has been on hold pending the final text of the AI Act, as it will introduce comparable obligations with its conformity assessment and human rights impact assessment for high-risk AI-systems. In December 2023 an agreement was reached, but it will still not be binding for several years. Also, the compliance mechanism will largely be based on self-assessment by the provider (who might be a private party delivering systems to government agencies). Therefore, the DCA states it is important to already start considering ways to give way to the key provisions of the act already, e.g. by stimulating the use of the AIA.

It seems the State Secretary of Digitization and Kingdom Relations is preparing<sup>59</sup> discussions involving the Senate, House of Representatives, government, judiciary, and supervisory bodies. The aim is to assess the sufficiency of safeguards for automated decision-making impacting human rights. In February 2023, the Rathenau Institute emphasized in a letter to Parliament<sup>60</sup> that while these measures contribute to responsible government use of algorithms, more steps are needed. A lot can still be done to implement their recommendations (p.2, 3<sup>rd</sup> in line with another motion<sup>61</sup>), as well as those of the CvdRM.

The still-pending Dutch Data Processing through Partnerships Act (WGS) remains contentious. It is supposed to help administrative bodies and private parties jointly process personal data for ‘weighty general interests’, but has faced strong opposition from human rights groups. Despite improvements,

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<sup>56</sup> <https://www.digitaleoverheid.nl/kabinetsbeleid-digitalisering/werkagenda/iedereen-heeft-regie-op-het-digitale-leven/algorithmes-reguleren/acties-prioriteit-3-3/>

<sup>57</sup> <https://open.overheid.nl/documenten/9b7b55fd-1762-499b-b089-2b7132c12402/file>

<sup>58</sup> <https://www.rijksoverheid.nl/documenten/rapporten/2021/02/25/impact-assessment-mensenrechten-en-algorithmes>

<sup>59</sup>

[https://www.eerstekamer.nl/behandeling/20231113/brief\\_van\\_de\\_staatsecretaris\\_van/document3/f=/vm86lu3e96uh\\_opgemaakt.pdf](https://www.eerstekamer.nl/behandeling/20231113/brief_van_de_staatsecretaris_van/document3/f=/vm86lu3e96uh_opgemaakt.pdf)  
[https://www.eerstekamer.nl/behandeling/20231113/brief\\_van\\_de\\_staatsecretaris\\_van/document3/f=/vm86lu3e96uh\\_opgemaakt.pdf](https://www.eerstekamer.nl/behandeling/20231113/brief_van_de_staatsecretaris_van/document3/f=/vm86lu3e96uh_opgemaakt.pdf)

<sup>60</sup> [https://www.rathenau.nl/sites/default/files/2023-02/Inzet\\_algorithmes\\_en\\_data-ethiek%20Bericht\\_aan\\_het\\_Parlement\\_Rathenau%20Instituut.pdf](https://www.rathenau.nl/sites/default/files/2023-02/Inzet_algorithmes_en_data-ethiek%20Bericht_aan_het_Parlement_Rathenau%20Instituut.pdf)

<sup>61</sup> <https://www.tweedekamer.nl/kamerstukken/moties/detail?id=2023Z00686&did=2023D01629>

the AP criticised<sup>62</sup> the accompanying implementing act (BGS), warning for the lack of a vital safeguard (prior judicial review) and emphasizing the importance of transferring certain BGS rules to the actual act to ensure the protection of fundamental rights. The AP advises the Senate to hold out on voting until changes are made.

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<sup>62</sup> <https://www.autoriteitpersoonsgegevens.nl/actueel/voor-aanvaardbare-wgs-ontbreekt-belangrijke-waorborg>