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Country Review Report of the Netherlands

Review by Luxembourg and Vanuatu of the implementation by the Netherlands of articles 5-14 and 51-59 of the United Nations Convention against Corruption for the review cycle 2016-2021

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the Netherlands of the Convention is based on the completed response to the comprehensive self-assessment checklist received from the Netherlands, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Luxembourg, Vanuatu, and the Netherlands, by means of telephone conferences, videoconferences, e-mail exchanges and any further means of direct dialogue in accordance with the terms of reference and involving Mr. Jean-Louis Bordet, Mr. Jean-Jacques Dolar, Mr. Georges Keipes, Mr. Patrick Konsbruck, Mr. Olivier Lenert and Mr. Claude Scho. The staff members of the secretariat were Ms. Yao Deng and Ms. Melanie Chabert.
6. A virtual country visit, agreed to by the Netherlands, was conducted from 23 to 27 November 2020. The information presented below reflects the situation in the Netherlands at the time of the country visit. Any progress or updates to legislation made since November 2020, are not included in this report.
7. The Netherlands remarks that the information reflected in this report reflects only measures adopted until November 2020, when the country visit took place. Therefore the contents of the report are outdated and do not necessarily represent the current situation. Nonetheless, the Netherlands acknowledges the findings and recommendations of the reviewing experts as presented in the Executive Summary, which has been shared with their Parliament in October 2023.[1]

III. Executive summary

[1] Kamerbrief reactie op 2e nalevingsverslag GRECO en 5e evaluatieronde en evaluatie UNCAC | Kamerstuk | Rijksoverheid.nl

Introduction: overview of the legal and institutional framework of the Netherlands in the context of implementation of the United Nations Convention against Corruption[*]

The United Nations Convention against Corruption was signed by the Netherlands on 10 December 2003 and the document of acceptance was deposited with the Secretary-General of the United Nations on 31 October 2006. The application of the Convention was extended to Bonaire, Sint Eustatius and Saba on 10 October 2010.

Article 94 of the Constitution states that the provisions of international treaties prevail over contradicting statutory law if those provisions are binding on all persons. Accordingly, the Convention has become an integral part of domestic law, ranking above national legislation.

The implementation by the Netherlands of chapters III and IV of the Convention was reviewed in the third year of the first review cycle, and the executive summary of that review was issued on 28 May 2014 (CAC/COSP/IRG/I/3/1/Add.12).

The national legal framework for preventing corruption and recovering assets comprises, notably, the Constitution, the General Administrative Law Act, the Civil Servants Act of 2017, the Whistle-blowers Authority Act, the Political Parties (Financing) Act, the Public Procurement Act, the Freedom of Information Act, the Criminal Code, the Code of Criminal Procedure, the Enforcement of Criminal Judgments (Transfer) Act and the Money-Laundering and Terrorist Financing (Prevention) Act.

Relevant corruption prevention and asset recovery authorities include the National Ombudsman, the Whistle-blowers Authority, the Court of Audit, the Ministry of the Interior and Kingdom Relations, the National Internal Investigations Department, the Fiscal Information and Investigation Service, the Central Authority for Mutual Legal Assistance in Criminal Matters within the Ministry of Justice and Security, the Public Prosecution Service, the Asset Recovery Office and the International Legal Assistance (Criminal Matters) Division of the Public Prosecution Service, as well as law enforcement agencies such as the Anti-Corruption Centre of the Fiscal Information and Investigation Service and the National Police Force.

All information provided in the present executive summary reflects the situation in the Netherlands at the time of the country visit in November 2020.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

There is no overarching anti-corruption strategy, but all government entities must develop an integrity policy and publish an annual account of their integrity policy (art. 4, para. 4, of the Civil Servants Act). Each entity is responsible for the formulation, implementation and monitoring of its own policy. The Minister of the Interior and Kingdom Relations is responsible for the overall system of integrity policies. Monitoring of the framework is carried out through internal evaluations.

There is no systematic evaluation of the effectiveness of administrative and legal instruments.

[*] In view of the status of Curaçao, Sint Maarten and Aruba as separate countries within the Kingdom of the Netherlands, the following findings relate only to the implementation of the Convention in the Netherlands. The focus of the report lies on the European part of the country and largely exempts the Caribbean special municipalities (Bonaire, Sint Eustatius and Saba).

Anti-corruption practices include the creation of an information platform by the Ministry of Justice and Security to increase and disseminate knowledge relating to the prevention of corruption; however, operation of the platform has been suspended since 2019.

The Netherlands does not have a centralized body exclusively designated to prevent corruption, and preventive measures are taken at different levels of Government.

The office of the National Ombudsman, which is responsible for handling complaints on the functioning of Government, is enshrined in the Constitution and the General Administrative Law Act (art. 9:18). The Ombudsman and the Deputy Ombudsman are appointed by the House of Representatives (art. 78a (2) of the Constitution).

The Whistle-blowers Authority, established by the Whistle-blowers Authority Act, is mandated to advise reporting persons and investigate suspected wrongdoing in a work-related situation and treatment by employers (art. 3 of the Act). Its members and Chair are appointed by royal decree for a maximum period of four years (art. 3c, para. 1, of the Act).

The Netherlands collaborates with other States parties through the Group of States against Corruption of the Council of Europe, the Organisation for Economic Co-operation and Development, the Network of European Integrity and Whistleblowing Authorities, the European Partners Against Corruption, the Group of 20 Anti-Corruption Working Group and the European contact-point network against corruption.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The recruitment of public officials is decentralized and each ministry or department oversees the process with the support of the Human Resources Shared Service Organization. Government employers may conduct an assessment of suitability and competence for a position as a civil servant (art. 3a of the Civil Servants Act). Vacancies are published on a central website. Hiring is at the discretion of the hiring manager and unsuccessful candidates are notified and informed of their right to contact the hiring manager for further information.

Each ministry or department must designate positions that involve a particular risk of a financial conflict of interest or a risk of the improper use of price-sensitive information (art. 5, para. 1, of the Civil Servants Act). However, there is no specific selection procedure for, or training or mandatory rotation of, individuals in such positions. General integrity training is provided by each government entity (art. 4 of the Civil Servants Act).

Criteria concerning candidature for public office at the national, provincial and municipal levels do not include disqualification for offences established in accordance with the Convention, and criteria for the nomination of ministers and State secretaries are not enshrined in law.

Candidates for the House of Representatives must report donations exceeding 4,500 euros per donor in a single calendar year (art. 29 of the Political Parties (Financing) Act), but there is no reporting obligation with regard to expenditure. Candidates to other elected positions are not subject to specific reporting requirements in relation to donations. There is no limit on donations from natural or legal persons, no ban on anonymous donations and only individual anonymous donations of more than 1,000 euros must be reported (art. 21 (1) of the Political Parties (Financing) Act). At the time of the country visit, a bill prohibiting foreign donations was being drafted. There is no electoral oversight institution.

Government entities promote integrity, honesty and responsibility through basic integrity standards and the establishment of guidelines (art. 4 of the Civil Servants

Act). The Code of Conduct for Integrity in the Central Public Administration provides civil servants in the central public administration with a framework for managing conflicts of interest (section 4.1). The Code is not enforceable and does not establish disciplinary sanctions. Violations of integrity rules may be sanctioned under labour law (art. 6 of the Civil Servants Act and the Collective Labour Agreement).

Departments may draw up further organization-specific rules. The House of Representatives and the Senate have their own codes of conduct that establish disciplinary measures in case of violations (arts. 5, 10 and 11 of the respective codes).

Secondary professional activities must be reported, and ancillary activities and financial interests that may hamper the functioning of the public administration are prohibited (art. 8 of the Civil Servants Act). However, there is no mechanism for verifying adherence to these rules.

"High-risk" public officials designated as such by a government employer pursuant to article 5, paragraph 1, of the Civil Servants Act must declare their financial interests, but the fulfilment of this obligation is not monitored and the veracity of the declarations is not verified (see the section concerning article 52, paragraph 5, of the Convention, below). Gifts, including benefits, cannot be accepted without the permission of a superior (art. 8, para. 1 (e), of the Civil Servants Act).

Every public or private institution that employs at least 50 persons must have a reporting procedure in place (sect. 2 of the Whistle-blowers Authority Act). Violations of integrity can also be reported externally to the Whistle-blowers Authority and the National Ombudsman. Corruption offences, depending on the type of offence, must be reported to the Public Prosecution Service, the Fiscal Information and Investigation Service, the National Internal Investigations Department or the police, or through a confidential helpline (art. 162 of the Code of Criminal Procedure).

At the time of the country visit, a plan was being developed to merge all codes of conduct and guidelines for the courts within the judiciary into a single code of conduct. Each court has an integrity committee and a confidential adviser that, along with the Human Resources Department of the Council for the Judiciary, provide advice on integrity issues.

All officials working for the Public Prosecution Office are bound by the Public Prosecution Service Code of Conduct, the Government Code of Ethics, the Guidelines on Reporting Integrity Violations and instructions on how to handle integrity violations. The Public Prosecution Service Integrity Bureau was set up to comply with the obligation to implement the integrity policy and code of conduct within the Public Prosecution Service (art. 4 of the Civil Servants Act). In addition to the Bureau's advisory and policymaking role, its investigators may carry out internal investigations into any suspected integrity violation within the Public Prosecution Service.

Public procurement and management of public finances (art. 9)

The Netherlands has a decentralized government system and, therefore, a decentralized procurement system, the legal framework for which is established by the Public Procurement Act, the Public Procurement Decree, the Proportionality Guide, the Works Procurement Regulations 2016 and the European Single Procurement Document. The Public Procurement Act is based on the European Union procurement directives 2014/23/EU, 2014/24/EU and 2014/25/EU. For tenders with a value equal to or above the European Union thresholds, a European Union tendering procedure is obligatory (art. 2.1 of the Public Procurement Act). For tenders with a value below the European Union thresholds, part I of the Public Procurement Act applies.

Under the Public Procurement Act, government authorities are obliged to publish all calls for tenders on the TenderNed platform (chap. 2.3 and art. 4.13). Tenderers are selected on the basis of award criteria (chap. 2.3.8) and, in specific cases, on the basis of selection criteria (chap. 2.3.6) provided for in the tender documents (art. 2.3.3).

After the provisional award decision, unsuccessful tenderers have 20 calendar days to appeal and institute summary proceedings, during which period no contract may be awarded (arts. 2.127 and 2.131 of the Public Procurement Act). A request for a review by a civil law judge can be made. In addition to the judicial procedure, a special form of dispute resolution is offered by the Committee of Procurement Experts, which issues non-binding advice when a party claims that procurement rules have been violated (art. 4.27 of the Public Procurement Act).

Economic operators must be excluded from participating in a procurement procedure in case of convictions for, among other offences, corruption and fraud, and may be excluded from participating in a procurement procedure where a conflict of interest cannot be effectively remedied (arts. 2.86 and 2.87 of the Public Procurement Act).

The Dutch Public Procurement Expertise Centre, PIANOo, is responsible for, inter alia, organizing training activities and improving administrative capacity among public procurement practitioners.

Procedures for the adoption of the State budget are established in the Government Accounts Act 2016. Revenue and expenditure reports must be produced in accordance with articles 2.22, 2.23, 2.28 and 2.29 of the Act. The Netherlands Court of Audit is responsible for conducting an annual audit of the annual financial reports of each ministry, and the Central Audit Service is the independent internal auditor of central Government (art. 1.1 of the Act). The Service may be instructed by a minister to conduct specific audits of "major projects" designated by the House of Representatives (art. 3 of the Central Government Audit Service Decree). Decentralized governments are subject to an annual external audit, including of public procurement.

Civil, administrative and criminal measures on protecting the integrity of accounting books are laid down in the General State Taxes Act (arts. 52, 68 and 69), the Economic Offences Act (arts. 1 and 6), the Civil Code (for example, arts. 2:10, 2:361, 2:362 and 2:394) and the Criminal Code (arts. 225 and 336).

Public reporting; participation of society (arts. 10 and 13)

The Freedom of Information Act establishes, on the basis of article 110 of the Constitution, the principle that, aside from specific statutory exceptions, information in the possession of administrative bodies is public. Public requests for information must be addressed within two weeks, with a possibility of extension for another two weeks (sect. 6 of the Freedom of Information Act). Although there is no oversight body to oversee the enforcement of the right of access to information, an appeal against any denial of access can be made to the public body concerned and in court (art. 6, para. 4, art. 7, para. 1, and art. 8, para. 1, of the General Administrative Law Act). The judge may order that access to the information be provided within a certain time frame and issue a fine to the authority concerned (art. 15b of the Freedom of Information Act).[2]

Draft legislation may be published for consultation online and the comments received from the public are considered in the drafting process.

[2] Following the country visit, the Freedom of Information Act was repealed and replaced by the Open Government Act.

In 2019, a bill was prepared to amend the Freedom of Information Act, establishing the requirement that government institutions proactively publish certain documents and general information on their organization and functioning).[3]

Measures aimed at simplifying administrative procedures include the establishment of a knowledge and information centre to facilitate effective communication between citizens and the Government and support administrative bodies in adopting an informal and proactive approach to the provision of public information. The centre also mediates between citizens and institutions in complaint, objection and appeal procedures.

The number of corruption investigations in the country's public administration are published by the National Internal Investigations Department through the Public Prosecution Service Annual Review. The Netherlands does not conduct periodic evaluations on the risks of corruption in its public administration.

The National Internal Investigations Department, which is responsible for investigating corruption in the public sector, is accessible to the public through its website, which allows for anonymous reporting.

Private sector (art. 12)

Listed companies must report on their adherence to the Corporate Governance Code, which sets out principles and best practices on internal auditing controls (principles 1.3 et seq.) and other preventive measures. On the basis of the "comply-or-explain" principle, listed companies must either comply with the provisions of the Code or explain their reasons for deviating from them. The Corporate Governance Code Monitoring Committee reports its findings to the Minister of Economic Affairs and Climate Policy, the Minister of Finance and the Minister of Legal Protection.

A public-private partnership through the Dutch Financial Expertise Centre provides for cooperation between law enforcement and the private sector. Public bodies involved in the fight against corruption, such as the Fiscal Information and Investigation Service and the Public Prosecution Service, organize or contribute to joint workshops for the public and private sector aimed at raising awareness of specific risks of corruption.

Companies registered in the Trade Register must provide beneficial ownership information (arts. 30 and 31 of the fourth revised European Union Transparency Directive).

Provisions on the misuse of procedures governing private entities, including procedures relating to subsidies and licences granted by public authorities for commercial activities, are established in the Public Administration (Probity Screening) Act (chap. 2, arts. 5–7).

The Corporate Governance Code contains a principle on internal audit controls (principle 1.3), but the principle is not enforceable.

The Netherlands has not imposed restrictions on the professional activities of former public officials in the private sector. For a period of two years following their resignation, former ministers and State secretaries are prohibited from engaging with civil servants from their former ministry or from ministries with which the former minister had active involvement while in office (adjacent policy areas). However, the Secretary-General of the ministry concerned may authorize an exception to that rule.

Obligations on the maintenance of books by private sector entities are laid down in the Civil Code (arts. 2:10, 2:24, 2:361, 2:362 and 2:392–395), the General Customs

[3] On 5 October 2021, the Senate approved the Open Government Act, which came into effect on
1 May 2022 and has replaced the Freedom of Information Act.

Act (art. 10:5) and the General State Taxes Act (art. 52). The preparation and use of false documents is criminalized by the Criminal Code (arts. 225 and 336). The General State Taxes Act provides that any obliged person must keep accounting records and make them available for inspection (art. 68 1 (a), (b) and (e)).

The tax deductibility of expenses that constitute bribes is prohibited (art. 3.14 of the Income Tax Act).

Measures to prevent money-laundering (art. 14)

The Money-Laundering and Terrorist Financing (Prevention) Act establishes obligations for various reporting entities, including banks, other financial institutions and designated non-financial businesses and professions (art. 1a). Relevant supervisory authorities include De Nederlandsche Bank N.V. (art. 1d (1a)), the Dutch Authority for the Financial Markets (art. 1d (1b)), the Financial Supervision Office (art. 1d (1c)), the President of the Netherlands Bar (art. 1d (1d)), the Minister of Finance (art. 1d (1e)) and the Netherlands Gambling Authority (art. 1d (1f)). The customer due diligence requirements under chapter II of the Money-Laundering and Terrorist Financing (Prevention) Act provide for, inter alia, the identification and verification of clients and beneficial owners (art. 3 (2)). All institutions are obliged to file unusual transaction reports to the Netherlands Financial Intelligence Unit (art. 16). The obligation to keep records for at least five years is established under article 33 of the Act.

A risk-based approach is taken under the anti-money-laundering regime (art. 2b of the Money-Laundering and Terrorist Financing (Prevention) Act). The national risk assessment is conducted every two years, which requires the Minister of Finance and the Minister of Justice and Security to jointly publish a report on the risks identified (arts. 1 (1) and 1 (f) (1) of the Act). Reporting entities must use the results of the national risk assessment and the supranational risk assessments produced by the European Commission, in addition to the information they collect, to implement the risk-based approach (art. 2c of the Act). In 2019, the Government launched a national action plan to prevent and combat money-laundering.[4]

The Financial Intelligence Unit is responsible for collecting, processing and analysing information regarding money-laundering and terrorist financing, including the receipt of unusual transaction reports (arts. 13 and 16 of the Money-Laundering and Terrorist Financing (Prevention) Act). Information can be shared at the domestic level between the Unit and the Public Prosecution Service and other law enforcement and supervisory authorities (art. 13 (f) (3) and 13 (g) of the Act). The Unit can also exchange information, spontaneously or upon request, with its foreign counterparts (art. 13a of the Act).

Any natural person entering or leaving the European Union and carrying cash, including bearer negotiable instruments, with a value equal to or exceeding 10,000 euros, should declare that sum to the competent authorities (art. 3 of Regulation (EU) 2018/1672). The customs authorities are responsible for cash controls at the borders. Failure to declare or the act of falsely declaring cash movements are punishable with a fine or a term of imprisonment of not more than four years in the case of intentional failure to declare (art. 10:1 of the General Customs Act). At the time of the country visit, the General Customs Act was being revised to include an obligation to declare cash or cash equivalents of 10,000 euros when entering or leaving the Netherlands; the customs authorities are required to report such transactions to the Financial Intelligence Unit (art. 9 of Regulation (EU) 2018/1672).

Regulation (EU) 2015/847 on information accompanying transfers of funds is directly applicable in the Netherlands. The Regulation requires reporting entities to

[4] Following the country visit, the plan was renewed in 2022.

obtain adequate information on payers and payees and maintain proper records (arts. 4, 7, 8 and 16).

The Netherlands is a member of the Financial Action Task Force and has undergone three rounds of evaluation so far.[5] It was reported that the fourth and fifth European Union money-laundering directives were duly transposed into national law. The national authorities have the ability to cooperate widely with their counterparts through various networks in order to prevent money-laundering.

2.2. Successes and good practices

- The establishment of the knowledge and information centre to facilitate effective communication between citizens and the Government, in order to support all administrative bodies in adopting an informal and proactive approach to the provision of public information (art. 10 and art. 13, para. 1 (b)).

2.3. Challenges in implementation

It is recommended that the Netherlands:

- Ensure that an effective mechanism is in place to evaluate the effectiveness of integrity policies, ensure coordination between government institutions in the formulation, implementation and monitoring of those policies, and endeavour to consistently implement existing preventive practices (art. 5, para. 1).
- Endeavour to periodically evaluate the effectiveness of relevant legal instruments and administrative measures (art. 5, para. 3).
- Ensure the designation of a body or bodies responsible for overseeing and coordinating the implementation of integrity policies at the relevant levels of Government (art. 6, para. 1).
- Enhance transparency in the recruitment of public officials by establishing clear criteria on the recruitment, hiring, retention, promotion and retirement of civil servants, and consider establishing an oversight body to ensure that recruitment is based on the principles of efficiency, transparency and objective criteria
(art. 7, para. 1 (a)).
- Establish adequate procedures for the selection and training of individuals for public positions identified as being especially vulnerable to corruption and consider establishing the rotation of such individuals to other positions (art. 7, para. 1 (b)).
- Consider adopting legislative and administrative measures to prescribe criteria for the positions of ministers and State secretaries, and extending the criteria concerning candidature for and election to public office to include no prior convictions for offences established in accordance with the Convention (art. 7, para. 2).
- Consider establishing a comprehensive framework on the funding of candidatures for elected public office beyond candidates for the House of Representatives, establishing a reporting obligation with regard to expenditure, establishing a limit on donations from natural or legal persons, banning anonymous donations, establishing an electoral oversight body and enacting the bill prohibiting foreign donations (art. 7, para. 3).
- Strengthen systems to prevent conflicts of interest and endeavour to extend the obligation to report interests to include assets, and include the interests and assets of close family members; consider establishing a monitoring,

[5] Following the country visit, the Netherlands completed its fourth evaluation in 2022.

verification and sanctions mechanism to ensure compliance with reporting obligations; and consider permitting its competent authorities to share such information with foreign competent authorities (art. 7, para. 4, art. 8, para. 5, and art. 52, para. 5).

- Consider establishing an oversight body to ensure effective access to information through the monitoring of implementation of the access to information legislation (art. 10 (a) and art. 13, para. 1).
- Consider publishing periodic reports on the risks of corruption in the public administration (art. 10 (c)).
- Impose restrictions for a reasonable period of time on the employment of public officials by the private sector, where such employment relates directly to the functions held during their tenure (art. 12, para. 2 (e)).
- Consider taking further measures to ensure that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption (art. 12, para. 2 (f)).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The Netherlands can apply relevant provisions of the Criminal Code, the Code of Criminal Procedure, the Financial Penalties and Confiscation Orders (Mutual Recognition and Enforcement) Act and the Enforcement of Criminal Judgments (Transfer) Act for the purpose of asset recovery. The Central Authority for Mutual Legal Assistance in Criminal Matters within the Ministry of Justice and Security is the central authority for all forms of judicial mutual legal assistance with regard to non-member States of the European Union, while the Asset Recovery Office acts as the national point of contact for the confiscation and recovery of assets. A bank data retrieval portal serving as the central bank register was created by the Bank Data Retrieval Portal Act.

Information can be shared spontaneously by the Financial Intelligence Unit with its foreign counterparts and through its membership of the Egmont Group of Financial Intelligence Units, or by other authorities through different networks, such as the International Criminal Police Organization (INTERPOL), the European Union Agency for Law Enforcement Cooperation and the European Union platform of asset recovery offices.

The Netherlands has concluded several multilateral and bilateral agreements and has joined the Camden Asset Recovery Inter-Agency Network and other networks for international cooperation in asset recovery.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Chapter II of the Money-Laundering and Terrorist Financing (Prevention) Act prescribes specific customer due diligence requirements, including verification of customer identities. Reporting entities must conduct enhanced customer due diligence if the business relationship or transaction entails a greater than average risk or if there is an increased geographical risk (art. 8 (1)). Enhanced due diligence measures must also be taken in respect of politically exposed persons (art. 8 (5) to (9)), including both foreign and domestic politically exposed persons. Such measures are also applicable to family members and close associates of politically exposed persons. The Minister of Finance and the Minister of Justice and Security are required to establish a list of positions that qualify as prominent public positions, including domestic politically exposed persons and foreign politically exposed

persons based in the Netherlands (art. 9a). Measures on the identification of beneficial owners are provided under chapter 2 of the Money-Laundering and Terrorist Financing (Prevention) Act (arts. 3, 3a, 4, 8 and 9 and sect. 2.4a), and the beneficial ownership registers for legal entities and for trusts and similar legal arrangements have been established accordingly. All beneficial owners must be identified by obliged entities.

The Ministry of Finance and the Ministry of Justice and Security have issued general guidance on the Money-Laundering and Terrorist Financing (Prevention) Act. In addition, the supervisory authorities have issued various guidelines and advisories tailored to specific sectors, such as the De Nederlandsche Bank N.V. Guidance on the Money-Laundering and Terrorist Financing (Prevention) Act, to assist reporting entities under their supervision in carrying out their obligations under the Act, including in the area of enhanced customer due diligence.

Institutions must maintain records for at least five years after the date of termination of the business relationship or up to five years after completion of the relevant transaction (art. 33 of the Money-Laundering and Terrorist Financing (Prevention) Act).

The Financial Supervision Act prohibits all persons with a registered office inthe Netherlands from providing banking services without a licence granted by the European Central Bank (art. 2:11). In addition, it is prohibited for banks and other financial undertakings to enter into or continue a correspondent relationship with a shell bank or with a bank or other financial undertaking that is known to allow a shell bank to use its accounts (art. 5 (5) of the Money-Laundering and Terrorist Financing (Prevention) Act).

“High-risk” public officials, as designated by the Civil Servants Act, must declare financial interests (art. 5 (1) (d) and art. 8 of the Act), which do not include all types of assets. Each government entity must internally register the declarations. However, there is no centralized monitoring, verification or appropriate sanctioning for non-compliance, or an authority to verify that government entities enforce this obligation. The legislation contains no provisions on the reporting of accounts that public officials have an interest in or signature or other authority over in foreign jurisdictions.

The Financial Intelligence Unit is responsible for receiving, analysing and disseminating unusual transaction reports to the competent authorities (art. 16 of the Money-Laundering and Terrorist Financing (Prevention) Act). The Unit may also request further data or information from reporting entities if it deems it necessary (art. 17 of the Act). It cooperates with national authorities and foreign financial intelligence units pursuant to article 13 of the Act and is a member of the Egmont Group. A draft bill authorizing the Unit to temporarily suspend unusual financial transactions was under consultation at the time of the country visit.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Foreign States have legal standing in the country’s courts. They can initiate action in civil proceedings to establish title to or ownership of property, for example through “revindication” or through a claim for unlawful enrichment or an unlawful act (arts. 5:2, 6:212 and 6:162 of the Civil Code). In addition, when the defendant is the “owner” of the disputed property, foreign States may obtain ownership of the property that has been unlawfully taken in lieu of compensation as an injured party in civil proceedings (art. 6:103 of the Civil Code).

Foreign States can also join criminal proceedings and claim compensation or damages as a victim that has suffered an economic loss or other harm directly caused

by a criminal offence (arts. 51 (a)–(h) of the Code of Criminal Procedure; art. 36f Criminal Code). The Netherlands reported that in criminal proceedings, property can be returned directly to original owners, including foreign States, pursuant to the Code of Criminal Procedure (arts. 116 and 353). If the judge finds that the hearing of the claim of the injured party imposes a disproportionate burden, the injured party can be referred to a civil court (art. 361 of the Code). In addition, the interested parties may file a written complaint to the criminal court about the confiscation of objects belonging to them within three months of a decision becoming enforceable (art. 552 (b) of the Code).

The Netherlands distinguishes between foreign confiscation orders issued by European Union member States and non-member States. The Financial Penalties and Confiscation Orders (Mutual Recognition and Enforcement) Act is applicable to the enforcement of confiscation orders from States members of the European Union where a confiscation order would be recognized and enforced under national law (arts. 4, 22 and 35). The convicted person and interested parties may appeal against the recognition and enforcement of a confiscation order to the Northern Netherlands District Court (arts. 27 and 39). With regard to the enforcement of a foreign confiscation order from a non-member State of the European Union, the order would be transposed into a domestic confiscation judgment and enforced in the Netherlands (arts. 14–16, 18–28 and 30–33 of the Enforcement of Criminal Judgments (Transfer) Act). A public hearing should be held for that purpose, and the court should hear the opinions of the public prosecutor and the defendant (arts. 28 (2) and 31a). There is also a possibility to appeal against the decision of the court (art. 32).

Confiscation of the proceeds and instrumentalities of money-laundering and other criminal offences is envisaged under the Criminal Code (arts. 33 (1), 33a and 36e). National law does not provide for non-conviction-based confiscation, although lawmakers were reviewing the possibility of introducing such a procedure at the time of the country visit. However, it was reported that foreign non-conviction-based confiscation orders could be enforced in the Netherlands, as the Financial Penalties and Confiscation Orders (Mutual Recognition and Enforcement) Act and the Enforcement of Criminal Judgments (Transfer) Act do not distinguish between confiscation orders in that regard.

Similarly to the enforcement of foreign confiscation orders, the Netherlands also distinguishes between requests for seizure from European Union member States and non-member States. Seizure within the European Union is governed by articles 5.5.1. to 5.5.19 of the Code of Criminal Procedure, in which the mutual recognition and enforcement of European Union freezing orders is regulated. With regard to requests from non-member States of the European Union, insofar as it is provided by a treaty, including the Convention, property that would be confiscated under the law of the foreign State may be seized and preserved at the request of that foreign State (art. 13a of the Enforcement of Criminal Judgments (Transfer) Act). Such requests could either entail a foreign seizure order or demonstrate that such an order would have been issued if the relevant property had been in the territory of the foreign State.

The Netherlands reported that it may initiate its own investigation on the basis of a foreign arrest or criminal charge that involved a substantial suspicion of criminal offences without asking for a foreign request. The administration of assets is governed by the Seized Objects (Safekeeping) Decree, under the responsibility of the Asset Management Office and other relevant agencies.

The Netherlands has received and executed foreign requests for confiscation of property before. In addition, a domestic criminal and financial investigation into gains unlawfully obtained by a person under investigation in a foreign State may be initiated in the Netherlands following a request from that State made on the basis of the Convention (art. 13 of the Enforcement of Criminal Judgments (Transfer) Act). Investigative powers, including asset tracing and seizure, can be applied as part of criminal and financial investigations.

The Netherlands reported that it could communicate directly with foreign authorities prior to refusing a request or lifting a provisional measure (art. 5.1.4 (5) of the Code of Criminal Procedure). The interests of bona fide third parties are protected under article 552a and 552b of the Code.

Return and disposal of assets (art. 57)

There is no domestic legislation governing the return and disposal of assets. Return of property to a requesting State, including the deduction of reasonable expenses, is conducted pursuant to bilateral mutual legal assistance agreements or on a case-by-case basis. According to several mutual legal assistance agreements, confiscated assets would be kept by the requested State; however, the possibility would exist for those assets to be returned or shared, with due consideration for the interests of bona fide third parties.

In addition, the Ministry of Justice and Security is authorized to conclude agreements with the competent authority of the requesting State on the disposal of confiscated assets pursuant to the Convention. Such agreements may entail the full or partial transfer of assets to the foreign requesting State with a view to compensating injured parties or returning the assets to the entitled parties. In this regard, the Netherlands reported several cases involving the full return of assets.

3.2. Successes and good practices

- The establishment of two beneficial ownership registers (art. 12, para. 2 (c), and art. 52, para. 1).
- The multidisciplinary approach taken by the Public Prosecution Service in confiscation cases, including the use of specialized teams.

3.3. Challenges in implementation

It is recommended that the Netherlands:

- Clarify the application of different legal bases for mutual legal assistance and asset recovery by, for example, developing an asset recovery guide (art. 51).
- Strengthen systems to prevent conflicts of interest and endeavour to extend the obligation to report interests to include assets, and include the interests and assets of close family members; consider establishing a monitoring, verification and sanctions mechanism to ensure compliance with reporting obligations; and consider permitting its competent authorities to share such information with foreign competent authorities (art. 8, para. 5, and art. 52, para. 5).
- Consider requiring appropriate public officials to report foreign accounts in a foreign country that they have an interest in or signature or other authority over and to maintain relevant records (art. 52, para. 6).
- Take the necessary measures to ensure that the direct enforcement of foreign confiscation orders issued in States parties that are not members of the European Union is timely and streamlined (art. 54, para. 1 (a)).
- Although the Netherlands is able to enforce non-conviction-based confiscation orders issued by foreign authorities, in order to provide mutual legal assistance, consider taking the necessary measures to allow confiscation of property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence (art. 54, para. 1 (c)).
- Adopt legislative or other measures to ensure that confiscated assets be disposed of pursuant to the requirements of the Convention, including by returning property to its prior legitimate owners or compensating the victims

of the offences, and consider concluding agreements for the final disposal of confiscated property (art. 57, paras. 1, 3 and 5).

- Consider allowing the Financial Intelligence Unit to administratively freeze or suspend suspicious transactions (art. 58).

IV. Implementation of the Convention

A. Ratification of the Convention

The United Nations Convention Against Corruption (UNCAC) was signed by the Netherlands on 10 December 2003. This Convention was submitted to the Dutch Houses of Parliament for tacit approval by the Minister of Foreign Affairs, after having heard the Council of State, on 4–19 September 2006. The Governors of the Kingdom of the Netherlands Antilles and Aruba were requested to submit the Convention to the House of Parliament of the Kingdom of the Netherlands Antilles and the House of Parliament of Aruba on 19 September 2006.

Since no expression of the wish for explicit approval (by the Houses of Representatives or by the Ministers Plenipotentiary) was received, the Convention was tacitly approved. The document of acceptance was deposited with the Secretary-General of the United Nations (UN) on 31 October 2006.

Approval was given for the European part of the Netherlands.

B. Legal system of the Netherlands

The Dutch Constitution takes a moderately monist approach to international conventions. Article 93 of the Constitution states that provisions of treaties and of resolutions by international institutions that are binding on everyone, shall have binding force after they have been published in the Treaty Series (het Tractatenblad).

Article 94 of the Constitution states that provisions of international treaties override contradicting statutory law ('Statutory regulations … shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions'). Accordingly, the UN Convention Against Corruption has become an integral part of Dutch domestic law through its publication, ranking above national legislation.

According to the memorandum of the Minister of Foreign Affairs to the Parliament asking for approval of the Convention, the approval did not require any legislative action, with the exception of some amendments to the technical aspects of the Dutch Extradition Act which were planned to be incorporated into the Dutch Penal Code.[6] Otherwise, the amendments for the international instruments to which the Netherlands became a State Party prior to UNCAC were considered sufficient to meet the obligations under UNCAC as well.

The Netherlands is a parliamentary democratic constitutional monarchy. It borders the North Sea to the north and west, Belgium to the south and Germany to the east. Its capital is Amsterdam and

[6] September 6th, 2004: kst100828.2s.pdf (officielebekendmakingen.nl)

its seat of government is The Hague. The Netherlands is densely populated. At this moment (November 2019), approximately 17,323,639 people live in the Netherlands, on 41,562 km2. It is a geographically low-lying country, with about 27 per cent of its area and 60 per cent of its population located below sea level. Significant areas have been gained through land reclamation and preserved through an elaborate system of polders and dykes. The Netherlands is a founding member of the UN, the North Atlantic Treaty Organization (NATO), the European Communities (now the European Union (EU)), the International Monetary Fund, the World Bank and the West European Union. As a relatively small country with a globally oriented economy, The Netherlands attaches great importance to multilateral and international relations.

The Netherlands is one of four countries which together form the Kingdom of the Netherlands. In addition to Netherlands, the Kingdom includes the countries Aruba, Curaçao and Sint Maarten. The Statute of The Kingdom of The Netherlands (Statuut voor het Koninkrijk der Nederlanden) governs the constitution of The Kingdom of The Netherlands. The Netherlands itself is divided in a European section and three special municipalities in the Caribbean, namely the islands Bonaire, Sint Eustatius and Saba. This report only concerns the European part of the Netherlands; the Caribbean countries and special municipalities are excluded from this evaluation.

Dutch economy

The Dutch economy is a private free market system. The main impact of the government on the economy is through regulation and taxation. The Dutch have long been renowned as merchants and a significant part of the economy is now based on foreign trade. Its exports and imports of goods and services comprise 83.0 and 72.2 per cent of its GDP, respectively (World Bank, 2017). These large shares are pushed upwards by a large volume of re-export activities, reflecting Rotterdam's role as a gateway to Europe. In 2017, The Netherlands ranked 8th in the world in terms of export levels (CIA World Factbook, Netherlands Country Profile). A large share of the export of goods are machinery-related and chemical products, while the major sectors with regard to the export of services include business, professional and technical services, franchises (and similar rights), and air and sea transport. With regard to the export of goods, the major trading partners of the Netherlands are Member States of the EU (in particular Germany, Belgium, France and the United Kingdom), the United States and China. Major trading partners with regard to the export of services are also EU Member States (in particular Ireland and Germany) and the United States. The Netherlands is home to some of the world's largest corporations, including Royal Dutch Shell and Unilever.

Along with the United States, the Netherlands has consistently been one of the main proponents of international free trade as well as the reduction of duties and tariffs on goods and services. As a member of the EU, the Netherlands uses the euro as its currency.

System of government

The Netherlands has been a constitutional monarchy since 1848. The Dutch Constitution (Grondwet) determines that the ministers, are responsible for government policy rather than the Monarch. The King enjoys a position of immunity. The Netherlands is a parliamentary democracy. The State is ruled by the government under the supervision of Parliament. The government consists of the Ministers under the leadership of the Prime Minister (minister-president). Parliament consists of an Upper House or Senate (Eerste Kamer) and a Lower House or House of Representatives (Tweede Kamer).

The 150 members of the Lower House are elected directly by the citizens of the Netherlands. In principle, there are elections every four years. The most important task of the Lower House is to

supervise the government's actions and to co-create legislation. The Lower House has several powers to do so. For instance, the Lower House may table a motion of 'no confidence' against the Minister or the Cabinet. This motion can ultimately lead to the resignation of the Minister or the Cabinet. The Lower House may also exercise the right of initiative (i.e. the right to propose bills), the right of amendment (i.e. the right to change a bill proposed by the government), the right of interpellation (i.e. the right to demand clarification from a Minister), the right of inquiry and the right of budget. These rights form the basis of parliamentary democracy in the Netherlands.

The Netherlands has three administrative layers: the State, the provinces (provincies) and the municipalities (gemeenten). Elections are held every four years for the Provincial Councils and the municipalities. Delegates from the Provincial Councils elect the members of the Upper House; as a result, the members of the Upper House are elected indirectly. The Upper House is co-legislator and monitors government policy. All bills which have been passed in the Lower House must also be approved by the Upper House. The Upper House can reject a bill, but it cannot propose or amend bills. Otherwise, the members of the Upper House have the same rights as members of the Lower House.

Currently (situation as of November 2019), the Netherlands has 12 Ministries. Each Ministry is headed by a Minister, who bears political responsibility for the policy pursued by that Ministry. There can also be other Ministers or State Secretaries (staatssecretaris(sen)) who are responsible for some policy topics within that Ministry. The civil servants in each Ministry assist the Minister and State Secretary in their work. They maintain an apolitical stance, according to the loyalty principle. After elections, the civil servants continue to work at the same Ministry for the newly appointed Ministers and State Secretaries.

The Netherlands does not have a constitutional court. The Raad van State (Council of State) must be consulted on all bills and draft proposals. Its rulings are not formally binding but are nonetheless authoritative. In general, once a law has been enacted by Parliament, it cannot be invalidated by the judiciary on constitutional grounds, but it can be wholly or partly invalidated when it is contradictory to international public law (including treaties). The courts have an important role in developing the law through the interpretation of legislation. With regard to the legal interpretation of legislation, explanatory notes (the Memorie van Toelichting) drafted for the purpose of the parliamentary reading of the bills, as well as the parliamentary history regarding the bill, are an important source for the interpretation of the provisions.

The courts

The Netherlands is a civil-law country. Its laws are written and the application of customary law is exceptional. The role of case law is minor in theory, although it is impossible in practice to understand the law in many fields without also taking into account the relevant case law.

A large proportion of Dutch law is laid down in international agreements, the Constitution, legal codes, acts, and municipal and provincial by-laws. As defined by the Constitution, the Judiciary (Organization) Act and other acts, the role of the courts in applying the law is to create order and shape its development.

The Netherlands is divided into eleven legal districts, each with its own court. Each court has a number of sub-district venues. Within the courts, three branches of law are defined: criminal, civil and administrative law.

Appeals against judgments passed by the district court in civil, criminal and tax law cases can be

lodged with the competent Court of Appeal (Gerechtshof). There are four Courts of Appeal in total. Appeals against administrative law judgments can be lodged with the competent specialised administrative law tribunal – the Administrative Jurisdiction Division of the Council of State, the Central Appeals Tribunal or the Trade and Industry Appeals Tribunal (also known as the Administrative High Court for Trade and Industry), depending on the type of case. Appeals in cassation in civil, criminal and tax law cases are lodged with the Supreme Court of the Netherlands (Hoge Raad der Nederlanden).

The Council for the Judiciary (Raad voor de rechtspraak), founded in 2002, is part of the judiciary system but does not administer justice itself. It has taken over responsibility for a number of tasks from the Minister of Justice and Security. These tasks are operational in nature and include the allocation of budgets, supervision of financial management, personnel policy, ICT as well as housing. The Council supports the district and appeal courts in executing their tasks within these areas. Another central task of the Council is to promote quality within the judiciary system and to advise on new legislation that has implications for the administration of justice. The Council also acts as a spokesperson for the judiciary on both the national and the international level.

The Public Prosecution Service

The Public Prosecution Service (Openbaar Ministerie) and the courts together make up the judiciary. The Public Prosecution Service is a national organisation divided over ten regions. The organisation's office (arrondissementsparket) in a given region is located at the district court (rechtbank) serving that region. Every office of this kind is headed by a Chief Prosecutor. If a convicted person or public prosecutor disagrees with the judgment handed down by the district court, it may lodge an appeal with the court of appeals. The Public Prosecution Service has a national office to deal with criminal appeals, which has locations at the appeal courts in Amsterdam, The Hague, 's Hertogenbosch and Arnhem-Leeuwarden. The Public Prosecutor's Office at the appeal court in question prosecutes the case anew. The appeal court then hands down a judgment ruling (arrest).

In addition, the Public Prosecution Service has a number of organisational units authorised to perform tasks at the national level.

National Head Office (Parket-Generaal)

The Public Prosecution Service is headed by the Board of Prosecutors General. They decide on the Dutch investigation and prosecution policy. Together with the organisation's directors and staff officers, the Board of Prosecutors General constitutes the national head office of the Public Prosecution Service. Other constituent elements are:

1. the Bureau for Criminal Law Studies (WBOM), which acts as a knowledge and documentation centre on legal matters for the Board of Procurators General as well as the other parts of the Public Prosecution Service;
2. the Bureau for International Affairs (BI), which acts as a non-operational advisory body to gain more coherence in and a better overview of the field of international affairs.

National Public Prosecutor's Office (Landelijk Parket)

The National Public Prosecutor's Office focuses on international forms of organised crime and on crime that undermines society, such as human trafficking, terrorism, drug trafficking, money laundering related to organised crime, international war crimes, child sexual abuse material, sexual exploitation of children in the context of travel and tourism, and cybercrime and domestic bribery. As these serious and often invisible forms of crime damage the fabric of society, they require a coordinated approach involving partners from both within and outside the Public Prosecution

Service.

In 2001 The board of Prosecutors General established the "Coordination commission NPIID" (Coördinatiecommissie Rijksrecherche (CCR). This commission, chaired by the member of the board of Prosecutors General responsible for the NPIID, decides on the engagement of the NPIID, policy related to this engagement and assesses (where required) the prioritization of the engagement by the management of NPIID and the coordinating public prosecutor NPIID ("landelijk coördinerend officier van justitie rijksrecherche" LOvJ RR). In all situations where in the course of an investigation or an investigation that is set to commence, requires capacity from the NPIID, the LOvJ RR must be informed by the thereto responsible person (the "(rijks)rechercheofficier") of the related public prosecutor's office. The LOvJ RR makes – in consultation with the steering committee on investigation, the management or NPIID duty officer –a preliminary decision on the engagement of the NPIID. The LOvJ RR informs the CCR. The CCR then decides if the engagement or the NPIID is indeed required. The substantial management of the investigation is decided upon by the responsible office of the DPPO. They are also responsible for progress and decisions on prosecution.

National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation (Functioneel Parket)

This office is responsible for tackling fraud and environmental offences. It handles complex cases regarding fraud and environmental crime, including cases of commercial bribery, foreign bribery and occasionally domestic bribery. In addition, it serves as the Public Prosecution Service's centre of expertise on confiscating the proceeds of crime.

An amount of 20 million euros has been made available since 2018 by the Dutch federal government for the improvement and intensification of the efforts to combat corruption as well as money laundering in the Netherlands.

The 20-million-euro investment referred to above led among other things to the creation of the so-called 'corruption team' in 2017. For a successful approach to corruption, a prerequisite is reserving distinct capacity that includes people who are able to specialise and focus on building and maintaining their specialist knowledge, as well as share and teach their expertise.

The corruption team is a partnership between the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation and the National Public Prosecutor's Office. It exercises authority over criminal investigations that are carried out by the Anti-Corruption Centre (ACC) of the Fiscal Intelligence and Investigation Service (FIOD).

The prosecutors in the corruption team work in the different offices within the country. At the time of the country visit (late 2020), two prosecutors are devoting their time almost exclusively to handling foreign and commercial corruption cases, while a third position is vacant. Nine prosecutors are considered to form part of the team, although they are not exclusively working on corruption and also handle other fraud cases (flexibele schil).

The National Coordinating Prosecutor on Corruption is responsible for coordinating the prosecution of commercial and foreign bribery Together with the FIOD/ACC they are involved in the acquisition and intake of foreign bribery cases, the professionalisation of the Dutch approach towards this form of corruption and the development of knowledge in relation to this topic; for example, through teaching, providing legal updates, initiating team meetings to exchange experience and knowledge, and developing policies in the field of anti-corruption. The corruption

team is also the point of contact for both national and international partners.

As part of this coordinating responsibility, the corruption team acts as a traffic control tower for all commercial bribery and foreign bribery cases. The corruption team is responsible for improving the quality of the acquisition, intake and handling of these corruption cases, while it also advises on the allocation of the necessary competences within the Public Prosecution Service. These corruption cases are occasionally handled by public prosecutors from outside the corruption team. In principle, all divisions of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation and the National Prosecutor's Office are able to investigate these types of cases, provided that they have the necessary capacity and competences available at the time.

Together with the FIOD/ACC, the team centralises the incoming cases, complaints, information and so on within. These matters are then examined and discussed with the Public Prosecution Service in order to prioritise the cases, maintain an overview, and to advise on legal issues and tactics.

In addition, the prosecutor responsible for corruption regarding Dutch public officials (the coordinating public prosecutor NPIID from the National Prosecutor's Office) is part of the team, although he works in a different office and on other cases. This procedure was set up to enhance the cooperation between the different offices and investigative bodies.
The following positions have been integrated into the corruption team:[7]
- the National Coordinating Prosecutor on Corruption;
- the National Police Internal Investigations Department (NPIID) public prosecutor from the National Prosecutor's Office;
- the Intelligence public prosecutor for money laundering and corruption of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation;
- three public prosecutors (one current vacancy) of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation;
- the policy adviser for corruption and money laundering of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation;
- the policy adviser for the National Police Internal Investigations Department from the National Prosecutor's Office;
- the policy secretary for corruption and money laundering of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation;
- two office secretaries of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation.

As previously stated, the flexible shell surrounding the corruption team consists of nine public prosecutors of the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation.

Central Processing Office (CVOM)
The Central Processing Office handles virtually all minor offences and traffic cases in the Netherlands. Central Processing deals with anyone who is guilty of drink-driving, speeding or driving without a licence. It makes nationwide agreements with the police concerning road traffic enforcement, while it also assesses whether new legislation concerning the roads, waterways, airways and railways is enforceable.

[7] The following list describes the situation anno 2020. Since then, several functions have been merged together or ceased to exist. Therefore, the overview no longer represents the situation at the time this report is published.

National Service Centre (DVOM)
The DVOM is a service provider which performs operational management tasks for the Public Prosecution Service in the fields of human resources, finance, information management and facilities management.

National Police Internal Investigations Department (NPIID, Rijksrecherche)
The NPIID falls under the authority of the Public Prosecution Service. This independent body investigates alleged cases of criminal conduct within the government, including when a public servant is suspected of a criminal offence such as fraud or bribery.

A case may involve a police officer or a staff member at the Public Prosecution Service, but it could equally be a civil servant at the central, local or provincial government level who is under investigation. In addition, the NPIID is always called in use of severe violence against civilians by the police. The NPIID conducts investigations when the integrity of the government is at stake, when it is a sensitive case and when any appearance of partiality has to be avoided In sum the investigations will contribute to the integrity of and trust in government and its authorities.
The NPIID investigators are police officers, though the department is part of the DPPO. The main characteristic is that they are independent and impartial. The legal basis of their activities falls under art. 49 of the Police Act. The tasks and interventions by the Rijksrecherche are described in a(n) Instruction/Policy Rule. Specific criteria for intervention are:
- Suspect is an employee of the (semi)government;
- A crime that affects the integrity of the government (corruption);
- Need of impartiality;
- Special expertise needed/delicate situation

Examples of cases the NPIID deals with are:
- corruption by civil servants;
- abuse of power by civil servants;
- use of fire arms by police officers with casualties;
- casualties after police intervention;
- casualties in jails;
- other criminal offences by civil servants.

Public Prosecution Service

Section 124 of the Judicial Organisation Act provides that the Public Prosecution Service is responsible for the criminal enforcement of the legal system and for other tasks as established by law. The Public Prosecution Service's main tasks are:
- investigating criminal offences;
- prosecuting offenders;
- making sure that sentences are carried out properly.

The Public Prosecution Service concerns itself with criminal offences, both minor and serious, and is the only body that can decide to prosecute somebody.

The police are responsible for the practical side of criminal investigations. They collect evidence, interview witnesses and victims, and arrest suspects. In addition, they are required to keep a complete record of the case in the form of an official report. However, the Public Prosecution Service has the ultimate responsibility for the investigation. The police have to render account for their actions to one of the public prosecutors of the Public Prosecution Service. Every investigation

is carried out under the instructions of a public prosecutor, who ensures that the police observe all the rules and procedures laid down by law. This procedure is of particular importance in the case of a serious offence, where the public prosecutor will be involved from the beginning of the investigation.

The Public Prosecution Service is also responsible for supervising criminal investigations carried out by other authorities, such as the municipal social services, the FIOD, and the Netherlands Food and Consumer Product Safety Authority. If necessary, the public prosecutor may authorise the police to apply certain coercive measures. The Public Prosecution Service does not have unlimited powers and certain measures may only be taken with permission from the courts. Examples are house searches and telephone tapping.

Prosecution begins as soon as the courts become involved in a case, even if no one has actually appeared in court. For instance, the court may be asked to issue a warrant for remand in custody if someone is suspected of having committed a serious offence. The person in question can then be detained for a limited period of time.

The public prosecutor may have reason to decide not to prosecute a case and may therefore drop the charges against the suspect. This situation could be the case, for instance, if the police have not managed to collect sufficient evidence. The charges may also be dropped for other reasons, as a matter of policy. The public prosecutor can decide as well to settle a case out of court. Prosecutions in the Netherlands are conducted according to the principle of prosecutorial discretion (opportuniteitsbeginsel). Article 167 of the Dutch Code of Criminal Procedure delegates the decision to prosecute to the Public Prosecution Service. The Public Prosecution Service has a discretionary power to dismiss a case, to settle a case out of court or to choose for what offence/which offences a suspect shall be prosecuted. The decision to prosecute is not a matter of arbitrariness, however, because the public prosecutor is subject to general guidelines called Instructions (Aanwijzingen) for the prosecution of several offences. These Instructions counterbalance the discretionary powers of the Public Prosecution Service.

Anyone who is directly involved in a case may object to the charges being dropped by lodging a complaint with the Court of Appeal. If the Court finds that the complaint is well founded, the Public Prosecution Service has to start a prosecution.

If the Public Prosecution Service does not drop the charges or settle out of court, the suspect has to appear in court. It is sent a summons: a letter stating when the case is to be heard and giving a description of the offence or offences with which it is charged. The defendant may only be tried on those counts. Relatively minor offences are heard in a court presided over by a single judge. More serious cases are heard by three judges.

The case against a defendant is presented in court by the public prosecutor. After the public prosecutor has explained in full the charges that have been filed, the court interrogates the defendant. The public prosecutor is also given an opportunity to interrogate the defendant. Subsequently, the public prosecutor gives his opinion of the case and requests the court to impose what he considers to be an appropriate sanction. The public prosecutor may also request an acquittal.

One of the Public Prosecution Service’s tasks is also to protect the interests of people who have suffered as the result of a crime. It advises them on how to claim compensation and keeps them informed of progress in the case. In addition, it can negotiate between the offender and the victim

to arrange compensation.

The Public Prosecution Service is accountable to two separate authorities. First, the courts review the conduct of the Public Prosecution Service and the police services. Second, the Minister of Justice and Security has political responsibility for the Service's conduct and performance, and may be called upon to render account to Parliament.

The Minister is concerned with general policy on investigations and prosecutions. Only rarely does he intervene in individual cases, although he might issue instructions to the Service's public prosecutors after consulting the Board of Procurators-General. If the Minister decides to issue instructions to the Public Prosecution Service, he keeps the court hearing the case in question fully informed. It is of course the court that makes the ultimate decision in criminal prosecutions. If the Minister decides that a person will not be prosecuted, he has to inform Parliament of his decision.

For more information on the organisation of the Public Prosecution Service, please refer to the brochure 'The Public Prosecution Service at a glance' (December 2019).

Investigative authorities

Various investigative authorities are responsible for detecting corruption offences and can carry out investigations. Among those are the National police, the NPIID, the Royal Netherlands Marechaussee (KMar) and the FIOD.

For information on the police organisation, please refer to the brochure 'Policing in the Netherlands'. See also: https://www.government.nl/documents/leaflets/2009/01/01/policing-in-the-netherlands. This brochure was produced in 2009. Since then, there has been an important change with regard to the responsible Minister for the police organisation. In October 2010, part of the tasks of the Ministry of the Interior and Kingdom Relations (among other things the responsibility for the police organisation) was transferred to the Ministry of Justice, as it was called at that time. This change means that the Minister of Justice and Security has since had full ministerial accountability for the national police force. The Minister determines the budget and sets the framework within which the national police force works. The brochure 'Working on a Safe and Just Society' contains a brief description of the organisational structure as well as the goals and responsibilities of the Ministry of Justice and Security. See for the brochure: https://www.government.nl/documents/leaflets/2012/03/27/working-on-a-safe-and-just-society.

The purpose of the NPIID is to be an investigative authority, with a focus on the detection of punishable crimes committed by semi-governmental or other officials. The NPIID is an independent part of the Dutch police force, falls under the authority of the Board of Procurators General and has the same investigative powers as the regular police. See above for more information on the NPIID.

The FIOD is the special criminal investigation service of the Netherlands Tax Administration (NTA), under the Ministry of Finance.[8] The FIOD combats fiscal, financial-economic and commodity fraud, while it also safeguards the integrity of the financial system and combats organised crime, especially its financial component. If the NTA or supervisory bodies such as the Dutch Central Bank or the Authority for the Financial Markets suspect fraud, the matter is referred to the FIOD. The FIOD then assesses whether fraud is indeed being committed. If so, the FIOD may decide to start a criminal investigation in consultation with the Public Prosecution Service. In

[8] Until 2020, the tax and customs administration formed a joined organisation with name Tax and Customs Administration (NTCA). In 2020, they have been separated in two individual organisations.

this context, particular attention is paid to the social interest and feasibility of a prosecution. The final outcome of the investigation is set out in an official report. In nearly 90% of cases, the public prosecutor decides to prosecute the suspect. This procedure can involve summoning the suspect to appear in court, but the public prosecutor may also opt for an out-of-court settlement. If prosecution nor settlement is decided, the case can also be dealt with administratively by the NTA or the supervisory body. This fact means that the NTA or the supervisory body can impose a fine on the offender.

The FIOD also performs activities in the area of economic planning, financial integrity, social benefits and goods movements. These activities involve matters such as bankruptcy fraud, money laundering and health-care fraud. In addition, the FIOD contributes to the fight against organised crime and terrorism by conducting criminal investigations as well as by mapping out the money flows of criminal and terrorist organisations. Because financial-economic and fiscal fraud is not restricted by borders, the FIOD cooperates with foreign sister organisations.

In September 2016, a special Anti-Corruption Centre (ACC) within the FIOD was established and operationalised. The ACC is a centre of expertise in the field of corruption within the FIOD. Having this specialised body in place enables the FIOD to detect signs of corruption at an early stage and investigate them immediately. The ACC, which consists of FIOD employees, is aimed at combating bribery and corruption, mainly focusing on foreign bribery as well as commercial bribery. Offences related to these foreign bribery offences are also investigated by the ACC. The ACC consists of the following three divisions:
1. Detection and Acquisition;
2. Investigation;
3. Knowledge.
The FIOD is divided into six regions; there are offices at different locations in the Netherlands. The management team and the central staff are located in Utrecht. Investigation teams operate from all locations. In addition, there are anti-money laundering teams, a strategic intelligence team, an international team and a Criminal Intelligence Team (TCI). Moreover, the FIOD has its own arrest teams.
In addition to the FIOD, there are three other special investigative services:
1. the Social Affairs and Employment Inspectorate (Inspectie Sociale Zaken en Werkgelegenheid) of the Ministry of Social Affairs and Employment;
2. the Human Environment and Transport Inspectorate (Inspectie Leefomgeving en Transport) of the Ministry of Infrastructure and Water Management;
3. the Intelligence and Investigation Service of the Netherlands Food and Consumer Product Safety Authority (Nederlandse Voedsel- en Warenautoriteit) of the Ministry of Agriculture, Nature and Food Quality.

The above three special investigative services do not have a special task in investigating corruption. Nevertheless, if they come across any corruption offences during their regular ongoing investigations, these special investigative authorities can include such offences in their investigations.

The Royal Netherlands Marechaussee – a part of the military- has responsibilities following from article 4 of the Police Act, which include policing responsibilities within the Dutch military and military locations.

Policy on tackling financial-economic crime
In 2007, the Dutch government started a comprehensive government programme aimed at tackling

financial crime – the Programme for Reinforcement of Measures against Financial and Economic Crime (FINEC) – in which all ministries and involved agencies cooperated closely. Simultaneously, the governmental Reinforcement Programme against Organised Crime was launched. The two programmes included differing but similar elements and were designed in a mutually reinforcing manner.

The principle guiding the Dutch financial crime policy is to make the Netherlands a hostile environment for committing financial crime. The Netherlands believes that this aim can only be achieved through a system of prevention, disruption and enforcement, operating across organisational as well as geographical boundaries.

The FINEC programme is an innovative, programmatic approach, which means including all relevant actors (public and private) in combination with the reinforcement of existing measures. The implementation of the reinforcement programme involves the Ministry of Justice and Security, the Ministry of Finance, the Ministry of the Interior and Kingdom Relations, special investigation agencies, the police, the Public Prosecution Service, along with all its specialised agencies and private-sector actors (such as insurance companies and banks). The overall programme on financial crime, FINEC, brought significant expansion of law enforcement agencies involved in the tackling of financial crime.

The FINEC programme lasted until 2011. The current government has more or less continued the reinforcements made in the FINEC programme through its Confiscation of Illicit Gains programme (Programma Afpakken). This national programme, which started in February 2011, ensures that law enforcement authorities (the public prosecutor, the police and special investigation services) can confiscate more money (and in a smarter and more effective way) from criminals. In the upcoming years, structurally more money has to be confiscated, ultimately resulting in an amount of 100 million euros in 2018. Through an effective and efficient use of all instruments of criminal, administrative, tax and civil law, the emphasis placed on confiscation ensures that crime does not pay.

The Combating Financial Crime (Extended Powers) Act entered into force on 1 January 2015. This legislation provided for the further expansion of the options available to investigate and prosecute white collar crime as well as penalise it more harshly.

The maximum prison sentence for various financial and economic offences has been increased, while a flexible maximum level for fines has been introduced for legal persons. This flexible maximum level means that a fine can be imposed on a legal person of up to 10 per cent of its annual turnover.

Furthermore, the criminal penalties for abuse of grant monies and official as well as commercial bribery have been updated and broadened, the maximum penalties for bribery and money laundering have been increased, and the possibilities for the deduction of any costs incurred on criminal proceeds have been restricted. ‘Habitual’ infractions of the lighter category of economic offences, as referred to in Article 6(1)(2) of the Economic Offences Act (WED), have furthermore been criminalised independently. Systematic violations of these economic regulatory acts are punishable by imprisonment for up to four years or with a fine of the fifth category.

The Act not only leads to legal entities and executives risking higher penalties as well as the confiscation of unlawfully obtained proceeds, it also allows for a significantly broader use of investigative and coercive measures against legal entities as well as their managers. As a result of

the increase in the maximum penalty for commercial bribery and the criminalisation of systematic infractions for the lighter category of economic offences, it will be possible to detain persons suspected of such offences even when they are not caught in the act and take them into provisional custody. Furthermore, the investigative services can increasingly proceed to record telecommunications. The limitation period for commercial bribery and systematic infringement of the WED has also been extended from six to twelve years, as a result of which legal entities and executives risk prosecution for a significantly longer time.

Finally, a number of statutory periods were introduced in relation to the procedure for the seizure of so-called 'confidential third-party documents'. This amendment came into force on 1 March 2015.

Even after the Confiscation of Illicit Gains programme, which involved the structural investment of 20 million euros per year to strengthen the criminal justice chain, multiple investments were made to strengthen organisations aimed at reinforcing the approach to financial and economic offences. For example, an amount of up to 20 million euros per year was invested in the FIOD and the Public Prosecution Service from 2016 onwards to strengthen the tackling of corruption and money laundering. At the same time, investments were made in regional partnerships aimed at combating money laundering and confiscating criminal assets, such as the Brabant-Zeeland task force and the Rotterdam confiscation team (afpakteam). In 2017, 30 million euros were made available as a one-off boost to strengthen the approach to confiscating criminal assets. This amount was invested in regional projects, improvements to seizure registration and the further development of the Bank Data Retrieval Portal. In 2019, an amount increasing up to a structural sum of 29 million euros per year from 2021 was made available to organisations including the FIOD, the NTA, Financial Intelligence Unit (FIU) and the Public Prosecution Service in order to intensify the detection of money laundering, tackle fraud and combat criminal subversion. Also see the Letter to Parliament on the Confiscation of Illicit Gains programme of 13 March 2019 (Lower House of Parliament, session year 2018-2019, 29 911, No 221) and the Letter to Parliament on Money Laundering of 30 June 2019.

In January 2019 the DPPO presented its results in this area for 2018. In the letter of March 2019 the minister of Justice and Finance specified the necessity for effective policy and collaboration and identifying key areas of action. At this time four areas were identified to further strengthen their activities together with the FIOD and NP, including further reinforcing systematic financial investigations in all criminal law investigations, increase expertise and adapting to swift societal and technological changes, further internationalization, monitoring. These topics were also elaborated in the abovementioned letter to parliament. Moreover in the fight against the disruptive effects of organized crime legislative, policy and operational measures are continuously developed and undertaken to reinforce financial investigations, increase possibilities to seize criminal assets and undertake an approach to confiscate assets effectively.

National key performance indicators are formulated and progress is monitored annually by the Ministry of Justice and Security and the Ministry of Finance. From 2020 onward the seizure results are reported for each (regional) prosecutor's office and police region and a national criminal law confiscation result is reported. In the preparatory phase of a possible investigation, financial paragraphs will be developed in intelligence reports, criminal assets reports will developed. Afterwards a project plan is drawn up once a case is accepted (upon suspicion of any criminal act) and becomes a criminal investigation. The project plan focuses special attention on the possibilities of confiscation.

The Caribbean parts of the Kingdom of the Netherlands

Constitutional structure

The Kingdom of the Netherlands underwent a process of constitutional reform in 2010. The changes concern the Netherlands Antilles, a country within the Kingdom of the Netherlands that comprised the islands of Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba. These reforms are based on the results of referenda and on decisions taken by representative assemblies about the islands' future constitutional status. The results, with one exception, were unequivocal: the islands no longer wanted to be part of the Netherlands Antilles, yet they also did not want to sever their ties with the Netherlands. As an exception, Sint Eustatius voted to remain a part of the Netherlands Antilles.

On the basis of an outline agreement concluded in 2005 (which set out agreements on constitutional reforms, financial and economic issues, law enforcement and good governance), a series of conferences was launched with the aim of taking a coordinated and parallel approach to dealing with the complexities of this process. In October and November 2006, this approach led to final declarations on the constitutional position of Bonaire, Sint Eustatius and Saba, as well as of Curaçao and Sint Maarten. At the Round Table Conference in Curaçao on 15 December 2008, the Netherlands and the other Kingdom partners reached an agreement on the new constitutional structure of the Kingdom. The conclusions of the final Round Table Conference were signed on 9 September 2010. These conclusions stated that the amended Charter for the Kingdom of the Netherlands would enter into force as planned on 10 October 2010. As of 10 October 2010, the Netherlands Antilles have ceased to exist.

The scope of this report and the review covers only measures adopted by the Netherlands. With the exception of the description below, legislative or other measures adopted by Aruba, Curaçao, Sint Maarten, and the special municipalities Bonaire, Sint Eustatius and Saba are not part of this evaluation.

Autonomous Caribbean countries of the Kingdom of the Netherlands (Aruba, Curaçao and Sint Maarten)

Since 10 October 2010, Curaçao and Sint Maarten have had the status of countries within the Kingdom (like the Netherlands Antilles and Aruba before the changes). Aruba had already been an autonomous country within The Kingdom of The Netherlands since 1986. Thus, as from 10 October 2010, the Kingdom consists of four rather than three equal countries: Aruba, Curaçao and Sint Maarten are not Dutch overseas dependencies but full, autonomous partners within the Kingdom, alongside the Netherlands.

Under this constitutional structure, Curaçao and Sint Maarten – like Aruba – have a high degree of autonomy in internal matters. Nevertheless, Article 3 of the Charter for the Kingdom enumerates some issues as Kingdom affairs. Examples of these Kingdom affairs are the maintenance of the independence and the defence of the Kingdom, foreign relations and Dutch nationality.

As separate countries, Curaçao, Sint Maarten and Aruba have their own governments and are responsible for their own legislation. For example, Aruba, Curaçao and Sint Maarten are responsible for their own governance, education, legal system and law enforcement. While treaties and conventions may be concluded only by the Kingdom and not by its constituent parts, their applicability may be confined to one or more countries. The decision that a treaty or convention is applicable to one of the respective countries within the Kingdom is regarded as an autonomous

affair of that specific country.

Caribbean part of the Netherlands (Bonaire, Sint Eustatius and Saba)

The three other islands Bonaire, Sint Eustatius and Saba are now part of the country of the Netherlands, thus constituting 'the Caribbean part of the Netherlands' (CN). The relationship's legal form is that each island has the status of a public body within the meaning of Article 132a of the Dutch Constitution. In broad terms, their position is now like that of Dutch municipalities, with adjustments for their small size, their distance from the Netherlands and their geographic situation in the Caribbean region. Unlike municipalities in the European part of The Netherlands, the CN are not part of a Dutch province.

The legal system of CN is based on civil law. Although part of the Netherlands now, the islands of CN share a separate legal system that is largely derived from the law of the former Netherlands Antilles. While CN has its own set of legislation, certain laws that apply in the European part of the Netherlands also apply in CN.

An amended version of the Criminal Code BES (wetboek van strafrecht BES) was introduced for Bonaire, Saba and Sint Eustatius in order to fulfil the requirements posed by the international conventions on corruption.

Every resident of the three islands who has Dutch nationality now has the right to vote in elections for the Dutch Lower House of Parliament alongside the existing right to vote in European Parliament elections

Responsibility for foreign relations

The constitutional changes of 2010 did not significantly affect the way in which the Kingdom conducts its foreign relations:

- The Kingdom's external borders have not changed.
- Foreign relations and defence remain 'Kingdom affairs'. These matters are dealt with in the Council of Ministers for the Kingdom, which meets in The Hague. The governments of the Caribbean countries are represented in the Council by a Minister Plenipotentiary. The Aruban government has its seat in Oranjestad, the government of Curaçao is based in Willemstad and the government of Sint Maarten is located in Philipsburg.
- There is one Minister of Foreign Affairs, who has ultimate responsibility for the foreign relations of the Kingdom as a whole.
- The Ministry of Foreign Affairs and the embassies, consulates as well as permanent missions/representations abroad continue to work for the Kingdom as a whole and all its constituent parts.
- As of 10 October 2010, the Caribbean countries of the Kingdom of the Netherlands (Aruba, Curaçao and Sint Maarten) each have their own Foreign Relations Department.
- While treaties and conventions may be concluded only by the Kingdom and not by its constituent parts, their applicability may be confined to one or more countries. In other words, such agreements may be concluded by the Kingdom for one or more individual parts of the Kingdom.

Law enforcement authorities and the judiciary

The Caribbean parts of the Netherlands (Bonaire, Sint Eustatius and Saba) have one single police force. The police force of the CN is called 'Korps Politie Caribisch Nederland (KPCN)' or the Dutch Caribbean Police Force.

The tasks and responsibilities of the KPCN have been laid down in the Police Kingdom Act of Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba. The KPCN has the task to ensure, in accordance with the applicable rules and regulations, the effective enforcement of the law and the provision of assistance to those who are in need.

As for the management of the KPCN, the Dutch Minister of Justice and Security is the competent authority, who can provide the necessary instructions to the chief of police. The Director-General of Police of the Dutch Ministry of Justice and Security is the mandated Regional Police Force Manager, who is responsible for the overall management of the KPCN.

Under the authority of the joint Procurator General of Curaçao, Sint Maarten and the Caribbean parts of the Netherlands, the NPIID is responsible for investigations that concern integrity issues in Bonaire, Sint Eustatius and Saba.

Aruba, Curaçao and Sint Maarten each have their own police force. As part of the agreements between the Kingdom partners to reorganise constitutional relations, the Police Force Curaçao (KPC – Korps Politie Curaçao) and the Police Force Sint Maarten (KPSM – Korps Politie Sint Maarten) were introduced on 10 October 2010, in addition to the already existing Police Force Aruba (KPA – Korps Politie Aruba). The three Caribbean countries of the Kingdom the Netherlands each have their own Landsrecherche as well: a special police force dedicated to investigating possible criminal conduct of government officials and civil servants.

In addition to these local law enforcement agencies, the Police Investigation Cooperation Team (RST – Recherche Samenwerkingsteam) was established in 2001. The main task of this cooperation between the Kingdom countries is the investigation of international and organised crime, as well as crimes for which special expertise is required. The RST supports the investigation units of the local police forces of Aruba, Curaçao, Sint Maarten and the Caribbean parts of the Netherlands.

In 2019, an amendment to the Protocol on specialised police investigation cooperation between these countries was implemented, which sets out that the countries will invest in police investigation cooperation across the board. The RST will intensify collaboration with the individual police forces in the execution of its responsibilities. With regard to serious crime, the RST will work with the individual police forces in combined teams.

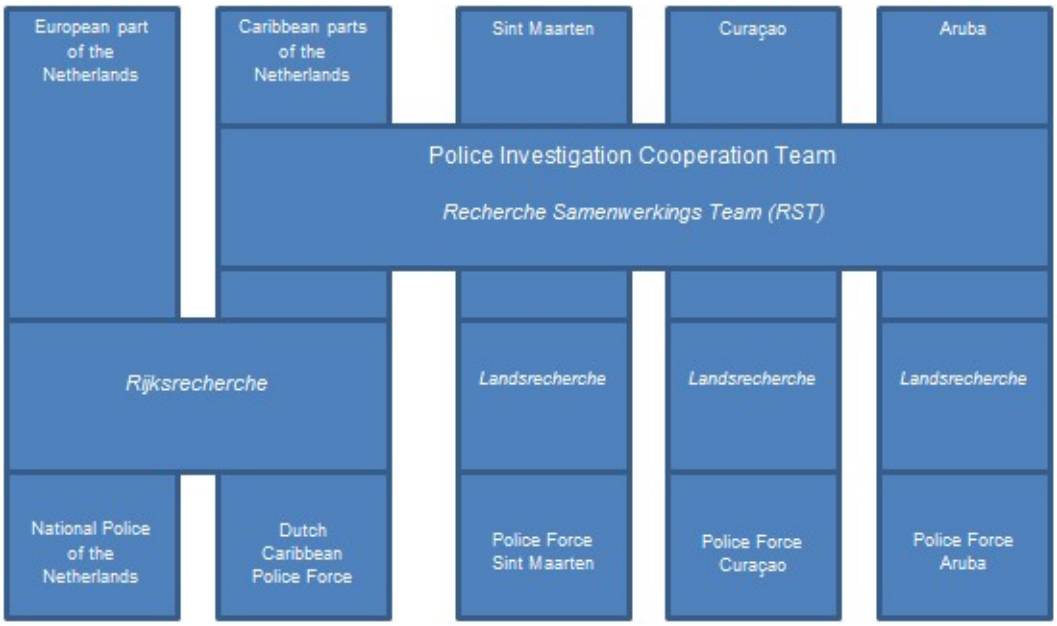

Figure a. Global overview of the police organisation in the Kingdom of the Netherlands

Since 10 October 2010, there have been three new independent public prosecution services in the Kingdom of the Netherlands, to wit for Curaçao, Sint Maarten and the Caribbean parts of the Netherlands. These three new public prosecution services each have their own chief prosecutor. There is a single (or joint) Procurator General at the head of these three public prosecution services, who is accountable to the Ministers of Justice of Curaçao, Sint Maarten and the Netherlands.

The organisational structure, the tasks and responsibilities of these three public prosecution services, and the joint Procurator General are laid down in the Public Prosecution Service (Kingdom) Act for Curaçao, Sint Maarten and for Bonaire, Sint Eustatius and Saba. Aruba already had, and still has, its own public prosecution service with its own Procurator General.

A case that is dealt with in court for the first time generally falls under the jurisdiction of the Court of First Instance, which is an organisational part of the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and the Caribbean parts of the Netherlands. The Courts of First Instance of Aruba, Curaçao and Sint Maarten are located in the respective countries; the Court of First Instance of the Caribbean parts of the Netherlands is located in Bonaire.

The Joint Court of Justice of Aruba, Curaçao, Sint Maarten and the Caribbean parts of the Netherlands is responsible for the administration of justice in first instance but also in appeal cases. The Joint Court of Justice consists of a presiding judge, the other members and their substitutes. The members of the Joint Court of Justice deal with civil cases, criminal cases and cases of administrative law in first instance as well as in appeal procedures.

The Supreme Court of the Netherlands (which has its seat in The Hague) is the highest court in Aruba, Curaçao, Sint Maarten, the Caribbean parts of the Netherlands and the European Netherlands. It is therefore the court of cassation for the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and the Caribbean parts of the Netherlands, as a result of which it has the authority to quash or annul verdicts of the Joint Court of Justice.

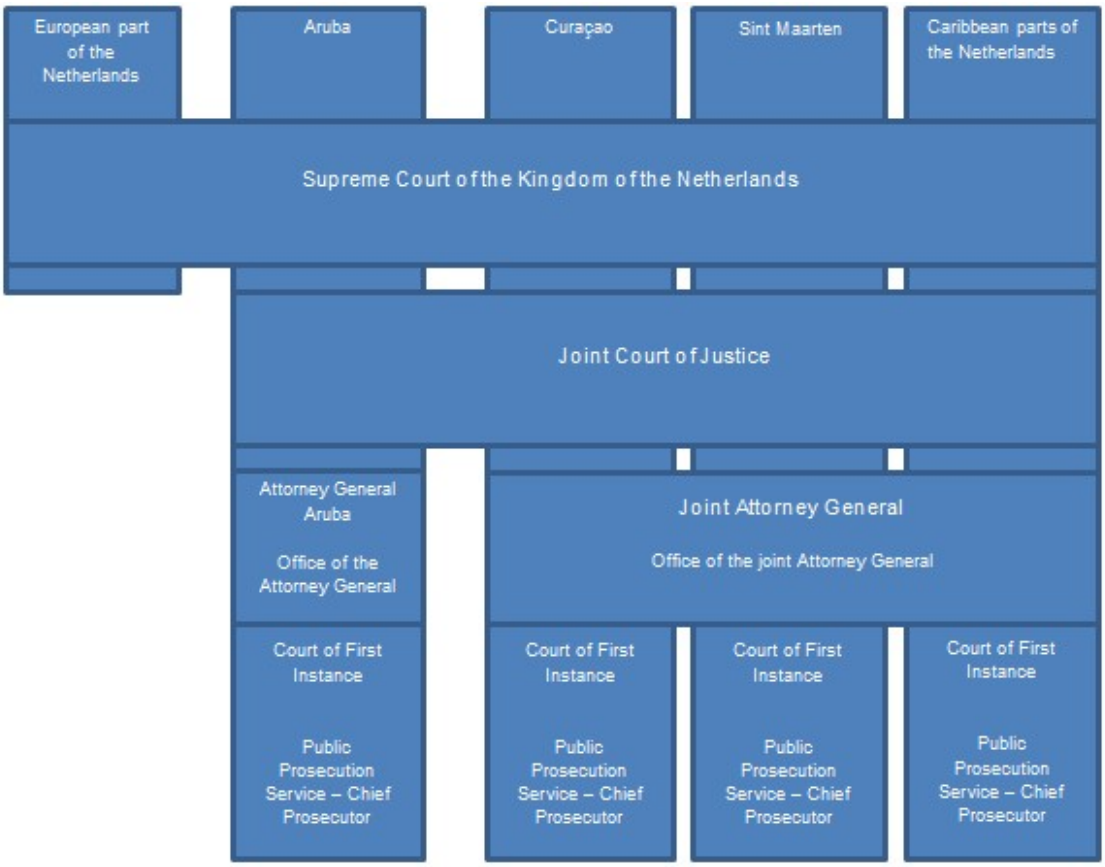

Figure b. Global overview of the Public Prosecution Service and the judiciary in the Caribbean region of the Kingdom of the Netherlands

In a separate communication addressed and e-mailed to the secretariat (uncac.cop@unodc.org), please provide a list of relevant laws, policies and/or other measures that are cited in the responses to the self-assessment checklist along with, if available online, a hyperlink to each document and, if available, summaries of such documents. For those documents not available online, please include the texts of those documents and, if available, summaries thereof in an attachment to the e-mail. If available, please also provide a link to, or the texts of, any versions of these documents in other official languages of the United Nations (Arabic, Chinese, English, French, Russian or Spanish). Please revert to this question after finishing your self-assessment to ensure that all legislation, policies and/or other measures you have cited are included in the list.

Overview of laws, policies and/or other measures as found in the self-assessment. In general most websites will be in Dutch, in some cases English information is available.

All legislation can be found on http://wetten.overheid.nl/zoeken

1) Brochure on policing the Netherlands
2) Brochure including organisational structure as well as the goals and responsibilities of the Ministry of Justice and Security

3) Article 6(1)(2) of the Economic Offences Act (WED), https://wetten.overheid.nl/BWBR0002063/2020-01-31
4) Letter to Parliament on the Confiscation of Illicit Gains programme of 13 March 2019 (Lower House of Parliament, session year 2018-2019, 29 911, No 221) Kamerstuk 29911, nr. 221 | Overheid.nl > Officiële bekendmakingen
5) Letter to Parliament on Money Laundering of 30 June 2019 (English copy can be provided). https://www.rijksoverheid.nl/documenten/kamerstukken/2019/06/30/aanbiedingsbrief-plan-van-aanpak-witwassen
6) www.kennisopenbaarbestuur.nl and www.rijksoverheid.nl
7) Monitor 'Integrity and Security in the Public Sector' Monitor Integriteit en Veiligheid Openbaar Bestuur 2016 | Rapport | Kennisbank Openbaar Bestuur
8) Corporate social responsibility MVO: Corruptie | RVO.nl and the English version: Corruption | RVO.nl
9) GRECO fifth round evaluation report https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2019Z03702&did=2019D07873 English report is available through this link as well.
10) https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0435
11) https://www.huisvoorklokkenluiders.nl/samenwerking/internationaal/europees-netwerk
12) www.werkenvoornederland.nl
13) ikwerkvoornederland.nl.
14) https://www.functiegebouwrijksoverheid.nl/
15) Article 6 of the Intelligence and Security Services Act 2002 (*Wet op de inlichtingen- en veiligheidsdiensten 2002 (wetten.nl - Regeling - Wet op de inlichtingen- en veiligheidsdiensten 2002 - BWBR0013409),* Intelligence and Security Services Act 2017 (*Wet op de inlichtingen- en veiligheidsdiensten 2017*) *https://wetten.overheid.nl/BWBR0039896/2020-01-01*
16) Basic Integrity Standards: https://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/documenten/brochures/2005/09/26/modelaanpak-basisnormen-integriteit
17) Framework Act on Independent Government Agencies (*Kaderwet zelfstandige bestuursorganen*) https://wetten.overheid.nl/BWBR0020495/2020-01-01
18) the Whistleblowers Authority Act (*Wet Huis voor Klokkenluiders*) - https://wetten.overheid.nl/BWBR0037852/2020-01-01 https://wetten.overheid.nl/BWBR0037852/2018-06-13/#Hoofdstuk1_Paragraaf1_Artikel1
19) Parliamentary Papers II, 2016/17, 34376, No 15 https://zoek.officielebekendmakingen.nl/kst-34376-15.html and the circular on the Application of the lobbying ban to Cabinet members, 5 October 2017, appendices.
20) Political Parties (Financing) Act article 21.1 and 23 (wetten.nl - Regeling - Wet financiering politieke partijen - BWBR0033004)
21) https://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/documenten/brochures/2005/09/26/modelaanpak-basisnormen-integriteit
22) Integrity Guidelines for Holders of Political Offices (*Handreiking integriteit politieke ambtsdragers*)
23) *Handreiking registratie integriteitsschendingen*) https://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-

overheidsinstanties/documenten/brochures/2008/06/27/registratie-integriteitsschendingen-handreiking

24) Integrity Violations Registration model form (*modelformulier Registratie integriteitsschendingen*) https://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/documenten/formulieren/2008/06/27/modelformulier-registratie-integriteitschendingen
25) 'Incoming Cabinet Members' Manual' ('*Handboek voor aantredende bewindspersonen'*), This is a public document and can be consulted on the website of the Central Public Administration: Handboek voor bewindspersonen | Richtlijn | Rijksoverheid.nl
26) Government Code of Ethics (*Gedragscode Integriteit Rijk*, GIR)
27) Code of Conduct in 2015 for elected representatives as well as day-to-day administrators.[9] https://vng.nl/onderwerpenindex/arbeidsvoorwaarden-en-personeelsbeleid/integriteit/brieven/modelgedragscode
28) Integrity Guidelines for Holders of Political Offices.
The guidelines are a joint publication of the Ministry of the Interior and Kingdom Relations, the VNG, the IPO and the UvW. Handreiking integriteit van politieke ambtsdragers bij provincies, gemeenten en waterschappen | Rapport | Rijksoverheid.nl
29) *Adviespunt voor ambtsmisdrijven.*
30) *Meldpunt M: Meld Misdaad Anoniem*). https://www.meldmisdaadanoniem.nl/
31) Confidential help line, '*De Vertrouwenslijn'*. https://www.devertrouwenslijn.nl
32) Article 8 of the 2017 Civil Servants Act (Ambtenarenwet 2017) https://wetten.overheid.nl/BWBR0001947/2020-01-01
33) *Algemeen Rijksambtenarenreglement*, ARAR) https://wetten.overheid.nl/BWBR0001950/2019-01-01
34) Chapter 8 'Disciplinary penalties' of the General Civil Service Regulations (*Algemeen Rijksambtenarenreglement*, ARAR) https://wetten.overheid.nl/BWBR0001950/2019-01-01
35) Collective Regulations and Implementation Agreement on Employment Conditions (*Collectieve Arbeidsvoorwaardenregeling en Uitwerkingsovereenkomst*, CAR-UWO), Articles 8:13, 16:1:1 and 16:1:2. Collectieve Arbeidsvoorwaardenregeling en Uitwerkingsovereenkomst (CAR-UWO) | Lokale wet- en regelgeving
36) Collective Regulations on Employment Conditions for the Provinces (Collectieve Arbeidsvoorwaardenregeling Provincies, CAP), Article 10.3.
37) Sectoral Collective Regulations on Employment Conditions for Personnel of the Water Authorities (*Sectorale Arbeidsvoorwaardenregelingen Waterschapspersoneel*). Sectorale Arbeidsvoorwaardenregelingen Waterschapspersoneel (SAW) | Lokale wet- en regelgeving
38) Public Servants (Standardization of Legal Status) Act (*Wet Normalisering Rechtspositie Ambtenaren*, Wnra)
39) Annual Report on Government Operational Management 2018 (*Jaarrapportage Bedrijfsvoering Rijk 2018*, JBR) https://www.rijksoverheid.nl/documenten/rapporten/2019/05/01/jaarrapportage-bedrijfsvoering-rijk-2018
40) Dutch Public Procurement Act or PPA *(Aanbestedingswet 2012)*

https://wetten.overheid.nl/BWBR0032203/2019-04-18
41) Public Procurement Decree (*Aanbestedingsbesluit*) https://wetten.overheid.nl/BWBR0032919/2019-04-18
42) Proportionality Guide *(Gids Proportionaliteit),*
43) Works Procurement Regulations 2016 *(Aanbestedingsreglement Werken 2016)*
44) European Single Procurement Document *(Uniform Europees Aanbestedingsdocument).*
45) Declaration of conduct *(Gedragsverklaring aanbesteden)* in public procurement: https://www.justis.nl/producten/gva/
46) https://www.rijksoverheid.nl/documenten/rapporten/2015/07/08/aanbestedingsrechtspraak-in-nederland-2012-en-2014
47) https://www.rijksoverheid.nl/documenten/rapporten/2018/05/22/5e-periodieke-rapportage-commissie-van-aanbestedingsexperts.
48) Government Accounts Act 2016 https://www.rijksoverheid.nl/documenten/rapporten/2018/05/22/5e-periodieke-rapportage-commissie-van-aanbestedingsexperts.
49) https://www.government.nl/topics/budget-day/budget-process
50) https://www.government.nl/ministries/ministry-of-finance/services-and-institutions
51) Government Information (Public Access) Act (*Wet openbaarheid van bestuur*, Wob): Wet open overheid (Woo) | Rijksoverheid.nl
52) www.internetconsultatie.nl
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54) https://wetgevingskalender.overheid.nl/.
55) *Prettig contact met de overheid'* knowledge and information centre, Lower House of Parliament, session year 2010–2011, 29 362, No 185 2 https://www.raadvoorrechtsbijstand.org/publish/library/86/2010_prettig_contact_met_de_overheid_2.pdf
56) NPIID publishes its annual figures through the Public Prosecution Service Annual Review (*Jaarbericht Openbaar Ministerie*). See for the Annual Review (in Dutch): Jaarberichten | Actueel | Openbaar Ministerie
57) https://www.politie.nl/binaries/content/assets/politie/nieuws/2019/rapport-lekken.pdf
58) Code of Conduct for the Judiciary, 2010 *(Gedragscode Rechtspraak) https://www.rechtspraak.nl/Voor-advocaten-en-juristen/Reglementen-procedures-en-formulieren/Paginas/Gedragscode-Rechtspraak.aspx*
59) Code for Judges, 2011 *(Rechterscode) https://nvvr.org/uploads/documenten/nvvr-rechterscode.pdf*
60) Guidelines for impartiality and ancillary positions in the Judiciary, 2014 *(Leidraad onpartijdigheid en nevenfuncties in de Rechtspraak*) https://www.rechtspraak.nl/SiteCollectionDocuments/Leidraad-onpartijdigheid-en-nevenfuncties-in-de-rechtspraak-januari-2014.pdf
61) Recommendation on the Recusal Protocol *(Aanbeveling wrakingsprotocol gerechtshoven en rechtbanken)*
62) https://www.om.nl/onderwerpen/integriteit/
63) https://www.om.nl/vaste-onderdelen/zoeken/@105665/presentatie/.
64) Financial Expertise Centre https://www.fec-partners.nl/nl

65) District Court of Haarlem of 6 July 2011, No 10/2778 and 10/2779, V-N 2011/57.10 (LJN BR0679)
66) the Journalistic Sources Protection Act (*Wet Bronbescherming*) https://zoek.officielebekendmakingen.nl/stb-2018-264.html
67) https://www.fiod.nl/wat-doet-de-fiod-tegen-corruptie/
68) Wet ter voorkoming van witwassen en financieren van terrorisme https://wetten.overheid.nl/BWBR0024282/2020-01-01
69) Annual reviews - FIU-Nederland
70) AML Action Plan (Plan van Aanpak Witwassen) https://www.rijksoverheid.nl/documenten/kamerstukken/2019/06/30/aanbiedingsbrief-plan-van-aanpak-witwassen.
71) https://eba.europa.eu/-/esas-consult-on-guidelines-on-cooperation-and-information-exchange-for-aml-cft-supervision-purposes
72) AFM guidance (Wet ter voorkoming van witwassen en financieren van terrorisme (Wwft))
73) FEC reports https://www.fec-partners.nl/nl/nieuws/nieuwsberichtjaarplan2016/167, https://www.fec-partners.nl/nl/publicaties
74) ESA guidelines and other regulatory standards https://eba.europa.eu/regulation-and-policy/anti-money-laundering-and-e-money
75) https://www.om.nl/%40103952/ing-pays-775-million
76) WWFT Guidelines DNB Wwft | De Nederlandsche Bank
77) Relevant articles of the criminal code, have been translated into the tekst: 33a; 33(1), 36(1); 36e; 511c, 74, 36f, 14c(2)(1) ; 51 (a), 94, 177, 178, 178a, 328ter , 363, 364, 420 (a)
78) Some relevant articles of the Code of Criminal Procedure have been translated into the tekst. 5.3.1 (6) , 5.1.8(1) , 5.3.1(6) , 5.3.5, 36f, 51, 116, 353, 574, *577b, 552a. The new Book 5 addresses International and European cooperation*
79) Articles 13, 15, 18, 28, 31 and 31a of the Enforcement of Criminal Judgments (Transfer) Act (*Wet op de Overdracht van de Tenuitvoerlegging van Strafvonnissen*, WOTS)
80) Introduction of a thematic register for police data on corruption https://zoek.officielebekendmakingen.nl/stb-2019-475.html

Annexes

1. "Gedragscode Integriteit"– Code of Conduct for integrity 2016 English Version (Gedragscode Integriteit Rijk 2016 | Brochure | O&P Rijk P-Direkt)
2. Overview ministerial contactpoints– "overzicht meldpunten bij ministeries"
3. Political Parties (Financing) Act – ENGLISH VERSION
4. Practice note for auditors on corruption

Please provide a hyperlink to or copy of any available assessments of measures to combat corruption and mechanisms to review the implementation of such measures taken by your country that you wish to share as good practices.

N/A

Please provide the relevant information regarding the preparation of your responses to the

self-assessment checklist.

N/A

Please describe three practices that you consider to be good practices in the implementation of the chapters of the Convention that are under review.

Asset Recovery

Organization:
The use of a multi-disciplinary confiscation team that works together with the public prosecutor and the investigative bodies on the confiscation cases. This team can also be consulted by these and other chain partners as well.

This team consists of:

-asset tracers (investigators);

-forensic accountants;

-civil law experts;

-international criminal law experts;

-specialized public prosecutors;

-specialized assistants of the public prosecutors;

-asset management officers;

- specialized administrative officers;

Many criminal cases, that become more and more complex, have proven that these experts are very useful for the tracing, seizing and confiscation of criminal assets which are more and more hidden behind complex company structures and fake civil law agreements. In almost any confiscation case the assets are transferred to other countries. With these experts as dedicated personnel, working for the same organization (the national public prosecution service for serious fraud, environmental crime and asset confiscation, *het Functioneel parket*), a multi-disciplinary team can be brought together very quickly and is also able to make a confiscation strategy that has to be followed from the beginning. The asset tracers can advise the investigation team and will keep the focus on the tracing and seizing of the assets, even when the investigation team has already been terminated or a confiscation order has been reached.

The forensic accountants are, for example, able to understand business papers and business constructions, they are also able to make calculations with regard to the illegally obtained assets that are understandable for the judge in court. They can also assist the investigation authorities with these calculations.

The international law advisers can be used to cooperate quickly with authorities in other jurisdictions and to know what the possibilities are in the other countries with regard to asset recovery and which instruments to use. They are also part of international networks (such as Carin and the ARO network). The use of these networks has proven to be very successful in many cases.

The asset management officers are part of the same organization and are part of the national asset management office (AMO). All assets that are seized in the Netherlands are managed and registered by this office and will be sold directly by public auction on the internet, if possible. Many countries have visited (and are still visiting)the Netherlands to learn about how the Netherlands have

organized the asset management. The possibility in the law to sell seized (and replaceable) items before judgment if these items are decreasing in value rapidly or if the costs of storing these items are very high, has been adopted by many surrounding countries. Since 2014 this law is prescribed by the European commission (after the Netherlands have promoted this within the EU). The AMO is also part of an AMO network within the EU.

Practical Law:

Through the years the Dutch law on asset recovery has developed. For example:

- Third party confiscation:

An average, experienced criminal won't register the assets on his own name. The Netherlands, therefore arranged in the criminal proceedings code the possibility to seize items that in fact belong to the suspect, but are on paper registered on the name of a third party. Seizure and in the end confiscation of these items is possible if there is a suspicion of a serious offence and the registration was done with the aim to frustrate the confiscation of these items. Furthermore, the third person knew this or could reasonably have known this (art. 94a, 4, criminal proceedings code).

This law is now standard law within the EU and has been adopted in DIRECTIVE 2014/42/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

Policy:

The Netherlands have learned that asset recovery should not be an exclusive domain of a specialized part of the public prosecutors service. Asset recovery should be incorporated in every criminal investigation and should be done by every public prosecution service. Therefore, it is now prescribed that in every criminal investigation it should be considered from the start whether the suspect has gained profits with his illegal activities and whether there are possibilities to trace, seize and confiscate these assets.

Please describe (cite and summarize) the measures/steps, if any, your country needs to take, together with the related time frame, to ensure full compliance with the chapters of the Convention that are under review, and specifically indicate to which articles of the Convention such measures would relate.

The Netherlands considers itself to be in compliance with the relevant articles of the Convention.

C. Implementation of selected articles

II. Preventive measures

Article 5. Preventive anti-corruption policies and practices

Paragraph 1 of article 5

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the

participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

There is no general strategy or legal framework in place that focuses solely on anti-corruption or integrity. Nevertheless, the relevant policies, laws and regulations can be interpreted in such a way. Among other things, the relevant laws and regulations include the Dutch Constitution, the Dutch Criminal Code (Wetboek van Strafrecht) and the Civil Servants Act 2017 (Ambtenarenwet).

(Unofficial translation)

Civil Servants Act 2017[10]

Article 4

1 A government employer pursues an integrity policy that is aimed at promoting good civil service practice and, in any case, pays attention to promoting integrity awareness and preventing abuse of authority, conflicts of interest and discrimination.

2 A government employer shall ensure that the integrity policy is an integral part of the personnel policy, in any case by raising the issue of integrity in performance appraisals and work consultations and by offering education and training in the field of integrity.

3 A government employer shall ensure the establishment of a code of conduct for good civil servants.

4 A government employer shall publish an annual account of the implementation of this article.

5 By order in council, further rules may be laid down with regard to the third paragraph.

The Minister of the Interior and Kingdom Relations is (among other things) responsible for constitutional affairs, decentralisation, the organisation of internal administration, the civil service, housing and spatial planning. Within the Netherlands, political responsibility is decentralised, with each government organisation bearing responsibility for the formulation and implementation of its own policies on integrity as well as transparency. The Minister of the Interior and Kingdom Relations is responsible for the system of integrity policy and for the quality of public administration (national government, provinces, municipalities and water authorities) in a general sense.

This framework responsibility for the system is made up of four key components: standards (through laws and regulations), monitoring (by way of a three-yearly public administration monitor

[10] The Netherlands informed that both the Civil Servants Act and the General Civil Service Regulations were revised in January 2020. In the timespan covered by this report, 2016-2020, both versions of the legislation were in place and will be cited alternately throughout this report. In order to clarify which version of the legislation is cited, dates are added to the titles. Contradictory to its name, the Civil Servants Act 2017 is the most recent version of this legislation, having entered into force in January 2020.

that includes an integrity module), facilitation (through research, networking, agenda-setting and information provision; the independent Dutch Whistleblowers Authority, which carries out a role as an independent administrative body in this regard, is the remit of the Ministry of the Interior and Kingdom Relations) and intervention (option for retrieval of official notices, which rarely occurs). Regular contact takes place with the umbrella organisations of the local and regional authorities. Consultation and collaboration also take place with other government sectors, such as the Ministry of Defence and the National Police.

There are general institutions that play a role in preventing corruption and promoting integrity: the Supreme Audit Institution, the National Ombudsman and the Whistleblowers Authority mentioned below. Article 6 of the self-assessment report focuses on the role and responsibilities of these organisations in greater detail.

The Civil Servants Act referred to previously (called the Civil Servants Act 2017 as of 1 January 2020) includes the obligation to have a Code of Conduct in place as well as an official oath, and annual monitoring as well as reporting of integrity and conduct violations (including cases of corruption). Article 8 of the self-assessment report will focus on this aspect in greater depth.

In addition to the statutory responsibilities, government employers are supported by the availability of model protocols, such as a model Code of Conduct and/or trainings and workshops aimed at the implementation, enforcement as well as development of policy in general and of the Code of Conduct in particular. The vast majority of policies, guidelines, model Codes of Conduct and protocols, and studies that have been developed are available on www.rijksoverheid.nl and/or Home | Kennisbank Openbaar Bestuur.

As part of the coordinating role of the Ministry of the Interior and Kingdom Relations, the Interdepartmental Platform on Integrity Management (Interdepartementaal Platform Integriteitsmanagement, IPIM) focuses on cross-government integrity policy, the monitoring and registration of violations, and the development of new instruments. The integrity coordinators of all the Ministries and a number of major implementation organisations, such as the Tax and Customs Administration as well as the Custodial Institutions Agency (Dienst Justitiële Inrichtingen), are members of the IPIM. The IPIM is supported by the Ministry of the Interior and Kingdom Relations. Both the model Code of Conduct and the 'Baseline Internal Personal Investigation following an integrity or security incident' (Baseline Intern Persoonsgericht Onderzoek na een integriteits- of beveiligingsincident) are examples of instruments that have been developed on a cross-government basis, coordinated by the Ministry of the Interior and Kingdom Relations. There are also various working groups that deal with specific topical issues and convert them into protocols.

In addition, the IPIM advises other/higher bodies such as the Interdepartmental Committee on Organisational and Personnel Policy (Interdepartmentale Commissie Organisatie- en Personeelsbeleid, ICOP), the Interdepartmental Committee on the Operation of Government Agencies (Interdepartementale Commissie Bedrijfsvoering Rijksdienst, ICBR) and the consultations of the secretaries-general of the ministries (SGO) in the field of integrity management. The IPIM is guided by the principle that fostering an awareness of integrity in government employees' is an ongoing process of learning and development, where professional conduct ought to be the benchmark.

The IPIM has a fixed composition of participants whose competent authority is a member of one of the sub-councils of the ICBR and the SGO. Participants represent their organisations and are mandated to present their organisation's point of view to the IPIM. ICBR consists of the most highly responsible officials for the operational management of each ministry. The SGO consists of each ministries most senior civil servant.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The most recent monitor entitled 'Integrity and Security in the Public Sector'[11] was published in 2016. This monitor aimed to provide insight into the implementation and effectiveness of integrity policy. A survey was conducted among holders of political offices, managers and employees of the national government, provinces, municipalities and water authorities for the purposes of the monitor. The monitor showed that:

- one in five employees had suspected an incident/integrity breach to have occurred within their own organization, whereas actual registrations of the integrity violations are relatively low;

- nearly all organisations have policies and instruments in place aimed at fostering integrity awareness, which includes holding lectures and trainings as well as the implementation of an integrity protocol and the appointment of a confidential counsellor;

- a shift has taken place from a system which focuses on prohibitions and obligations to more focus on awareness and professionalism;

- sensitive processes, such as the procurement process and information security, deserve more attention.

This monitor will be carried out again in 2020 and is now mainly focused on political office holders.

The first extensive monitor entitled the 'Government Personnel Survey' (Personeelsonderzoek Overheid) was carried out in 2019 and includes the subject of integrity. The Ministry of the Interior and Kingdom Relations will have the survey conducted by Statistics Netherlands (Centraal Bureau voor de Statistiek), CBS.[12]

- The survey will be part of a larger study, which will combine the survey material with other sources. This opportunity has arisen chiefly as a result of collaboration with Statistics Netherlands.

- Key themes of the survey include the labour market, HRM, organisation, integrity and agility.

- This survey will take place among employees and managers alike.

[11] https://www.rijksoverheid.nl/documenten/rapporten/2016/11/29/rapport-monitor-integriteit-en-veiligheid-openbaar-bestuur-2016

[12] https://kennisopenbaarbestuur.nl/rapporten-publicaties/kernrapport-werkonderzoek-2019/

- The format and implementation of the study expressly seek to create a connection between the public sector and scientists. In doing so, we will focus on knowledge-sharing and collective deepening of the knowledge derived from the results through a call for papers.

- All the results will be presented as specific responses to pre-articulated knowledge questions, such as: what is the present employability of staff in the public sector?

- At the end of 2019, the Ministry of the Interior and Kingdom Relations will hold another WERKcongres conference at which the results (including in-depth analyses) will be presented to policymakers in the public sector.

Prior to 2016, a number of studies into the effectiveness of Dutch integrity policy were carried out, including the 'Beleidsdoorlichting integriteit(sbeleid)'[13] (Integrity policy assessment) of 2014. This study focuses on an evaluation of the policy period from 2006 to 2012. The Netherlands Court of Audit (Algemene Rekenkamer) carried out its own studies in 2005, 'Zorg voor integriteit. Een nulmeting naar integriteitszorg in 2004'[14] and in 2010 'Stand van zaken integriteitszorg Rijk 2009.'[15] Another periodically carried out monitors are: 'Jaarrapportage Bedrijfsvoering Rijk'[16] is a yearly monitor which reports about the amount of integrity violations and sanctions in the Central Government.

https://www.rijksoverheid.nl/documenten/rapporten/2020/05/01/jaarrapportage-bedrijfsvoering-rijk-2019. Paragraph 1.7.1. of the report deals with this topic.

(b) Observations on the implementation of the article

There is no overarching anti-corruption strategy, but all government entities must develop an integrity policy and publish an annual account of their integrity policy (art. 4, para. 4, of the Civil Servants Act). Each entity is responsible for the formulation, implementation and monitoring of its own policy. The Minister of the Interior and Kingdom Relations is responsible for the overall system of integrity policies. Monitoring of the framework is carried out through internal evaluations.

The reviewing experts therefore recommended that the Netherlands ensure that an effective mechanism is in place to evaluate the effectiveness of integrity policies, ensure coordination between government institutions in the formulation, implementation and monitoring of those policies, and endeavour to consistently implement existing preventive practices (art. 5, para. 1).

Paragraph 2 of article 5

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

[13] http://www.rijksbegroting.nl/system/files/18/1.bzk-beleidsdoorlichting-integriteitsbeleid.pdf
[14] https://zoek.officielebekendmakingen.nl/kst-30087-2.pdf
[15] https://huisvoorklokkenluiders.nl/wp-content/uploads/2018/01/Algemene-Rekenkamer-2009-Rapport-Integriteitszorg-incl-omslag.pdf
[16] https://www.rijksoverheid.nl/documenten/rapporten/2019/05/01/jaarrapportage-bedrijfsvoering-rijk-2018

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

See Article 5(1).

The IPIM focuses on integrity policy in the broadest sense. This also includes the prevention of integrity violations, including corruption. The code of conduct and BIPO are products of this body.

Another corruption platform is known as the Platform on Fighting Corruption. This platform operates under the aegis of the Ministry of Justice and Security. Its aim is to promote awareness and joint action in the fight against national and international corruption by sharing knowledge and information more effectively. The platform participants are government employees who work on the topic of corruption. The platform meets twice a year.

1.7.1 Integrity

Integrity is a key reference point for the professional conduct of civil servants, since it ties in directly with primary government processes and is therefore also linked to the trust placed in the government by society. This is why integrity should be an ongoing priority, including in the primary processes.

Integrity management

Integrity management refers to the efforts undertaken by an organisation to promote integrity. A key aspect of integrity management is encouraging a culture of safety around raising and reporting concerns. In connection with the entry into force of the Public Servants (Standardization of Legal Status) Act on 1 January 2020, the regulations and facilities for reporting abuses have been incorporated in Section 13 of the collective labour agreement for the central government.[17]

In 2019, the following activities were carried out across the government:

- The Integrity Code of Conduct for the Central Government Sector was updated and published in the Government Gazette on 31 December 2019 (Government Gazette 2019, 71141).[18] The text has been edited and amended to reflect the employment laws applicable from 1 January 2020. In addition to this, the content of a number of sections was updated, for example in relation to dealings with lobbyists and working abroad.
- In September, another edition of the Week of Integrity was organised. In the course of this week, virtually all ministries put a greater focus on integrity. The intention is to repeat the event on an annual basis.
- In 2019, the Interdepartmental Platform for Integrity Management (IPIM) began work to improve the reporting procedure and strengthen the position of confidential counsellors. This includes having a mixed group of internal and external counsellors who can be consulted. In addition to this, a confidential counselling space is available.
- Integrity forms an ongoing part of various training and development programmes related to the procurement processes of central government. In 2019, special attention was paid to the integrity and exclusivity of high-value knowledge and confidential information (state secrets, personal data of Dutch citizens and sensitive technological data). This is because security is increasingly important as a result of current technological and global developments. Procurement is no exception to this. In light of this, the central government developed a number of tools, including a quickscan and a risk analysis guide, which can be used to check purchase orders and tenders for national security risks.

[17] https://www.caorijk.nl/

[18] https://zoek.officielebekendmakingen.nl/stcrt-2019-71141.html

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Reports of integrity violations

In 2019, there was a drop in the number of reports regarding *suspected* integrity violations (from 815 to 586). This drop is seen in virtually all categories. Especially striking is the drop in the 'Undesirable behaviour' category, which could be an effect of the #MeToo movement and the intensified focus on behaviour. 'Inappropriate conduct in private life' remains the largest category by volume, despite a slight decrease compared to the previous year. The number of *proven* integrity violations, however, showed an increase in 2019 (from 525 to 570). This can mainly be attributed to the 'Undesirable behaviour' and 'Inappropriate conduct in private life' categories. The number given concerns integrity violations that were settled by the competent authorities in 2019. Each integrity procedure must be completed with due care, which can take a considerable period of time. This means there is no direct link between the number of proven violations in 2019 and the number of suspected violations in that year. It is possible that the overall decrease in the number of suspected violations will not be reflected in a decrease in the number of proven violations until 2020.

In line with earlier decisions, all ministries will also proactively publish separate information on reports of actual and suspected integrity violations in 2020, using their dedicated pages on rijksoverheid.nl. This will involve anonymised information regarding the nature, follow-up and settlement of a report. Each integrity violation, whether proven or otherwise, must still be dealt with on a case-by-case basis, also taking account of the context.

Table 19 – Number of suspected integrity violations by year and type

Suspected violations	2015	2016	2017	2018	2019
Financial violations (in business matters)	79	76	48	59	44
Abuse of position and conflicts of interest	58	77	46	43	55
Leaks, wrongful use and/or withholding and/or unauthorised handling of information	52	73	76	68	46
Inappropriate communication (1)	–	–	–	22	24
Abuse of powers	18	29	22	24	12
Abuse of the power to use force	3	5	3	5	2
Undesirable behaviour	157	188	146	143	76

Misuse of resources and violation of internal regulations	286	257	291	260	141
Inappropriate conduct in private life	226	228	170	191	186
Total	**879**	**933**	**802**	**815**	**586**
Abuses under the whistle-blowers' scheme	0	3	1	2	3
(1) Measurement of the number of inappropriate communications only began in 2018.					
Source: Assessment.					

Table 20 – Number of proven integrity violations by year and type

Proven violations	2015	2016	2017	2018	2019
Financial violations (in business matters)	34	35	28	33	33
Abuse of position and conflicts of interest	28	31	21	23	29
Leaks, wrongful use and/or withholding and/or unauthorised handling of information	34	38	45	46	39
Inappropriate communication (1)	–	–	–	17	15
Abuse of powers	16	15	10	18	11
Abuse of the power to use force	3	4	5	4	5
Undesirable behaviour	91	72	71	57	84
Misuse of resources and violation of internal regulations	185	145	186	181	185
Inappropriate conduct in private life	164	148	119	146	169
Total	**555**	**488**	**485**	**525**	**570**
Abuses under the whistle-blowers' scheme	0	0	0	2	0
(1) Measurement of the number of inappropriate communications only began in 2018.					
Source: Assessment.					

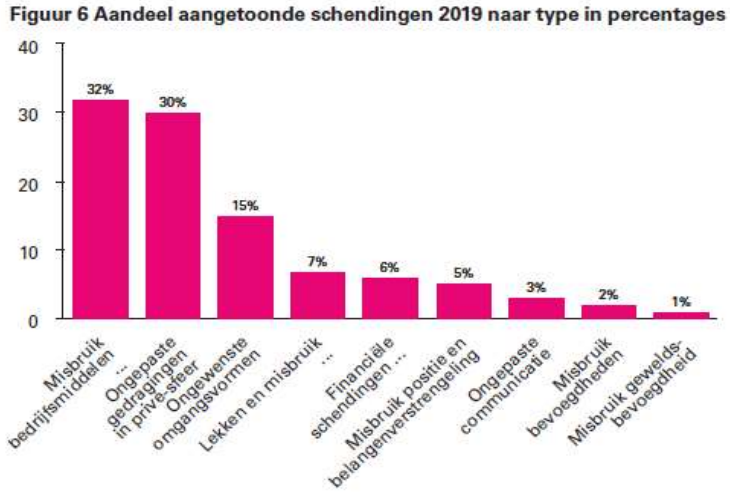

Figure 6 – Relative share of proven violations in 2019 by type

Misuse of resources

Inappropriate conduct in private life

Undesirable behaviour

Leaks and wrongful use

Financial violations

Abuse of position and conflicts of interest

Inappropriate communication

Abuse of powers

Abuse of the power to use force

Source: Assessment.

Table 21 – Number of disciplinary measures imposed by year and type

Imposed penalties	2015	2016	2017	2018	2019
Written reprimand	67	66	86	79	103
Deduction of leave	28	11	7	17	15
Financial settlement	23	16	25	16	21
Transfer	7	12	8	16	15
Punitive dismissal	105	102	90	71	75
Other	1	1	4	1	5
Total	**231**	**208**	**220**	**200**	**234**

Source: Assessment.

In addition to this, 342 cases were settled by means of non-disciplinary measures (a different type of dismissal or termination of contract, or another type of official settlement appropriate to the circumstances of the case, combined with a disciplinary measure as necessary).

(b) Observations on the implementation of the article

Anti-corruption practices include the creation of an information platform by the Ministry of Justice and Security to increase and disseminate knowledge relating to the prevention of corruption; however, operation of the platform has been suspended since 2019.

Paragraph 3 of article 5

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

There is no specific mechanism to evaluate the effectiveness of legal instruments against corruption. There are evaluations of the integrity policy in general.

The Netherlands is party to a number of important international anti-corruption treaties at the level of the Council of Europe, the Organization for Economic Cooperation and Development (OECD), and the United Nations.

The Netherlands is periodically assessed by these various international organizations and provided with recommendations. These international anti-corruption assessments are a useful tool to periodically review the legal and institutional framework for the fight against corruption of the Netherlands. The reports are shared with Parliament along with measures to implement recommendations where applicable.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

There is no systematic evaluation of the effectiveness of administrative and legal instruments.

The reviewing experts therefore recommended that the Netherlands endeavour to periodically evaluate the effectiveness of relevant legal instruments and administrative measures (art. 5, para. 3).

Paragraph 4 of article 5

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The Netherlands Enterprise Agency (RVO) has a Corporate Social Responsibility implementation policy in place for all international programmes, which is based on the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD). This implementation policy is used in all applications for an instrument of the Netherlands Enterprise Agency. In such cases, corruption is one of the topics that will be discussed if the analysis should show that it is one of the 'most salient risks' of the project. Agreements will be made with the company to realise improvements, if necessary. Shedding light on corruption is difficult, however, given that it is not an optional chapter and RVO staff are subject to a reporting duty. In the case of grants to large infrastructure projects, the internationally recognised IFC performance standards are added to the evaluation of the project as a benchmark at both the submission and the audits of the project. The Netherlands is also a constructive partner within the OECD Working Group on Bribery and the G20 Anti-Corruption Working Group, in which context it has committed itself to various deliverables, such as the previously adopted Compendium of Good Practices for promoting integrity and transparency in infrastructure development. Please see the RVO website for more information: https://www.rvo.nl/onderwerpen/internationaal-ondernemen/kennis-en-informatie/maatschappelijk-verantwoord-ondernemen-mvo-het-buitenland/informatie/corruptie and the English version: https://english.rvo.nl/topics/international/corporate-social-responsibility/corruption.

Integrity policies largely focus on domestic policy. At the same time, the Netherlands/the Ministry of the Interior and Kingdom Relations also takes part in international consultations, while it is a member of Group of States against Corruption (GRECO) and the OECD as well:

GRECO:

The work carried out by GRECO is based on the various conventions that the Member States have concluded with one another. The Criminal Law Convention on Corruption and the Civil Law Convention on Corruption are the conventions that chiefly underpin GRECO. Countries that have ratified these conventions are automatically a member of GRECO. This situation is the case for the Netherlands. The integrity policies of the Netherlands in respect of persons with top executive functions', the police and the Royal Netherlands Marechaussee (Kmar) were evaluated in 2018. Please see the evaluation report for more information.

OECD:

Among other things, the Ministry of the Interior and Kingdom Relations is a member of the Working Party of Senior Public Integrity Officials (SPIO). The objective of the SPIO is to promote the design and implementation of integrity and anti-corruption policies by Member States. This objective is accomplished by encouraging Member States to exchange experiences, best practices and lessons learnt. On 26 January 2017, the OECD adopted the OECD Recommendation of the Council on Public Integrity, which contained recommendations on the creation of a set of coherent and effective integrity policies.

Through the SPIO/OECD, the Netherlands is a member of the Task Force on Public Integrity Indicators. This task force is developing a self-assessment tool for countries to use in order to develop coherent and effective anti-corruption/integrity policies. Within the task force, the Netherlands chiefly contributes through the sharing of expertise in relation to designing measurable indicators and good examples of measuring instruments, such as surveys, questionnaires and statistical methodologies.

NEIWA:

At the initiative of the Dutch Whistleblowers Authority a Network of European integrity and whistleblowing authorities (Neiwa) was established.[19] Focus of the network is exchanging lessons learned, knowledge and experiences. Also the network focuses on jointly developing measures, programmes and or instruments focused on the protection of whistleblowers.

EPAC-EACN:

The whistleblowers Authority is also a member of the European Partnership Against Corruption (EPAC) and the European Anti-Corruption Network (EACN). From their website: "The European Partners against Corruption (EPAC) and European contact-point network against corruption (EACN) are independent forums, united in the common goal of preventing and combatting corruption. Together, we offer a platform for anti-corruption and police oversight practitioners to share experience and cooperate across national borders in developing common strategies and high professional standards. We advocate international legal instruments and offer assistance to other bodies for establishing transparent, efficient mechanisms."[20]

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

The Netherlands collaborates with other States parties through the Group of States against Corruption of the Council of Europe, the Organisation for Economic Co-operation and Development, the Network of European Integrity and Whistleblowing Authorities, the European Partners Against Corruption, the Group of 20 Anti-Corruption Working Group and the European contact-point network against corruption.

Article 6. Preventive anti-corruption body or bodies

[19] https://www.huisvoorklokkenluiders.nl/samenwerking/internationaal/europees-netwerk
[20] https://www.epac-eacn.org/

Paragraph 1 of article 6

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

There are general independent institutions that play a role in preventing corruption and promoting integrity:

Court of Audit

Constitution (translation confirmed by Netherlands)

Article 76

The Court of Audit (Algemene Rekenkamer) shall be responsible for examining the State's revenues and expenditures.

Article 77

1.The members of the Court of Audit shall be appointed for life by Royal Decree from a list of three persons per vacancy drawn up by the Lower House of the States General.

2. They shall cease to be members on resignation or on attaining an age to be determined by Act of Parliament.

3. They may be suspended or dismissed from membership by the Supreme Court in cases to be laid down by Act of Parliament.

4. Their legal status shall in other respects be regulated by Act of Parliament.

Article 78

1. The organisation, composition and powers of the Court of Audit shall be regulated by Act of Parliament.

2. Additional duties may be assigned to the Court of Audit by Act of Parliament.

The Court of Audit is a High Council of State: an independent institution and thus not part of the government or Parliament. The Supreme Audit Institution investigates whether the Central Public Administration is spending public money efficiently and lawfully. Its statutory duty is to audit the income and expenses of the Central Public Administration as well as to report on these matters once a year to Parliament on Accountability Day. Based on the opinion of the Supreme Audit Institution, Parliament decides whether to discharge the government from any liability. The Supreme Audit

Institution also reports to Parliament on the outcomes of separate investigations, so Members of Parliament can decide whether a Minister is pursuing an effective policy.

The Supreme Audit Institution decides for itself what to investigate. Members of Parliament, Ministers and State Secretaries sometimes request an investigation. These requests are often complied with in practice if the powers of the Supreme Audit Institution would have an added value. Signals and reactions from society can also be taken into account during current investigations.

The Central Public Administration must account for its income, its expenditure and the use of its statutory powers. In order to audit these aspects, the Supreme Audit Institution has powers that are laid down in the Government Accounts Act (Comptabiliteitswet). All Ministries and other government organisations that fall under the Central Public Administration can be audited. Organisations that do not form part of the Central Public Administration but which perform public duties can also be audited, such as the National Police. The Supreme Audit Institution is entitled to access all relevant information that it requires, including confidential information.

The Minister of the Interior and Kingdom Relations manages the budget of the Supreme Audit Institution, which amounts to more than 31 million euros for 2018. There are around 270 employees, all playing a role in increasing integrity.

National Ombudsman

Constitution (translation confirmed by Netherlands)

Article 78a

1. The National Ombudsman shall investigate, on request or of his own accord, actions taken by central government administrative authorities and other administrative authorities designated by or pursuant to Act of Parliament.

2. The National Ombudsman and a Deputy Ombudsman shall be appointed by the Lower House of the States General for a period to be determined by Act of Parliament. They may resign or retire on attaining an age to be determined by Act of Parliament. They may be suspended or dismissed by the Lower House of the States General in instances specified by Act of Parliament. Their legal status shall in other respects be regulated by Act of Parliament.

3. The powers and methods of the National Ombudsman shall be regulated by Act of Parliament.

4. Additional duties may be assigned to the National Ombudsman by or pursuant to Act of Parliament.

The General Administrative Law Act

Article 9:18

1. Everyone has the right to request the Ombudsman in writing to initiate an investigation into the manner in which an administrative body has acted towards him or another person in a particular matter.

2. If the petition is submitted to an incompetent ombudsman, it shall, after the date of receipt has been recorded thereon, be forwarded as soon as possible to the competent ombudsman, at the same time notifying the petitioner thereof.

3. The ombudsman is obliged to comply with a request as referred to in the first paragraph, unless Article 9:22 , 9:23 or 9:24 applies.

The National Ombudsman deals with complaints from the general public about the public administration and informs public administration agencies on how they can improve their services. The National Ombudsman can start an investigation in response to problems or complaints. Everyone involved must cooperate in such an investigation.

The National Ombudsman is an independent and impartial office. Around 170 specialists assist the National Ombudsman in its work (of which 69.4% are female and 30.6% are male). These specialists work in four investigative teams. The Facilities Department, IT, Secretariat, Communication and Library, Strategy and Policy, and Personnel and Finance all support the Office of the National Ombudsman in a different manner. The Bureau of the National Ombudsman is headed by a managing director. The Minister of the Interior and Kingdom Relations manages the budget of the National Ombudsman. The Minister also respects the independence and impartiality of the National Ombudsman. The budget of the National Ombudsman for 2017 is more than 18 million euros.

Knowledge of the law and public administration are the starting points for selecting a new ombudsman. Knowledge of public administration agencies and the way that these agencies operate is very important for National Ombudsman employees. It is also important that employees who deal with complaints have an understanding of the everyday life of the citizens concerned.

The National Ombudsman is a High Council of State. These High Councils are independent of the government. The Lower House of Parliament appoints the National Ombudsman and the Deputy National Ombudsman for a period of six years. The same person can then be reappointed for a further six years. The National Ombudsman issues a report to the Lower House of Parliament each year. The Lower House of Parliament may only dismiss the National Ombudsman on special statutory grounds; for example, if the Ombudsman does something to betray the confidence in it.

If the Lower House of Parliament requires a new ombudsman, it announces a vacancy for this purpose. A special committee oversees the selection procedure and advises the Lower House of Parliament in this regard. This committee consists of the Vice-President of the Council of State, the President of the Supreme Court of the Netherlands and the President of the Supreme Audit Institution.

The National Ombudsman can only deal with complaints after they have been reported by the complainant to the public administration agency that is the subject of the complaint. If the Ombudsman is unable to deal with a complaint, this fact will be explained in a letter or telephone call. The complainant will then be referred to another institution that can provide assistance. If a complaint can be accepted for processing, there are a number of investigative options. The Ombudsman chooses the option that is the most suitable for each complaint. The options are as follows.

- An intervention: discussing with the public administration agency whether a quick solution can be found. The public administration agency then responds to the complainant; for example, by telephone, email or letter.

- A mediation interview: during a mediation interview, mediators from the Bureau of the National Ombudsman try to improve contact between the complainant and the public administration agency. Matters can be clarified or apologies made during the mediation interview. The interview may lead to specific arrangements between the complainant and the public administration agency.

- An investigation with a report: a written investigation starts with a letter from the National Ombudsman to the complainant and the public administration agency. Both sides are given the

opportunity to clarify their positions and can then respond to each other's answers. Next, a report is drawn up, setting out the Ombudsman's opinion of the public administration agency's actions. A recommendation is sometimes made for how the agency can resolve the problem or prevent it from reoccurring in future. This report, which is sent to the complainant and the agency, is published without names.

- An investigation with a letter: an investigation is sometimes concluded with a letter, rather than a report, to the complainant and the public administration agency. This situation occurs if the outcome of the investigation is only important to the complainant or if the Ombudsman cannot form an opinion on a large portion of the complaint.

Whistleblowers Authority

Whistleblowers authority act (unofficial translation)

Article 3

1 There is a Whistleblowers Authority (Huis voor Klokkenluiders)

2 The Framework Act on independent governing bodies applies to the Authority, with the exception of articles 12, 21 and 22.

3 Contrary to article 20 of the Framework Act on independent administrative bodies, the Authority is only obliged to provide information to Our Minister or to give access to business data and documents relating to the financial management and the administrative organization.

4 Article 23 of the Framework Act on independent administrative bodies is only applicable with regard to the financial management conducted by the Authority and the administrative organization.

Article 3a

1 The Authority has an advice department and a research department.

2 The advisory department has the task:

a. informing, advising and supporting an employee about the steps to be taken concerning the suspicion of a wrongdoing;

b. referring to administrative bodies or services charged with the investigation of criminal offences or with the supervision of compliance with the provisions under or pursuant to any statutory regulation or other competent authority to which the suspicion of wrongdoing can be reported, and

c. providing general information on dealing with a suspicion of wrongdoing.

3 It is the task of the Investigation Department to:

a. assess whether the petition is admissible with due observance of the conditions referred to in article 6, first paragraph;

b. on the basis of a petition, initiate an investigation into:

1°. the suspicion of wrongdoing;

2°. the manner in which the employer has behaved towards the employee following a report of a suspicion of wrongdoing;

c. instituting an investigation into the suspicion of wrongdoing on the basis of one or more requests for advice, with due observance of Article 3k, third paragraph, and Article 6, first paragraph; and

d. formulating general recommendations on how to deal with a suspicion of wrongdoing.

Article 3b

1 The board of the Authority consists of a chairman and a maximum of four members.

2 The members are appointed to the Advisory Section or to the Research Section. They are not appointed to both departments.

3 A member who has been involved in advising on a suspicion of wrongdoing does not take part in an investigation concerning the same wrongdoing.

4 The president is responsible for the proper functioning of the Authority.

Article 3c

1 The members and the president of the Authority are appointed by royal decree. At personal request, they are dismissed by Our Minister. They may also be suspended by royal decree and dismissed for incompetence or incapacity or for other serious reasons in the person of the person concerned. The nomination for suspension or dismissal shall not be made until the House has been heard about it.

2 The members shall be appointed in such a way that all relevant expertise is present in the Authority for the performance of the duties referred to in article 3a.

3 The members shall be appointed for a maximum period of four years. The term of office of the member who has been appointed in an interim vacancy shall be equal to the duration of the remaining term of office of the member in whose place this member has been appointed. Members may be reappointed twice.

4 The chairman and the members shall not engage in any affairs the performance of which is undesirable with a view to the proper performance of his duties or to the maintenance of his impartiality and independence or of confidence in them.

The Whistleblowers Authority is available for people who wish to report a work-related situation of abuse. The Whistleblowers Authority provides advice and support, while it also investigates if necessary. Its service is confidential, independent and free of charge.

The organization is divided among an Advisory Department, an Investigations Department, a Knowledge & Prevention Department and a small general staff component. The office is headed by a director. The Advisory Department advises people who suspect a work-related situation of abuse. At the request of a whistleblower, the Investigations Department can investigate a work-related situation of abuse or their treatment by the employer following the report of a situation of abuse. The Advisory Department and the Investigations Department work independently from each other and do not exchange any information in an individual case. The Knowledge & Prevention Department develops guidelines and practical instruments for employers which helps to prevent abuses and promotes a healthy and save working environment.

The Whistleblowers Authority is an independent administrative body. The Authority is accountable to the Minister of the Interior and Kingdom Relations only for its financial management carried out and the management of the administrative organization. The Minister of the Interior and Kingdom Relations cannot determine the policy of the Authority. The Minister also cannot reverse any of its management decisions. The Minister may not request information on matters being dealt with by the Authority. The executive board members of the Whistleblowers Authority are appointed by Royal Decree. The executive board annually reports directly to the Houses of Parliament an overview of the recommendations of the Authority and of the way in which the recommendations have been followed up. It is important that the information provided can never be traced back to specific whistleblowing cases. The Whistleblowers Authority's annual budget for 2019 is about 3 million euros.

A rule applies within the Authority that executive board members, advisers and investigators may not have or previously have had any personal involvement in specific whistleblowing cases. If they have, or if this person previously worked at the employer involved, there is an internal duty of disclosure. The executive board member or employee will then be excluded from advisory and investigative duties relating to the specific whistleblowing case.

Employees may make reports if they believe that there is a situation of abuse within the organisation where they work. A report must relate to a situation of abuse of social relevance, such as a violation of a statutory rule, danger to public health, danger of harm to the environment, or danger to the effective functioning of a public administration agency or company because of improper acts or omissions. In principle, employees must first report such matters internally to their employer. If that report is ignored or not dealt with satisfactorily, a report may be made to an external body. This body is normally an inspectorate or supervisory authority. The Investigations Department of the Whistleblowers Authority can be requested to conduct an investigation into reported wrongdoing if no other Dutch Authority is mandated to investigate the abuse/wrongdoing or take measures. The Whistleblowers Authority can also investigate into the retaliation of the reporters of the abuse/wrongdoing regardless of whether the internal organisation has commended its own internal investigation into the reported abuse.

When conducting an investigation, the Whistleblowers Authority has the power to request information and if it concerns an investigation in the public sector, visit workplaces.

Information is gathered during the investigation. A draft report is prepared on the basis of the gathered information. The employee and the employer can respond to this report. A final report is then drafted. After the employee and employer have received the report, the investigation report is published on the Authority's website. The report describes the situation of abuse and any underlying cause. The report contains conclusions and, if necessary, recommendations to end the situation of abuse or to prevent repetition. The findings of the investigation and the opinion in the report are not binding on the parties involved. However, the employer concerned is obliged to inform the Whistleblowers Authority how it has followed the recommendations. If the employer does not follow the recommendations, it is obliged to state reasons.

An employee who has to put forward a defence in legal proceedings against measures taken by the employer under labour law following the employee's report may enter the report as evidence in the proceedings.

The Whistleblowers Authority has made arrangements for cooperation with the Public Prosecution Service and the National Ombudsman. An investigation by the Whistleblowers Authority into a situation of abuse can coincide with a criminal investigation under the authority of the Public Prosecution Service. The investigations can be conducted simultaneously, after coordination between the Public Prosecution Service and the Authority. If necessary, the Public Prosecution Service can request information from the Whistleblowers Authority's investigation. If the National Ombudsman receives a complaint that the Whistleblowers Authority may investigate, the Ombudsman will refer the complainant to the Authority, as the National Ombudsman and Whistleblowers Authority do not investigate complaints simultaneously.

The Whistleblowers Authority is a relatively young organisation that is still developing its practices. Significant and formidable work has been carried out so far; for example, through the advice provided to hundreds of potential whistleblowers (on an annual basis) as well as through the information provided to employers (in the public and private sector) on the implementation of integrity programmes and internal reporting schemes. The Whistleblowers Authority finished and published five investigation-reports (three in 2019, two in the first months of 2020) about wrongdoing or retaliation of the reporter (not about corruption). Nevertheless, there are still challenges. For instance, an interim evaluation showed that cooperation between the three different departments that make up the Whistleblowers Authority (Advisory, Investigations and Knowledge & Prevention) has not yet been optimised. Moreover, the advisory and investigative responsibilities are inherently at odds with one another, while it could be that the expectations raised by others as to the legal protection of whistleblowers cannot be met by the Authority. At most, the Whistleblowers Authority can conduct an investigation into the potential penalisation/retaliation of whistleblowers; however, it is ultimately the purview of the court or labour tribunal to issue a binding judgment on the relevant issue. Coupled with forthcoming new European regulations (Directive), these challenges may cause the organisation and the methods of the Whistleblowers Authority to undergo changes in certain regards over the long term.

The Whistleblowers Authority Act will be amended in response to the Whistleblower Directive EU 2019/1937 (PbEU 2019, L 305). The aim is to have the bill to implement the Whistleblower Directive enter into force in December 2021. In addition, the Whistleblowers Authority Act was recently evaluated. The Minister of the Interior and Kingdom Relations wants to inform parliament about her substantive response to the evaluation before the end of 2020. This can also lead to a legislative process to amend the Whistleblowers Authority Act.

The Whistle blowers Authority (WA) disseminates knowledge on integrity management, which is broader than on corruption prevention. The WA has, for instance, published research reports on the implementation of reporting procedures, on the functioning of confidential integrity officers and are about to report research on the roles and positions of integrity/compliance officers. Besides the WA has published manuals on various integrity management topics and is working on an online integrity assessment tool. Furthermore WA uses their website, newsletters, social (and other) media to communicate and to raise awareness for these activities.

The WA disseminates knowledge on integrity management, which is broader than on corruption prevention. We have, for instance, published research reports on the implementation of reporting procedures, on the functioning of confidential integrity officers and are about to report research on the roles and positions of integrity/compliance officers. Besides we have published manuals on various integrity management topics and are working on an online integrity assessment tool. We

use our website, newsletters, social (and other) media to communicate and to raise awareness for these activities.

The Court of Audit investigates whether the national government spends public money sensibly, economically and carefully. The statutory task is to check the income and expenditure of the government and we report on this once a year to parliament on Accountability Day (third Wednesday in May). Article 76 of the Constitution stipulates that the General Audit Chamber is charged with auditing government revenue and expenditure. On the basis of the judgment of the Court of Audit, parliament decides whether to grant discharge to the cabinet. The Court of Audit therefore plays an important role in auditing government finances.

The National Ombudsman is an independent body that handles complaints about almost all government agencies. In principle, the Ombudsman has no active duties in the field of fighting corruption or in disseminating knowledge about corruption. The inquiries and reports of the national ombudsman are made public. People who wish to report work-related abuse, such as corruption, to the government can contact both the National Ombudsman and the Whistleblowers Authority.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

(b) Observations on the implementation of the article

The Netherlands does not have a centralized body exclusively designated to prevent corruption, and preventive measures are taken at different levels of Government.

The office of the National Ombudsman, which is responsible for handling complaints on the functioning of Government, is enshrined in the Constitution and the General Administrative Law Act (art. 9:18). The Ombudsman and the Deputy Ombudsman are appointed by the House of Representatives (art. 78a (2) of the Constitution).

The Whistle-blowers Authority, established by the Whistle-blowers Authority Act, is mandated to advise reporting persons and investigate suspected wrongdoing in a work-related situation and treatment by employers (art. 3 of the Act). Its members and Chair are appointed by royal decree for a maximum period of four years (art. 3c, para. 1, of the Act).

The reviewing experts therefore recommended that the Netherlands ensure the designation of a body or bodies responsible for overseeing and coordinating the implementation of integrity policies at the relevant levels of Government (art. 6, para. 1).

Paragraph 2 of article 6

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

See also: article 6(1)

The Whistleblower Authority Act mandates the Whistleblowers Authority to provide advice and support to whistleblowers and conduct investigations into reported wrongdoing and alleged retaliation, if no other Dutch authority is mandated to investigate or take measures. The Whistleblowers Authority is an independent administrative body, which means that the Minister in principle does not bear responsibility for the execution of the duties and powers exercised by the Authority. Naturally, this fact also means that the Minister cannot interfere or intervene in individual cases. However, the Minister is responsible for ensuring that the Authority has ***sufficient*** funds at its disposal to function effectively, as well as for overseeing the organisation's financial management and administrative processes. The legal basis for the Whistleblowers Authority is the Whistleblowers Authority Act, more specifically Article 3 paragraph 1 of that Act. The members and the chairman are appointed by royal decree on the basis of Article 3c paragraph 1 of the Whistleblowers Act (for a maximum period of 4 years). They are fired by the Minister of the Interior and Kingdom Relations at their own request. They can also be suspended or dismissed by Royal Decree on the grounds of unsuitability or incompetence or for other compelling reasons relating to the person of the person concerned (all on the basis of Article 3c paragraph 1). In derogation from the Framework Act on Independent Government Agencies (Kaderwet zelfstandige bestuursorganen), the Whistleblowers Authority Act (Wet Huis voor Klokkenluiders) prevents the Minister from laying down policy on the responsibilities of the Authority. Neither does the Minister have the power to quash any decisions of the Authority. These exceptions to the powers provided by the Framework Act in respect of other independent government agencies in general match the nature of the Authority's responsibilities. After all, the Authority's responsibilities are such that they require the Authority to have a position in respect of the Minister which is as independent as possible. The executive board members are appointed by Royal Decree. An executive board member of the Authority may be dismissed by Royal Decree for unfitness or incompetence or for other compelling reasons in the person of the member. The Authority must first be heard about the nomination by the Minister of the Interior and Kingdom Relations for dismissal. The Minister can dismiss the board members at his own request. The Authority has around 25 full time employees. It has an annual budget of approximately EUR 3 million with the intention to increase this to approximately 3.5 million on an annual basis as of 2021.

The High Councils of State ***are themselves responsible for their budgetary management and draw up their own budgets.*** Both the Court of Audit and the National Ombudsman are responsible for the management and scale of their own budgets. In accordance with the Compatibility Act (2016), article 4.4., they are responsible for budgetary management, financial management, operational management and the relevant administrative activities. The Colleges themselves estimate the expenditure and income they consider necessary for the tasks they must implement. They report this to the Minister of the Interior and Kingdom Relations (BZK) who combines them in a single budget statement, chapter IIB of the Government Budget.

The legal basis for the National Ombudsman is Article 78a of the Constitution. The law in which this has been elaborated with regard to the National Ombudsman is the National Ombudsman Act. Article 78a paragraph 2 of the Constitution provides that the ombudsman and his deputy are appointed by the House of Representatives for a term to be determined by law. The same paragraph provides that the national ombudsman and his deputy are dismissed at their own request or on reaching an age to be determined by law. He can also be suspended and dismissed by the House of Representatives in cases to be determined by law.

The legal basis for the Court of Audit is Article 76 of the Constitution. The law in which this has been elaborated with regard to the Court of Audit is the Government Accounts Act 2016. Article 77 paragraph 1 of the Constitution provides that the members of the General Audit Chamber are appointed for life by Royal Decree from a nomination of three persons drawn up by the House of Representatives. They can be dismissed on the basis of article 77 paragraph 2 of the Constitution at their own request or because of an age to be determined by law. The members can also be suspended or dismissed by the Supreme Court in cases designated by law. Article 7.1 paragraph 2 of the Government Accounts Act 2016 stipulates that the president of the General Audit Chamber is appointed from among the members in regular service by Royal Decree on the recommendation of the Minister of the Interior and Kingdom Relations.

It is the task of the Minister to assess proposals within the total of the Government Budget, in other words whether there are sufficient funds available and whether they are proportionate to Cabinet policy. Any differences of opinion that may arise about proposals are settled officially and if settlement proves impossible, may be escalated up the political-administrative ladder; in reality a situation never arises in which no consensus is arrived at.

Constitution (translation confirmed by Netherlands)

Article 57

1. No one may be a member of both Houses.

2. A member of the States General may not be a Minister, State Secretary, member of the Council of State, member of the Court of Audit (Algemene Rekenkamer), National Ombudsman or Deputy Ombudsman, member of the Supreme Court, or Procurator General or Advocate General at the Supreme Court.

3. Notwithstanding the above, a Minister or State Secretary who has offered to tender his resignation may combine the said office with membership of the States General until such time as a decision is taken on such resignation.

4. Other public functions which may not be held simultaneously by a person who is a member of the States General or of one of the Houses may be designated by Act of Parliament.

Article 78a

1. The National Ombudsman shall investigate, on request or of his own accord, actions taken by central government administrative authorities and other administrative authorities designated by or pursuant to Act of Parliament.

2. The National Ombudsman and a Deputy Ombudsman shall be appointed by the Lower House of the States General for a period to be determined by Act of Parliament. They may resign or retire on attaining an age to be determined by Act of Parliament. They may be suspended or dismissed by the Lower House of the States General in instances specified by Act of Parliament. Their legal status shall in other respects be regulated by Act of Parliament.

3. The powers and methods of the National Ombudsman shall be regulated by Act of Parliament.

4. Additional duties may be assigned to the National Ombudsman by or pursuant to Act of Parliament.

The General Administrative Law Act

Article 9:18

1. Everyone has the right to request the Ombudsman in writing to initiate an investigation into the manner in which an administrative body has acted towards him or another person in a particular matter.

2. If the petition is submitted to an incompetent ombudsman, it shall, after the date of receipt has been recorded thereon, be forwarded as soon as possible to the competent ombudsman, at the same time notifying the petitioner thereof.

3. The ombudsman is obliged to comply with a request as referred to in the first paragraph, unless Article 9:22 , 9:23 or 9:24 applies.

Whistleblowers authority act (unofficial translation)

Article 3

1 There is a Whistleblowers Authority (Huis voor Klokkenluiders)

2 The Framework Act on independent governing bodies applies to the Authority, with the exception of articles 12, 21 and 22.

3 Contrary to article 20 of the Framework Act on independent administrative bodies, the Authority is only obliged to provide information to Our Minister or to give access to business data and documents relating to the financial management and the administrative organization.

4 Article 23 of the Framework Act on independent administrative bodies is only applicable with regard to the financial management conducted by the House and the administrative organization.

Article 3a

2 The Authority has an advice department and a research department.

2 The advisory department has the task:

a. informing, advising and supporting an employee about the steps to be taken concerning the suspicion of a wrongdoing;

b. referring to administrative bodies or services charged with the investigation of criminal offences or with the supervision of compliance with the provisions under or pursuant to any statutory regulation or other competent authority to which the suspicion of wrongdoing can be reported, and

c. providing general information on dealing with a suspicion of wrongdoing.

3 It is the task of the Investigation Department to

a. assess whether the petition is admissible with due observance of the conditions referred to in article 6, first paragraph;

b. on the basis of a petition, initiate an investigation into:

1°. the suspicion of wrongdoing;

2°. the manner in which the employer has behaved towards the employee following a report of a suspicion of wrongdoing;

c. instituting an investigation into the suspicion of wrongdoing on the basis of one or more requests for advice, with due observance of Article 3k, third paragraph, and Article 6, first paragraph; and

d. formulating general recommendations on how to deal with a suspicion of wrongdoing.

Article 3b

The board of the Authority consists of a chairman and a maximum of four members.

2 The members are appointed to the Advisory Section or to the Research Section. They are not appointed to both departments.

3 A member who has been involved in advising on a suspicion of wrongdoing does not take part in an investigation concerning the same wrongdoing.

4 The president is responsible for the proper functioning of the Authority.

Article 3c

1 The members and the president of the Authority are appointed by royal decree. At personal request, they are dismissed by Our Minister. They may also be suspended by royal decree and dismissed for incompetence or incapacity or for other serious reasons in the person of the person concerned. The nomination for suspension or dismissal shall not be made until the House has been heard about it.

2 The members shall be appointed in such a way that all relevant expertise is present in the Authority for the performance of the duties referred to in article 3a.

3 The members shall be appointed for a maximum period of four years. The term of office of the member who has been appointed in an interim vacancy shall be equal to the duration of the remaining term of office of the member in whose place this member has been appointed. Members may be reappointed twice.

4 The chairman and the members shall not engage in any affairs the performance of which is undesirable with a view to the proper performance of his duties or to the maintenance of his impartiality and independence or of confidence in them.

National Ombudsman
- The legal basis for the National Ombudsman is Article 78a of the Constitution. The law in which this has been elaborated with regard to the National Ombudsman is the National Ombudsman Act.
- Article 78a paragraph 2 of the Constitution stipulates that the NO (and his substitute) is appointed by the House of Representatives for a term to be determined by law.
- The same paragraph provides that the NO (and his substitute) is dismissed at his own request or because of reaching an age to be determined by law. He can also be suspended and fired by the LH in cases to be determined by law.

National Ombudsman (NO):
Article 78a of the Dutch Constitution is the relevant legal provision. It stipulates in section 2 that the NO and his substitute are appointed by the Lower House of Parliament for a certain period which is determined by law. Section 2 further stipulates that the NO and his substitute are terminated on their own request or when they reach a certain age which is determined by law. Section 2 also stipulates that the NO and his substitute can be fired by the Lower House of Parliament in cases that are predetermined by law.

The National Ombudsman has a budget that is intended for organizing its own business management and operational activities. If the National Ombudsman notices that the budget is not sufficient, they report the necessary difference as a budget proposal to the Minister of the Interior and Kingdom Relations. This then takes part in regular financial decision-making.

To give an idea of how it works if the National Ombudsman needs extra resources, this is the process that is then followed:

If the Ombudsman notices that the budget would not be sufficient, they report the difference to be bridged as a budget proposal to the Minister of Interior and Kingdom Relations. The latter then assesses the proposal (simply to ensure that there are no excessive proposals in between). The Minister of the Interior and Kingdom Relations has this role to guarantee the financial checks and balances. If the Minister of the Interior and Kingdom Relations is of the opinion that there are excessive proposals, she will consult with the Ombudsman about this in order to be able to bridge a difference of opinion. Here at all times, the constitutional independent position of the National Ombudsman is taken into account and justice is also done to this. The Minister of Interior and Kingdom Relations then submits the proposal to the Minister of Finance and discusses this.

By way of illustration: There has been no disagreement about budget proposals in recent years and the consultation with the Ministry of Finance also reasonably leads to the funds being added to the budget.

The WA has specialized employees for their main tasks: give advice to Whistleblowers, investigate abuses and retaliation and on how to prevent abuses.

Court of Audit (Algemene Rekenkamer):
Article 77 of the Dutch Constitution is the relevant legal provision. It stipulates in section 1 that members of the Court of Audit are appointed for life by the government by royal decree and are selected out of a pool of three candidates. The pool of candidates is provided by the Lower House of Parliament (Tweede Kamer). Section 2 stipulates that a members position is terminated on their own request or when they reach a certain age which is determined by law. The law the article refers to is the Comptabiliteitswet. Section 3 stipulates that members can be fired by the High Court of the Netherlands in cases that are predetermined by law.

Whistleblowers authority (Huis voor Klokkenluiders):
Article 3c of the Whistleblowers authority act is the relevant legal provision. It stipulates in section 1 that members of the Whistleblowers authority are appointed by the government by royal decree. Section 3 stipulates that members are appointed for 4 years and may be reappointed twice. Section 1 stipulates that a members position can be terminated by the responsible minister on their own request. Furthermore, they can be fired by royal decree in the case of unsuitability, incompetence or for grave reasons relatable to the person involved. The authority must be heard before a decision to fire a member is made.

- The members and the chairman of the WA are appointed by Royal Decree on the basis of Article 3c paragraph 1 of the Whistleblowers House Act (for a maximum period of 4 years).
- They are fired by the Minister of the Interior and Kingdom Relations at their own request. They can also be suspended or dismissed by Royal Decree on the grounds of unsuitability or incompetence or for other compelling reasons relating to the person of the person concerned (all on the basis of Article 3c paragraph 1).
The minister can only dismiss members if they request it themselves. Without such a request, they can only be dismissed by royal decree and only on account of unsuitability, incompetence or other

compelling reasons in the person of the member. The House must also always be heard beforehand. That bar is therefore quite high. If those conditions are met, the minister can decide to nominate a member for dismissal. The Council of Ministers must first agree to this and if it agrees. The minister can therefore never independently decide to dismiss a member if that member does not request it himself. It is not precisely laid down in the law when exactly there is such an unsuitability, incompetence or other compelling reasons in the person of the member that justify dismissal. However, the minister will in any case have to hear the House about this and come up with a good motivation in order to be able to convince the Council of Ministers of the presence of compelling reasons for a dismissal. The King signs after the Council of Ministers has agreed. This is a formality.

The current budget is too tight for the ambitions of the WA and are (thus) subject of discussions with the Ministry of the Interior.

The WA has specialized employees for their main tasks: give advice to Whistleblowers, investigate abuses and retaliation and on how to prevent abuses.

General Audit Chamber
- The legal basis for the General Audit Chamber is Article 76 of the Constitution. The law in which this has been elaborated with regard to the Court of Audit is the Government Accounts Act 2016.
- Article 77 paragraph 1 of the Constitution stipulates that the members are appointed for life by Royal Decree from a nomination of three persons drawn up by the House of Parliament. They may be dismissed on the basis of Article 77 paragraph 2 of the Constitution at their own request or because of an age to be determined by law. The members can also be suspended or dismissed by the Supreme Court in cases designated by law.
- Article 7.1 paragraph 2 of the Government Accounts Act 2016 stipulates that the president is appointed from among the members in ordinary service by Royal Decree on the recommendation of the Minister of the Interior and Kingdom Relations.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

The Netherlands does not have a centralized body exclusively designated to prevent corruption, and preventive measures are taken at different levels of Government.

The office of the National Ombudsman, which is responsible for handling complaints on the functioning of Government, is enshrined in the Constitution and the General Administrative Law Act (art. 9:18). The Ombudsman and the Deputy Ombudsman are appointed by the House of Representatives (art. 78a (2) of the Constitution).

The Whistle-blowers Authority, established by the Whistle-blowers Authority Act, is mandated to advise reporting persons and investigate suspected wrongdoing in a work-related situation and treatment by employers (art. 3 of the Act). Its members and Chair are appointed by royal decree for a maximum period of four years (art. 3c, para. 1, of the Act).

Paragraph 3 of article 6

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

National Ombudsman:

Telephone: +31 70 356 35 63

Address:

Postbus 93122

2509 AC Den Haag

Contact en adres | Nationale ombudsman

Court of audit:

Telephone: +31 70 342 43 44

Address:

Postbus 20015

2500 EA Den Haag

Home | Netherlands Court of Audit

Whistleblowers Authority:

Telephone: +3188 – 133 10 00

Address:

Postbus 85680

2508 CJ Den Haag

English | Huisvoorklokkenluiders

(b) Observations on the implementation of the article

The Netherlands has notified the Secretary General that it has designated the National Ombudsman, the Court of Audit and the Whistleblowers Authority for the purpose of assisting other States Parties in the prevention of corruption.

Article 7. Public sector

Paragraph 1 of article 7

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring,

retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Within the national government there are a number of mechanisms aimed at the transparent and objective recruitment, adequate remuneration, selection, development and promotion of civil servants.

Each ministry or department independently recruits new employees. There is a central role of the manager in hiring staff. This process is supported by the HR department of that specific department. In addition, there is a shared service organization, working for all departments, for specific services, such as labor market communication, organizing the government-wide trainee program, purchasing services such as assessments and testing candidates and supporting IT systems for recruitment. Top management is recruited by a specific agency (Algemene Bestuursdienst)

If there is a vacancy in a department, there is normally the first opportunity for candidates within the department or organization to apply. If there is no matching candidate, it is up to the manager to decide whether the position is immediately publicly advertised or whether the vacancy is open to candidates from other departments before the vacancies are published on a central website (www.werkenvoornederland.nl).

In principle there are three categories for hiring public officials with sometimes different rules.

Potential employees normally get two or three rounds of conversations with future colleagues. An assessment is an option, but not a permanent part of the process. The second category consists of the government-wide trainee-programme. Potential trainees can apply once a year. Potential trainees receive tests, interviews and an assessment. This year, 140 new interns have started. The trainee program lasts two years, in which the trainees receive four six-month assignments before being offered a permanent position. The last category is top management. The top management is recruited by a specific agency (Algemene Bestuursdienst). Every top manager is assessed. There is a committee that looks for potential candidates for top positions. If there is a function, a regular process is started with several rounds of conversation.

Rejected candidates will be notified that they have been rejected with an explanation of why they have been rejected. In principle, this message is not extensive. The rejected candidates will be informed in the message that, if desired, there is a possibility to contact the hiring manager for further explanation. It is possible to appeal against this decision.

The development / increase of wages is part of the Collective Labor Agreement (CLA). There is a salary table with the different salary scales (1-19) and steps within that scale (1-10). With a new collective labor agreement, the table will be adjusted to the new agreements.

Examples of measures:

- Agreements on filling of vacancies and the order of opening vacancies. Placing vacancies on the internal vacancy database (mobility database) and the external vacancy database (werkenvoornederland). As a consequence, vacancies are public knowledge and open to everyone.

- In the description of the vacancy, information is provided about activities, position, grade and other job characteristics.

- The Civil Service Job Description and Evaluation System (Functiegebouw Rijk) applies for the whole of national government and provides a job description system. As a consequence, all jobs are classified in a specific job family with the accompanying job requirements and grade.

- Salary grades. Within national government, fixed salary grades apply with fixed increments. In this way the salary related to each position is transparent.

- Each organisation component/department has an organisation and formation report. An organisation and formation report (O&F report) is a report in which the new or adapted organisation structure, formation and jobs are described. The O&F report is used to formalise the new organisation structure and formation structure.

- Collective labour agreements with the trade unions, for example about primary and secondary elements of adequate remuneration. The current agreement is effectual until June 30th 2020. There will be negotiations between the trade unions and the public employer to establish a new agreement for a next period.

- A budget for staff training. Learning and development assumes personal responsibility on the part of the employee. The organisation and its manager encourage employees to continue to develop and ensure that a training budget is available.[21]

Excerpt from letter to Parliament from the Minister of Education Culture and Science on equitable pay scales and promoting equality in general:

"The government is a major employer. In respect of gender equality, the government achieves a better score than the private sector. The wage gap within government is half that in the private sector and the proportion of women in senior positions in national government is 33 percent. By signing the Diversity Charter, all Ministries have committed to promoting diversity on the shop floor. This means in practice that deliberate action must be taken to prevent subconscious prejudice, bringing about an open business culture and encouraging the influx, retention and advancement of employees, irrespective of employment restrictions, gender, age, sexual orientation and gender identity, or cultural, ethnic or religious background. National government is also contributing to *Workplace Pride*, the network of businesses and institutions with an LGBT-inclusive HR policy.

[21] https://www.functiegebouwrijksoverheid.nl/

www.werkenvoornederland.nl

www.mobiliteitsbank.nl

Within national government, a number of different LGBT staff networks are operational and affiliated to *Dutch Government Pride*. In 2017, the Ministry of the Interior and Kingdom Relations organised a series of sessions for diversity coordinators within national government, to exchange knowledge and experiences. In revising the strategic national government HR policy for 2025, there is clear attention for diversity and inclusivity."

d) See also article 8.

The Civil Servants Act 2017

Article 3a

1. Government employers may conduct an investigation into suitability and competence for a position as a civil servant. If necessary, they may process special categories of personal data and personal data of a criminal nature as referred to in paragraph 3.1 and paragraph 3.2 of the General Data Protection Regulation Implementation Act .

2. Rules are laid down by general administrative measure regarding the types of personal data that can be processed.

Article 4

1. Public sector employers shall pursue an integrity policy aimed at the promotion of appropriate official conduct that focuses on the promotion of integrity awareness and the prevention of abuse of powers, conflicts of interest and discrimination as a minimum.

2. Public sector employers shall embed the integrity policy in the human resources policy by ensuring, as a minimum, that the topic of integrity is raised during performance reviews and in work meetings and that training and education is offered on the topic of integrity.

3. Public sector employers shall put in place a code of conduct for public servants.

4. Public sector employers shall publish an annual statement rendering account for the implementation of this Section.

5. Specific rules may be laid down by order in council with regard to paragraph 3.

Article 5

1. Public sector employers shall:

a. ensure that public servants swear a solemn oath or make a sworn statement upon their entry into service;

b. ensure that, if public servants undertake ancillary activities that may impact on the interests of the service, such activities are registered in so far as they are related to the performance of their duties;

c. ensure that the ancillary activities registered pursuant to (b) are disclosed if the public servant has been appointed to a position that requires the disclosure of ancillary activities in order to protect the integrity of the public service;

d. designate public servants who perform duties that are particularly susceptible to the risk of financial conflicts of interest or the risk of improper use of price-sensitive information, identify which financial interests such public servants shall be prohibited from holding or acquiring and keep records of the disclosures made by such public servants in accordance with Section 8, paragraph 2(b);

e. ensure that a procedure is in place for handling suspicions of abuses that public servants have in relation to the organisation that employs them.

2. Specific rules may be laid down by order in council with regard to paragraph 1.

Trainees:
Once a year young people, recently graduated (university), can subscribe by sending a motivation and CV. A selected group is invited to do tests and an assessment. Candidates with a positive result have meetings with the participating ministries (market place). Ministries have a certain number of traineeships each year and pick candidates, selected during these meetings.

Regular staff:
If there is no match with available candidates within the own organization positions are open for candidates both internal and external. Candidates have to send a motivation and CV. Candidates that are selected normally have at least two rounds of meetings with a selection committee (future manager and future colleagues). An assessment can be part of the procedure. Members of selection committees will have to be trained in bias-free conversations (current policy that we are carrying out).

Top management:
Within the Ministry of Interior and Kingdom Relations there is an agency that is responsible for recruitment and selection of top management (ABD). There is a committee that selects people who are qualified to become member of the so called Top Management Group. If there is a vacancy ABD organizes the process. Candidates have to submit a motivation and CV. ABD does a preselection and proposes candidates. A selection committee has meetings with candidates in at least two rounds. Top management is appointed by the minister of the Interior.

The employer is bound by the internal agreements regarding the filling of vacancies, but may choose within those agreements who to hire or not. In principle, he may not treat applicants unequally in this procedure. If an applicant is of the opinion that there is unjustified discrimination on the basis of gender, skin colour, religion or origin, the applicant can submit the matter to the Institute for Human Rights. The judgment of this board is not binding. The matter can also be brought to court.

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There is a basic screening for all civil servants, in the form of a certificate of good conduct (VOG). A VOG is a statement showing that the civil servants (judicial) past does not constitute an objection to fulfilling a specific task or position.

On the basis of article 5, paragraph 1, part d of the Civil Service Act 2017, the employer designates civil servants who perform activities that in particular involve the risk of financial conflicts of interest or the risk of improper use of price-sensitive information, and designate the financial interests they may not possess or acquire and the registration of the reports made by them as referred to in Article 8 (2) (b). Section 8 (2) (b) requires an officer appointed within the meaning of section 5 (1) (d) to disclose his financial interests as well as holdings and transactions in securities that are public service insofar as this is related to the performance of his duties and to provide further information in this regard upon request

Article 4 of the Civil Service Act 2017 prescribes that a government employer must ensure that the integrity policy forms a permanent part of the personnel policy, in any case by addressing integrity in performance interviews and work meetings and by offering training and education in the field of integrity. The responsibility for this lies with the individual government employers.

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c. ensure that the ancillary activities registered pursuant to (b) are disclosed if the public servant has been appointed to a position that requires the disclosure of ancillary activities in order to protect the integrity of the public service;
d. designate public servants who perform duties that are particularly susceptible to the risk of financial conflicts of interest or the risk of improper use of price-sensitive information, identify which financial interests such public servants shall be prohibited from holding or acquiring and keep records of the disclosures made by such public servants in accordance with article 8, paragraph 2(b);
e. ensure that a procedure is in place for handling suspicions of abuses that public servants have in relation to the organisation that employs them.

2. Specific rules may be laid down by order in council with regard to paragraph 1.

§ 3. Obligations for public servants

Article 6

1. Public servants shall be required to fulfil the obligations imposed on them by or pursuant to the law and arising from their duties and to otherwise conduct themselves as befits a good public servant.

2. For the purposes of the Dutch Civil Code, non-compliance with paragraph 1 shall be deemed a failure to comply with the duties imposed on a public servant by virtue of their employment agreement.

Article 7

Public servants shall swear a solemn oath or make a sworn statement in accordance with a form established by general administrative order, which form may vary for different positions.

Article 8

1. Public servants shall be prohibited from:

a. undertaking ancillary activities as a result of which the proper performance of their duties or the proper functioning of the public service, to the extent this relates to the performance of their duties, cannot reasonably be guaranteed;
b. participating directly or indirectly in contracting for services or supplies to public services, unless the public sector employer with which the public servant has concluded an employment agreement has granted permission for this;
c. holding financial interests, possessing securities or carrying out securities transactions as a result of which the proper performance of their duties or the proper functioning of the public service, to the extent this relates to the performance of their duties, could not reasonably be guaranteed;
d. holding or acquiring financial interests as designated under article 5, paragraph 1(d), by the public sector employer with whom the public servant has concluded an employment agreement;
e. accepting or requesting payment, gifts, fees or promises from a third party with whom a public servant maintains relations in an official capacity, without the permission of their public sector employer.

2. Public servants shall be required to disclose the following to the public sector employer with whom they have concluded an employment agreement:

a. any ancillary activities they undertake or intend to undertake that may impact on the interests of the service, in so far as those activities are related to the performance of their duties;
b. if the public servant is a designated public servant within the meaning of article 5, paragraph 1(d), their financial interests, any securities held by them and any securities transactions carried out by them that may impact on the interests of the

service, in so far as those activities are related to the performance of their duties. The public servant shall furthermore be obliged to comply with requests for additional information in this regard.

3. Rules may be laid down by an order in council regarding the application of paragraphs 1 and 2.

Article 9

Current and former public servants shall be required to keep confidential anything they take cognizance of in connection with their duties, to the extent that this obligation follows from the nature of the matter.

Article 10

1. Public servants shall refrain from expressing thoughts or sentiments or from exercising the right to freedom of association, the right to hold meetings or the right of demonstration if, as a result of the exercising of such rights, the proper performance of their duties or the proper functioning of the public service, to the extent this relates to the performance of their duties, cannot reasonably be guaranteed.

2. Where the right to freedom of association is concerned, paragraph 1 shall not apply to membership of:

a. a political group identified and registered in accordance with the Dutch Elections Act;
b. a trade union.

Article 11

Whilst present at their place of work, public servants shall be required to undergo a body search, a search of their clothes or a search of their effects present at the place of work if the public sector employer orders such a search in the interest of the service. The public sector employer that has ordered the search shall take the necessary measures to prevent any unfair or improper treatment during that search.

§ 4. Confidential positions

Article 12

1. Only individuals who are Dutch citizens shall be eligible to take up a confidential position. An individual who does not have Dutch nationality may nevertheless become eligible if the interests of the service specifically require this.

2. The employment agreement with a public servant may be terminated if their removal from a confidential position is necessary on the basis of the provisions in Article 5, paragraph 3, or Article 10, paragraph 2, of the Security Screening Act.

3. Specific rules may be established by or pursuant to a general administrative order with regard to the provisions of this Section.

Article 13

1. For categories of public servants with whom the State has concluded an employment agreement and who, by virtue of their role, could become aware of secret or highly secret information regarding the security or other vital interests of the State, a general administrative order may be used to lay down rules regarding the risk mitigation obligations that shall apply to these civil servants when, for purposes other than the exercise of their duties, they travel to and stay in countries where their presence could pose a particular risk to the security or other vital interests of the State.

2. The general administrative order referred to in paragraph 1 may stipulate that the requirements set out there in shall also extend to former public servants.

3. A general administrative order within the meaning of paragraph 1 shall not enter into force until two months after the date of publication of the Bulletin of Acts and Decrees in which that order is published. Publication shall be promptly notified to both Houses of the States General.

§ 4a. The State

Article 13a

An employment agreement relating to positions designated by or pursuant to a general administrative order shall be entered into by means of a Royal Decree. The employment agreement shall be terminated by means of a Royal Decree, except in the event that the State terminates the employment agreement on the basis of Article 677 of Book 7 of the Civil Code.

Article 13b

1. Public servants of the States General shall be subject to the employment conditions laid down for all public servants in the most recently concluded collective labour agreement

for public servants who are employed by virtue of an employment agreement with the State.

2. At the request of the States General, different employment conditions may be incorporated for public servants of the States General in the collective labour agreement referred to in paragraph 1.

§ 5. Transitional and final provisions

Article 14

1. From the date of entry into force of Section I of the Public Servants (Standardization of Legal Status) Act, public servants as referred to in Article 1, paragraph 1, of the Central and Local Government Personnel Act who were appointed prior to that date and who, at the date of the entry into force of Article I of the Public Servants (Standardization of Legal Status) Act, were eligible for remuneration within the meaning of Article 115 of the Central and Local Government Personnel Act that qualifies as wages within the meaning of Article 610(1) of Book 7 of the Civil Code, shall have their appointment converted into a civil-law employment agreement by operation of law. The employment agreement shall comprise the decisions, arrangements and agreements existing at that time with regard to the employment conditions of the public servant, which shall in event include the term of employment, remuneration, working hours, roster, leave, facilities for the performance of the duties and study facilities.

2. From the date of entry into force of Article I of the Public Servants (Standardization of Legal Status) Act, public servants as referred to in paragraph 1 who were appointed prior to that date and who were not eligible for remuneration as referred to in paragraph 1 shall have their appointment converted to an agreement by operation of law. The agreement shall comprise the decisions, arrangements and agreements that exist at that time with regard to the performance of the duties, which shall in event include the term of employment, expense allowances, working hours, roster, leave, facilities for the performance of the duties and study facilities.

3. From the date of entry into force of Article I of the Public Servants (Standardization of Legal Status) Act, appointments made prior to an appointment as referred to in paragraph 1 shall be considered civil-law employment agreements.

4. The above paragraphs shall not apply to individuals as referred to in paragraph 3.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

The recruitment of public officials is decentralized and each ministry or department oversees the process with the support of the Human Resources Shared Service Organization. Government employers may conduct an assessment of suitability and competence for a position as a civil servant (art. 3a of the Civil Servants Act). Vacancies are published on a central website. Hiring is at the discretion of the hiring manager and unsuccessful candidates are notified and informed of their right to contact the hiring manager for further information.

Each ministry or department must designate positions that involve a particular risk of a financial conflict of interest or a risk of the improper use of price-sensitive information (art. 5, para. 1, of the Civil Servants Act). However, there is no specific selection procedure for, or training or mandatory rotation of, individuals in such positions. General integrity training is provided by each government entity (art. 4 of the Civil Servants Act).

The reviewing experts therefore recommended that the Netherlands enhance transparency in the recruitment of public officials by establishing clear criteria on the recruitment, hiring, retention, promotion and retirement of civil servants, and consider establishing an oversight body to ensure that recruitment is based on the principles of efficiency, transparency and objective criteria (art. 7, para. 1 (a)).

The reviewing experts also recommended that the Netherlands establish adequate procedures for the selection and training of individuals for public positions identified as being especially vulnerable to corruption and consider establishing the rotation of such individuals to other positions (art. 7, para. 1 (b)).

Paragraph 2 of article 7

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Three fact-finding exercises are carried out before the formateur (person charged with forming a new government) interviews a candidate Minister or State Secretary. By putting themselves forward as candidates, candidates agree to this procedure. During the interview with a candidate, the formateur shares the results of these exercises and discusses them with the candidate. It must be stressed that the prior background checks of the candidate serve only to support the formateur. These fact-finding exercises as well as the way that the formateur delves into specific aspects of them during the meeting with the candidate do not affect the candidate's responsibility to raise all relevant facts and circumstances at their own initiative.

The exercises and their scope are explained below.

Judicial record

The judicial document register is consulted to determine whether there is any relevant information under criminal law relating to the candidate. This exercise is limited to completed cases that have led to a criminal conviction.

Background check by the General Intelligence and Security Service (AIVD)

The General Intelligence and Security Service (AIVD) verifies whether there is any relevant information in its files relating to the candidate which has been gathered in connection with its duties as specified in Article 6 of the Intelligence and Security Services Act 2002 (Wet op de inlichtingen- en veiligheidsdiensten 2002).[22] This act has since been replaced by the Intelligence and Security Services Act 2017 (Wet op de inlichtingen- en veiligheidsdiensten 2017), which is expected to enter into force during the course of 2018. The AIVD may conduct new and more far-reaching background checks on the candidate only if there is a serious suspicion that the protection of the interests referred to in Article 6 is being threatened.

The background check by the AIVD yields information insofar as the service has previously 'encountered' the candidate and recorded information about them on that occasion for any reason. A ministerial regulation will be issued pursuant to Article 63 of the new Act, setting out the rules for the background check into the AIVD files.

Background check of the tax file

The NTCA consults the candidate's tax file. On accepting office, Ministers and State Secretaries must resign from all paid and unpaid positions, secondary positions and other secondary activities. This rule exists to prevent conflicts of interests. Also see the answer under 5.1.b.

As indicated under 1.2, prerequisites, benefits in kind and any expense claims are made public, unless this publication is undesirable for security¬ considerations. Also see this answer in relation to audits.

Finally, there is a ban on lobbying. For a period of two years after their resignation, it is not acceptable for former Ministers and State Secretaries to engage in any way with the employees of their former Ministry as lobbyists on behalf of a company, semi-public organisation or lobby organisation that represents interests in their former policy area. This ban means that they also cannot act as an intermediary, lobbyist or agent in commercial contacts with the Ministry. The term 'commercial contacts' must be interpreted broadly to mean not only physical meetings but also emails, telephone calls, other forms of telecommunication or participation in a business delegation (Parliamentary Papers II, 2016/17, 34376, No 15 and the circular on the Application of the lobbying ban to Cabinet members, 5 October 2017, appendices). The Secretary-General of the Ministry

[22] The AIVD is tasked with the following in the interests of national security:

a. carrying out investigations into organisations and persons that give rise to serious suspicions, because of the objectives that they pursue or their activities, which constitute a danger to the continued existence of the democratic legal system or to the security or other compelling interests of the State;

b. conducting security screening as referred to in the Security Screening Act (*Wet veiligheidsonderzoeken*);

c. promoting measures to protect the interests referred to under a, which include measures to secure data whose confidentiality is needed for reasons of national security and of those sections of the public administration as well as of trade and industry that the responsible Ministers believe to be crucial for maintaining social life;

d. carrying out investigations into other countries;

e. preparing threat and risk assessments at the joint request of the Minister of the Interior and Kingdom Relations as well as the Minister of Justice and Security for the security of the persons referred to in Section 4(3)(b) and Section 42(1)(c) of the Police Act 2012 (*Politiewet 2012*) as well as the surveillance and security of properties and services designated under Section 16 of that Act;

f. upon a request to that effect from a person or institution jointly designated by a regulation of the above Ministers, to report on the data processed by the service regarding persons or institutions in the cases designated under that regulation.

concerned may allow an exception to this rule. Due to their status and reputation abroad, former Cabinet members who work in trade and industry may head or form part of a trade delegation organised by a Ministry.

'Prevention is better than cure' is the key principle that applies to the appointment of Ministers and State Secretaries. A background check in AIVD files is performed before candidates take office. Candidates must also resign from all secondary positions. Business interests must be disposed of or placed at arm's length. Also see the answer under 2.1.

The arrangement concerning the financial and business interests of Cabinet members taking office is based on trust. Ministers and State Secretaries are personally responsible for preventing any conflict between their public and private capacities. The interview between the formateur and the candidate systematically looks at whether the candidate has any controlling rights in relation to relevant financial or business interests. In relation to the financial and business interests of Cabinet members, any appearance of subjective decision-making must be avoided. After all, as a Cabinet member, a Minister or State Secretary is involved in the decisions made on all issues that are raised in the Council of Ministers. Over the years, rules of conduct have therefore been established, which candidate Cabinet members must undertake to observe.

Where applicable, candidates must either fully dispose of these interests or enter into an arrangement by which they cannot and will not exercise their controlling rights during their period of office. If these controlling rights relate to relevant financial or business interests, candidate Ministers or State Secretaries must either fully dispose of these interests or enter into an arrangement by which they cannot and will not exercise their controlling rights during their period of office. Ministers or State Secretaries are also responsible for not participating in any decision-making on matters that involve their partner, children, other family members, business relations, interests, former interests or previous positions, insofar as participating could run counter to the proper performance of their duties. For this reason, the Replacement Arrangements for Ministers in the Event of Temporary Absence stipulate that they will be replaced by another Minister insofar as performing their duties in a certain matter would mean that they could be personally and directly involved.

1. Cabinet members

The arrangement concerning the financial and business interests of Cabinet members (ministers and state secretaries) is based on a letter to the house of representatives.

The complete relevant text for this answer is as follows:

'Positions, additional positions and other ancillary activities'

During the interview, the formateur informs the candidate that he / she must renounce all paid and unpaid positions and ancillary positions and other ancillary activities before swearing in cabinet. This is to avoid any possible appearance that additional positions or other ancillary activities could detract from objective

decisionmaking. Moreover, the office of a member of government is so demanding

and important that it requires the full commitment of those involved. The terms

(secondary) position and secondary activity must be as broad as possible understood. It therefore also concerns volunteer positions, for example clubs or societies, part-time

professorships, editorial positions and memberships of committees of recommendation. Continuing "asleep" of a position by means of a so-called zero-hours contract is not allowed. Exclusively being a member of an association (not in a board position) is not covered by this scheme.

If the candidate nevertheless sees a reason for a certain position, whether or

not to be continued for a fixed period, this is only possible with explicit consent of the formateur. That's how it happened in the past that a candidate minister was allowed a few more PhD students to supervise whose investigation was almost completed.

This policy also implies that a member of government once in position may only accept an additional position in exceptional cases and then only after written permission from the Prime Minister. Likewise a member of government should intend to hold discussions about a future position for approval submit to the Prime Minister.

Financial and business interests

With regard to the financial and business interests of the ministers likewise, any appearance should be avoided that there is no objective decision-making. It's not only the relevant policy area for which a minister is directly responsible. After all, as a member of the cabinet, a member of government is involved in the decision-making on all subjects raised in the Council of Ministers.

Hence, over the years there have been established very stringent rules of conduct to which candidate ministers must commit. In the conversation between formateur and candidate it is therefore systematically checked whether the candidate has control rights in relevant financial or business interests. Where that is the case, the person concerned must either completely renounce this interests, or to make an arrangement whereby he / she has control rights cannot / will not exercise these rights during the term of office. In the appendix you will find a non-exhaustive overview of the guidelines used in respect of financial or business interests and so far accepted possible solutions in case there is a risk of apparent conflict of interest. In doing so, i draw your attention to it that is taken as a starting point that financial and business interests of a partner, adult children and other family members are generally not considered relevant. The rationale for this is that in in today's society people become independent individuals considered to be economically independent. It fits not, including the partner or family members of a candidate member of government, to demand significant financial or business changes in their life to make the candidacy of the person concerned possible. It is also undesirable for the office of a minister that an important group of suitable candidates would be unreachable due to the social position of partner or relatives. The boundary of relevant financial and business interests that that are raised during the formation is therefore assigned to those interests over which the candidate-minister has personal (joint) control. Hence, the financial and business interests of minor children and the partner in the case of a marriage in community of goods are considered relevant. That demarcation does not affect that during a term of office a member of government bears responsibility himself not to participate in decision-making on matters that his or her partner, children, other family, business relations, (former) interests or affect previous positions, to the extent that participation could conflict with a good performance of office. Especially when it comes to financial and business interests it is of importance to keep a close eye on the division of

responsibility between formateur and candidate. It is the responsibility of the formateur to systematically raise the issue and to address this topic in the conversation with the candidate. It is the candidate's responsibility to to report all relevant facts truthfully and completely. In case that during the conversation possible incompatible financial and / or business interests are identified it is the responsibility of the candidate minister, taking into account the guidelines to make seasonable adequate arrangements.

There are no statutory sanctions. However, Ministers or State Secretaries make themselves politically vulnerable if they do not report information that they could suspect involves a risk or otherwise be politically relevant.

The formateur takes note of this in outline and only indicates whether the chosen solution seems plausible to him in the given case. It goes without saying that the formateur can never substantive form a picture of the business interests of the candidate and the legal design thereof. He must be in the assessment of the business interests and the chosen solution direction rely on the information provided by the candidate minister. Therefore he cannot do otherwise then assess in outline whether the person concerned opts for an adequate solution for identified problem points. The formateur is also not possible to check whether the person concerned subsequently implements it correctly to those agreements. Responsibility for the chosen solution direction and its correct implementation therefore remain fully with the candidate government minister. This is all the more so because there are large personal financial interests may be at stake, so that only the person concerned can weigh up the advantages and disadvantages of the possible solutions. During the term of office, a member of government may of course not create financial or business interest that violates the above guidelines."

The candidates give a declaration to the formateur about the interview held by the formateur on the above mentioned topics. It includes also the solutions or the measures taken place, or the appointment or the commitment to these topics. You can find a format in the "Het blauwe boek, handbook voor bewindspersonen"

2. Elected officials at the provincial and municipal level. And governors at the same level.

The following rules apply to governors at provincial, municipal and water board level:

Rules which apply to the King´s Commissioner (the following legislation is drafted in the Provinces Act, the version used was valid until 31-01-2016)

Nomination requirements:

Article 61

1. The King's Commissioner is appointed for a term of six years by royal decree on the recommendation of Our Minister.

2. Our Minister consults with the provincial council about the job requirements to be met by the person to be appointed as King's Commissioner.

3. After consulting with Our Minister the provincial council appoints from among its members a confidential committee responsible for assessing the candidates. The provincial council may decide that one or more members of the provincial executive should be added to the confidential committee as advisers. Our Minister provides the confidential committee with a list of applicants for the office of King's Commissioner, together with his view on which candidates he considers, in principle, suitable for appointment. If the confidential committee decides to include in its assessment not only these candidates but also others who have applied, it must give immediate notice of this to Our Minister. The latter must then communicate his opinion about the latter candidates to the confidential committee.

4. The confidential committee obtains the information it considers necessary about the candidates. Administrative authorities are obliged to furnish the requested information. The confidential committee reports its findings to the provincial council and to Our Minister.

5. The provincial council sends Our Minister a recommendation for an appointment within four months of the date on which applications were invited for the position. This recommendation contains the names of two persons.

6. In a special case, where the provincial council gives reasons, a recommendation need list only one name. Our Minister may disregard a recommendation listing only one name if he does not consider it to be a special case.

7. Our Minister must, in principle, accept the provincial council's recommendation in making his recommendation, including the order in which the names are listed, unless he considers that there are serious reasons to depart from it. Reasons must be given for any departure.

Article 61a

1. The King's Commissioner may be reappointed for a term of six years by royal decree on the recommendation of Our Minister.

2. The provincial council sends a recommendation to Our Minister concerning the reappointment of the King's Commissioner at least four months before the first day of the month in which the reappointment is to take effect.

3. Before the provincial council makes a recommendation it consults with Our Minister about the King's Commissioner's performance.

4. In making his recommendation Our Minister may depart from the provincial council's recommendation only on compelling grounds.

Article 63

Dutch nationality is a requirement of eligibility for appointment as King's Commissioner.

Article 64

1. Before accepting his office, the King's Commissioner must make the following oath or affirmation before the King:

‘I do swear (declare) that in order to be appointed as King’s Commissioner I have not promised or given, directly or indirectly, any gift or favour to any person under any name or on any pretext whatever. I do swear (declare and affirm) that I have not accepted and will not accept, directly or indirectly, any promise or gift in order to do or refrain from doing anything whatever in this office. I do swear (affirm) allegiance to the Constitution and that I will obey the law and faithfully discharge my duties as King’s Commissioner to the best of my ability. So help me God! (This I declare and affirm!’).

2. Where a King’s Commissioner is reappointed, the oath or affirmation is made before the King or before Our Minister authorised thereto by the King.

3. [Translator’s note: paragraph 3 contains the same oath and affirmation in the Frisian language]

Article 70

The King’s Commissioner must have his actual place of residence in the province.

Incompatible occupations/relations:

Article 67

1. A King’s Commissioner may not also be:

(a) a minister;

(b) a state secretary;

(c) a member of the Council of State;

(d) a member of the Court of Audit;

(e) National Ombudsman;

(f) a deputy ombudsman as referred to in article 9, paragraph 1 of the National Ombudsman Act;

(g) a member of a provincial council;

(h) a member of a provincial executive;

(i) a member of the audit office;

j) a member of a municipal council;

(k) a mayor;

(l) a member of a municipal executive;

(m) a member of the audit office of a municipality located in the province concerned;

(n) an ombudsman or member of an ombuds committee as referred to in article 79q, paragraph 1;

(o) a public servant appointed by or on behalf of the provincial authority or subordinate to it;

(p) a public servant appointed by or on behalf of the municipal authority of a municipality located in the province concerned or subordinate to it;

(q) the chair or a board member of or a public servant working for a water authority located in the province concerned;

(r) a public servant working for a body established by joint arrangement, an organ of which is subject to the supervision of the provincial executive;

(s) a public servant appointed by or on behalf of central government whose duties include carrying out activities involving supervision of the province;

(t) an official who advises the provincial authority by virtue of an Act of Parliament or order in council.

Incompatible acts:

Article 68

1. Article 15, paragraphs 1 and 2 apply mutatis mutandis to a King's Commissioner.

2. The provincial council adopts a code of conduct for the King's Commissioner.

Article 68 should be read in relation to section 15.

Article 15

1. A provincial council member may not:

(a) serve as counsel or adviser to the province or the provincial authority in disputes or to the counterparty in a dispute with the province or the provincial authority;

(b) serve as authorized representative of the counterparty in a dispute with the province or the provincial authority;

(c) serve as representative of or adviser to third parties who are entering into:

(1) contracts as referred to at (d) with the province;

(2) contracts to transfer immovable property to the province;

(d) enter, directly or indirectly, into a contract for:

(1) the performance of works for the province;

(2) the performance of activities for the province for hire and reward other than as an employee;

(3) the transfer of movables to the province other than for no consideration;

(4) the hiring of movables to the province;

(5) the acquisition of disputed claims against the province;

(6) the acquisition from the province by private instrument of immovable property or limited rights to which such property is subject;

(7) taking a lease or agricultural lease by private instrument from the province.

2. Our Minister may grant exemption from the provisions of paragraph 1, opening words and (d)

3. The provincial council adopts a code of conduct for its members.

Additional provisions:

Article 66

1. The King's Commissioner may not hold any second jobs or positions that might prejudice the proper discharge of the office of King's Commissioner or compromise his ability to maintain his impartiality and independence or confidence therein.

2. The King's Commissioner must give the provincial council notice of his intention to accept a second job or position other than one arising from the office of King's Commissioner.

3. The King's Commissioner must publicly disclose his second jobs or positions, other than those arising from the office of King's Commissioner, and the income from them. Such disclosure is effected by depositing the information at the offices of the province for public inspection no later than on 1 April of the year following the calendar year in which the income from second jobs or positions was received.

4. For this purpose income is deemed to mean salary within the meaning of article 9 of the Salaries Tax Act 1964, less the final levy components referred to in article 31 of that Act.

Rules which apply to members of the provincial executive (the following legislation is drafted in the Provinces Act, the version cited was valid until 31-01-2016.):

Nomination requirements:

Article 35b

1. The requirements for membership of the provincial council referred to in section 10 also apply to membership of the provincial executive.

2. The provincial council may grant exemption from the residency requirement for a term of one year. In special cases the exemption may be extended for a maximum of one year at a time.

3. No one may be a member of more than one provincial executive.

Article 35b should be read in relation to article 10.

Article 10

To be eligible to be a provincial council member a person must be a Dutch national and resident of the province, have attained the age of eighteen and not be disqualified from voting and standing for election.

Incompatible occupations/relations:

Article 35c

1. A member of the provincial executive may not also be:

(a) a minister;

(b) a state secretary;

(c) a member of the Council of State;

(d) a member of the Court of Audit;

(e) National Ombudsman;

(f) a deputy ombudsman as referred to in article 9, paragraph 1 of the National Ombudsman Act;

(g) a King's Commissioner;

(h) a member of a provincial council;

(i) a member of the audit office;

(j) a member of a municipal council;

(k) a mayor;

(l) a member of a municipal executive;

(m) a member of the audit office of a municipality located in the province concerned;

(n) a public servant who has been appointed by or on behalf of the provincial authority or is subordinate to it;

(o) a public servant who has been appointed by or on behalf of the municipal authority of a municipality located in the province concerned or is subordinate to it;

(p) the chair or a board member of or a public servant working for a water authority located in the province concerned;

(q) a public servant working for a body established by joint arrangement, an organ of which is subject to the supervision of the provincial executive;

(r) a public servant appointed by or on behalf of central government whose duties include carrying out activities involving supervision of the province;

(s) an official who advises the provincial authority by virtue of an Act of Parliament or order in council.

2. Notwithstanding paragraph 1, opening words and (h), a member of the provincial executive may also be a member of the provincial council of the province of whose provincial executive he is a member during the period which:

(a) starts on polling day for the election of provincial council members and ends on the date on which the members of the provincial executive cease to hold office pursuant to article 41, paragraph 1,

or (b) starts on the date of his appointment as a member of the provincial executive and ends on the date on which the credentials of his successor as provincial council member have been finally approved or on which the central electoral committee decides that no successor can be appointed. He is deemed to have resigned from the provincial council from the date

on which he accepts his appointment as a member of the provincial executive. Article X 6 of the Elections Act applies mutatis mutandis.

3. Notwithstanding paragraph 1, opening words and (n), a member of the provincial executive may also be a volunteer or other person who performs emergency services on account of a statutory duty other than in a professional capacity

Incompatible acts:

Article 40c

1. Article 15, paragraphs 1 and 2 apply mutatis mutandis to members of a provincial executive.

2. The provincial council adopts a code of conduct for the members of the provincial executive

Article 40c should be read in relation to article 15.

Article 15

1. A provincial council member may not:

(a) serve as counsel or adviser to the province or the provincial authority in disputes or to the counterparty in a dispute with the province or the provincial authority;

(b) serve as authorized representative of the counterparty in a dispute with the province or the provincial authority;

(c) serve as representative of or adviser to third parties who are entering into:

(1) contracts as referred to at (d) with the province;

(2) contracts to transfer immovable property to the province;

(d) enter, directly or indirectly, into a contract for:

(1) the performance of works for the province;

(2) the performance of activities for the province for hire and reward other than as an employee;

(3) the transfer of movables to the province other than for no consideration;

(4) the hiring of movables to the province;

(5) the acquisition of disputed claims against the province;

(6) the acquisition from the province by private instrument of immovable property or limited rights to which such property is subject;

(7) taking a lease or agricultural lease by private instrument from the province.

2. Our Minister may grant exemption from the provisions of paragraph 1, opening words and (d)

3. The provincial council adopts a code of conduct for its members.

Additional provisions:

Article 40b

1. A member of the provincial executive may not hold any second jobs or positions which might prejudice the proper discharge of the office of a member of the provincial executive.

2. A member of the provincial executive must give the provincial council notice of his intention to accept a second job or position.

3. A member of the provincial executive must publicly disclose his second jobs or positions. Such disclosure is effected by depositing the information at the offices of the province for public inspection.

4. A member of the provincial executive who does not hold office on a part-time basis must also publicly disclose any income from second jobs or positions. Such disclosure is effected by depositing the information at the offices of the province for public inspection no later than on 1 April of the year following the calendar year in which the income from second jobs or positions was received.

5. For this purpose income is deemed to mean salary within the meaning of article 9 of the Salaries Tax Act, less the final levy components referred to in article 31 of that Act.

Rules regarding voting:

Article 58

Article 28, paragraphs 1 to 3 and articles 29 and 30 apply mutatis mutandis to meetings of the provincial executive

Article 58 should be read in relation to article 28.

Article 28

1. A provincial council member may not take part in voting on:

- a matter which concerns him personally, either directly or indirectly, or in which he is involved as a representative;
- the adoption or approval of the accounts of an organ to which he is accountable or to whose executive he belongs.

2. In the event of a written ballot, casting a vote means handing in a properly completed ballot paper.

3. An appointment is deemed to concern a person personally if he is one of those to whom the choice of persons to be appointed is limited either by nomination or on a second ballot.
4. Paragraph 1 does not apply to a decision regarding the admission of provincial council members appointed after a periodic election.

Rules which apply to the mayor (the following legislation is drafted in the Municipalities Act, the version cited was valid until 31-01-2016):

Nomination requirements:

Article 61

1. The mayor is appointed for a term of six years by royal decree on the recommendation of Our Minister.

2. The King's Commissioner consults with the council about the job requirements to be met by the person to be appointed as mayor.

3. After consulting with the King's Commissioner the council appoints from among its members a confidential committee responsible for assessing the candidates. The council may decide that one or more members of the municipal executive should be added to the confidential committee as advisers. The King's Commissioner provides the confidential committee with a list of applicants for the office of mayor, together with his view on which candidates he considers, in principle, suitable for appointment. If the confidential committee decides to include in its assessment not only these candidates but also others who have applied, it must give immediate notice of this to the King's Commissioner. The latter must then communicate his opinion about the latter candidates to the confidential committee.

4. The confidential committee obtains the information it considers necessary about the candidates through the intermediary of the King's Commissioner. Administrative authorities are obliged to furnish the requested information. The confidential committee reports its findings to the council and to the King's Commissioner.

5. The council sends Our Minister a recommendation for an appointment within four months of the date on which applications were invited for the position. This recommendation contains the names of two persons.

6. In a special case, where the council gives reasons, a recommendation need list only one name. Our Minister may disregard a recommendation listing only one name if he does not consider it to be a special case.

7. Our Minister must, in principle, accept the council's recommendation in making his recommendation, including the order in which the names are listed, unless he considers that there are serious reasons to depart from it. Reasons must be given for any departure.

Article 61a

1. The mayor may be reappointed for a term of six years by royal decree on the recommendation of Our Minister.

2. The council sends a recommendation to Our Minister concerning the reappointment of the mayor through the intermediary of the King's Commissioner at least four months before the first day of the month in which the reappointment is to take effect.

3. Before the council makes a recommendation it consults with the King's Commissioner about the mayor's performance.

4. The King's Commissioner advises Our Minister on the council's recommendation.

5. In making his recommendation Our Minister may depart from the council's recommendation only on grounds derived from the King's Commissioner's advice or on other serious grounds.

Article 63

Dutch nationality is a requirement of eligibility for appointment as mayor

Article 64

A person may be appointed mayor of more than one municipality provided that at the time of his appointment the total number of residents of the municipalities does not exceed 10,000.

Article 65

1. Before accepting his office, the mayor must make the following oath or affirmation before the King's Commissioner:

'I do swear (declare) that in order to be appointed as mayor I have not promised or given, directly or indirectly, any gift or favour to any person under any name or on any pretext whatever. I do swear (declare and affirm) that I have not accepted and will not accept, directly or indirectly, any promise or gift in order to do or refrain from doing anything whatever in this office. I do swear (affirm) allegiance to the Constitution and that I will obey the law and faithfully discharge my duties as mayor to the best of my ability. So help me God! (This I declare and affirm!')

2. [Translator's note: paragraph 2 contains the same oath and affirmation in the Frisian language]

Incompatible occupations/relations:

Article 68

1. A mayor may not also be:

(a) a minister;

(b) a state secretary;

(c) a member of the Council of State;

(d) a member of the Court of Audit;

(e) National Ombudsman;

(f) a deputy ombudsman as referred to in section 9, paragraph 1 of the National Ombudsman Act;

(g) a King's Commissioner;

(h) a member of a provincial executive;

(i) secretary to a province;

(j) clerk of a province;

(k) a member of the audit office of the province in which the municipality of which he is mayor is situated;

(l) a council member;

(m) a member of a municipal executive;

(n) a member of the audit office;

(o) an ombudsman or member of an ombuds committee as referred to in article 81p, paragraph 1;

(p) a member of a district council;

(q) a member of a district executive;

(r) a public servant appointed by or on behalf of the municipal authority or subordinate to it;

(s) a public servant appointed by or on behalf of central government or a province whose duties include carrying out activities involving supervision of the municipality;

(t) an official who advises the municipal authority by virtue of an Act of Parliament or order in council.

2. Notwithstanding paragraph 1, opening words and (r) a mayor may also be a registrar of births, deaths, marriages and registered partnerships.

Incompatible acts:

Article 69

1. Article 15 (1) and (2) apply mutatis mutandis to a mayor, provided always that the exemption referred to in paragraph 2 of that section is granted by the King's Commissioner.

2. The council adopts a code of conduct for the mayor.

Article 69 should be read in relation to section 15.

Article 15

1. A council member may not:

(a) serve as counsel or adviser to the municipality or the municipal authority in disputes or to the counterparty in a dispute with the municipality or the municipal authority;

(b) serve as authorised representative of the counterparty in a dispute with the municipality or the municipal authority;

(c) serve as representative of or adviser to third parties who are entering into:

(1) contracts as referred to at (d) with the municipality;

(2) contracts to transfer immovable property to the municipality;

(d) enter, directly or indirectly, into a contract for:

(1) the performance of works for the municipality;

(2) the performance of activities for the municipality for hire and reward other than as an employee;

(3) the transfer of movables to the municipality other than for no consideration;

(4) the hiring of movables to the municipality;

(5) the acquisition of disputed claims against the municipality;

(6) the acquisition from the municipality by private instrument of immovable property or limited rights to which such property is subject;

(7) taking a lease or agricultural lease by private instrument from the municipality.

2. The provincial executive may grant exemption from the provisions of paragraph 1, opening words and (d). 3. The council adopts a code of conduct for its members.

Additional provisions

Acrticle 67

1. The mayor may not hold any second jobs or positions that might prejudice the proper discharge of his office or compromise his ability to maintain his impartiality and independence or confidence therein.

2. The mayor must give the council notice of his intention to accept a second job or position other than one arising from the office of mayor.

3. The mayor must publicly disclose his second jobs or positions, other than those arising from the office of mayor, and the income from them. Such disclosure is effected by depositing the information at the offices of the municipality for public inspection no later than on 1 April of the year following the calendar year in which the income from second jobs or positions was received.

4. For this purpose income is deemed to mean salary within the meaning of section 9 of the Salaries Tax Act, less the final levy components referred to in section 31 of that Act.

Rules which apply to members of the municipal executive (the following legislation is drafted in the Municipalities Act, version cited is valid until 31-01-2016):

Nomination requirements:

Article 36a

1. The requirements for membership of the council referred to in action 10 also apply to membership of the municipal executive, provided always that in action 10, paragraph 2 (b) the words ‘the day on which the municipal council decides on their admission as council member’ is read as meaning ‘the day on which they are appointed as members of the municipal executive’.

2. The council may grant exemption from the residency requirement for a term of one year. In special cases the exemption may be extended for a maximum of one year at a time.

3. No one may be a member of the municipal executive in more than one municipality.

The bill that promotes the integrity of political administrators is now pending in the lower house. The bill provides for a statement of conduct for candidate members of the municipal executive as a requirement for appointment. This also applies for the members of the provincial and Waterboard executive.

Under the renumbering of the second and third sub-paragraph to the third and fourth sub-paragraph is inserted in article 36a:

2. In addition to the first sub-paragraph, on the day on which the candidate is appointed as a member of the executive, the candidate is in possession of a certificate of conduct which is not older than 3 months, as referred to in section 28 of the Judicial and Criminal Records Act.

Article 36a should be read in relation to section 10.

Article 10

1. To be eligible to be a council member a person must be a resident of the municipality, have attained the age of eighteen and not be disqualified from voting and standing for election.

2. Persons who are not nationals of a member state of the European Union must also fulfil the following requirements:

(a) they must be legally resident in the Netherlands pursuant to article 8 (a), (b), (d), (e) or (l) of the Aliens Act 2000 or pursuant to a headquarters agreement between an international organisation and the State of the Netherlands, and

(b) they must have been resident in the Netherlands for an uninterrupted period of at least five years immediately prior to the day on which the municipal council decides on their admission as a council member, and must have residence rights as referred to at (a) above or be legally resident in the Netherlands pursuant to section 8 (c) of the Aliens Act 2000.

3. Non-Dutch nationals and persons employed in the Netherlands as members of diplomatic or consular missions posted to the Netherlands by other States, and their non-Dutch spouses or partners, registered or otherwise, and children, in so far as they have a joint household, are not eligible to be council members

Incompatible occupations/relations:

Acticle 36b

1. A member of the municipal executive may not also be:

(a) a minister;

(b) a state secretary;

(c) a member of the Council of State;

(d) a member of the Court of Audit;

(e) National Ombudsman;

(f) a deputy ombudsman as referred to in section 9, paragraph 1 of the National Ombudsman Act;

(g) a King's Commissioner;

(h) a member of the provincial executive;

(i) secretary to a province;

(j) clerk of a province;

(k) a member of the audit office of the province in which the municipality of which he is a member of the municipal executive is situated;

(l) a member of the council of a municipality;

(m) a mayor;

(n) a member of an audit office;

(o) an ombudsman or member of an ombuds committee as referred to in section 81p, paragraph 1;

(p) a member of a district council;

(q) a member of a district executive;

(r) a public servant who has been appointed by or on behalf of the municipal authority or is subordinate to it;

(s) a public servant appointed by or on behalf of central government or a province whose duties include carrying out activities involving supervision of the municipality;

(t) an official who advises the municipal authority by virtue of an Act of Parliament or order in council.

2. Notwithstanding paragraph 1, opening words and (l), a member of the municipal executive may also be a member of the council of the municipality of whose municipal executive he is a member during the period which:

(a) starts on polling day for the election of council members and ends on the date on which the members of the executive cease to hold office pursuant to section 42, paragraph 1, or

(b) starts on the date of his appointment as a member of the municipal executive and ends on the date on which the credentials of his successor as council member have been finally approved or on which the central electoral committee decides that no successor can be appointed. He is deemed to have resigned from the municipal council from the date on which he accepts his appointment as a member of the municipal executive. Section X 6 of the Elections Act applies mutatis mutandis.

3. Notwithstanding paragraph 1, opening words and (r), a member of the municipal executive may also be:

(a) a registrar of births, deaths, marriages and registered partnerships;

(b) a volunteer or other person who performs emergency services on account of a statutory duty other than in a professional capacity;

(c) a public servant working for a public-authority school.

Incompatible acts:

Article 41c

1. Article 15, paragraphs 1 and 2 apply mutatis mutandis to members of a municipal executive.

2. The council adopts a code of conduct for the members of the municipal executive.

Article 41c should be read in relation to Article 15.

Article 15

1. A council member may not:

(a) serve as counsel or adviser to the municipality or the municipal authority in disputes or to the counterparty in a dispute with the municipality or the municipal authority;

(b) serve as authorised representative of the counterparty in a dispute with the municipality or the municipal authority;

(c) serve as representative of or adviser to third parties who are entering into:

(1) contracts as referred to at (d) with the municipality;

(2) contracts to transfer immovable property to the municipality;

(d) enter, directly or indirectly, into a contract for:

(1) the performance of works for the municipality;

(2) the performance of activities for the municipality for hire and reward other than as an employee;

(3) the transfer of movables to the municipality other than for no consideration;

(4) the hiring of movables to the municipality;

(5) the acquisition of disputed claims against the municipality;

(6) the acquisition from the municipality by private instrument of immovable property or limited rights to which such property is subject;

(7) taking a lease or agricultural lease by private instrument from the municipality.

2. The provincial executive may grant exemption from the provisions of paragraph 1, opening words and (d). 3. The council adopts a code of conduct for its members.

Additional positions:

Article 41b

1. A member of the municipal executive may not hold any second jobs or positions which might prejudice the proper discharge of the office of a member of the executive.

2. A member of the municipal executive must give the council notice of his intention to accept a second job or position.

3. A member of the municipal executive must publicly disclose his second jobs or positions. Such disclosure is effected by depositing the information at the offices of the municipality for public inspection.

4. A member of the municipal executive who does not hold office on a part-time basis must also publicly disclose any income from second jobs or positions. Such disclosure is effected by depositing the information at the offices of the municipality for public inspection no later than on 1 April of the year following the calendar year in which the income from second jobs or positions was received.

5. For this purpose income is deemed to mean salary within the meaning of article 9 of the Salaries Tax Act, less the final levy components referred to in article 31 of that Act

Rules regarding voting:

Article 58

Article 28, paragraphs 1 to 3 and articles 29 and 30 apply mutatis mutandis to meetings of the municipal executive.

Article 58 should be read in relation to article 28

Article 28

1. A provincial council member may not take part in voting on:

• a matter which concerns him personally, either directly or indirectly, or in which he is involved as a representative;

• the adoption or approval of the accounts of an organ to which he is accountable or to whose executive he belongs.

2. In the event of a written ballot, casting a vote means handing in a properly completed ballot paper.

3. An appointment is deemed to concern a person personally if he is one of those to whom the choice of persons to be appointed is limited either by nomination or on a second ballot.
4. Paragraph 1 does not apply to a decision regarding the admission of provincial council members appointed after a periodic election.

For elected officials the following rules apply.

Provincial council members

Nomination requirements:

Article 10

To be eligible to be a provincial council member a person must be a Dutch national and resident of the province, have attained the age of eighteen and not be disqualified from voting and standing for election.

Rules regarding voting:

Article 28

1. A provincial council member may not take part in voting on:

• a matter which concerns him personally, either directly or indirectly, or in which he is involved as a representative;

• the adoption or approval of the accounts of an organ to which he is accountable or to whose executive he belongs.

2. In the event of a written ballot, casting a vote means handing in a properly completed ballot paper.

3. An appointment is deemed to concern a person personally if he is one of those to whom the choice of persons to be appointed is limited either by nomination or on a second ballot. 4. Paragraph 1 does not apply to a decision regarding the admission of provincial council members appointed after a periodic election.

Incompatible occupations/relations:

Article 13

1. A provincial council member may not also be:

(a) a minister;

(b) a state secretary;

(c) a member of the Council of State;

(d) a member of the Court of Audit;

(e) National Ombudsman;

(f) a deputy ombudsman as referred to in section 9, paragraph 1 of the National Ombudsman Act;

(g) a King's Commissioner;

(h) a member of a provincial executive;

(i) a member of the audit office;

(j) an ombudsman or member of an ombuds committee referred to in article 79q, paragraph 1; (k) a public servant appointed by or on behalf of the provincial authority or subordinate to it.

2. Notwithstanding paragraph 1, opening words and (h), a provincial council member may also be a member of the provincial executive during the period which:

(a) starts on polling day for the election of provincial council members and ends on the date on which the members of the provincial executive cease to hold office pursuant to article 41, paragraph 1 or
(b) starts on the date of his appointment as a member of the provincial executive and ends on the date on which the credentials of his successor as provincial council member have been finally approved or on which the central electoral committee decides that no successor can be appointed. He is deemed to have resigned from the provincial council from the date on which he accepts his appointment as a member of the provincial executive. Article X 6 of the Elections Act applies mutatis mutandis.

3. Notwithstanding paragraph 1, opening words and (k) a provincial council member may also be a volunteer or other person who performs emergency services on account of a statutory duty other than in a professional capacity.

Incompatible acts:

Article 15

1. A provincial council member may not:

(a) serve as counsel or adviser to the province or the provincial authority in disputes or to the counterparty in a dispute with the province or the provincial authority;

(b) serve as authorized representative of the counterparty in a dispute with the province or the provincial authority;

(c) serve as representative of or adviser to third parties who are entering into:

(1) contracts as referred to at (d) with the province;

(2) contracts to transfer immovable property to the province;

(d) enter, directly or indirectly, into a contract for:

(1) the performance of works for the province;

(2) the performance of activities for the province for hire and reward other than as an employee;

(3) the transfer of movables to the province other than for no consideration;

(4) the hiring of movables to the province;

(5) the acquisition of disputed claims against the province;

(6) the acquisition from the province by private instrument of immovable property or limited rights to which such property is subject;

(7) taking a lease or agricultural lease by private instrument from the province.

2. Our Minister may grant exemption from the provisions of paragraph 1, opening words and (d)

3. The provincial council adopts a code of conduct for its members.

Municipal council members

Nomination requirements:

Article 10

1. To be eligible to be a council member a person must be a resident of the municipality, have attained the age of eighteen and not be disqualified from voting and standing for election.

2. Persons who are not nationals of a member state of the European Union must also fulfil the following requirements:

(a) they must be legally resident in the Netherlands pursuant to article 8 (a), (b), (d), (e) or (l) of the Aliens Act 2000 or pursuant to a headquarters agreement between an international organisation and the State of the Netherlands, and

(b) they must have been resident in the Netherlands for an uninterrupted period of at least five years immediately prior to the day on which the municipal council decides on their admission as a council member, and must have residence rights as referred to at (a) above or be legally resident in the Netherlands pursuant to article 8 (c) of the Aliens Act 2000.

3. Non-Dutch nationals and persons employed in the Netherlands as members of diplomatic or consular missions posted to the Netherlands by other States, and their non-Dutch spouses or partners, registered or otherwise, and children, in so far as they have a joint household, are not eligible to be council members

Rules regarding voting:

Article 28

1. A council member may not take part in voting on:

• a matter which concerns him personally, either directly or indirectly, or in which he is involved as a representative;

• the adoption or approval of the accounts of an organ to which he is accountable or to whose executive he belongs.

2. In the event of a written ballot, casting a vote means handing in a properly completed ballot paper.

3. An appointment is deemed to concern a person personally if he is one of those to whom the choice of persons to be appointed is limited either by nomination or on a second ballot.

4. Paragraph 1 does not apply to a decision regarding the admission of council members appointed after a periodic election.

Incompatible occupations/relations:

1. A council member may not also be:

(a) a minister;

(b) a state secretary;

(c) a member of the Council of State;

(d) a member of the Court of Audit;

(e) National Ombudsman;

(f) a deputy ombudsman as referred to in section 9, paragraph 1 of the National Ombudsman Act;

(g) a King's Commissioner;

(h) a member of a provincial executive;

(i) secretary to a province;

(j) clerk of a province;

(k) a mayor;

(l) a member of a municipal executive;

(m) a member of the audit office;

(n) an ombudsman or member of an ombudscommittee referred to in article 81p, paragraph 1;

(o) a member of a district council;

(p) a member of a district executive;

(q) a public servant appointed by or on behalf of the municipal authority or subordinate to it.

2. Notwithstanding paragraph 1, opening words and (l), a council member may also be a member of the executive of the municipality of which he is a council member during the period which:

(a) starts on polling day for the election of council members and ends on the date on which the members of the executive cease to hold office pursuant to article 42, paragraph 1

or (b) starts on the date of his appointment as a member of the executive and ends on the date on which the credentials of his successor as council member have been finally approved or on which the central electoral committee decides that no successor can be appointed. He is deemed to have resigned from the council from the date on which he accepts his appointment as a member of the executive. Article X 6 of the Elections Act applies mutatis mutandis.

3. Notwithstanding paragraph 1, opening words and (r) a council member may also be:

(a) a registrar of births, deaths, marriages and registered partnerships;

(b) a volunteer or other person who performs emergency services on account of a statutory duty other than in a professional capacity;

(c) a public servant working for a public-authority school.

Incompatible acts:

Article 15

1. A council member may not:

(a) serve as counsel or adviser to the municipality or the municipal authority in disputes or to the counterparty in a dispute with the municipality or the municipal authority;

(b) serve as authorised representative of the counterparty in a dispute with the municipality or the municipal authority;

(c) serve as representative of or adviser to third parties who are entering into:

(1) contracts as referred to at (d) with the municipality;

(2) contracts to transfer immovable property to the municipality;

(d) enter, directly or indirectly, into a contract for:

(1) the performance of works for the municipality;

(2) the performance of activities for the municipality for hire and reward other than as an employee;

(3) the transfer of movables to the municipality other than for no consideration;

(4) the hiring of movables to the municipality;

(5) the acquisition of disputed claims against the municipality;

(6) the acquisition from the municipality by private instrument of immovable property or limited rights to which such property is subject;

(7) taking a lease or agricultural lease by private instrument from the municipality.

2. The provincial executive may grant exemption from the provisions of paragraph 1, opening words and (d). 3. The council adopts a code of conduct for its members.

Concerning House of Representatives:

The Constitution includes articles requiring MPs to represent the interest of the general public and to discharge their duties faithfully (articles 50 and 60). The Penal Code, administrative law and the Rules of Procedure of the House of Representatives or the Senate also comprise rules that apply to parliamentarians either directly, or because they are covered by the general norms that apply to wider ranges of public officials. In addition, MPs are subject to certain reporting requirements as regards their outside positions and interests, as well as gifts received and sponsored foreign trips. Likewise, members of the Senate have an obligation to disclose any outside positions and interests .

For members of the Senate, the duty of integrity starts when they take the oath or make the affirmation required of all members under article 60 of the Constitution and section 2 of the Ministers and Members of the States General (Swearing in) Act (Wet beëdiging Ministers en leden Staten-Generaal). Upon accepting office, they must take an oath or make an affirmation before the Senate that they have not done anything which may legally debar them from holding office, and must also swear or promise allegiance to the Constitution and that they will faithfully perform their duties. In discharging the oath or affirmation, the members are required to act in accordance with the principles of integrity and reliability.

If a member of either Chamber holds an incompatible position within the meaning of article 57, paragraph 2 of the Constitution, his/her membership is terminated automatically (section X3, paragraph 1 Elections Act). In other cases, the member concerned notifies the president of the Chamber concerned that s/he no longer fulfils one of the requirements for membership. If s/he fails to give notice, the president of the Chamber informs him/her that, in his/her opinion, s/he no longer fulfils the membership requirements and thus ceases to be a member. If the member disagrees with the decision of the president, s/he may request the opinion of the Chamber on the matter. A committee, composed of members of the Chamber is then established to investigate the case. The Chamber gives a final ruling on the case after the publication by the committee of its report (article 3, Rules of Procedure of the House of Representatives and article 5, Rules of Procedure of the Senate).

MPs are subject to an obligation of declaration of their outside positions and interests and of the income they receive from them (Section 5 Remuneration (Members of the House of Representatives) Act and Section 3b, Remuneration (Members of the Senate) Act).

The Code of Conduct for the House of Representatives has 5 articles concerning independence, gifts, registrations, use of confidential information and the rules of procedure. The regulation of supervision and enforcement provides regulation for compliance (Voorstel van het Presidium voor een regeling toezicht en handhaving gedragscode leden van de Tweede Kamer der Staten-Generaal). The regulation, establishing an independent Committee to investigate complaints regarding Members' adherence to the Code of Conduct and to advise the House on possible sanctions, was adopted by the House on 22 September 2020 will enter into force on 1 April 2021. The House is currently in the process of selecting a chair and two members for the new Committee.

Although the responsibility for the integrity of a candidate MP lies with the individual, political parties also have responsibility for the composition of their candidate list.

A political party has several options to look into the integrity of their party member. The party can ask for an extended or complete CV, a list of secondary functions, ask for a VOG (certificate of conduct) and questions references. The party chairman may ask for more information about a candidate from the General Intelligence and Security Service. However, this needs to be within the statutory duty of the service. This means that the Service must first assess whether the concerns raised by the party chairman, in combination with the position for which the person in question is being considered, poses such a risk to the integrity of the public sector that it is certain to be sufficiently in line with the statutory duties (Artikel 6 lid 2 Wet op de inlichtingen en- veiligheidsdiensten 2002 (Wiv 2002).

Relevant laws and provisions:

Article 49 Constitution: Article 49 Upon accepting office Ministers and State Secretaries shall swear an oath or make an affirmation and promise in the presence of the King, in the manner prescribed by Act of Parliament, that they have not done anything which may legally

debar them from holding office, and shall also swear or promise allegiance to the Constitution and that they will faithfully discharge their duties

Article 60 Constitution: Upon accepting office members of the houses shall swear an oath or make an affirmation and promise before the house in the manner prescribed by Act of Parliament that they have not done anything which may legally debar them from holding office, and shall also swear or promise allegiance to the Constitution and that they will faithfully discharge their duties.

Article 2. Ministers and Members of the States General (Swearing in) Act:
On taking up their office, the members of the Parliament, in the meeting of the chamber in which they have been elected, shall take the following oaths or declarations and vows:

I swear (declare) that in order to be appointed a member of the Parliament, I have not given or promised, directly or indirectly, under any name or pretext, any gift or favour.

I swear (declare and pledge) that in order to do or not to do anything in this office I have not accepted or will not accept, directly or indirectly, any gift or promise.

I swear (promise) allegiance to the King, to the Statute of the Kingdom and to the Constitution.

I swear (promise) to fulfil faithfully the duties which my office requires of me.

So help me God Almighty! (I declare and promise that!).

Article 2. the Rules of Procedure of the House of Representatives (2018[23]):
1. Each newly appointed member shall provide evidence of his/her election by submission of the documents prescribed by law.
2. The credentials and the documents relating to them shall be placed on deposit for inspection by the members at the office of the Secretary General of the House. 3. The House in its old composition shall decide, in so far as possible, on the admission of members who have been declared appointed after a periodic retirement or dissolution.

Article 150a, the Rules of Procedure of the House of Representatives (2018): Registers

1. A register shall be kept at the office of the Secretary General in which the members report their secondary activities and the (expected) renumeration no later than one week after acceptance, as well as interests that can reasonably be considered relevant. Renumeration is understood to mean: wages in the sense of Article 9 of the 1964 Wages Tax Act, with the exception of the income parts, referred to in Article 31 of said Act, or earnings with meaning of Section 3.2 of the 2001 Income Tax Act. No later than April

[23] The Netherlands informed that the new Rules of Procedure of the House of Representatives were adopted in 2023. Link: RvO - English 2023.pdf

1st after each calendar year in which the renumerations were granted the members shall give notice again of their income in that particular calendar year.

2. A register shall be kept at the office of the Secretary General in which members shall report their foreign trips of which the travel and accommodation expenses have been entirely or partly paid for by third parties, no later than one week after their return to the Netherlands.

3. A register shall be kept at the office of the Secretary General in which Members shall declare any gifts or benefits received by them in excess of EUR 50, no later than one week after receipt of the gift or benefit.

4. The three registers are open to public inspection.

5. The Secretary General is in charge of the publication, twice a year, of the statements in the register of additional functions and interests.

About the Guideline House of Representatives:
The Presidium emphasizes that the honourable exercise of the office of member of parliament is and remains, in the first place, the responsibility of the members of parliament themselves. In the end, they are accountable to the voters. Members of Parliament are well aware of this, also in comparison with other parliaments. At the same time, it is important to keep working on the familiarity of the integrity rules and to promote an unambiguous and useful interpretation of the integrity rules of the House.

Article 3 Code of Conduct House of Representatives:
Members must declare ancillary outside activities and income, interests that may reasonably be considered relevant, trips abroad for which the traveland subsistence costs are wholly or partly paid by third parties, including lobbyists, and gifts and benefits worth in excess of EUR 50. Upon declaration my the MP, the Plenary Office shall include this information in registers maintained for this purpose, which are open for public scrutiny. Every six months, the Plenary Office shall remind the Members of the necessity to keep information in the public registers up to date and to the possibility of correcting omissions.

These interests shall not be limited to financial interests only. Reference is made to a recommendation by the OSCE in this regard: "the rules should [...] include a clause requiring legislators to declare any other interest that might reasonably be thought to influence their actions, speeches or votes". "Any other interests" might, for example, include, refer to: (a) prior positions. It is of little consequence whether this interest generated income, as it may be important for the outside world to be aware of the member's professional background, in order to critically determine whether the member is not acting in the interests of a professional group, (b) a return guarantee or other special agreements regarding activities after termination of the MP's House membership, or (c) a majority interest in a company.

The list presented is deliberately not exhaustive. The member him/herself must determine whether a specific circumstance might reasonably be considered relevant to the performance of his/her duties. In case of doubt, a member may consult the independent integrity adviser on this matter.

The regulation of supervision and enforcement Code of Conduct House of Representatives (Voorstel van het Presidium voor een regeling toezicht en handhaving gedragscode leden van de Tweede Kamer der Staten-Generaal:

Article 2. Composition and appointment

1. The Committee consists of a President and two members. They are appointed by the Chamber, on a proposal from the Presidium, for a maximum period of six years. The Chamber takes its decision without deliberation. They may be reappointed twice, each time for a maximum of six years. 2. The Committee is independent. 3. The members of the Committee shall only be reimbursed for the costs that arise in the performance of their duties.

Article 7. Complaint management (klachtafhandeling)

1. The Committee shall inform a Member of Parliament when a complaint about him or her is being considered.

2. The Committee requests information from the Member of Parliament. The Member of Parliament complies with this request.

3. The Committee may decide, after assessing the information received and other facts and circumstances it considers relevant, that the complaint should not be further investigated. The Member of Parliament and the complainant are informed of this. The Board may make a recommendation to the Member of Parliament.

Article 8. Complaint investigation

1. After receiving the information referred to in Article 7, second paragraph, and after assessing other facts and circumstances which it considers relevant, the Committee may decide to investigate the complaint.

2. If the complaint concerns a matter on which the Advisor has previously advised the Member of Parliament concerned and this advice has been followed, the Committee can only decide to initiate an investigation, giving reasons.

[…]

Article 11. Possible sanctions
The following sanctions may be imposed in the event of a breach of the Code of Conduct: a. an instruction, which is understood to mean a measure that obliges a Member of Parliament to correct a breach of the Code of Conduct; b. a reprimand, which is understood to mean a public letter from the Presidium to a Member of Parliament disapproving of the act that led to a breach; c. a suspension, which is understood to mean the exclusion of a Member of Parliament for a maximum period of one month from participating in plenary sittings, except for votes, committee meetings or any other activities held by or on behalf of the House.

Article 6 lid 2 Wet op de inlichtingen en- veiligheidsdiensten 2002 (Wiv 2002)
In the interests of national security, it is the task of the General Intelligence and Security Service to

a. to conduct investigations into organisations and persons who, because of the goals they pursue or their activities, give rise to the serious suspicion that they pose a danger to the continued existence of the democratic legal order, or to safety or other important interests of the state;

b. to carry out security investigations as referred to in the Security Investigations Act;

c. the promotion of measures for the protection of the interests referred to under a, including measures for the protection of data the secrecy of which is required by national security and of those parts of the civil service and of industry which, in the opinion of Our Ministers responsible, are of vital importance for the maintenance of social life

d. the performance of research concerning other countries with respect to subjects designated by Our Prime Minister, Minister of General Affairs, in agreement with Our Ministers concerned;

e. drafting threat and risk analyses at the request of Our Minister of the Interior and Kingdom Relations and Our Minister of Security and Justice jointly for the purpose of securing the persons referred to in sections 4(3)(b) and 42(1)(c) of the 2012 Police Act and the surveillance and security of the objects and services designated pursuant to section 16 of that Act.

Concerning Senate

Integrity, in the widest sense of the word, means doing right, even if no one is watching. For members of the Senate, the duty of integrity starts when they take the oath or make the affirmation required of all members under article 60 of the Constitution and section 2 of the Ministers and Members of the States General (Swearing in) Act (Wet beëdiging Ministers en leden Staten-Generaal). Upon accepting office, they must take an oath or make an affirmation before the Senate that they have not done anything which may legally debar them from holding office, and must also swear or promise allegiance to the Constitution and that they will faithfully perform their duties. In discharging the oath or affirmation, the members are required to act in accordance with the principles of integrity and reliability.

Each member must act in accordance with the principles of integrity and reliability in compliance with the oath taken or affirmation made by him. This must be construed and accounted for in accordance with this Code of Conduct of the Senate (art. 1 Code of Conduct of the Senate).

Members of the Senate are part-time politicians who generally hold other positions elsewhere in society, in addition to their membership of the Senate. They are therefore at the very heart of society and have a different perspective on legislative proposals and policies from members of the House of Representatives, who are full-time politicians. This partly explains the added value of the Senate. However, the other side of the coin is that it is precisely because they hold a variety of positions that members of the Senate may become involved in social discussions about actual or apparent conflicts of interest. Having certain

interests is not in itself a problem; what is important that members of the Senate deal with such interests prudently and with integrity. Paragraph 1 of article 2 of this Code of Conduct states that members must make allowance for the interests they have other than in their capacity as member of the Senate and must ensure that these interests do not result in the improper performance of their duties. Pursuant to the second sentence of paragraph 1, members must also refrain from acts and activities that indicate an apparent conflict of interest. The term 'improper' in paragraph 1 indicates that a conflict of interest requires more than merely having an interest in a general sense in certain decisions. In other words, members of the Senate also pay taxes and are entitled to social benefits, but that does not mean that they also have a particular interest in parliamentary decision-making on these subjects. It follows that there is no conflict of interest if members of the Senate only stand to benefit from certain decisions as a member of the general public or a broad category of people. A member of the Senate must really have a specific individual interest, which clearly exceeds that of other members of society (art. 2 Code of Conduct of the Senate).

Contacts with third parties (including lobbyists) are part and parcel of the work of members of the Senate. One of their essential duties is, after all, to take account of the views of the various groups in society and organisations that will be affected by future legislation.

Members of the Senate must guard against improper influence in their contacts with third parties. They must observe transparency with regard to these contacts (passive transparency).

Regarding absence of conflict of interests, **article 6 of the Code of Conduct of the Senate states:**

In accordance with the Remuneration (Members of the Senate) Act (Wet vergoedingen leden Eerste Kamer), each member must disclose any positions besides membership of the Senate by submitting a list to the Secretariat. This list must also contain a brief description of the positions

5 which the member holds and the organisation for which the member works.

2. If the member works as a consultant, he must also specify the sector in which he provides the consultancy services.

3. When submitting the statement referred to in paragraph 1, the member must indicate whether the positions are remunerated or unremunerated.

4. In addition to paragraph 1, each member must also submit to the Secretariat a statement of interests that can reasonably be considered relevant, but cannot be designated as a position besides membership of the Senate. These interests must be disclosed in the same way, except where the security or privacy of the persons concerned dictates otherwise.

The Code of Conduct of the Senate came into force on the 11th of June 2019.

Relevant laws and provisions: (aside from art. 6 which is mentioned in the text above already)

Chapter 12 of the Rules of Procedure of the Senate of the States General concerns integrity. It says:

Chapter XIIa Integrity

Conflicts of interest

Article 156a

The Senate shall adopt by separate regulation a Code of Conduct on Integrity containing rules governing the promotion of ethical conduct by members of the Senate. This separate regulation must also introduce instruments for compliance with and interpretation of this Code of Conduct.

Article 1, Code of Conduct of the Senate:
General provision

Each member must act in accordance with the principles of integrity and reliability in compliance with the oath taken or affirmation made by him. This must be construed and accounted for in accordance with this Code of Conduct.

Article 2, Code of Conduct of the Senate:
Dealing with interests

1. Each member must make allowance for the interests he has other than in his capacity as member of the Senate and must ensure that these interests do not result in the improper performance of his duties. A member must also refrain from acts and activities that indicate an apparent conflict of interest.

2. A member who submits a written contribution or addresses a meeting must disclose any interests that could reasonably be of relevance in the context of the discussion of the agenda item.

Article 3, Code of Conduct of the Senate: Dealing with third parties

Members of the Senate must guard against improper influence in their contacts with third parties. They must observe transparency with regard to these contacts.

17. Do candidates need to demonstrate:

- absence of prior criminal convictions (including for corruption offences)

- absence of conflict of interest? (MPs – do they need to declare links to private sector or lobbying groups?; you mention bill on provincial and municipal council reps having a risk analysis of their integrity made before, please describe this)

- compliance with tax obligations?

- asset declarations prior or upon entry to office?

ANSWER:

1. **Cabinet members:**

a) "absence of prior criminal convictions (including for corruption offences)"
Answer: in paragraph 2 of article 7 of the Draft Country Review Report of the Netherlands an explanation is given about the three fact-finding exercises that are carried out before the formateur (person charged with forming a new government) interviews a candidate Minister or State Secretary. One is a judicial record. So, candidates don't have to demonstrate themselves that there is a absence of prior criminal convictions.

b) "absence of conflict of interest?"

Answer: see answer 16. Yes they do have to demonstrate the absence of conflict of interest. For a deeper and further understanding I give you the next further information:

Article 1 of the Ministers and Members of the States General (Swearing-In) Act (Wet beëdiging ministers en leden Staten-Generaal) stipulates the following:

'On taking office, Ministers and State Secretaries swear, declare or affirm the following before the King: 'I swear (declare) that I, for the purpose of being appointed Minister (State Secretary), have not directly or indirectly, under any name or pretext, given or promised any gift or favour.

I swear (declare and affirm) that I have not, and shall not, accept any gift or promise, directly or indirectly, to do or refrain from doing something in this office.

I swear (affirm) allegiance to the King, to the Charter and to the Constitution.

I swear (affirm) that I will faithfully fulfil the duties of my office.'

The Minister or State Secretary is further obliged to resign from all other positions for the office. Also see the former explanation.

The rules of private and public law apply normally to the acts of former cabinet members, including the duties of confidentiality laid down in Articles 98 et seq. and 272 of the Criminal Code (Wetboek van Strafrecht).

As mentioned before, the 'Incoming Cabinet Members' Manual' ('Handboek voor aantredende bewindspersonen') applies to Ministers and State Secretaries. The manual outlines the rights and obligations of Ministers and State Secretaries. It is not binding and enforceable, but provides clear guidelines on the basis of statutory provisions and predecessors' experiences. It has been used for many years.

c) Compliance with tax obligations

- As mentioned in paragraph 2 of article 7 of the Draft Country Review Report of the Netherlands a background check of the tax file will be conducted by the 'formateur'.

d) asset declarations
See answer on question 16 and former answer in first set of questions about the asset declaration system (draft report H5 p 38)

1. Executive members municipal and provincial level

The bill that promotes the integrity of political administrators is now pending in the lower house. The bill provides for a statement of conduct for candidate members of the municipal executive as a requirement for appointment. This also applies for the members of the provincial and Waterboard executive.

Under the renumbering of the second and third sub-paragraph to the third and fourth sub-paragraph is inserted in article 36a:

2. In addition to the first sub-paragraph, on the day on which the candidate is appointed as a member of the executive, the candidate is in possession of a certificate of conduct which is not older than 3 months, as referred to in section 28 of the Judicial and Criminal Records Act.

In the same bill as mentioned above, the government proposes that an integrity risk analyses should be carried out prior of the appointment of the candidate members of the municipal and provincial executive. The purpose of the risk analysis is to provide the members of the council with insights into the vulnerabilities of the intended candidate and to offer the possibility to take measures in response. In addition, this risk analysis increases awareness among the candidate with regard to the integrity risks in the exercise of their office. This insight can ensure that integrity risks do not lead to integrity violations, because measures can be taken in advance to control these risks. The conclusion, recommendations and any control measures that follow from the risk analysis provide the members of the council a complete picture of the profile of the candidate. On the basis of this profile the council can decide whether or not to appoint the candidate.

With regard to the King's Commissioner and the mayor, the candidate for this office is prior to the nomination by the minister to the King screened. The screening consists of a reference by the AIVD (intelligence agency) and a tax investigation by the Tax enforcement agency.

For members of parliament, please see question 16.

18. **Please provide all relevant laws and provisions relating to these measures for the report.**

ANSWER:

Cabinet members

See answers question 16 and 17 and former answer in first set of questions.

Executive members municipal and provincial

See answers question 17 and section 40b and 43 of the Provinces Act and 41b and section 44 of the Municipalities Act

Section 40b Provinces Act

1. A member of the provincial executive may not hold any second jobs or positions which might prejudice the proper discharge of the office of a member of the provincial executive.

2. A member of the provincial executive must give the provincial council notice of his intention to accept a second job or position.

3. A member of the provincial executive must publicly disclose his second jobs or positions. Such disclosure is effected by depositing the information at the offices of the province for public inspection.

4. A member of the provincial executive who does not hold office on a part-time basis must also publicly disclose any income from second jobs or positions. Such disclosure is effected by depositing the information at the offices of the province for public inspection no later than on 1 April of the year following the calendar year in which the income from second jobs or positions was received.

5. For this purpose income is deemed to mean salary within the meaning of section 9 of the Salaries Tax Act, less the final levy components referred to in section 31 of that Act.

Section 43 Provinces Act

1. Members of the provincial executive receive remuneration, regulated by or pursuant to order in council, from the province.

2. Rules may also be laid down concerning partial or full reimbursement of special expenses and other financial allowances connected with the discharge of the duties of a member of a provincial executive.

3. An order in council adopted pursuant to paragraph 1 takes effect no sooner than two months after the date of issue of the Bulletin of Acts and Decrees in which it has been published. Both Houses of the States General must be informed of its publication immediately.

4. With the exception of what has been granted to them by or pursuant to Act of Parliament, members of a provincial executive receive, in that capacity, no income in any form whatever from the province.

5. The members of a provincial executive receive no payments in any form whatever for activities performed in the course of second jobs or positions held by virtue of their position as members of a provincial executive, regardless of whether or not such payments are made by the province. If such payments are made they should be credited to the province's account.

6. Payments as referred to in paragraph 5 include income, by whatever name it may be known, from second jobs or positions which the member of the provincial executive ceases to hold upon the end of his term of office.

7. Income other than that referred to in paragraph 5 is offset against the remuneration in accordance with section 3 of the Remuneration (Members of the House of Representatives) Act.

8. Without prejudice to paragraph 5, income as referred to in paragraph 7 will not be offset in the case of members of the provincial executive who perform their duties on a part-time basis.

9. Rules governing the manner in which members of the provincial executive furnish information about income as referred to in paragraph 7 and the consequences of any failure to furnish such information are laid down by order in council.

Section 41b Municipalities Act

1. A member of the municipal executive may not hold any second jobs or positions which might prejudice the proper discharge of the office of a member of the executive. 2. A member of the municipal executive must give the council notice of his intention to accept a second job or position.

3. A member of the municipal executive must publicly disclose his second jobs or positions. Such disclosure is effected by depositing the information at the offices of the municipality for public inspection.

4. A member of the municipal executive who does not hold office on a part-time basis must also publicly disclose any income from second jobs or positions. Such disclosure is effected by depositing the information at the offices of the municipality for public inspection no later than on 1 April of the year following the calendar year in which the income from second jobs or positions was received.

5. For this purpose income is deemed to mean salary within the meaning of section 9 of the Salaries Tax Act, less the final levy components referred to in section 31 of that Act.

Section 44 Municipalities Act

1. Members of the municipal executive receive remuneration, regulated by or pursuant to order in council, from the municipality.

2. Rules may also be laid down concerning partial or full reimbursement of special expenses and other financial provision connected with the discharge of the duties of a member of a municipal executive.

3. With the exception of what has been granted to them by or pursuant to Act of Parliament, members of a municipal executive receive, in that capacity, no income in any form whatever from the municipality.

4. The members of a municipal executive receive no payments in any form whatever for activities performed in the course of second jobs or positions held by virtue of their position as members of a municipal executive, regardless of whether or not such payments are made by the municipality. If such payments are made they should be credited to the municipality's account.

5. Payments as referred to in paragraph 4 include income, by whatever name it may be known, from second jobs or positions which the member of the municipal executive ceases to hold at the end of his term of office.

6. Income other than that referred to in paragraph 4 is offset against the remuneration in accordance with section 3 of the Remuneration (Members of the House of Representatives)

Act. 7. Without prejudice to paragraph 4, income as referred to in paragraph 6 will not be offset in the case of members of the municipal executive who perform their duties on a part-time basis.

8. Rules governing the manner in which members of the municipal executive furnish information about income as referred to in paragraph 6 and the consequences of any failure to furnish such information are laid down by order in council.

For council members municipal and provincial, see answers question 17

For members of parliament, see answers question 16.

Ministry of Justice and Security

The so-called Dienst Justis is the Integrity and Screening Agency at the Ministry of Justice and Security. This is the agency in charge of receiving and accessing the applications for certificates of conduct.

A certificate of conduct (Verklaring Omtrent het Gedrag, VOG) is a document by which the Dutch Minister of Legal Protection declares that the applicant has not been convicted for any crime relevant to the performance of his or her duties.

For example, a taxi driver who has been convicted several times of drunken driving, or an accountant convicted of fraud are unlikely to be issued with a certificate. Obviously, an accountant who has been convicted of drunken driving may well be granted a certificate.

After applying for a certificate of conduct Justis consults the Criminal Records System (JDS). The Criminal Records System contains data relating to criminal offences and their outcomes, ranging from custodial sentences to payment in lieu of prosecution or the dropping of charges. Justis may also consult police files and ask the Public Prosecution Service and the probation service for information. All such information is studied and evaluated as a whole.

(b) Observations on the implementation of the article

Criteria concerning candidature for public office at the national, provincial and municipal levels do not include disqualification for offences established in accordance with the Convention, and criteria for the nomination of ministers and State secretaries are not enshrined in law.

The reviewing experts recommended that the Netherlands consider adopting legislative and administrative measures to prescribe criteria for the positions of ministers and State secretaries, and extending the criteria concerning candidature for and election to public office to include no prior convictions for offences established in accordance with the Convention (art. 7, para. 2).

Paragraph 3 of article 7

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Political Parties (Financing) Ac

Article 21

1. A political party will register the following in respect of contributions received:

a. the name and address of the contributor;

b. the amount or value of the contribution;

c. the date of the contribution.

2. In derogation of the first paragraph, the following need not be registered:

a. contributions of € 1,000 or less;

b. contributions provided by ancillary institutions of the party.

3. A political party will register the following in respect of the debts of the party:

a. the name and address of creditors or lenders and, if applicable, the details of the institution;

b. the amount of the debt.

4. Further rules can be set by ministerial regulation in respect of the details of the information to be registered pursuant to the third paragraph.

Article 22

1. With respect to the value of a contribution in kind, the difference between the market value of the contribution and the value of the consideration will apply.

2. In implementation of this Act, contributions consisting of individual work or activities performed by members of the political party will not be considered contributions in kind.

3. Under or pursuant to an order in council, it may be determined in more detail which goods or services can in any case be considered as contributions in kind, and rules can be provided concerning the manner in which contributions in kind will be valued financially.

Article 23

1. If a political party receives an anonymous financial contribution of more than € 1,000, it will transfer the amount that exceeds € 1,000 to the account of Our Minister which has been designated for that purpose. If a political party receives an anonymous contribution in kind of more than € 1,000, it will transfer the part of the equivalent value that exceeds the amount of € 1,000 to Our Minister, or destroy the contribution.

2. A financial contribution or equivalent value of a contribution in kind transferred pursuant to the first paragraph will accrue to the State.

Article 24

Articles 20 to 23 will not apply to branches of a political party.

Article 25

1. Prior to 1 July of each calendar year, a political party will send Our Minister:

a. a financial report concerning the previous calendar year. The financial report will contain a representation of the information, as included in the records pursuant to Article 20;

b. an overview of the contributions totalling € 4,500 or more that the party received in that calendar year from a contributor, together with the information registered pursuant to Article21(1);

c. an overview of the debts of € 25,000 or more, together with the information registered pursuant to Article 21(3); and

d. the written auditor's report, as referred to in the third paragraph.

2. The political party will instruct an auditor, as referred to in Section 393(1) of Book 2 of the Dutch Civil Code, to conduct an audit of the financial report. The auditor will investigate whether the financial report and the overviews as referred to in the first paragraph under (b) and (c) comply with the regulations provided by or pursuant to the law.

3. The auditor will report on his investigation in a written declaration concerning the accuracy of the financial report and the overviews as referred to in the first paragraph under (b) and (c).

4. A financial report held by Our Minister will be public.

5. Our Minister will make the overviews, as referred to in the first paragraph under (b) and (c), public, in any case by means of publication in the Government Gazette. With respect to the details of the address of a natural person, only the place of residence will be made public. Disclosure of details concerning the name and place of residence of the donator, being a natural person, will remain omitted at the request of a political party in the overview, as referred to in paragraph 1(b), if considered appropriate by Our Minister on grounds of safety issues concerning that person.

6. The Government Information (Public Access) Act will not apply to information concerning contributions to political parties held by Our Minister.

Article 26

If subsidy has been granted to a political party, the following will apply:

a. the records, as referred to in Article 20, will also contain the information relevant to the determination of subsidy concerning the number of members of the political party and, if applicable, of the designated political youth organisation;

b. the records, as referred to in Article 20, will be structured in such a way that the rights and obligations, as well as the costs and income, relevant to the determination of the subsidy can also be established at any time;

c. the financial report, as referred to in Article 25(1)(a), also according to generally accepted standards, will include an account of the costs and income, with the related explanation relevant to the determination of the subsidy;

d. the financial report will also contain the information relevant to the determination of subsidy concerning the number of members of the political party and, if applicable, of the designated political youth organisation;

e. the financial report will be provided with an activities report;

f. the auditor's report, as referred to in Article 25(3), will also concern the compatibility of the activities report with the financial report;

g. the auditor's report, as referred to in Article 25(3), will also concern the legitimacy of the expenditure of the subsidy; and

h. the auditor's report, as referred to in Article 25(3), will also concern observance of the obligations attached to the subsidy and the accuracy of the numbers of members of the political parties provided and, if applicable, of the designated political youth organisation.

…

Article 29

1. If a candidate on the list of candidates of a political party that participates in elections to the Lower House of the States General has received, in a calendar year, contributions totalling € 4,500 or more, the party will provide Our Minister, between the twenty-first and fourteenth day prior to the date of the elections, with an overview of these contributions, including the information, as referred to in Article 21(1). Article 23 will equally apply to contributions to a candidate.

2. The overview will contain the contributions that have been received in the period that commences on 1 January of the second calendar year prior to the year in which the elections take place, and that ends on the twenty-first day before the elections.

3. Without prejudice to Article 1, under (h) and (i), a contribution to a candidate, in implementation of this Article, will be taken to mean a contribution for the benefit of the political activities or of the work within the context of the candidate's election campaign.

4. Our Minister will make the overview public as soon as possible, but at the latest on the seventh day before the date of the elections. Our Minister will make the overview public, in any case by publication in the Government Gazette. With respect to the details

of the address of a natural person, only the place of residence will be made public. Disclosure of details concerning the name and place of residence of the donator, being a natural person, will remain omitted in the overview at the request of a political party, if considered appropriate by Our Minister on grounds of safety issues concerning that person. Article 25(6) will equally apply.

5. The candidates will provide the political party with the required details.

6. If this Article applies to a candidate for part of the calendar year, the amount referred toin the first paragraph will apply proportionally.

§ 4. Broader application

Article 30

1. Articles 21 and 23 will apply equally to an ancillary institution of a political party.

2. Prior to 1 July of each calendar year, an ancillary institution of a political party will send Our Minister an overview of:

a. the contributions totalling € 4,500 or more received in the previous calendar year from a contributor, together with the information registered pursuant to Article 20(1).

b. the debts of € 25,000 or more, together with the information registered pursuant to Article 21(3).

3. In implementation of Article 21(1) and (2), contributions from the political party need not be registered.

4. Our Minister will make the overview public, in any case by publication in the Government Gazette. With respect to the details of the address of a natural person, only the place of residence will be made public. Disclosure of details concerning the name and place of residence of the donator, being a natural person, will remain omitted at the request of a political party in the overview, as referred to in paragraph 2(a), if considered appropriate by Our Minister on grounds of safety issues concerning that person. Article 25(6) will equally apply.

5. If a political party is granted subsidy for a political science institute or a political youth organisation, Article 20 will apply equally to these ancillary institutions.

On sanctions:

§ 5. Supervision and sanctions

Article 36

1. The persons designated by decision of Our Minister will be charged with supervision of compliance with provisions by or pursuant to Articles 20, 21, 23, 25, 26, 27(3) and (4), 28, 29, 30, 31, 32 and 33.

2. The supervisors will not have the powers as referred to in Articles 5:18 and 5:19 of the General Administrative Law Act.

3. Decisions as referred to in the first paragraph will be announced in the Government Gazette.

Article 37

1. Our Minister may decide to impose an administrative fine for acts or omissions in violation of the provisions of Articles 20(1), opening lines and under (b) and (e), 21 (1) and (3), 23(1), 25(1), opening lines and under (a), (b), (c) and (d), and (2), 27(3) and (4), 28(1), opening lines and under (a) and (b), and (2), 29(1), (2) and (5), 30(1) and (2), opening lines and under (a) and (b), 31(1), (2) and (3), 32(1) and (2), and 33(1) and (2).

2. In the first paragraph, Articles 30, 31, 32 and 33 will be considered in conjunction with the provisions declared to apply equally in these Articles.

3. The fine will be imposed on political parties, ancillary institutions, associations, as referred to in Article 31, or on candidates, as referred to in Article 32.

4. Fines for acts or omissions in violation of one of these Article paragraphs or parts of them, as referred to in the first paragraph, will amount to at most € 25,000.

5. Administrative fines for acts or omissions by associations, as referred to in Article 31, will not be imposed if perpetrated before the date of registration of the appellation, as referred to in Article 31.

6. Administrative fines for acts or omissions, as referred to in the first paragraph, by candidates, as referred to in Article 32, will not be imposed if perpetrated before the date of nomination of the candidate to the elections, as referred to in Article 32.

7. Further rules can be set in respect of the amount of the fines, to be imposed by order in council.

8. The amount of the fine will accrue to the State.

9. If a political party receives subsidy, Our Minister can set off the fine imposed against the subsidy.

10. If a political party pays an amount to an ancillary institution pursuant to Article 11, Our Minister will be authorised to set off a fine imposed on the ancillary institution with the subsidy the party receives for the benefit of said ancillary institution.

Article 38

If Our Minister, in the exercise of his duties pursuant to this Act, encounters possibly criminal acts, he will inform the Public Prosecutor thereof.

Article 39

1. If a political party, pursuant to Article 137(c), (d), (e), (f) or (g), or to Article 429 quarter of the Dutch Criminal Code, has been ordered to pay a fine, eligibility for subsidy will lapse by operation of law for a period that commences on the date on which the conviction became final. This period will be:

a. a year, in the event of a fine of less than € 1,125;

b. two years, in the event of a fine of € 1,125 or more, but less than € 2,250;

c. three years, in the event of a fine of € 2,250 or more, but less than € 3,375; and

d. four years, in the event of a fine of € 3,375 or more.

2. If a political party has been convicted in respect of a terrorist crime, as referred to in Article 83 of the Dutch Criminal Code, eligibility for subsidy will lapse by operation of law for a period of four years, which period will commence on the day on which the conviction became final.

3. If an association, on the day on which the conviction as referred to in the first or second paragraph becomes final, is not eligible for subsidy, and this association, within a period of two years after this day, does qualify, as a political party, for subsidy, eligibility for subsidy will lapse by operation of law effective from the day on which the party becomes eligible for subsidy for the period referred to in the first or second paragraph.

In article 29 of the Political Parties (Financing) Act[24], the following is laid down for the financing of politicians:

- If a candidate placed on a candidates list of a political party that participates in an election to the Dutch House of Representatives has received donations from a sponsor in a single calendar year that total € 4,500 or more, between the twenty-first and fortieth day before the voting date for this election, that party must issue to Our Minister an overview of these contributions including the details as intended in article 21.1. Article 23 shall apply mutatis mutandis to contributions to a candidate.

- 2 The overview will list the amounts received in the period starting on 1 January of the second calendar year prior to the year in which the voting takes place, and which ends on the twenty-first day before the day of the voting.

Aside from the possibility for a candidate to run as part of a political party or group, a candidate can also take part as an individual. This derives directly from article 4 of the Dutch constitution. This candidate can register as a political group, or can choose to not register and participate in the election with just a list number.

The existing threshold of € 1000,- only sees to a one-time, individual donation. The anonymous character of these donations makes it impossible to verify if the same person - whether or not surpassing the threshold by doing so - has made multiple donations.

There exists no legal provision for candidates to report on expenditures.

Before handing in the reports, the political parties are obligated to have their financial reports checked by an accountant (art. 25 (2) Wfpp). The accountant then has to give out written approval (art. 25 (1d, 3) Wfpp). After the parties have handed in their reports, the Ministry of the Interior checks if all formalities have been complied with, and hands the documents to the Committee of Financial supervision. They check the content of the documents for irregularities and write up a report with advice to the Minister (art. 35 (3, 4). Finally, the Minister sends this report with her reaction to Parliament.

[24] https://wetten.overheid.nl/BWBR0033004/2019-02-23#Paragraaf3_Artikel21

(b) Observations on the implementation of the article

Candidates for the House of Representatives must report donations exceeding 4,500 euros per donor in a single calendar year (art. 29 of the Political Parties (Financing) Act), but there is no reporting obligation with regard to expenditure. Candidates to other elected positions are not subject to specific reporting requirements in relation to donations. There is no limit on donations from natural or legal persons, no ban on anonymous donations and only individual anonymous donations of more than 1,000 euros must be reported (art. 21 (1) of the Political Parties (Financing) Act). At the time of the country visit, a bill prohibiting foreign donations was being drafted. There is no electoral oversight institution.

The reviewing experts therefore recommended that the Netherlands consider establishing a comprehensive framework on the funding of candidatures for elected public office beyond candidates for the House of Representatives, establishing a reporting obligation with regard to expenditure, establishing a limit on donations from natural or legal persons, banning anonymous donations, establishing an electoral oversight body and enacting the bill prohibiting foreign donations (art. 7, para. 3).

Paragraph 4 of article 7

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

For systems that promote transparency: see article 10.

For prevention of conflicts of interest: see article 8.

All government employers (such as central government, municipalities, provinces and other legal entities governed by public law) are obliged by virtue of Article 4 of the Civil Service Act 2017 to pursue an integrity policy that is aimed at promoting good official behavior, to adopt a code of conduct for good official behaviour and to publish an annual account of their integrity policy.
The responsibility for policy and implementation is decentralized within the Netherlands. As a result, each government organization is responsible for its own integrity policy and it's practical implementation.

The Central Government Code of Conduct for Integrity (GIR) applies to the central government. The GIR provides civil servants with a framework for acting with integrity and contains information on important elements such as gifts and invitations, (private) use of government resources, financial interests, ancillary activities, switching to other work, dealing with lobbyists, purchasing, hiring and tendering, involvement in independent research and dealing with information, vulnerable functions and private relationships.

Responsibility for acting with integrity lies with the civil servant. If there is a risk of a conflict of interest, the officer must report this to the manager. Together they discuss how the conflict of

interest can be avoided. Ancillary activities and financial interests that are harmful to the public service are prohibited by law.

The Civil Servants Act 2017

Article 4

1. Public sector employers shall pursue an integrity policy aimed at the promotion of appropriate official conduct that focuses on the promotion of integrity awareness and the prevention of abuse of powers, conflicts of interest and discrimination as a minimum.

2. Public sector employers shall embed the integrity policy in the human resources policy by ensuring, as a minimum, that the topic of integrity is raised during performance reviews and in work meetings and that training and education is offered on the topic of integrity.

3. Public sector employers shall put in place a code of conduct for public servants.

4. Public sector employers shall publish an annual statement rendering account for the implementation of this Section.

Article 6

1. The civil servant is obliged to fulfil the obligations imposed on him by or pursuant to law and arising from his position and to otherwise conduct himself as befits a good civil servant.

2. Failure to comply with the first paragraph shall, for the purposes of the Civil Code, constitute a failure to fulfil the obligations imposed on the civil servant by the employment contract.

Article 8

1. The official is not allowed to:

a.to perform secondary activities that would not reasonably ensure the proper performance of the duties or the proper functioning of the public service, insofar as this is related to the performance of his duties;

b.to participate directly or indirectly in contracts and deliveries for public services, unless the government employer with whom he has an employment contract has given permission to do so;

c.to have financial interests, to own securities or to conduct securities transactions as a result of which the proper performance of his duties or the proper functioning of the public service, insofar as this is related to the performance of his duties, would not reasonably be assured;

d.to possess or acquire financial interests which have been designated by the government employer with whom he has an employment contract pursuant to Article 5, paragraph 1, section d ;

e.to accept or solicit gifts, compensation, rewards and promises from a third party without the permission of the government employer, if the civil servant has relations with this third party as a civil servant.

2. The civil servant is obliged to the government employer with whom he has an employment contract:

a.to report any secondary activities that he performs or intends to perform, which may affect the interests of the service insofar as they are related to the performance of his duties;

b. if he has been designated within the meaning of Article 5, paragraph 1, subparagraph d , to report his financial interests as well as the ownership of and transactions in securities that may affect the interests of the public service insofar as these are related to the performance of his duties and to provide further information in this regard upon request.

3. Rules regarding the application of the first and second paragraphs may be established by general administrative measure.

Code of Conduct for Integrity in the Central Public Administration 2016

4.1 Conflict of interests

4.1.1 Gifts, services and other benefits

Sometimes a business contact wants to offer you something, or you can make use of certain benefits through your work. This can be a physical gift, a service or a benefit such as a savings or discount scheme (such as air miles or frequent flyer points accumulated during official trips). Integrity risks are attached to this. One such risk is that of influence and conflicts of interest. The key point in this regard is that you must guarantee your independence as a civil servant. You must also be seen to prevent the appearance of influence. Do not just accept a gift.

- do not accept any gifts with a value of more than €50;

- do not accept any gifts from third parties at your home address;

- from the perspective of reliability and carefulness, do not use benefits acquired through work, such as savings points, for private purposes.

Discuss the matter

It will not always be immediately clear whether you may accept and keep a gift. Your supervisor will then consider with you what should be done. In some cases, there will be no problem. However, the conclusion can also be that you should politely refuse or return the offer or gift; or that you should accept it, but not keep it for yourself and make it available for general use or for a good cause. You will need to take applicable practices and manners into account, especially with regard to foreign contacts, as it could be impolite to refuse a gift. In that case, you should accept and then discuss with your supervisor what to do next. Deal openly with this in each case and discuss dilemmas with both your supervisor and colleagues. Openness and transparency not only help to identify temptations and weigh things up properly, but also to strengthen trust in each other.

4.1.2 Invitations, commercial activities and sponsorship

Networking can be part of your duties. You might receive invitations from external parties. It is best to accept these, provided that you act sensibly and keep the circumstances in mind. The acceptance of invitations must be functional, moderate and efficient. The reciprocity of invitations is also an aspect to take into consideration
[…].

4.1.3 Financial interests and trade on the stock market

You may have financial interests in one or more companies, trade on the stock market, or intend to do so. This can give rise to risks, for example with regard to conflicts of interest or prior knowledge of price-sensitive information. Your employer is responsible for designating positions that pose an additional risk in this regard.

[…].

Regulations on the Monitoring and Enforcement of the Code of Conduct for Members of the House of Representatives of the States-General

Article 4. Annual report

1. In February of each year, the Committee shall send the Presidium its annual report on the previous year.

2. In its annual report, the Committee may make recommendations for amendment or clarification of the Code of Conduct.

3. The Presidium shall publish the annual report.

Article 5. Archive and access

1. Every six years, the Committee shall transmit to the Court the documents that it has requested and any other documents it considers important. It may specify, with reasons, that documents may not be published and that they may only be made available for inspection by members of the College for a period of ten years.

2. The Committee shall not disclose any information.

Article 6. Complaints

1. Anyone may lodge a complaint regarding a breach of the Code of Conduct.

2. A complaint must be submitted in writing and must at least state the name and postal address of the complainant, the name of the Member of Parliament concerned by the complaint and the facts that led to the complaint being made.

3. The Committee may decide not to deal with a complaint if it considers it manifestly unfounded, if the requirements referred to in the second paragraph have not been met, or if the same complaint has been made by several complainants. The complainant will be informed of this.

4. The Committee will not consider a complaint that concerns a possible violation for which the Rules of Procedure provide for supervision in another manner.

5. A complaint about a possible criminal offence, not being an official offence, will not be considered by the Committee. After consultation with the complainant, the complaint can be forwarded to the Public Prosecution Service.

Article 7. Complaint management (klachtafhandeling)

1. The Committee shall inform a Member of Parliament when a complaint about him or her is being considered.

2. The Committee requests information from the Member of Parliament. The Member of Parliament will cooperate with this request.

3. The Committee may decide, after assessing the information received and other facts and circumstances it considers relevant, that the complaint should not be further investigated. The Member of Parliament and the complainant are informed of this. The Committee may make a recommendation to the Member of Parliament.

Article 8. Complaint investigation

1. After receiving the information referred to in Article 7, second paragraph, and after assessing other facts and circumstances which it considers relevant, the Committee may decide to investigate the complaint.

2. If the complaint concerns a matter on which the Advisor has previously advised the Member of Parliament concerned and this advice has been followed, the Committee can only decide to initiate an investigation, giving reasons.

3. If the Committee decides to initiate an investigation, the Advisor will no longer issue advice to the Member of Parliament concerned on the same issue.

4. The Member of Parliament must cooperate as required by the Committee in the context of its investigation.

5. The Committee prepares a draft report of its findings and offers the Member of Parliament the opportunity to be heard within four weeks. The opinion of the Member of Parliament will be included in the report. In its report, the Committee may make a recommendation to the Member of Parliament.

6. If the Committee establishes a breach of the Code of Conduct, the report may contain a recommendation for sanctions.

Article 9. Report

1. The Committee shall send the report to the Presidium and to the Member of Parliament concerned. When sending the report, the Committee may decide to keep parts of it confidential for important reasons.

2. The Presidium will publish the report no later than four weeks after its submission, insofar as the Board has determined that it can be made public.

Article 10 Possibility of appeal

1. The MP to which the report referred to in section 9 relates may lodge an appeal with the House within two weeks of receiving the report. In that event the Presidium shall not make the report public.

2. Upon nomination by the Presidium, the House shall institute a temporary board of appeal. Section 2 shall apply mutatis mutandis.

3. The task of the temporary board of appeal is to assess, with due consideration for the report and the relevant facts and circumstances, whether the Board was able to reach its opinion in a reasonable manner.

4. The temporary board of appeal shall send its written opinion to the Presidium and to the MP in question. Once it has sent its opinion the temporary board shall be dissolved.

5. The Presidium shall make the opinion public together with the report without delay.

Article 11. Possible sanctions

The following sanctions may be imposed in the event of a breach of the Code of Conduct: a. an instruction, which is understood to mean a measure that obliges a Member of Parliament to rectify a breach of the Code of Conduct; b. a reprimand, which is understood to mean a public letter from the Presidium to a Member of Parliament disapproving of the act that led to a breach; c. a suspension, which is understood to mean the exclusion of a Member of Parliament for a maximum period of one month from participating in plenary sittings, except for votes, committee meetings or any other activities held by or on behalf of the Chamber.

From a letter by the Presidium of the House of Representatives to its members:[25]

In accordance with the recommendations of the working group, Members of Parliament can approach the independent advisor for confidential, written advice on the interpretation and application of the rules in the field of integrity. The Member of Parliament concerned may make the advice public, if he or she so wishes. Each year, the adviser will draw up an anonymous annual report, which will be sent to the Presidium and subsequently published. In the annual report, the adviser may also make recommendations for the improvement or clarification of the integrity rules.

[25] brief_van_het_presidium_inzake_benoeming_onafhankelijk_adviseur_integriteit.pdf, d.d. November 28th 2019.

The Code of Conduct of the Senate can be found in English here.

Relevant laws and provisions:

Article 10. Compliance with the Code of Conduct of the Senate:

1. The Internal Committee oversees compliance with this Code of Conduct and rules on its interpretation.

2. At the request of one or more members of the Senate or on its own initiative, the Internal Committee may assess whether a member of the Senate has complied with articles 1 to 6 in a specific case. The Internal Committee may make recommendations in this regard.

3. The Internal Committee will make no ruling until it has given the member or members concerned the opportunity to be heard.

4. If the member or members concerned do not agree with the ruling of the Internal Committee, they may apply within two weeks, through the intermediary of the Committee of Senior Members, for a decision on the matter by the Senate. The Senate either upholds or dismisses the ruling of the Internal Committee. No deliberations are held on the ruling.

5. Once the ruling of the Internal Committee has become final, it will be made public.

6. If the assessment referred to in paragraph 2 concerns a member of the Internal Committee itself, this member will be replaced by the member who has the longest record of service in the Senate; if two or more members have the same length of service, the eldest in age will take precedence.

Explanatory notes on article 10, Code of Conduct of the Senate:

As already noted in the explanatory notes on article 1, members of the Senate should ideally do right even when no one is watching. Nonetheless, some form of supervision of compliance with this Code of Conduct is desirable. First of all, members may be expected to be amenable to being called to account for their actions by their fellow members, even if they are from other parliamentary parties within the Senate. In this way, integrity issues related to compliance with this Code of Conduct can in many cases be resolved within or among the parliamentary parties. This was also the view of the Temporary GRECO Report Committee in 2014.6 Second, it is only right that a body should be designated with formal task of supervision. That role is entrusted to the Internal Committee. The Internal Committee consists of the President and the two Vice Presidents of the Senate (article 14 of the Rules of Procedure). As it is responsible for safeguarding the interests and reputation of the Senate as an institution, it is a suitable body for monitoring compliance with this Code of Conduct. Members may ask the Internal Committee for a ruling on their actions or those of other members as regards compliance with the rules and principles set out in articles 1 to 6 of this Code of Conduct, i.e. the general provision and the provisions on dealing with interests, dealing with third parties, travel, gifts and disclosure of positions besides membership of the Senate and other relevant interests. Generally, members who have in some way attracted negative publicity will themselves ask for a ruling. The chair of the parliamentary party to which such a member belongs may also do this. Where appropriate, the Internal Committee may, on its own initiative, give a ruling if it judges this to be necessary in the interests of the Senate and its reputation. The Internal Committee may, if desired, consult external experts on such matters. Paragraph 2 of article 10 does not preclude a member from asking the Internal Committee, in the interests of the Senate, to assess whether a member of another parliamentary party has complied with this Code of Conduct. In such a case, it is reasonable to expect the member making the request to have first raised such concerns with the member of the other parliamentary party personally. The latter is, of course,

immediately informed if a request for a ruling is made. The Internal Committee will make no ruling until it has given the member or members concerned the opportunity to be heard. It may issue recommendations with its ruling. The decision to have the Internal Committee make recommendations rather than impose sanctions was made deliberately. Formal sanctions such as full or partial suspensions or disqualification from membership of the Senate are incompatible with the free mandate of the members, as enshrined in the Constitution. Moreover, the main purpose of a ruling by the Internal Committee is to gain more clarity about the interpretation of the provisions of this Code of Conduct, which must necessarily use open standards on certain points. Making recommendations is better suited to this objective than imposing sanctions, which also, by the way, entail the risk of politicisation. A recommendation does not have to be limited to the member or members concerned; the Internal Committee may also find that the Code of Conduct is unclear or has gaps in some respects and recommend that the Senate remedy these problems. Paragraph 4 enables the member or members concerned to request a decision from the Senate within two weeks on the ruling of the Internal Committee. This is done through the intermediary of the Committee of Senior Members, where it is still possible for the case to be resolved amicably. If the matter is nevertheless submitted to the Senate, it merely carries out a marginal review of the ruling. The Senate does not therefore deliberate; it simply upholds or overturns the ruling. The ruling of the Internal Committee may be overturned only it is manifestly unreasonable. When the actions of a member of the Senate attract negative publicity, it is important to clarify whether or not the member concerned has complied with this Code of Conduct. It follows that it is also important for the ruling of the Internal Committee on this matter to be made public. That is done pursuant to paragraph 5 once the ruling has become final, that is once the two-week appeal period has passed unused or after the Senate has reached its decision as referred to in paragraph 4; until then no communications are made about the ruling. The purpose of publication is to make clear not only to those directly concerned but also to the press and public whether there has been non-compliance with the Code of Conduct. The rulings of the Internal Committee can be publicised by posting them on the Senate's website. It is advisable to create a specific page on which all rulings can be easily consulted. Paragraph 6 contains a provision for cases where the assessment of whether there has been compliance with this Code of Conduct concerns a member of the Internal Committee itself. Such a member may not then participate in the assessment and must be replaced. Replacement takes place on the basis of length of service and thereafter possibly on the basis of seniority.

Article 12. Code of Conduct of the Senate. Confidential counsellor

1. The Senate must appoint an independent confidential counsellor, on the recommendation of the Internal Committee, to advise members and parliamentary parties on the interpretation of this Code of Conduct and on what action should be taken in specific situations. The appointment is for a term of four years, after which the confidential counsellor is immediately eligible for reappointment.

2. The confidential counsellor may not be a member of the Senate or work in the Secretariat.

3. All parties involved must observe secrecy with regard to the talks with the confidential counsellor.

4. The confidential counsellor must report annually, on a confidential basis, to the Internal Committee on the extent to which his services are used.

5. The Internal Committee must make arrangements with the confidential counsellor about appropriate remuneration.

Concerning the House of Representatives:
The regulation of supervision and enforcement[26] (Voorstel van het Presidium voor een regeling toezicht en handhaving gedragscode leden van de Tweede Kamer der Staten-Generaal) provides regulation for compliance and is, together with the Code of Conduct, the main conflict of interest management system in place for the House of Representatives.

Members of the House may contact the special advisor on integrity with questions about the Code of Conduct..

Relevant laws and provisions:

The regulation of supervision and enforcement Code of Conduct House of Representatives (Voorstel van het Presidium voor een regeling toezicht en handhaving gedragscode leden van de Tweede Kamer der Staten-Generaal):

Article 4. Annual report
1. In February of each year, the Committee shall send the Presidium its annual report on the previous year.

2. In its annual report, the Committee may make recommendations for amendment or clarification of the Code of Conduct.

3. The Presidium shall publish the annual report.

Article 5. Archive and access
1. Every six years, the Committee shall transmit to the Court the documents that it has requested and any other documents it considers important. It may specify, with reasons, that documents may not be published and that they may only be made available for inspection by members of the College for a period of ten years.

2. The Committee shall not disclose any information.

Artikel 6. Complaints
1. Anyone may lodge a complaint regarding a breach of the Code of Conduct.

2. A complaint must be submitted in writing and must at least state the name and postal address of the complainant, the name of the Member of Parliament concerned by the complaint and the facts that led to the complaint being made.

3. The Committee may decide not to deal with a complaint if it considers it manifestly unfounded, if the requirements referred to in the second paragraph have not been met, or if the same complaint has been made by several complainants. The complainant will be informed of this.

4. The Committee will not consider a complaint that concerns a possible violation for which the Rules of Procedure provide for supervision in another manner.

5. A complaint about a possible criminal offence, not being an official offence, will not be considered by the Committee. After consultation with the complainant, the complaint can be forwarded to the Public Prosecution Service.

[26] https://www.tweedekamer.nl/kamerstukken/detail?id=2020Z10983&did=2020D23757

Article 7. Complaint management (klachtafhandeling)
1. The Committee shall inform a Member of Parliament when a complaint about him or her is being considered.

2. The Committee requests information from the Member of Parliament. The Member of Parliament will cooperate with this request.

3. The Committee may decide, after assessing the information received and other facts and circumstances it considers relevant, that the complaint should not be further investigated. The Member of Parliament and the complainant are informed of this. The Committee may make a recommendation to the Member of Parliament.

Article 8. Complaint investigation
1. After receiving the information referred to in Article 7, second paragraph, and after assessing other facts and circumstances which it considers relevant, the Committee may decide to investigate the complaint.

2. If the complaint concerns a matter on which the Advisor has previously advised the Member of Parliament concerned and this advice has been followed, the Committee can only decide to initiate an investigation, giving reasons.

3. If the Committee decides to initiate an investigation, the Advisor will no longer issue advice to the Member of Parliament concerned on the same issue.

4. The Member of Parliament must cooperate as required by the Committee in the context of its investigation.

5. The Committee prepares a draft report of its findings and offers the Member of Parliament the opportunity to be heard within four weeks. The opinion of the Member of Parliament will be included in the report. In its report, the Committee may make a recommendation to the Member of Parliament.

6. If the Committee establishes a breach of the Code of Conduct, the report may contain a recommendation for sanctions.

Article 9. Report
1. The Committee shall send the report to the Presidium and to the Member of Parliament concerned. When sending the report, the Committee may decide to keep parts of it confidential for important reasons.

2. The Presidium will publish the report no later than four weeks after its submission, insofar as the Board has determined that it can be made public.

Article 11. Possible sanctions

The following sanctions may be imposed in the event of a breach of the Code of Conduct: a. an instruction, which is understood to mean a measure that obliges a Member of Parliament to rectify a breach of the Code of Conduct; b. a reprimand, which is understood to mean a public letter from the Presidium to a Member of Parliament disapproving of the act that led to a breach; c. a suspension, which is understood to mean the exclusion of a Member of Parliament for a maximum period of one month from participating in plenary sittings, except for votes, committee meetings or

any other activities held by or on behalf of the Chamber.

From the webpage on the integrity advisor of the House of Representatives[27]:
In accordance with the recommendations of the working group, Members of Parliament can approach the independent advisor for confidential, written advice on the interpretation and application of the rules in the field of integrity. The Member of Parliament concerned may make the advice public, if he or she so wishes. Each year, the adviser will draw up an anonymous annual report, which will be sent to the Presidium and subsequently published. In the annual report, the adviser may also make recommendations for the improvement or clarification of the integrity rules.

The Senate:

The main Confict of Management system of the Senate is the Code of Conduct of the Senate which can be found in English here, and the Rules of Procedure.

Relevant laws and provisions:

Article 10. Compliance with the Code of Conduct of the Senate:
1. The Internal Committee oversees compliance with this Code of Conduct and rules on its interpretation.
2. At the request of one or more members of the Senate or on its own initiative, the Internal Committee may assess whether a member of the Senate has complied with articles 1 to 6 in a specific case. The Internal Committee may make recommendations in this regard.
3. The Internal Committee will make no ruling until it has given the member or members concerned the opportunity to be heard.
4. If the member or members concerned do not agree with the ruling of the Internal Committee, they may apply within two weeks, through the intermediary of the Committee of Senior Members, for a decision on the matter by the Senate. The Senate either upholds or dismisses the ruling of the Internal Committee. No deliberations are held on the ruling.
5. Once the ruling of the Internal Committee has become final, it will be made public.
6. If the assessment referred to in paragraph 2 concerns a member of the Internal Committee itself, this member will be replaced by the member who has the longest record of service in the Senate; if two or more members have the same length of service, the eldest in age will take precedence.

Explanatory notes on article 10, Code of Conduct of the Senate:
As already noted in the explanatory notes on article 1, members of the Senate should ideally do right even when no one is watching. Nonetheless, some form of supervision of compliance with this Code of Conduct is desirable. First of all, members may be expected to be amenable to being called to account for their actions by their fellow members, even if they are from other parliamentary parties within the Senate. In this way, integrity issues related to compliance with this Code of Conduct can in many cases be resolved within or among the parliamentary parties. This was also the view of the Temporary GRECO Report Committee in 2014.6 Second, it is only right that a body should be designated with formal task of supervision. That role is entrusted to the Internal Committee. The Internal Committee consists of the President and the two Vice Presidents of the Senate (article 14 of the Rules of Procedure). As it is responsible for safeguarding the interests and reputation of the Senate as an institution, it is a suitable body for monitoring compliance with this Code of Conduct. Members may ask the Internal Committee for a ruling on their actions or

[27] https://www.tweedekamer.nl/nieuws/kamernieuws/tweede-kamer-benoemt-adviseur-integriteit-voor-kamerleden

those of other members as regards compliance with the rules and principles set out in articles 1 to 6 of this Code of Conduct, i.e. the general provision and the provisions on dealing with interests, dealing with third parties, travel, gifts and disclosure of positions besides membership of the Senate and other relevant interests. Generally, members who have in some way attracted negative publicity will themselves ask for a ruling. The chair of the parliamentary party to which such a member belongs may also do this. Where appropriate, the Internal Committee may, on its own initiative, give a ruling if it judges this to be necessary in the interests of the Senate and its reputation. The Internal Committee may, if desired, consult external experts on such matters. Paragraph 2 of article 10 does not preclude a member from asking the Internal Committee, in the interests of the Senate, to assess whether a member of another parliamentary party has complied with this Code of Conduct. In such a case, it is reasonable to expect the member making the request to have first raised such concerns with the member of the other parliamentary party personally. The latter is, of course, immediately informed if a request for a ruling is made. The Internal Committee will make no ruling until it has given the member or members concerned the opportunity to be heard. It may issue recommendations with its ruling. The decision to have the Internal Committee make recommendations rather than impose sanctions was made deliberately. Formal sanctions such as full or partial suspensions or disqualification from membership of the Senate are incompatible with the free mandate of the members, as enshrined in the Constitution. Moreover, the main purpose of a ruling by the Internal Committee is to gain more clarity about the interpretation of the provisions of this Code of Conduct, which must necessarily use open standards on certain points. Making recommendations is better suited to this objective than imposing sanctions, which also, by the way, entail the risk of politicisation. A recommendation does not have to be limited to the member or members concerned; the Internal Committee may also find that the Code of Conduct is unclear or has gaps in some respects and recommend that the Senate remedy these problems. Paragraph 4 enables the member or members concerned to request a decision from the Senate within two weeks on the ruling of the Internal Committee. This is done through the intermediary of the Committee of Senior Members, where it is still possible for the case to be resolved amicably. If the matter is nevertheless submitted to the Senate, it merely carries out a marginal review of the ruling. The Senate does not therefore deliberate; it simply upholds or overturns the ruling. The ruling of the Internal Committee may be overturned only it is manifestly unreasonable. When the actions of a member of the Senate attract negative publicity, it is important to clarify whether or not the member concerned has complied with this Code of Conduct. It follows that it is also important for the ruling of the Internal Committee on this matter to be made public. That is done pursuant to paragraph 5 once the ruling has become final, that is once the two-week appeal period has passed unused or after the Senate has reached its decision as referred to in paragraph 4; until then no communications are made about the ruling. The purpose of publication is to make clear not only to those directly concerned but also to the press and public whether there has been non-compliance with the Code of Conduct. The rulings of the Internal Committee can be publicised by posting them on the Senate's website. It is advisable to create a specific page on which all rulings can be easily consulted. Paragraph 6 contains a provision for cases where the assessment of whether there has been compliance with this Code of Conduct concerns a member of the Internal Committee itself. Such a member may not then participate in the assessment and must be replaced. Replacement takes place on the basis of length of service and thereafter possibly on the basis of seniority.

Article 12. Code of Conduct of the Senate. Confidential counsellor

1. The Senate must appoint an independent confidential counsellor, on the recommendation of the Internal Committee, to advise members and parliamentary parties on the interpretation of this Code of Conduct and on what action should be taken in specific situations. The appointment is for a term of four years, after which the confidential counsellor is immediately eligible for reappointment.

2. The confidential counsellor may not be a member of the Senate or work in the Secretariat.
3. All parties involved must observe secrecy with regard to the talks with the confidential counsellor.
4. The confidential counsellor must report annually, on a confidential basis, to the Internal Committee on the extent to which his services are used.
5. The Internal Committee must make arrangements with the confidential counsellor about appropriate remuneration.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

Government entities promote integrity, honesty and responsibility through basic integrity standards and the establishment of guidelines (art. 4 of the Civil Servants Act). The Code of Conduct for Integrity in the Central Public Administration provides civil servants in the central public administration with a framework for managing conflicts of interest (section 4.1). The Code is not enforceable and does not establish disciplinary sanctions. Violations of integrity rules may be sanctioned under labour law (art. 6 of the Civil Servants Act and the Collective Labour Agreement). Departments may draw up further organization-specific rules. The House of Representatives and the Senate have their own codes of conduct that establish disciplinary measures in case of violations (arts. 5, 10 and 11 of the respective codes).

Gifts, including benefits, cannot be accepted without the permission of a superior (art. 8, para. 1 (e), of the Civil Servants Act).

Secondary professional activities must be reported, and ancillary activities and financial interests that may hamper the functioning of the public administration are prohibited (art. 8 of the Civil Servants Act). However, there is no mechanism for verifying adherence to these rules.

The reviewing experts therefore recommended that the Netherlands strengthen systems to prevent conflicts of interest and endeavour to extend the obligation to report interests to include assets, and include the interests and assets of close family members; consider establishing a monitoring, verification and sanctions mechanism to ensure compliance with reporting obligations; and consider permitting its competent authorities to share such information with foreign competent authorities (art. 7, para. 4, art. 8, para. 5, and art. 52, para. 5).

Article 8. Codes of conduct for public officials

Paragraph 1 of article 8

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Government employers bear primary responsibility for pursuing a sound and consistent integrity policy. These government employers are mandated to do so under the Civil Servants Act. The Civil Servants Act (predating January 2020) includes the following provisions[28] in respect of integrity policy for government employers:

> Section 125ter
>
> The competent authority and civil servants are obliged to act in a manner as befits a good employer and good civil servants.
>
> Section 125quater
>
> The competent authority of civil servants that have been appointed by or on behalf of the government, the provinces, the municipalities or the water authorities:
>
> a. will pursue an integrity policy which is aimed at promoting proper conduct as befits civil servants, and which in any case focuses on improving awareness of integrity as well as preventing misuse of powers, conflicts of interest and discrimination;
>
> b. will ensure that the integrity policy is a fixed component of human resources policy, in any case by addressing integrity during appraisal interviews and work consultations as well as by providing training and education in the field of professional integrity;
>
> c. will ensure the creation of a Code of Conduct with regard to proper conduct as befits civil servants;
>
> d. will determine the method of annual accountability and reporting on the integrity policy in place as well as on compliance with the Code of Conduct, in accordance with the Lower House of Parliament or the Provincial Council, the executive board or general management.
>
> Section 125quinquies
>
> 1. To the extent that these matters are not governed by or under the law, guidelines will be established for civil servants who have been appointed by or on behalf of the government, by or under a General Administrative Order concerning:
>
> a. the oath of office or pledge that civil servants are required to affirm upon appointment;
>
> b. the reporting and registration of ancillary activities that may affect the interests of the agency, to the extent that they are related to job performance;
>
> c. the disclosure of ancillary activities, registered pursuant to part b, of civil servants appointed to a position for which the disclosure of such ancillary activities is crucial to protecting the integrity of the public service;
>
> d. the prohibition of ancillary activities as a result of which the effective execution of the position or the proper functioning of the public services would not reasonably be guaranteed, to the extent that they are related to job performance;

[28] Civil Servants Act, Sections 125b, 125c and 125d

e. the disclosure of financial interests relating to the possession of and transactions in securities respectively that may affect the interests of the public service, to the extent that they are related to the duties of the position, for civil servants appointed to a position that specifically entails the risk of a financial conflict of interest or the risk of the improper use of price-sensitive information;

f. a procedure to handle civil servants' suspicions of abuses within the organisation at which they work.

2. The competent authority of the provinces, municipalities and water authorities will establish guidelines on the subjects referred to in Paragraph 1 under the same terms for the civil servants appointed by or on behalf of these bodies. Civil servants appointed by or on behalf of a water authority are defined as those persons that have been appointed to be employed by the authority designated for such a purpose by the regulations of that institution.

3. As a result thereof, civil servants who act in good faith and duly report a suspicion of wrongdoing as referred to in Section 1(1) of the Whistleblowers Authority Act[29] shall experience no adverse effects with regard to their legal position during and after the processing of the report by the competent body or the competent authority.

The oath of office or pledge

All civil servants, public administrators and elected representatives must abide by rules of conduct. Civil servants who take the oath of office or pledge swear or promise to abide by these rules. By taking the oath of office or pledge, civil servants, public administrators or elected representatives swear:

- that they will be loyal to the King and respect the Constitution as well as all other laws of our nation;
- that they neither directly nor indirectly in any form whatsoever have provided false information to obtain the office;
- that they have not made gifts or promises to third parties in order to obtain the office, nor shall do so;
- that they have not accepted gifts from third parties to obtain this office, nor that they have made promises to third parties or shall do so;
- that they shall execute their duties faithfully and scrupulously, and that any confidential matters which are brought to their attention by virtue of their position or of which the confidential nature should be clearly recognised shall be kept secret from persons other than those whom they are required to inform as part of their professional responsibilities;
- that they shall conduct themselves as befits a good civil servant, and be diligent, incorruptible and reliable, nor shall their conduct harm the authority of the office.

Basic integrity standards

In addition to the legal standards, the government also has Basic Integrity Standards,[30] which must ensure that civil servants are able to carry out their duties with integrity. All government organisations are required to comply with these standards. Among other things, the Basic Integrity Standards stipulate that the organisation:

[29] https://wetten.overheid.nl/BWBR0037852/2018-06-13/#Hoofdstuk1_Paragraaf1_Artikel1
[30] https://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/documenten/brochures/2005/09/26/modelaanpak-basisnormen-integriteit

- must draft rules on integrity;
- must regularly examine which positions involve working with a significant amount of confidential information and where any risks lie with regard to fraud;
- must have its own code of conduct in place;
- must have rules on how to handle confidential informational, such as for the security of computer equipment;
- must verify the diplomas or certificates of new staff;
- must require that new members of staff hold a Certificate of Conduct (Verklaring Omtrent het Gedrag).

The Basic Integrity Standards also prescribe that civil servants:

- must take an oath of office or make a pledge;
- must disclose their ancillary activities;
- may not accept gifts or services with a value exceeding 50 euros.

Code of conduct for public administrators and elected representatives

Among other things, public administrators and elected representatives must abide by the following rules of conduct:

- They must take the oath of office or pledge.
- They must disclose any paid and unpaid ancillary positions.
- They must handle any confidential information with diligence.
- They may only claim expenses that they have incurred for their work.
- They may not carry out any paid ancillary activities for the municipality or province.
- They may not vote on matters that affect the public administrator personally.

Furthermore, Ministers and State Secretaries may not hold any paid or unpaid ancillary positions.

The Integrity Guidelines for Holders of Political Offices (Handreiking integriteit politieke ambtsdragers) contain more information on integrity policies for public administrators and elected representatives.

Registration of integrity

All municipalities, provinces and Ministries register any violations of integrity, for which the Guidelines on Registering Integrity Violations (Handreiking registratie integriteitsschendingen)[31] and the Integrity Violations Registration model form (modelformulier Registratie integriteitsschendingen) have been established.[32]

Code of Conduct for Integrity in the Central Public Administration 2016

4.1 Conflict of interests

4.1.1 Gifts, services and other benefits

[31] https://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/documenten/brochures/2008/06/27/registratie-integriteitsschendingen-handreiking
[32] https://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/documenten/formulieren/2008/06/27/modelformulier-registratie-integriteitschendingen

Sometimes a business contact wants to offer you something, or you can make use of certain benefits through your work. This can be a physical gift, a service or a benefit such as a savings or discount scheme (such as air miles or frequent flyer points accumulated during official trips). Integrity risks are attached to this. One such risk is that of influence and conflicts of interest. The key point in this regard is that you must guarantee your independence as a civil servant. You must also be seen to prevent the appearance of influence. Do not just accept a gift.

- do not accept any gifts with a value of more than €50;

- do not accept any gifts from third parties at your home address;

- from the perspective of reliability and carefulness, do not use benefits acquired through work, such as savings points, for private purposes.

Discuss the matter

It will not always be immediately clear whether you may accept and keep a gift. Your supervisor will then consider with you what should be done. In some cases, there will be no problem. However, the conclusion can also be that you should politely refuse or return the offer or gift; or that you should accept it, but not keep it for yourself and make it available for general use or for a good cause. You will need to take applicable practices and manners into account, especially with regard to foreign contacts, as it could be impolite to refuse a gift. In that case, you should accept and then discuss with your supervisor what to do next. Deal openly with this in each case and discuss dilemmas with both your supervisor and colleagues. Openness and transparency not only help to identify temptations and weigh things up properly, but also to strengthen trust in each other.

4.1.2 Invitations, commercial activities and sponsorship

Networking can be part of your duties. You might receive invitations from external parties. It is best to accept these, provided that you act sensibly and keep the circumstances in mind. The acceptance of invitations must be functional, moderate and efficient. The reciprocity of invitations is also an aspect to take into consideration
[…].

4.1.3 Financial interests and trade on the stock market

You may have financial interests in one or more companies, trade on the stock market, or intend to do so. This can give rise to risks, for example with regard to conflicts of interest or prior knowledge of price-sensitive information. Your employer is responsible for designating positions that pose an additional risk in this regard.

[…].

Regulations on the Monitoring and Enforcement of the Code of Conduct for Members of the House of Representatives of the States-General

Article 4. Annual report

1. In February of each year, the Committee shall send the Presidium its annual report on the previous year.

2. In its annual report, the Committee may make recommendations for amendment or clarification of the Code of Conduct.

3. The Presidium shall publish the annual report.

Article 5. Archive and access

1. Every six years, the Committee shall transmit to the Court the documents that it has requested and any other documents it considers important. It may specify, with reasons, that documents may not be published and that they may only be made available for inspection by members of the College for a period of ten years.

2. The Committee shall not disclose any information.

Article 10 Possibility of appeal

1. The MP to which the report referred to in section 9 relates may lodge an appeal with the House within two weeks of receiving the report. In that event the Presidium shall not make the report public.

2. Upon nomination by the Presidium, the House shall institute a temporary board of appeal. Section 2 shall apply mutatis mutandis.

3. The task of the temporary board of appeal is to assess, with due consideration for the report and the relevant facts and circumstances, whether the Board was able to reach its opinion in a reasonable manner.

4. The temporary board of appeal shall send its written opinion to the Presidium and to the MP in question. Once it has sent its opinion the temporary board shall be dissolved.

5. The Presidium shall make the opinion public together with the report without delay.

Article 11. Possible sanctions

The following sanctions may be imposed in the event of a breach of the Code of Conduct: a. an instruction, which is understood to mean a measure that obliges a Member of Parliament to rectify a breach of the Code of Conduct; b. a reprimand, which is understood to mean a public letter from the Presidium to a Member of Parliament disapproving of the act that led to a breach; c. a suspension, which is understood to mean the exclusion of a Member of Parliament for a maximum period of one month from participating in plenary sittings, except for votes, committee meetings or any other activities held by or on behalf of the Chamber.

From the webpage on the integrity advisor of the House of Representatives :

In accordance with the recommendations of the working group, Members of Parliament can approach the independent advisor for confidential, written advice on the interpretation and application of the rules in the field of integrity. The Member of Parliament concerned may make the advice public, if he or she so wishes. Each year, the adviser will draw up an anonymous annual report, which will be sent to the Presidium and subsequently published. In the annual report, the adviser may also make recommendations for the improvement or clarification of the integrity rules.

The Code of Conduct of the Senate and the Rules of Procedure. Both documents can be found in English here.

Relevant laws and provisions:

Article 10. Compliance with the Code of Conduct of the Senate:

1. The Internal Committee oversees compliance with this Code of Conduct and rules on its interpretation.

2. At the request of one or more members of the Senate or on its own initiative, the Internal Committee may assess whether a member of the Senate has complied with articles 1 to 6 in a specific case. The Internal Committee may make recommendations in this regard.

3. The Internal Committee will make no ruling until it has given the member or members concerned the opportunity to be heard.

4. If the member or members concerned do not agree with the ruling of the Internal Committee, they may apply within two weeks, through the intermediary of the Committee of Senior Members, for a decision on the matter by the Senate. The Senate either upholds or dismisses the ruling of the Internal Committee. No deliberations are held on the ruling.

5. Once the ruling of the Internal Committee has become final, it will be made public.

6. If the assessment referred to in paragraph 2 concerns a member of the Internal Committee itself, this member will be replaced by the member who has the longest record of service in the Senate; if two or more members have the same length of service, the eldest in age will take precedence.

Explanatory notes on article 10, Code of Conduct of the Senate:

As already noted in the explanatory notes on article 1, members of the Senate should ideally do right even when no one is watching. Nonetheless, some form of supervision of compliance with this Code of Conduct is desirable. First of all, members may be expected to be amenable to being called to account for their actions by their fellow members, even if they are from other parliamentary parties within the Senate. In this way, integrity issues related to compliance with this Code of Conduct can in many cases be resolved within or among the parliamentary parties. This was also the view of the Temporary GRECO Report Committee in 2014.6 Second, it is only right that a body should be designated with formal task of supervision. That role is entrusted to the Internal Committee. The Internal Committee consists of the President and the two Vice Presidents of the Senate (article 14 of the Rules of Procedure). As it is responsible for safeguarding the interests and reputation of the Senate as an institution, it is a suitable body for monitoring compliance with this Code of Conduct. Members may ask the Internal Committee for a ruling on their actions or those of other members as regards compliance with the rules and principles set out in articles 1 to 6 of this Code of Conduct, i.e. the general provision and the provisions on dealing with interests, dealing with third parties, travel, gifts and disclosure of positions besides membership of the Senate and other relevant interests. Generally, members who have in some way attracted negative publicity will themselves ask for a ruling. The chair of the parliamentary party to which such a member belongs may also do this. Where appropriate, the Internal Committee may, on its own initiative, give a ruling if it judges this to be necessary in the interests of the Senate and its reputation. The Internal Committee may, if desired, consult external experts on such matters. Paragraph 2 of article 10 does not preclude a member from asking the Internal Committee, in the interests of the Senate, to assess whether a member of another parliamentary party has complied with this Code of Conduct. In such a case, it is reasonable to expect the member making the request to have first raised such concerns with the member of the other parliamentary party personally. The latter is, of course, immediately informed if a request for a ruling is made. The Internal Committee will make no ruling until it has given the member or members concerned the opportunity to be heard. It may issue recommendations with its ruling. The decision to have the Internal Committee make recommendations rather than impose sanctions was made deliberately. Formal sanctions such as full or partial suspensions or disqualification from membership of the Senate are incompatible with the free mandate of the members, as enshrined in the Constitution. Moreover, the main purpose of a ruling by the Internal Committee is to gain more clarity about the interpretation of the provisions of this Code of Conduct, which must necessarily use open standards on certain points. Making recommendations is better suited to this objective than imposing sanctions, which also, by the way, entail the risk of politicisation. A recommendation does not have to be limited to the member or members concerned; the Internal Committee may also find that the Code of Conduct is unclear or

has gaps in some respects and recommend that the Senate remedy these problems. Paragraph 4 enables the member or members concerned to request a decision from the Senate within two weeks on the ruling of the Internal Committee. This is done through the intermediary of the Committee of Senior Members, where it is still possible for the case to be resolved amicably. If the matter is nevertheless submitted to the Senate, it merely carries out a marginal review of the ruling. The Senate does not therefore deliberate; it simply upholds or overturns the ruling. The ruling of the Internal Committee may be overturned only it is manifestly unreasonable. When the actions of a member of the Senate attract negative publicity, it is important to clarify whether or not the member concerned has complied with this Code of Conduct. It follows that it is also important for the ruling of the Internal Committee on this matter to be made public. That is done pursuant to paragraph 5 once the ruling has become final, that is once the two-week appeal period has passed unused or after the Senate has reached its decision as referred to in paragraph 4; until then no communications are made about the ruling. The purpose of publication is to make clear not only to those directly concerned but also to the press and public whether there has been non-compliance with the Code of Conduct. The rulings of the Internal Committee can be publicised by posting them on the Senate's website. It is advisable to create a specific page on which all rulings can be easily consulted. Paragraph 6 contains a provision for cases where the assessment of whether there has been compliance with this Code of Conduct concerns a member of the Internal Committee itself. Such a member may not then participate in the assessment and must be replaced. Replacement takes place on the basis of length of service and thereafter possibly on the basis of seniority.

Article 12. Code of Conduct of the Senate. Confidential counsellor

1. The Senate must appoint an independent confidential counsellor, on the recommendation of the Internal Committee, to advise members and parliamentary parties on the interpretation of this Code of Conduct and on what action should be taken in specific situations. The appointment is for a term of four years, after which the confidential counsellor is immediately eligible for reappointment.

2. The confidential counsellor may not be a member of the Senate or work in the Secretariat.

3. All parties involved must observe secrecy with regard to the talks with the confidential counsellor.

4. The confidential counsellor must report annually, on a confidential basis, to the Internal Committee on the extent to which his services are used.

5. The Internal Committee must make arrangements with the confidential counsellor about appropriate remuneration.

In IPIM, the integrity policy for the central government is coordinated. The integrity coordinators of the ministries are part of the IPIM; they are the specialists of their organizations and monitor the integrity management within their organizations.

There are separate government-wide workshops for employees and managers on undesirable behaviour and on social safety. There are special leadership programs for top management. There is also a wide range of training courses, including dilemma training, at organizational level; there is no comprehensive overview of this.

Violation of the rules of conduct included in the code of conduct can be subject to employment law. Code of conduct is a kind of guideline / translation of regulations into behaviour. The code itself does not contain any sanctions and violation of the code of conduct itself does not constitute grounds for sanction.

Because the rules of the code of conduct have been laid down in provisions elsewhere, the code of conduct cannot be regarded as merely aspirational.

Article 2: Whistleblowers Authority Act:

1 An employer who normally employs at least fifty people shall adopt a procedure for dealing with a report of suspected misconduct within his organisation.

- 2 The procedure referred to in the first paragraph shall in any case include

a. the manner in which the internal report is dealt with;

b. describe when there is a suspicion of misconduct in accordance with the definition of a suspicion of misconduct as intended in this Act

c. established with which designated officer or officers the suspicion of misconduct may be reported;

d. recorded the employer's obligation to treat the report confidentially, if the employee has requested this

e. stipulate that the employee has the possibility to consult an advisor in confidence about a suspicion of misconduct.

-3 The employer is obliged to provide persons working for him with a written or electronic statement of the procedure referred to in the first paragraph. The employer will also provide information about

a. the circumstances under which a suspicion of misconduct can be reported outside the organisation,

b. the legal protection of the employee when reporting a suspicion of misconduct.

Article 4 Civil Servants Act 2017

- 1 An employer of public authorities shall pursue an integrity policy aimed at promoting good official behaviour, which in any case shall pay attention to promoting integrity awareness and to preventing abuse of authority, conflict of interest and discrimination.

- 2 A public employer shall ensure that the integrity policy is a permanent part of the personnel policy, in any case by raising the issue of integrity in performance interviews and work-related consultations and by offering training and education in the area of integrity.

- 3 A public employer shall ensure the development of a code of conduct for good official behaviour.

- 4 A governmental employer shall annually publish an account of the implementation of this article.

- 5 Further rules with regard to the third paragraph may be laid down by order in council.

Please provide examples of the implementation of those measures, including related court or

other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

The Code of Conduct for Integrity in the Central Public Administration provides civil servants in the central public administration with a framework for managing conflicts of interest (section 4.1).

Departments may draw up further organization-specific rules. The House of Representatives and the Senate have their own codes of conduct that establish disciplinary measures in case of violations (arts. 5, 10 and 11 of the respective codes).

Paragraph 2 and 3 of article 8

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The first model Code of Conduct for the national government was drafted in 2006. In 2016 and 2018, the model Code of Conduct was updated. A new, updated model Code of Conduct is envisaged for 2020. In 2006, the Model Code of Conduct for Integrity in the Central Public Administration served as the model and minimum framework for the Ministries and their implementing agencies to draw up their own codes of conduct tailored to their specific organisation. This process has been done in the meantime, while many organisation-specific codes of conduct have been drawn up and implemented.

Due to our constantly changing society and the complexity of the arena in which the civil servant operates, the Model Code of Conduct for Integrity also changes periodically. The code is intended to be a living instrument, which will be updated as and when needed.

In 2016, the Central Public Administration wished to act as a single employer, and it aimed for cooperation and harmonisation across the Central Public Administration where possible. Where necessary, the details remain specific for each organisation. The code describes the framework that applies across the Central Public Administration and can be used as a basic model for organisation-specific codes. In addition to minimum standards, it also provides general points of reference for how to deal with integrity within the Central Public Administration, which values and basic principles are adopted within the Central Public Administration, and which roles employees, confidential advisers, supervisors and top management play in this regard. Much value is also attached to making integrity a subject of discussion within the organisation; the code of conduct can be and is used as a vehicle for these discussions.

An updated version of the Government Code of Ethics (Gedragscode Integriteit Rijk, GIR) was published in 2017. The changes in comparison with the 2016 GIR relate to a new section on the involvement in studies and academic integrity. A new update is envisaged for 2020.

For Cabinet members at the central level, there is the 'Incoming Cabinet Members' Manual' ('Handboek voor aantredende bewindspersonen'), which applies to Ministers and State Secretaries.[33] The manual outlines the rights and obligations of Ministers and State Secretaries. It is not binding and enforceable, but it provides clear guidelines on the basis of statutory provisions and predecessors' experiences. The 'Incoming Cabinet Members' Manual' is a public document and can be consulted on the website of the Central Public Administration.[34]

In consultation with the Ministry of the Interior and Kingdom Relations, the Association of Dutch Municipalities (VNG), InterProvincial Consultation Platform (IPO) and the Association of Dutch regional water board (UvW) likewise drafted a model Code of Conduct in 2015 for elected representatives as well as day-to-day administrators.[35]

The Integrity Guidelines for Holders of Political Offices of 2013 were updated with a view to the codes of conduct that were drawn up in 2015.

The guidelines contain:

- changes in the structure of integrity policy;
- suggestions about the implementation of the statutory role that mayors, King's Commissioners and presidents of the water authorities play in the field of integrity policy;
- recommendations on the structure of this policy, preventive measures, enforcement action and support available.

The guidelines are a joint publication of the Ministry of the Interior and Kingdom Relations, the VNG, the IPO and the UvW.[36]

Code of Conduct for Integrity in the Central Public Administration 2016

4.1 Conflict of interests

4.1.1 Gifts, services and other benefits

Sometimes a business contact wants to offer you something, or you can make use of certain benefits through your work. This can be a physical gift, a service or a benefit such as a savings or discount scheme (such as air miles or frequent flyer points accumulated during official trips). Integrity risks are attached to this. One such risk is that of influence and conflicts of interest. The key point in this regard is that you must guarantee your independence as a civil servant. You must also be seen to prevent the appearance of influence. Do not just accept a gift.

- do not accept any gifts with a value of more than €50;

- do not accept any gifts from third parties at your home address;

[33] Relevant provisions from the Manual are appended.
[34] https://www.rijksoverheid.nl/documenten/richtlijnen/2017/10/03/handboek-voor-bewindspersonen
[35] https://vng.nl/onderwerpenindex/arbeidsvoorwaarden-en-personeelsbeleid/integriteit/brieven/modelgedragscode
[36] https://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/documenten/rapporten/2016/04/29/handreiking-integriteit-van-politieke-ambtsdragers-bij-gemeenten-provincies-en-waterschappen

- from the perspective of reliability and carefulness, do not use benefits acquired through work, such as savings points, for private purposes.

Discuss the matter

It will not always be immediately clear whether you may accept and keep a gift. Your supervisor will then consider with you what should be done. In some cases, there will be no problem. However, the conclusion can also be that you should politely refuse or return the offer or gift; or that you should accept it, but not keep it for yourself and make it available for general use or for a good cause. You will need to take applicable practices and manners into account, especially with regard to foreign contacts, as it could be impolite to refuse a gift. In that case, you should accept and then discuss with your supervisor what to do next. Deal openly with this in each case and discuss dilemmas with both your supervisor and colleagues. Openness and transparency not only help to identify temptations and weigh things up properly, but also to strengthen trust in each other.

4.1.2 Invitations, commercial activities and sponsorship

Networking can be part of your duties. You might receive invitations from external parties. It is best to accept these, provided that you act sensibly and keep the circumstances in mind. The acceptance of invitations must be functional, moderate and efficient. The reciprocity of invitations is also an aspect to take into consideration
[…].

4.1.3 Financial interests and trade on the stock market

You may have financial interests in one or more companies, trade on the stock market, or intend to do so. This can give rise to risks, for example with regard to conflicts of interest or prior knowledge of price-sensitive information. Your employer is responsible for designating positions that pose an additional risk in this regard.

[…].

Regulations on the Monitoring and Enforcement of the Code of Conduct for Members of the House of Representatives of the States-General

Article 4. Annual report

1. In February of each year, the Committee shall send the Presidium its annual report on the previous year.

2. In its annual report, the Committee may make recommendations for amendment or clarification of the Code of Conduct.

3. The Presidium shall publish the annual report.

Article 5. Archive and access

1. Every six years, the Committee shall transmit to the Court the documents that it has requested and any other documents it considers important. It may specify, with reasons, that documents may not be published and that they may only be made available for inspection by members of the College for a period of ten years.

2. The Committee shall not disclose any information.

Article 10 Possibility of appeal

1. The MP to which the report referred to in section 9 relates may lodge an appeal with the House within two weeks of receiving the report. In that event the Presidium shall not make the report public.

2. Upon nomination by the Presidium, the House shall institute a temporary board of appeal. Section 2 shall apply mutatis mutandis.

3. The task of the temporary board of appeal is to assess, with due consideration for the report and the relevant facts and circumstances, whether the Board was able to reach its opinion in a reasonable manner.

4. The temporary board of appeal shall send its written opinion to the Presidium and to the MP in question. Once it has sent its opinion the temporary board shall be dissolved.

5. The Presidium shall make the opinion public together with the report without delay.

Article 11. Possible sanctions

The following sanctions may be imposed in the event of a breach of the Code of Conduct: a. an instruction, which is understood to mean a measure that obliges a Member of Parliament to rectify a breach of the Code of Conduct; b. a reprimand, which is understood to mean a public letter from the Presidium to a Member of Parliament disapproving of the act that led to a breach; c. a suspension, which is understood to mean the exclusion of a Member of Parliament for a maximum period of one month from participating in plenary sittings, except for votes, committee meetings or any other activities held by or on behalf of the Chamber.

From the webpage on the integrity advisor of the House of Representatives :

In accordance with the recommendations of the working group, Members of Parliament can approach the independent advisor for confidential, written advice on the interpretation and application of the rules in the field of integrity. The Member of Parliament concerned may make the advice public, if he or she so wishes. Each year, the adviser will draw up an anonymous annual report, which will be sent to the Presidium and subsequently published. In the annual report, the adviser may also make recommendations for the improvement or clarification of the integrity rules.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

(b) Observations on the implementation of the article

The Code of Conduct for Integrity in the Central Public Administration provides civil servants in the central public administration with a framework for managing conflicts of interest (section 4.1).

Departments may draw up further organization-specific rules. The House of Representatives and the Senate have their own codes of conduct that establish disciplinary measures in case of violations (arts. 5, 10 and 11 of the respective codes).

Paragraph 4 of article 8

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The Netherlands now has more than twenty-five years' experience in the field of promoting integrity and also has an international reputation for its active approach in this field.[37] As part of that attitude, there are a series of reporting systems via which civil servants can report suspicions of abuse (including corruption). All government bodies for example are required to implement internal reporting procedures and to appoint confidential advisors who are available to advise whistleblowers in revealing abuse.

Government employees are able to report abuses and/or corruption internally to their own employer. Every government employer must have a reporting procedure in place for this purpose. Within the national government, each ministry has an individual reporting procedure and will in some cases have a hotline or help desk in place. See also the annex containing an inventory of the hotlines and help desks of the national government (inventarisatie meldpunten Rijksoverheid). Every Ministry also has a number of confidential counsellors to whom integrity violations can be reported. In the case of abuses within the meaning of the Whistleblowers Authority Act, an employee may make use of the whistleblowers scheme.[38]

Misconduct by civil servants can also be reported to the NPIID. This misconduct may include:

- falsifying financial records or registers;
- stealing documentary evidence;
- requesting or accepting bribes (bribery);
- coercion with misuse of power;
- allowing a prisoner to escape.

A help desk providing information and advice on reporting misconduct by civil servants has been set up in the form of the Help Desk for Official Misconduct (Adviespunt voor ambtsmisdrijven).[39]

Citizens that identify integrity violations by civil servants, such as fraud, can also report instances of fraud to the NPIID. In addition, citizens and civil servants may report possible violations of integrity externally via the police phone line (Meldpunt M: Meld Misdaad Anoniem).[40] They will also be able to consult the confidential help line, 'De Vertrouwenslijn'.[41]

Whistleblowers Authority Act

Article 2

1. The employer who normally employs at least fifty employees shall establish a procedure for them to report a suspicion of irregularity within his organization.

2. In the procedure referred to in the first paragraph, the following shall in any event be included:

a. the manner in which the internal report is handled is recorded;

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37 https://www.government.nl/documents/reports/2016/01/18/integrity-management-in-the-public-sector-the-dutch-approach

38 https://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/klokkenluiders

39 https://www.rijksrecherche.nl/adviespunt-ambtsmisdrijven

40 https://www.meldmisdaadanoniem.nl/

41 https://www.devertrouwenslijn.nl

b. described when there is a suspicion of wrongdoing, taking into account the definition of a suspicion of wrongdoing as referred to in this Act;

c. stipulates that an employee can make a report in the following manner:

1. in writing;

2. orally via telephone or other voice messaging systems, or

3. at his request within a reasonable period of time by means of a conversation at a location;

d. recorded to which designated independent officer or officers the suspicion of wrongdoing can be reported, and which independent officers can give careful follow-up to that report;

e. [Editor's note: this part has not yet entered into force;]

f. [Editor's note: this part has not yet entered into force;]

g. stipulates that the employee has the opportunity to consult an advisor in confidence about a suspected irregularity;

h. stipulates that a reporter will receive an acknowledgement of receipt within seven days of receipt of a report;

i. a reasonable period of no more than three months after dispatch of the acknowledgement of receipt referred to in subparagraph h, within which the reporter is provided with information about the assessment and, where applicable, the follow-up to the report.

3. By way of derogation from the first paragraph, the limit of fifty employees laid down therein shall not apply to an employer falling within the scope of the Union acts listed in Parts IB and II of the Annex to the Directive.

4. For the purpose of receiving a report and conducting investigations into it, resources may be shared by:

a. employers in the private sector with 50 to 249 employees, and

b. municipalities or public bodies as referred to in Article 8, paragraph 1, of the Joint Arrangements Act .

5. The employer shall provide its employees with information in writing or electronically about:

a. the procedure referred to in the first paragraph;

b. the manner in which suspected wrongdoing outside the organisation can be reported to competent authorities and, where applicable, to institutions, bodies, offices and agencies of the European Union, and

c. the legal protection of an employee when reporting a suspected wrongdoing.

6. The procedure referred to in the first paragraph may also be opened by an employer to persons who are not employees but who otherwise perform or have performed work-related activities, and in that case the employer shall also make the information referred to in the fifth paragraph available to those persons.

7. An employer as referred to in the first or third paragraph, who has not established a works council or staff representation, and is not obliged to do so, requires the consent of more than half of the employees when establishing the procedure referred to in the first paragraph. This consent is not required insofar as the procedure is substantively regulated in a collective labour agreement.

8. Any interested employee may request the subdistrict court to determine that the employer must establish a procedure as referred to in the first paragraph within a period to be determined by the subdistrict court.

Code of Criminal Procedure

Article 162

1. Public bodies and officials who, in the exercise of their duties, become aware of a crime which they are not responsible for investigating, are obliged to report it without delay, handing over the documents relating to the case, to the public prosecutor or to one of his assistant officers,

a. if the offence is an official offence as referred to in Title XXVIII of Book Two of the Criminal Code, or

b. if the offence was committed by a civil servant who thereby violated a special official duty or made use of the power, opportunity or means granted to him by his office, or

c. if the offence involves infringement or unlawful use of a regulation the implementation or enforcement of which has been assigned to them.

2. They shall, upon request, provide the public prosecutor or the assistant public prosecutor designated by him with all information concerning criminal offences which they are not responsible for investigating and which have come to their attention in the exercise of their duties.

3. The provisions of the first and second paragraphs shall not apply to an official who, by making a report or providing information, would create a risk of prosecution of himself or of a person in whose prosecution he could excuse himself from giving evidence.

4. Similar obligations apply to legal entities or bodies of legal entities whose tasks and powers are defined by or pursuant to law, insofar as designated for this purpose by general administrative measure.

5. Regulations may be issued by or pursuant to general administrative measures in the interest of the proper implementation of this article.

6. The reporting of offences referred to in the first paragraph under c may be further restricted in consultation with the public prosecutor and in compliance with the provisions referred to in the previous paragraph.

7. The proposal for a general administrative measure as referred to in the fourth or fifth paragraph shall not be made until the draft has been published in the Dutch Government Gazette and two months have elapsed since the date of publication.

As mentioned in several scientific papers, public integrity has been high on the political agenda since the early 1990s (see: integrity management in the public sector, the Dutch approach & Understanding integrity policy formation processes: ‘In today’s world, public organisations pay more attention to ethics and integrity. In the Netherlands, public integrity was placed on the agenda in the early 1990s (Hoekstra & Kaptein, 2014). Dutch efforts in the field of integrity management can therefore be qualified as relatively long lasting.

An integrity violation can be reported in various ways. Provisions on this can be found in chapter 13 and appendix 12 of the Collective Labour Agreement for the State (www.caorijk.nl)

Internal

• Report to your own manager

In principle, the manager is the first point of contact for reporting. He or she knows the civil servant and the working conditions and can take immediate action if needed.

• Report to a higher manager

If the civil servant concerned does not dare to report to his or her own supervisor, has doubts about the handling, or if the report about the manager, then a report can be made to the higher manager.

• Report via or to the confidential adviser

A civil servant can also ask a counsellor to make a report on their behalf. A possible misconduct can be reported to a confidential adviser who will forward the report to the highest official management.

• Report to the integrity coordinator

At some ministries, one can report directly to the integrity coordinator. The integrity coordinator deals with the organisation's integrity policy and advises management. It is a professional who knows the rules and processes regarding integrity well.

• Specific reporting points

It is possible that a specific / central reporting point has been set up within the organization that people can contact

for a notification.

External

The Whistleblowers Authority (www.huisvoorklokkenluiders.nl) is there especially for reporting abuses, violations of integrity where the social interest is at stake.

Complain to the National Ombudsman

The National Ombudsman is there to handle complaints (www.nationaleombudsman.nl).

Article 162 of the Code for Criminal Procedure includes a reporting obligation for civil servants. The duty to report applies to crimes, not to violations.

It is required by law, but it is not centrally regulated. There are no known cases in which this obligation has not been met.

Article 7: 658c of the Dutch Civil Code contains the prohibition of retaliation for employees who report a suspicion of abuse as referred to in the Whistleblowers' House Act. In 2019, this article was supplemented with a prohibition of retaliation for those who work other than on the basis of an employment contract, such as the self-employed, volunteers and interns.

The general provision about 'good employment practices' also plays a role. This provision is included in Article 7: 611 BW and states that an employer must behave as a good employer. It follows from this article and the parliamentary history of this article that employees must be protected against retaliation.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

Every public or private institution that employs at least 50 persons must have a reporting procedure in place (sect. 2 of the Whistle-blowers Authority Act). Violations of integrity can also be reported externally to the Whistle-blowers Authority and the National Ombudsman. Corruption offences, depending on the type of offence, must be reported to the Public Prosecution Service, the Fiscal Information and Investigation Service, the National Internal Investigations Department or the police, or through a confidential helpline (art. 162 of the Code of Criminal Procedure).

Paragraph 5 of article 8

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has partially implemented the provision under review and provided the following information.

The National Government Integrity Code of Conduct (GIR) contains the principle of not accepting any gifts with a value in excess of 50 euros, there is no registration of gifts with a value of 50 euros or less. Article 8 of the 2017 Civil Servants Act (Ambtenarenwet 2017) specifies that without permission from his employer, a civil servant may not accept or request gifts, payments, remunerations and rewards from a third party, if the civil servant maintains relations with that third party in his capacity as a civil servant.

In principle, a public official may have an secondary salary activity under private law, under the constitution there is a free choice of employment. If the secondary salary activities could affect the interests of the organization, the civil servant must report it by law. The manager and the employee discuss whether and how risks can be prevented. If this is not possible, it is possible to prohibit the secondary salary activities.

The GIR also contains a reporting obligation for financial interests and an obligation to report sensitive transfers to other employment. See GIR 2017/2018 4.1.3 and 4.1.5. Ad 4.1.3. The employer designates high-risk positions in the organization. These positions are subject to a legal obligation to disclose financial interests that could affect the interests of the service. However, the code of conduct calls on all officials to do this. A statutory registration requirement applies to reported financial interests. Financial interests that are for public service are prohibited by law.

Ad 4.1.5. The code of conduct appeals to the responsibility of civil servants, there is no legal obligation. Free choice of employment is enshrined in the Constitution. If a follow-up job could lead to a conflict of interests with the government service being abandoned, the civil servant is urged to report and discuss this in a timely manner to mitigate as much as possible.

In all other respects refer to the answers to article 5 and the other paragraphs of article 8 respectively.

Civil Servants Act 2017

Article 5

1. A government employer is responsible for:

a. the taking of the oath or making of the affirmation by the civil servant upon entering into employment;

b. the registration of secondary activities of civil servants which may affect the interests of the service insofar as these are related to the performance of their duties;

c. the disclosure of the secondary activities registered under paragraph b of civil servants appointed to a position for which disclosure of secondary activities is necessary to protect the integrity of the public service;

d. the designation of civil servants who perform activities that involve a particular risk of financial conflict of interest or the risk of improper use of price-sensitive information, the designation of the financial interests that they may not possess or acquire and the registration of the notifications made by them as referred to in Article 8, paragraph 2, sub b ;

e. a procedure for dealing with suspicions of wrongdoing by a civil servant within the organization where he or she works.

2. Further rules may be established by general administrative measure with regard to the provisions of the first paragraph.

Article 8

1. The official is not allowed to:

a.to perform secondary activities that would not reasonably ensure the proper performance of the duties or the proper functioning of the public service, insofar as this is related to the performance of his duties;

b.to participate directly or indirectly in contracts and deliveries for public services, unless the government employer with whom he has an employment contract has given permission to do so;

c.to have financial interests, to own securities or to conduct securities transactions as a result of which the proper performance of his duties or the proper functioning of the public service, insofar as this is related to the performance of his duties, would not reasonably be assured;

d.to possess or acquire financial interests which have been designated by the government employer with whom he has an employment contract pursuant to Article 5, paragraph 1, section d ;

e.to accept or solicit gifts, compensation, rewards and promises from a third party without the permission of the government employer, if the civil servant has relations with this third party as a civil servant.

2. The civil servant is obliged to the government employer with whom he has an employment contract:

a.to report any secondary activities that he performs or intends to perform, which may affect the interests of the service insofar as they are related to the performance of his duties;

b. if he has been designated within the meaning of Article 5, paragraph 1, subparagraph d , to report his financial interests as well as the ownership of and transactions in securities that may affect the interests of the public service insofar as these are related to the performance of his duties and to provide further information in this regard upon request.

3. Rules regarding the application of the first and second paragraphs may be established by general administrative measure.

Civil servants:
Pursuant to Article 8, paragraph 1, part A of the Civil Service Act 2017, civil servants are not permitted to perform ancillary activities as a result of which the proper performance of the position or the proper functioning of the public service, insofar as this is related to his performance, is not reasonably would be insured;
Pursuant to paragraph 2, part A of this article, the civil servant is obliged to report to the government employer with which he has an employment contract of the ancillary activities that he performs or intends to perform, which affect the interests of the service insofar as these are related can touch with his job performance;

1. Cabinet members. See mostly answer on question 16 (section about positions etc) and also draft report paragraph 2 of article 7.
2. Council members municipal and provincial. See mostly answer on question 17 which gives an outline of the sections of the Municipalities Act and the Provinces Act
3. Executive members municipal and provincial. See answers on question 17 which gives an outline of the sections of the Municipalities Act and the Provinces Act.

Ad 4.1.3. The employer designates high-risk positions in the organization. These positions are subject to a legal obligation to disclose financial interests that could affect the interests of the service. However, the code of conduct calls on all officials to do this. A statutory registration requirement applies to reported financial interests. Financial interests that are for public service are prohibited by law.

Ad 4.1.5. The code of conduct appeals to the responsibility of civil servants, there is no legal obligation. Free choice of employment is enshrined in the Constitution. If a follow-up job could lead to a conflict of interests with the government service being abandoned, the civil servant is urged to report and discuss this in a timely manner to mitigate as much as possible.

Article 5, paragraph 1, opening words and part d of the Civil Service Act 2017 (obligations of the employer with regard to the appointment of risk positions,
financial interests and registration obligation);

Article 8, first paragraph, opening words and parts c and d Civil Service Act 2017 (prohibition on certain financial interests);

Article 8, second paragraph, opening words and part b of the Civil Service Act 2017 (reporting and information obligation designated civil servant regarding
financial interests).

The process is as follows:
1. The government employer designates high-risk positions within its organization (Section 5 (1) (d)).
2. Civil servants in the designated positions have a statutory duty to report and provide information for financial interests that may affect the service; the Code of Conduct broadens this and calls on all officials to report. The government employer is obliged to register and internally registers these reports.
3. Some (especially financially oriented) organizations have a compliance officer who is notified, but this is not a legal general obligation. The employer is in principle free how to further organize this. The organizations have their own procedures for this. The employer / compliance officer assesses the reports for risks of a conflict of interest and harmfulness to the service. This is done on the basis of the information provided; if necessary, further information is requested (based on the aforementioned reporting and information obligation).
4. Financial interests that are harmful to the service are prohibited (legal prohibition).
5. There is no further central control of authorization monitoring
There are no specific sanctions for non-declaring or incomplete declaring. It is dereliction of duty. Employment law consequences can be attached to this.

Declarations of civil servants are not made public. There are no legal provisions for declarations of spouses and children, but they are taken into account in practice. For example, the code of conduct states that openness and honesty are important. In the code of conduct (4.4), the civil servant is also reminded to take into account the financial interests of, for example, his or her partner, which may also indirectly be the interests of the civil servant.

These data on asset declarations is not centrally registered, so there are no statistics.

Elected members are members of parliament. Information about MPs (house of representatives & the senate) can be found at question 16 and 17 above.

The process for gifts is as follows:

1. Granting favours to relations in any way whatsoever and having yourself rewarded or favoured for this as a civil servant is punishable (bribery, articles 177 and 363 of the Criminal Code).

2. No gifts or other benefits in the form of remuneration, allowances, savings or discount schemes, services, favours or promises may be demanded, solicited or accepted in connection with the work, unless authorized by the employer (Article 8, first paragraph, opening words and part e Civil Servants Act 2017).

3. A civil servant must also avoid the appearance of corruption (GIR).

4. The practical details of the employer's consent may differ per government organization.

5. For the central government, the GIR describes principles whereby openness and negotiability are the starting point and an appeal is made to the judgment of the civil servant to recognize temptations and to make the correct assessment. Guarding the independence is leading in this.

If the civil servant is offered something, he reports this to the supervisors before or afterwards, depending on the situation. Dilemmas are discussed with the supervisor and colleagues. The officer may take into account the normal courtesy standards and accept thanks, provided that they are not overly expensive and, as a rule, not with a value above € 50 (then it will be refused immediately). But if independence can be compromised, don't accept a gift anyway. The civil servant also does not receive gifts at the private address. Gifts that have been accepted as a courtesy are reported

afterwards to the manager who decides what to do with them (keep, return / refuse, give up eg for exhibition, raffle, charity or destruction).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

"High-risk" public officials designated as such by a government employer pursuant to article 5, paragraph 1, of the Civil Servants Act must declare their financial interests, but the fulfilment of this obligation is not monitored and the veracity of the declarations is not verified (see the section concerning article 52, paragraph 5, of the Convention, below). Gifts, including benefits, cannot be accepted without the permission of a superior (art. 8, para. 1 (e), of the Civil Servants Act).

The reviewing experts therefore recommended that the Netherlands strengthen systems to prevent conflicts of interest and endeavour to extend the obligation to report interests to include assets, and include the interests and assets of close family members; consider establishing a monitoring, verification and sanctions mechanism to ensure compliance with reporting obligations; and consider permitting its competent authorities to share such information with foreign competent authorities (art. 7, para. 4, art. 8, para. 5, and art. 52, para. 5).

Paragraph 6 of article 8

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Based on the Civil Servants Act, Chapter 8 'Disciplinary penalties' of the General Civil Service Regulations (Algemeen Rijksambtenarenreglement, ARAR)[42] sets out how to deal with violations of applicable rules as well as agreements between the employer and the employee. For municipalities, this procedure is laid down in the Collective Regulations and Implementation Agreement on Employment Conditions (Collectieve Arbeidsvoorwaardenregeling en Uitwerkingsovereenkomst, CAR-UWO), Articles 8:13, 16:1:1 and 16:1:2.[43] For the provinces, this procedure is laid down in the Collective Regulations on Employment Conditions for the Provinces (Collectieve Arbeidsvoorwaardenregeling Provincies, CAP), Article 10.3.[44] For the water

[42] https://wetten.overheid.nl/BWBR0001950/2019-01-01
[43] https://caruwo.vng.nl/IntegraleVersie.htm
[44] https://ipo.nl/beleidsvelden/werkgeverszaken/cao-2019-2020

authorities, these agreements are laid down in the Sectoral Collective Regulations on Employment Conditions for Personnel of the Water Authorities (Sectorale Arbeidsvoorwaardenregelingen Waterschapspersoneel).[45]

The introduction of the Civil Servants (Standardisation of Legal Status) Act (Wet Normalisering Rechtspositie Ambtenaren, Wnra) has resulted in the disciplinary rules for civil servants being scrapped in their current form. After the Wnra has come into force, all these extensive regulations will be abolished. For most sectors, the disciplinary rules will be reintroduced in a less extensive form within the various collective labour agreements (CLAs). On the one hand, the reason is that new disciplinary rules must not be contrary to the provisions of civil labour law. On the other hand, the transition to civil labour law may somewhat simplify the regulations, which are often complicated.

With a view to the introduction of the Wnra, the government employers and the trade unions for the municipal and provincial sectors (sectoren Gemeenten en Provincies) have concluded collective labour agreements that will replace the regulations on legal status as of 1 January 2020. The new CLAs for the municipal and provincial sectors do not include disciplinary penalty measures, with suspension being the only disciplinary measure to be reintroduced for the municipal sector (sector Gemeenten). The underlying thought is that the disciplinary measures in their current form do not befit the nature of civil labour law, given that most measures can also be imposed without further embedding and elaboration in a CLA. Moreover, such measures are also possible without there being a contractual basis, such as in the example of suspension. In principle, disciplinary measures that do affect the terms of employment in an employment contract do require a contractual basis. Examples include fines, withholding of statutory holidays, transfers and demotion.

The General Civil Service Regulations (ARAR), which will soon be subject of negotiations between the labour unions and public employer under the new Civil Servants Act (2017)[46], currently includes the following on disciplinary penalty measures:

Article 80 of ARAR

1 Any civil servants who fail to fulfil the obligations imposed upon them or are guilty of negligence in their duties may be punished with disciplinary measures.

2 Negligence includes both the contravention of rules and any act or omission not befitting a good civil servant in the same circumstances.

3 Unless We have otherwise provided or Our Minister has determined under Our authority, the sanction will be imposed by the authority competent to make appointments in the office held by the civil servant. If We hold such authority, the punishment shall be carried out by Our Minister, except if relating to the sanctions referred to in Section 81(1)(i) and (l).

Article 81 of ARAR

1 The disciplinary sanctions that can be imposed are:

o 1. written reprimand;

o b. exceptional working hours on days other than Sunday and official holidays in the religion of the civil servant, without remuneration or at a lower rate of remuneration than normal and for up to 6 hours with a maximum of 3 hours a day;

[45] https://www.uvw.nl/wp-content/uploads/2018/07/SAW-deel-I-tekst-1-juli-2018-JK2.pdf

[46] As a result of the reforms surrounding civil servants legislation, the ARAR is no longer in existence. Any citations of the ARAR represent the situation predating January 2020.

o c. reduction of the entitlement to annual leave up to 1/3 of the number of working hours to which the civil servant is entitled in the relevant calendar year;

o d. fine not exceeding €22;

o e. total or partial withholding of salary up to the amount of the salary for half a month;

o f. fixing of the salary to an amount within the salary scale applicable to the civil servant that is less than two annual periodic salary increases than ought to be applied under their applicable remuneration scheme or, if there is no applicable salary scale for the civil servant, reduction of the salary by up to 5%, for a period up to two years;

o g. restriction on granting periodic salary increases for up to four years;

o h. restriction from classification into a salary scale for which a higher maximum salary applies for a period up to four years, if such a classification would have taken place according to the applicable scheme;

o i. classification into a salary scale for which a lower maximum salary applies than that associated with the salary scale which should apply according to the applicable remuneration scheme, whether or not for a fixed period and with or without reduction of remuneration;

o j. relocation, whether or not accompanied by the granting of an allowance for potential relocation costs up to the amount that would be granted for relocation in the interest of the position under the Travel & Relocation Allowance Decree 1989 (Verplaatsingskostenbesluit 1989);

o k. suspension for a fixed period of time with total or partial withholding of remuneration;

o l. dismissal.

2 If a sanction as referred to in Paragraph 1 under (g), (h) and (i) has been imposed, the position of the civil servant in question may be brought in line with the position as it would have been without the imposition of a sanction either wholly or in part with effect from a specified time, if the subsequent conduct of the civil servant has given rise thereto in the opinion of the authority competent to issue such a sanction.

3 In relation to the imposition of a sanction, it may be determined that the sanction will not be enforced if the civil servant should not engage themselves in similar negligence as that for which the sanction has been imposed during a specific period, nor commit any other type of serious negligence as well as adhere to any special conditions associated with the imposition of the sanction.

Article 82 of ARAR

1. In cases where civil servants account for their conduct, they shall do so in respect of the authority competent to impose the intended sanction or in respect of an otherwise appointed authority, unless otherwise specified by Royal Decree. If We hold such authority, civil servants shall be accountable to Our Minister or to an authority appointed by that party. The authority in respect of which the accountability takes place shall determine whether this accountability shall be carried out verbally or in writing, on the understanding that a written report requires that civil servants must be offered the opportunity to give a more detailed oral clarification at their request.

2. A report shall be drawn up immediately of the verbal account provided or of any further verbal explanation, which shall be read to and signed by the person in whose presence the account as well as the explanation was given and by the civil servant in question. If civil servants refuse to sign the document, this fact shall be noted in the report, if possible stating the reasons for this refusal. A copy of the report shall be issued to the civil servant.

Article 82 of ARAR

Civil servants cannot be punished for contravening Section 125a(1) of the Civil Servants Act before advice is obtained from the Advisory Committee on the basic rights and performance of duties by civil servants.

Article 83 of ARAR

Civil servants must confirm having received a decision on the imposition of a sanction by the immediate return of a signed and dated receipt.

Article 84 of ARAR

Except for the written warning, sanctions shall not be enforced as long as they have not become final, unless immediate enforcement has been ordered when the sanction was imposed.

Civil Servants Act 2017

Article 5

1. A government employer is responsible for:

a. the taking of the oath or making of the affirmation by the civil servant upon entering into employment;

b. the registration of secondary activities of civil servants which may affect the interests of the service insofar as these are related to the performance of their duties;

c. the disclosure of the secondary activities registered under paragraph b of civil servants appointed to a position for which disclosure of secondary activities is necessary to protect the integrity of the public service;

d. the designation of civil servants who perform activities that involve a particular risk of financial conflict of interest or the risk of improper use of price-sensitive information, the designation of the financial interests that they may not possess or acquire and the registration of the notifications made by them as referred to in Article 8, paragraph 2, sub b ;

e. a procedure for dealing with suspicions of wrongdoing by a civil servant within the organization where he or she works.

2. Further rules may be established by general administrative measure with regard to the provisions of the first paragraph.

Article 6

1. Public servants shall be required to fulfil the obligations imposed on them by or pursuant to the law and arising from their duties and to otherwise conduct themselves as befits a good public servant.

2. For the purposes of the Dutch Civil Code, non-compliance with paragraph 1 shall be deemed a failure to comply with the duties imposed on a public servant by virtue of their employment agreement.

Article 8

1. The official is not allowed to:

a. to perform secondary activities that would not reasonably ensure the proper performance of the duties or the proper functioning of the public service, insofar as this is related to the performance of his duties;

b. to participate directly or indirectly in contracts and deliveries for public services, unless the government employer with whom he has an employment contract has given permission to do so;

c. to have financial interests, to own securities or to conduct securities transactions as a result of which the proper performance of his duties or the proper functioning of the public service, insofar as this is related to the performance of his duties, would not reasonably be assured;

d. to possess or acquire financial interests which have been designated by the government employer with whom he has an employment contract pursuant to Article 5, paragraph 1, section d ;

e. to accept or solicit gifts, compensation, rewards and promises from a third party without the permission of the government employer, if the civil servant has relations with this third party as a civil servant.

2. The civil servant is obliged to the government employer with whom he has an employment contract:

a. to report any secondary activities that he performs or intends to perform, which may affect the interests of the service insofar as they are related to the performance of his duties;

b. if he has been designated within the meaning of Article 5, paragraph 1, subparagraph d , to report his financial interests as well as the ownership of and transactions in securities that may affect the interests of the public service insofar as these are related to the performance of his duties and to provide further information in this regard upon request.

3. Rules regarding the application of the first and second paragraphs may be established by general administrative measure.

Code of Conduct for Integrity in the Central Public Administration 2016

4.1 Conflict of interests

4.1.1 Gifts, services and other benefits

Sometimes a business contact wants to offer you something, or you can make use of certain benefits through your work. This can be a physical gift, a service or a benefit such as a savings or discount scheme (such as air miles or frequent flyer points accumulated during official trips). Integrity risks are attached to this. One such risk is that of influence and conflicts of interest. The key point in this regard is that you must guarantee your independence as a civil servant. You must also be seen to prevent the appearance of influence. Do not just accept a gift.

- do not accept any gifts with a value of more than €50;

- do not accept any gifts from third parties at your home address;

- from the perspective of reliability and carefulness, do not use benefits acquired through work, such as savings points, for private purposes.

Discuss the matter

It will not always be immediately clear whether you may accept and keep a gift. Your supervisor will then consider with you what should be done. In some cases, there will be no problem. However, the conclusion can also be that you should politely refuse or return the offer or gift; or that you should accept it, but not keep it for yourself and make it available for general use or for a good cause. You will need to take applicable practices and manners into account, especially with regard to foreign contacts, as it could be impolite to refuse a gift. In that case, you should accept and then discuss with your supervisor what to do next. Deal openly with this in each case and discuss dilemmas with both your supervisor and colleagues. Openness and transparency not only help to identify temptations and weigh things up properly, but also to strengthen trust in each other.

4.1.2 Invitations, commercial activities and sponsorship

Networking can be part of your duties. You might receive invitations from external parties. It is best to accept these, provided that you act sensibly and keep the circumstances in mind. The acceptance of invitations must be functional, moderate and efficient. The reciprocity of invitations is also an aspect to take into consideration
[…].

4.1.3 Financial interests and trade on the stock market

You may have financial interests in one or more companies, trade on the stock market, or intend to do so. This can give rise to risks, for example with regard to conflicts of interest or prior knowledge of price-sensitive information. Your employer is responsible for designating positions that pose an additional risk in this regard.

[…].

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Annual Report on Government Operational Management (Jaarrapportage Bedrijfsvoering Rijk, JBR)[47] provides a coherent picture of the government's organisation and operations each year. This Annual Report on Government Operational Management

combines various accountability reports on operations submitted to the Lower House of Parliament, which limits the number of reports. As of 2017, the annual report also includes the number of integrity violations per category, as well as the corresponding sanctions applied.

1) The introduction of the Civil Servants (Standardisation of Legal Status) Act (Wet Normalisering Rechtspositie Ambtenaren, Wnra) has resulted in the disciplinary rules for civil servants being scrapped from their former form. When the Wnra came into force on 1 January 2020, all these extensive regulations have been abolished. On the one hand, the reason is that new disciplinary rules must not be contrary to the provisions of civil labour law. On the other hand, the transition to civil labour law may somewhat simplify the regulations, which are often complicated.

With a view to the introduction of the Wnra, the government employers and the trade unions for the municipal, provincial, water authorities and national government sectors (sectoren Gemeenten, Provincies, Waterschappen en Rijk) have concluded collective labour agreements (CLA's) that have replaced the regulations on legal status as of 1 January 2020.

The new CLAs for the municipal, provincial and water authorities sectors do not include disciplinary penalty measures. The underlying thought is that the disciplinary measures in their former form did not befit the nature of civil labour law, given that most measures can also be imposed without further embedding and elaboration in a CLA. Moreover, such measures are also possible without there being a contractual basis, such as in the example of suspension. In principle, disciplinary measures that do affect the terms of employment in an employment contract do require a contractual basis. Examples include fines, withholding of statutory holidays, transfers and demotion.

[47] https://www.rijksoverheid.nl/documenten/rapporten/2019/05/01/jaarrapportage-bedrijfsvoering-rijk-2018

(2) If a civil servant has committed a criminal offence, then the criminal justice system will also be applied. A civil servant can get a disciplinary measure and a criminal punishment. A criminal judge can decide to give the civil servant a lower punishment for the criminal offence, if he thinks the disciplinary measure also serves as a punishment.

The CAO Rijk (CLA) includes disciplinary penalty measures. In order to ensure that the legal possibilities for punishment are handled in the same way within the national government sector, the CLA contains an exhaustive list of which disciplinary penalty measures can be given. The CAO Rijk currently includes the following disciplinary penalty measures :

• written reprimand;

• reduction of the 'IKB'-hours a civil servant is entitled to;

• exclusion from a periodic salary increase for a maximum of four years;

• relocation, whether or not accompanied by the granting of an allowance for potential relocation costs up to the amount that would be granted for relocation in the interest of the position under the CAO Rijk;

• fine, if a civil servant has broken a rule for which a fine applies in the staff regulations, which are a result of negotiations between the labour unions and the employer;

dismissal under the rules of civil labour law.

If it is decided to impose a disciplinary penalty measure, the decision must be made carefully. This means, among other things, that:

• it must be justified why a disciplinary penalty measure is imposed;

• the manager must always consider the circumstances of the case in his decision about a disciplinary penalty measure to be imposed. The circumstances of the case cannot be stated exhaustively, but the duration of the employment, any previous incidents and personal circumstances are certainly included. The extent to which the employer has paid attention to the behaviour desired by him (e.g. integrity) or undesirable behaviour (e.g. drug policy) plays a role in this;

• the civil servant concerned is heard (where possible) before a disciplinary penalty measure is imposed, so that he can give his view on the situation and put forward any personal circumstances;

• the punishment must be adapted to the gravity of the offense (proportionality). A serious offense justifies a severe punishment, but not every undesirable behaviour deserves the heaviest punishment;

equal cases should be treated equally.

If a dispute arises about an imposed disciplinary penalty measure, the civil servant can go directly, and at least within four weeks after the employer has informed the civil servant of their intent to impose a disciplinary penalty measure, to the disputes committee. In the case of dismissal under the rules of civil labour law, and particularly in the case of summary

dismissal, an employee can go the disputes committee, however solely a judge can rule on the legal validity of such a dismissal.

The disputes committee for the national governmental sector (Geschillencommissie Rijk) is open to most national governmental civil servants and to employees of a number of Independent Administrative Bodies (ZBOs) who have joined the disputes committee. These ZBOs fall under the Central Government Collective Labour Agreement or apply the Central Government Collective Labour Agreement. If a civil servant submits a dispute, they will be informed whether the committee can process their request. If that is the case, there is usually a hearing in which the civil servant and employer explain their views on the dispute and answer any questions from the committee about this. After the hearing, the committee will make a decision. A decision of the disputes committee is not binding. If the employer takes a decision that deviates from the decision of the disputes committee, the employer is obliged to motivate this in writing.

Civil servants cannot be disciplined for the way in which they have expressed their own opinion in public, attended a demonstration or meeting or are a member of a certain association before advice is obtained from the Advisory Committee on the basic rights and performance of duties by civil servants (AGFA).

The disciplinary measures and penalties are laid down in Chapter 15 of the Collective Labour Agreement. (Please see in Dutch: 15. Ordemaatregelen en straffen | CAO Rijk Online | CAO Rijk)

Chapter 15:

Order measures

Your employer can take measures to maintain order within the organization.

Your employer can forbid you access to your workplace. During the period that you are unable to access your workplace as a result, your employer may instruct you to do your own work or other work at another workplace.

In addition, your employer can suspend you. This is possible if:

- You have been prosecuted for a crime
- Your employer intends to dismiss you as a punishment for an urgent reason or because you acted or failed to act culpably
- Your employer considers this necessary in the interest of the organization

Your employer will continue to pay your monthly income during the disciplinary measure in the manner set out in this collective labour agreement.

Punishments

You must behave like a ‘good civil servant’ [1]. This means that you are expected to do your work properly, committed and conscientiously and that you comply with the rules. If you nevertheless do

something that is not allowed or that you do nothing when you should have done something, your employer can impose a penalty on you.

In that case, your employer can:

- written reprimand;
- reduction of the 'IKB'-hours a civil servant is entitled to;
- exclusion from a periodic salary increase for a maximum of four years;
- relocation, whether or not accompanied by the granting of an allowance for potential relocation costs up to the amount that would be granted for relocation in the interest of the position under the CAO Rijk;
- fine, if a civil servant has broken a rule for which a fine applies in the staff regulations, which are a result of negotiations between the labour unions and the employer;
- dismissal under the rules of civil labour law.

If it is decided to impose a disciplinary penalty measure, the decision must be made carefully. This means, among other things, that:

- it must be justified why a disciplinary penalty measure is imposed;
- the manager must always consider the circumstances of the case in his decision about a disciplinary penalty measure to be imposed. The circumstances of the case cannot be stated exhaustively, but the duration of the employment, any previous incidents and personal circumstances are certainly included. The extent to which the employer has paid attention to the behaviour desired by him (e.g. integrity) or undesirable behaviour (e.g. drug policy) plays a role in this;
- the civil servant concerned is heard (where possible) before a disciplinary penalty measure is imposed, so that he can give his view on the situation and put forward any personal circumstances;
- the punishment must be adapted to the gravity of the offense (proportionality). A serious offense justifies a severe punishment, but not every undesirable behaviour deserves the heaviest punishment;
- equal cases should be treated equally.

If a dispute arises about an imposed disciplinary penalty measure, the civil servant can go directly, and at least within four weeks after the employer has informed the civil servant of their intent to impose a disciplinary penalty measure, to the disputes committee. In the case of dismissal under the rules of civil labour law, and particularly in the case of summary dismissal, an employee can go the disputes committee, however solely a judge can rule on the legal validity of such a dismissal.

The disputes committee for the national governmental sector (Geschillencommissie Rijk) is open to most national governmental civil servants and to employees of a number of Independent Administrative Bodies (ZBOs) who have joined the disputes committee. These ZBOs fall under the Central Government Collective Labour Agreement or apply the Central Government Collective Labour Agreement. If a civil servant submits a dispute, they will be informed whether the committee can process their request. If that is the case, there is usually a hearing in which the civil servant and employer explain their views on the dispute and answer any questions from the committee about this. After the hearing, the committee will make a decision. A decision of the disputes committee is not binding. If the employer takes a decision that deviates from the decision of the disputes committee, the employer is obliged to motivate this in writing.

Civil servants cannot be disciplined for the way in which they have expressed their own opinion in public, attended a demonstration or meeting or are a member of a certain association before advice is obtained from the Advisory Committee on the basic rights and performance of duties by civil servants (AGFA).

[1] The following articles are important for the term 'good civil servant':

§ 3. Obligations for public servants

Article 6 Civil Servants Act 2017

1. Public servants shall be required to fulfil the obligations imposed on them by or pursuant to the law and arising from their duties and to otherwise conduct themselves as befits a good public servant.

2. For the purposes of the Dutch Civil Code, non-compliance with paragraph 1 shall be deemed a failure to comply with the duties imposed on a public servant by virtue of their employment agreement.

Article 7 Civil Servants Act 2017

Public servants shall swear a solemn oath or make a sworn statement in accordance with a form established by general administrative order, which form may vary for different positions.

Article 8 Civil Servants Act 2017

1. Public servants shall be prohibited from:

a. undertaking ancillary activities as a result of which the proper performance of their duties or the proper functioning of the public service, to the extent this relates to the performance of their duties, cannot reasonably be guaranteed;

b. participating directly or indirectly in contracting for services or supplies to public services, unless the public sector employer with which the public servant has concluded an employment agreement has granted permission for this;

c. holding financial interests, possessing securities or carrying out securities transactions as a result of which the proper performance of their duties or the proper functioning of the public service, to the extent this relates to the performance of their duties, could not reasonably be guaranteed;

d. holding or acquiring financial interests as designated under Section 5, paragraph 1(d), by the public sector employer with whom the public servant has concluded an employment agreement;

e. accepting or requesting payment, gifts, fees or promises from a third party with whom a public servant maintains relations in an official capacity, without the permission of their public sector employer.

2. Public servants shall be required to disclose the following to the public sector employer with whom they have concluded an employment agreement:

a. any ancillary activities they undertake or intend to undertake that may impact on the interests of the service, in so far as those activities are related to the performance of their duties;

b. if the public servant is a designated public servant within the meaning of Section 5, paragraph 1(d), their financial interests, any securities held by them and any securities transactions carried out by them that may impact on the interests of the service, in so far as those activities are related to the performance of their duties. The public servant shall furthermore be obliged to comply with requests for additional information in this regard.

3. Rules may be laid down by an order in council regarding the application of paragraphs 1 and 2.

Article 9 Civil Servants Act 2017

Current and former public servants shall be required to keep confidential anything they take cognizance of in connection with their duties, to the extent that this obligation follows from the nature of the matter.

Article 10 Civil Servants Act 2017

1. Public servants shall refrain from expressing thoughts or sentiments or from exercising the right to freedom of association, the right to hold meetings or the right of demonstration if, as a result of the exercising of such rights, the proper performance of their duties or the proper functioning of the public service, to the extent this relates to the performance of their duties, cannot reasonably be guaranteed.

2. Where the right to freedom of association is concerned, paragraph 1 shall not apply to membership of:

a. a political group identified and registered in accordance with the Dutch Elections Act;

b. a trade union.

Article 11 Civil Servants Act 2017

Whilst present at their place of work, public servants shall be required to undergo a body search, a search of their clothes or a search of their effects present at the place of work if the public sector employer orders such a search in the interest of the service. The public sector employer that has ordered the search shall take the necessary measures to prevent any unfair or improper treatment during that search.

(b) Observations on the implementation of the article

The Code of Conduct for Integrity in the Central Public Administration provides civil servants in the central public administration with a framework for managing conflicts of interest (section 4.1). The Code is not enforceable and does not establish disciplinary sanctions. Violations of integrity rules may be sanctioned under labour law (art. 6 of the Civil Servants Act and the Collective Labour Agreement).

Secondary professional activities must be reported, and ancillary activities and financial interests that may hamper the functioning of the public administration are prohibited (art. 8 of the Civil Servants Act). However, there is no mechanism for verifying adherence to these rules.

"High-risk" public officials designated as such by a government employer pursuant to article 5, paragraph 1, of the Civil Servants Act must declare their financial interests, but the fulfilment of this obligation is not monitored and the veracity of the declarations is not verified (see the section concerning article 52, paragraph 5, of the Convention, below).

Article 9. Public procurement and management of public finances

Paragraph 1 of article 9

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The Netherlands has a system of public procurement which implements the EU procurement directives 2014/23/EU, 2014/24/EU and 2014/25/EU. Our procurement system therefore derives from EU law, and it is based on safeguarding the principles of transparency, objectivity, non-discrimination and equality. The general principles of Dutch civil law (including pre-contractual good faith) also apply. This system ensures fair competition between market parties that participate in tender procedures.

Please find below some more detailed information in relation to Article 9(1) of the Convention.

Legal framework

The legal framework in the Netherlands consists of the Dutch Public Procurement Act or PPA (Aanbestedingswet 2012), the Public Procurement Decree (Aanbestedingsbesluit), the Proportionality Guide (Gids Proportionaliteit), the Works Procurement Regulations 2016 (Aanbestedingsreglement Werken 2016) and the European Single Procurement Document (Uniform Europees Aanbestedingsdocument). The Dutch PPA, lower legislation and guidelines apply to all public contracts.

Furthermore, the principle of proportionality is further defined in the Dutch Proportionality Guide, in which the rules (voorschriften) explain how to take into account the proportionality principle and are based on the 'comply or explain' principle. If a contracting authority does not comply with the rules laid down in the Guide, it must be able to motivate these reasons.

Tendering procedures

For any tenders under the European threshold level, a European tendering procedure is not obligatory. There are several national tendering procedures:

- the open procedure;

- the restricted procedure;

- the competitive dialogue;

- the negotiated procedure with prior publication of a contract notice;

- the negotiated procedure without prior publication of a contract notice.

When choosing a specific procedure, the contracting authorities should take into consideration the principle of proportionality. The contracting authority also has to determine the time limit for submitting tenders, taking into account the subject matter of the contract, the time required to prepare the request or tender and the minimum time periods set out in Paragraph 2.3.2.3 of the PPA. In addition, the principle of proportionality needs to be respected when setting out these minimum terms and time limits.

During the procurement process, authorities must ensure that they give sufficient information to tenderers. After the contract notice, information rounds are held in writing or otherwise. These information rounds must be transparent. The contracting authority evaluates the bids on exclusion grounds, the selection criteria and the award criteria. After the selection and award phase, the contracting authority announces the results of the tender and publishes a contract award notice on the results of the procurement procedure.

Publication of tenders

Under the PPA, government authorities are obliged to publish all their calls for tenders – both national and European – on TenderNed's announcement platform. TenderNed (https://www.tenderned.nl/cms/) is the Dutch government's online tendering system and is a certified supplier of the European publication platform Tenders Electronic Daily (TED).

In addition, there are also commercial operators that offer tendering services similar to those of TenderNed. Although contracting authorities may use commercial operators for the purpose of publishing their tender notices, these operators are nonetheless required to publish on TenderNed. This process is facilitated by TenderNed through an import link, which allows the import of tender notices created by other systems.

Changes during the procedure

Changes to the procedure, the contract and the requirements are covered by the underlying principles of equal treatment as well as transparency. In this respect, changes to the procedure, the

contract and the requirements are only permitted if these changes were included in the tender documents by the contracting authority, provided that the provisions concerned were also drawn up in a clear, precise and unequivocal manner. If there are material changes in the contract or the procurement procedure itself, it is most probable that a new procurement procedure has to be initiated, taking into account the full minimum timescale for submitting a tender and including the possibilities to submit new questions about the tender documents.

Selection

The selection of tenderers is only permitted on the basis of the selection criteria provided for in the tender documents. These criteria may refer either to the tenderer's technical and/or professional abilities or to the tenderer's economic and/or financial position. Contracting authorities must always consider the principles of objectivity, proportionality, transparency and non-discrimination.

Legal recourse and remedies

In the Netherlands, procurement law is considered civil law. A review of procurement is done by a civil-law judge on request. Aside from court procedures, a special form of dispute resolution is offered by the Dutch Procurement Experts Committee (Commissie van Aanbestedingsexperts). This independent committee issues non-binding advice when a party (contracting authority or tenderer) is of the opinion that procurement rules are violated in a specific procurement procedure.

There is a possibility of appeal. The remedies that can be obtained in summary proceedings are diverse and include orders to:

a. suspend an ongoing tender procedure;

b. tender or retender a contract;

c. allow a tenderer to take part in the tender procedure; or

d. award a contract to a specific tenderer, provided that the contracting authority or entity still wants to award the contract.

Tenderers who have not been selected and who disagree with the decision to grant the contract award have (at least) 20 calendar days in which to institute summary proceedings, during which period no contract may be awarded. This so-called standstill period is regulated by Section 2.127 of the PPA. Not observing this period results in the potential voidability of the contract.

Once the tender procedure has resulted in the conclusion of a contract, the PPA provides legal grounds in Section 4.15 on which third parties can claim the annulment of the contract. These non-exhaustive grounds include the violation of certain essential public procurement rules such as publication requirements and the obligation to apply the aforementioned mandatory 20-day standstill period. The claim for annulment must be made within 30 calendar days after the notification of the conclusion of the contract, or within six months after the conclusion of the contract if no notification has taken place.

In addition to provisional measures or the annulment of a contract, tenderers can also claim damages caused by a breach of the public procurement rules. Damages can include tender costs as well as lost profits, under certain circumstances.

Integrity/preventing conflicts of interests

The PPA requires contracting authorities to take appropriate effective measures in order to prevent, identify and remedy conflicts of interest. Economic operators may be excluded from participation in a procurement procedure where a conflict of interest cannot be effectively remedied by other, less intrusive, means.

Contracting authorities may ask tenderers to submit a 'declaration of conduct' (Gedragsverklaring aanbesteden) in public procurement. Tenderers can obtain this document from Dienst Justis, which is part of the Ministry of Justice and Security, as evidence that the tenderer is not legally disqualified from bidding due to criminal proceedings or administrative restrictions.

The Dutch anti-corruption framework is built on the Public Administration Probity in Decision-Making Act or 'BIBOB' as well as the associated BIBOB Office within the Ministry of Justice and Security. The BIBOB Office conducts investigations of potential suppliers for issues such as criminal prosecution or failure to pay taxes, which could potentially be deemed by the contracting authority to be grounds for exclusion in some sectors.

Training and knowledge-sharing

Procurement training in the Netherlands is offered by a mix of public and private providers. Some contracting authorities offer a wide range of in-house training for public procurers. PIANOo is the Dutch expertise centre for public procurement, which is also responsible for improving administrative capacity among public procurement practitioners. PIANOo has a help desk and organises a wide range of training activities for public buyers throughout the year, including workshops, conferences and topic-specific training sessions. It also directs its members to a long list of private-sector skill-building organisations that cover procurement topics.

Public Procurement Act

Article 2.1

The provisions of or pursuant to Part 2 of this Act shall apply to public contracts for works the estimated value of which is equal to or higher than the amount referred to in Article 4(a) of Directive 2014/24/EU, excluding turnover tax.

Article 2.52a

1. Communication and information exchange between a contracting authority and an economic operator takes place using electronic means.

2. By way of derogation from the first paragraph, a contracting authority may offer economic operators the possibility to use means other than electronic means in the tendering procedure in a case referred to in points (a) to (d) of the first paragraph of Article 22 of Directive 2014/24/EU.

3. By way of derogation from the first paragraph, a contracting authority may offer economic operators the opportunity to use means other than electronic means in the tender procedure, to the extent necessary:

a. due to a breach of security of those electronic means, or

b. for the protection of the particularly sensitive nature of information which requires such a high level of protection that it cannot be adequately ensured by means of electronic tools or means which are generally available to entrepreneurs or which can be made available to entrepreneurs by alternative means of access.

4. Communications for which no electronic means are used pursuant to the second paragraph shall be made:

a.by post or other suitable carrier, or

b.by post or other suitable carrier and by electronic means.

5. An amendment to Article 22, paragraph 1, points (a) to (d), of Directive 2014/24/EU shall apply for the purposes of this Article from the date on which the relevant decision of the European Commission enters into force.

6. Our Minister shall publish a decision as referred to in the fifth paragraph in the Government Gazette.

Article 2.86

1. A contracting authority shall exclude from participation in a tender procedure a candidate or tenderer against whom a conviction as referred to in the second paragraph has been pronounced by a final judicial decision and which is known to the contracting authority as a result of verification in accordance with Articles 2.101 , 2.102 and 2.102a or on any other grounds.

2. For the purposes of the first paragraph, convictions relating to:

a. participation in a criminal organisation within the meaning of Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ 2008, L 300);

b. bribery within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ 1997 C 195) and of the first paragraph of Article 2 of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ 2003 L 192);

c. fraud within the meaning of Article 1 of the Convention on the protection of the Community's financial interests (OJ 1995, C 316);

d. money laundering within the meaning of Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 1991, L 166) as amended by Directive No 2001/97/EC of the European Parliament and of the Council (OJ L 2001, 344);

e. terrorist offences or offences related to terrorist activities within the meaning of Articles 1, 3 and 4 of Council Framework Decision 2002/475/JHA of 13 June 2003 on combating terrorism (OJ EU 2002, L 164);

f. child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Framework Decision 2002/629/JHA (OJ 2011, L 101).

3. A contracting authority shall also exclude a candidate or tenderer from participating in a tender procedure if a person who is a member of the administrative, management or supervisory body or who has powers of representation, decision-making or control within it has been the subject of an irrevocable conviction as referred to in the second paragraph of which the contracting authority is aware.

4. A contracting authority shall also exclude a candidate or tenderer from participating in a procurement procedure if the contracting authority is aware that it has been established by a final and binding judicial or administrative decision in accordance with the legal provisions of the country in which the candidate or tenderer is established or in accordance with national legal provisions that the economic operator is in breach of its obligations to pay taxes or social security contributions.

5. The fourth paragraph shall not apply if the candidate or tenderer has fulfilled his obligations by paying the taxes or social security contributions due, including any accrued interest or penalties where applicable, or by making a binding arrangement for the payment thereof.

6. Convictions as referred to in the second paragraph shall in any event include convictions pursuant to Articles 134a , 140 , 140a , 177 , 178 , 225 , 226 , 227 , 227a , 227b , 273f , 285, third paragraph , 323a , 328ter, second paragraph , 420bis , 420ter or 420quater of the Criminal Code , or convictions

for violation of the offences referred to in Article 83 of the Criminal Code , if the provisions of that article have been met.

7. When applying the first paragraph, the contracting authority shall only take into account judicial decisions which have become final in the five years preceding the date on which the request to participate or tender was submitted.

Article 2.87

1. The contracting authority may exclude a tenderer or candidate from participating in a tender procedure on the following grounds:

a. the contracting authority shall demonstrate by any appropriate means that the candidate or tenderer has breached one or more of the obligations referred to in the second paragraph of Article 2.81;

b. the tenderer or candidate is bankrupt or in liquidation, his activities have ceased, he is subject to a suspension of payments or a (bankruptcy) agreement, or the candidate or tenderer is in another comparable situation as a result of a similar procedure under laws and regulations applicable to him;

c. the contracting authority can demonstrate that the tenderer or candidate has committed a serious error in the exercise of his profession, which may cast doubt on his integrity;

d. the contracting authority has sufficient plausible evidence to conclude that the tenderer or candidate has concluded agreements with other economic operators aimed at distorting competition;

e. a conflict of interest within the meaning of Article 1.10b cannot be effectively resolved by other less drastic measures;

f. due to the previous involvement of the tenderer or candidate in the preparation of the tender procedure, a distortion of competition as referred to in Article 2.51 has occurred which cannot be remedied by less drastic measures;

g. the tenderer or candidate has demonstrated significant or persistent shortcomings in the performance of a material requirement of a previous government contract, a previous special sector company contract or a previous concession contract and this has led to the early termination of that previous contract, to damages or to other comparable sanctions;

h. the tenderer or candidate has been guilty of serious misrepresentation in providing the information necessary to verify the absence of grounds for exclusion or compliance with the suitability requirements or has withheld such information, or has been unable to provide the supporting documents referred to in Articles 2.101 and 2.102 ;

i. the tenderer or candidate has attempted to unduly influence the decision-making process of the contracting authority, to obtain confidential information which could give him undue advantages in the procurement procedure, or has negligently provided misleading information which could have a material influence on decisions concerning exclusion, selection and award;

j. the contracting authority demonstrates by any appropriate means that the tenderer or candidate has failed to meet his obligations to pay taxes or social security contributions.

2. The contracting authority shall take into account when applying:

a. the first paragraph, part a, only a breach of the obligations referred to in that part which occurred in the three years preceding the time of submission of the request to participate or registration;

b. the first paragraph, part c, only serious errors that occurred in the three years preceding the time of submission of the request to participate or registration;

c. the first paragraph, part d, only decisions as referred to in Article 4.7, first paragraph, parts c and d , which have become irrevocable in the three years preceding the application;

d. the first paragraph, part g, only shortcomings that occurred in the three years preceding the time of submission of the request for participation or registration;

e. the first paragraph, part h, only situations in which false statements have been made, information has been withheld or supporting documents have not been submitted which occurred in the three years preceding the date of submission of the request to participate or the registration;

f. the first paragraph, part i, only undue influences on the decision-making process that occurred in the three years preceding the time of submission of the request to participate or registration;

g. the first paragraph, part j, only the failure to comply with the payment obligations referred to in that part that were established in the three years preceding the time of submission of the request to participate or registration.

3. Article 2.86, fifth paragraph , applies mutatis mutandis to the case referred to in the first paragraph, part j.

Article 2.90

1. After using the online database of e-Certis certificates, a contracting authority may impose suitability requirements on candidates and tenderers.

2. The suitability requirements referred to in the first paragraph may concern:

a. the financial and economic capacity;

b. technical and professional competence;

c. professional qualifications.

3. If the contracting authority sets suitability requirements as referred to in the second paragraph, under a, these requirements shall not relate to the level of the total turnover and the turnover of the business activity that is the subject of the public contract, unless the contracting authority provides compelling reasons for this in the tender documents.

4. The contracting authority shall only impose suitability requirements which can guarantee that a candidate or tenderer has the legal capacity and financial resources and the technical and professional competence to carry out the public contract.

5. If the suitability requirements referred to in the second paragraph, under a, relate to the level of the total turnover and the turnover of the business activity that is the subject of the public contract, that requirement shall not be higher than:

a. three times the estimated value of the contract;

b. if the contract is divided into lots, three times the value of a lot or a cluster of lots to be executed simultaneously;

c. in the case of an order based on a framework agreement, three times the value of the specific orders which must be carried out simultaneously;

d. if the order is based on a framework agreement, the value of the specific orders of which is not known, three times the value of the framework agreement;

e. in the case of a dynamic purchasing system, three times the expected maximum size of the specific contracts to be awarded under that system.

6. When setting suitability requirements as referred to in the second paragraph, part a, the contracting authority may require that the candidate or tenderer:

a. provides information about its annual accounts;

b. has an appropriate level of occupational risk insurance.

7. Where the contracting authority requests information on data from the annual accounts, it shall specify in the tender documents the transparent, objective and non-discriminatory methods and criteria according to which the requested data must have been determined.

8. When preparing and concluding a contract, a contracting authority shall only impose requirements on the tenderer and the tender that are related to and reasonably proportionate to the subject matter of the contract.

Article 2.106

1. The invitation to tenderers referred to in Article 2.105 shall state the internet address where the tender documents can be directly accessed.

2. By way of exception to the first paragraph, the invitation to the candidates referred to in Article 2.105 shall contain a copy of the tender documents in a case referred to in Article 2.66, third or fourth paragraph , where the tender documents are not yet freely, directly, fully and free of charge available.

3. The invitation to candidates referred to in Article 2.105 shall contain the information referred to in Annex IX, Section 1, to Directive 2014/24/EU.

Article 2.110

1. When applying the competitive dialogue, the public contract is awarded on the basis of the criterion of the most economically advantageous tender based on the best price-quality ratio.

2. A contracting authority shall specify in the notice of a public contract the needs and requirements which it defines in that notice or in the descriptive document.

3. A contracting authority shall also state in the notice or descriptive document the selected award criteria as well as an indicative timetable and shall provide in that notice or descriptive document a description of the selected award criteria.

4. A contracting authority shall open a dialogue with the candidates selected in accordance with paragraph 2.3.6.3 in order to determine which resources are appropriate to meet its needs in the best possible way.

5. During the dialogue, the contracting authority can discuss all aspects of the public contract with the selected candidates.

6. During the dialogue, the contracting authority shall ensure equal treatment of all tenderers and shall not provide information that could favour one or more tenderers over others.

7. The contracting authority shall not communicate to the other participants the proposed solutions or other confidential information provided by a participant in the dialogue without the consent of the participant concerned to the disclosure of the specific information concerned.

Article 2.113

The contracting authority shall assess the tenders against the standards, functional requirements and performance requirements set by it in the tender documents.

Article 2.114

1. The contracting authority awards a public contract on the basis of the tender that, in the opinion of the contracting authority, is the most economically advantageous.

2. The most economically advantageous tender is determined by the contracting authority on the basis of:

a. best value for money,

b. lowest costs calculated on the basis of cost-effectiveness, such as the life cycle costs referred to in Article 2.115a , or

c. lowest price.

[…].

Article 2.127

1. A contracting authority shall observe a suspensive period before concluding the contract envisaged by the award decision.

2. The suspensive period referred to in the first paragraph commences on the day after the date on which the notification of the award decision is sent to the tenderers and candidates concerned.

3. The suspensive period referred to in the first paragraph shall be at least 20 calendar days.

4. A contracting authority need not apply the first paragraph if:

a. this Act does not require publication of the notice of the public contract by means of the electronic tendering system;

b. the only tenderer involved is the one to whom the public contract is awarded and there are no other candidates involved;

c. this concerns contracts based on a framework agreement or specific contracts based on a dynamic purchasing system as referred to in Section 2.4.2 .

Article 2.131

If, during the suspensive period referred to in the first paragraph of Article 2.127 , an immediate provisional measure is requested with regard to the award decision in question, the contracting authority shall not conclude the agreement envisaged by that decision until the court or arbitral tribunal has taken a decision on the request for interim measures and the suspensive period has expired.

Article 4.13

1. Our Minister shall be responsible for setting up, maintaining, operating and securing an electronic system for tenders, by means of which:

a. the prior information notices and notices shall be sent to the European Commission for publication in the Official Journal of the European Union;

b. prior information notices, announcements and other information may be published and made available in the context of a tender procedure;

c. forms as referred to in Article 4.14, first and second paragraphs , are made available;

d. information for the purpose of the application and compliance with this Act and with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU may be provided, including electronic manuals for contracting authorities and special sector companies;

e. a company file is made available in which tenderers can securely store their data and documents and make them available to a contracting authority or special sector company;

f. tenders for public contracts, special sector contracts and concession contracts may be submitted;

g. data are collected for the purpose of fulfilling the statistical obligations under Directives 2014/23/EU, 2014/24/EU and 2014/25/EU;

h. data are collected for the purpose of reporting by Our Minister to both Houses of the States General.

2. Rules may be laid down by ministerial regulation regarding access to and connection to the electronic tender system for the purpose of making announcements as referred to in the first paragraph, parts a and b.

3. The electronic system referred to in the first paragraph shall provide interfaces for the connection and automated exchange of data with data processing systems of contracting authorities or special sector companies and of undertakings offering consultancy and support services.

Article 4.27

Our Minister shall promote the establishment of a committee whose purpose is to provide independent advice on complaints relating to tender procedures.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Dutch Public Procurement Expertise Centre PIANOo reported the following numbers of public contract awards on the basis of a public procurement procedure: 6.505 in 2017, 7.252 in 2018 and 7.456 in 2019. The numbers of appeals in public procurement procedures are 153 in 2017 and 129 in 2018. All data is public. All data is public and communicated to Parliament. The statistics for 2019 are not yet available.

The Netherlands is currently conducting research on legal remedies for public procurement. Its results will be published by the end of 2019. There are older research papers in Dutch available.

The Ministry of Economic Affairs and Climate Policy previously conducted research on public procurement court cases within the Netherlands in 2012 and 2014; also see https://www.rijksoverheid.nl/documenten/rapporten/2015/07/08/aanbestedingsrechtspraak-in-nederland-2012-en-2014.

Furthermore, the Procurement Experts Committee publishes a report on the work of the Committee each year; also see https://www.rijksoverheid.nl/documenten/rapporten/2018/05/22/5e-periodieke-rapportage-commissie-van-aanbestedingsexperts.

See https://zoek.officielebekendmakingen.nl/kst-34252-13.html

The measures concerned are:

- Further professionalization of public procurement
- Improved complaints resolution on a local level

- Expanding the possibilities for appeal in procurement lawsuits
- Clarifying the role of the committee of procurement experts
- Limiting excess application of clauses arranging forfeiture of rights
- Exploring the possibilities under the Act on experiments in the administration of justice
- Exploring a role for the committee of procurement experts as a “big stick” in situations where local complaints resolution is not yet adequate
- Exploring suspension of procurement procedures awaiting complaints resolution
- Monitoring complaints resolution in public procurement

The latter three measures were added in reaction to parliamentary questions which can be found through this link (in Dutch): https://zoek.officielebekendmakingen.nl/ah-tk-20192020-582.html

Corruption is not within the scope of any of these measures. A full elaboration of the above measures is expected to be announced in the beginning of 2021.

Via the above link mentioned under question 1 above (https://zoek.officielebekendmakingen.nl/kst-34252-13.html) you can find a report (in Dutch) on jurisprudence in the field of public procurement in the years 2016-2018. This is the document named blg-894187. It shows that the number of cases brought before court was between 164 and 129 per year in the years 2016-2018. About three quarters of cases are won by the contracting authority. Please see the following link (page 5): file:///H:/Downloads/blg-894187.pdf

Next to that, the Dutch procurement act (Aanbestedingswet 2012) states in article 1.10b that a contracting authority should take appropriate measures to avoid any form of fraud, corruption and conflicts of interest in the course of a procurement procedure.

Public Procurement Act 2012

Article 1.10b [Prevention of fraud, corruption and conflicts of interests]

1. A contracting authority or a special sector company shall take appropriate measures to prevent, acknowledge and resolve any fraud, preferential treatment, corruption and conflicts of interests effectively during a tendering procedure, in order to avoid distortion of competition, guarantee the procedure's transparency and ensure the equal treatment of all economic operators.

2. Conflicts of interests, as provided for in paragraph 1, include in any case the situation where staff members of the contracting authority, the special sector company or the organisation under public or private law acting on behalf of the contracting authority or the special sector company, which offers an additional purchasing activity on the market, which are involved in the implementation of the tendering procedure or can influence the result of this procedure, have financial, economic or other personal interests, directly or indirectly, that may be deemed to compromise their impartiality or independence in this procedure.

This in in line with article 24 of Directive 2014/24/EU. Additionally, article 2.87 (1) (c) states that a contracting authority can exclude a bidder if they can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable. This is in line with art. 57 (4) (c) of directive 2014/24/EU.

The Netherlands Court of Audit (NCA) is the Supreme Audit Institution (SAI) and is by our Constitution charged with the annual audit of the annual financial reports of each ministry. Given that the NCA, annually write reports and issue opinions per ministry we annually perform a risk assessment per ministry. For each of the processes and parts of the financial statements we determine what the inherent and internal control risks are. Based on the chances and impacts of the risks the NCA write an audit plan per ministry.

Quite often procurement is seen as a significant risk for ministries, so they need to act accordingly when performing the audits. When checking for procurement they check:

1. the effectiveness of the internal controls regarding procurements; and
2. individual procurements.

1. Effectiveness of the internal controls

They expect that each ministry has taken the right measures to comply with the (EU and national) procurement regulations. More specifically, the NCA have developed 8 key controls that they expect to be implemented by the ministries. These include:

- The ministry/purchasing organization has drawn up a policy for the choice of suppliers that are invited to submit a tender. Also for contracts with a value lower than the European tender threshold the choice for the supplier has to be motivated.
- Internal control of compliance with procurement laws and regulations and internal procurement procedures
- Up to date and complete purchasing and (European) tender calendar
- Correct and complete contract register
- Mandatory consultation with the purchasing or legal department in case of intended purchases above the threshold of single tendering (€ 33.000 excluding VAT). So no purchases above € 33.000 can be made without the knowledge of the purchasing or legal department.
- Periodic performance of spend analyses in which all the expenditures of the last 4 years are put into one file and are compared. In this analysis, among other things, the expenditures should be checked for any payments to a supplier while there was no European tender, payments to a supplier while there was a contract with a different supplier, payments to a supplier while the contract has expired, payments to a supplier where the contract is missing.
- Procedure that if a ministry in exceptional cases does not want to obey the procurement regulations the highest management must give its approval
- Presence and completeness of purchase files for each procurement

(For more info on these key controls, see the NCA website in Dutch: https://www.rekenkamer.nl/onderwerpen/verantwoordingsonderzoek/over-dit-onderzoek/beoordelingskaders/beoordelingskader-inkoopbeheer)

The NCA check these key controls by interviews and inspecting documents. If one or more of the key controls are not present or not working, they can qualify the tender/purchase management as shortcoming in our reports. By qualifying a shortcoming, they force the ministry to come with an improvement plan. In the next years, they will follow the improvements.

2. Individual procurements.

For each type of tender (e.g. under the threshold, the open procedure, the restricted procedure, the competitive dialogue) the NCA checks whether the tender is in line with the regulations. For example, they check for the publication of the tender, the opening of the save, if the requirements from the ministry are reasonable, if the requirements are indeed fulfilled in the accepted offer and if the rating of the participating companies is done correctly.

When a contract is not a new contract but an extension or enlargement of an existing contract they check if this is allowed.

The number of individual procurements the check depends on the materiality level, their risk assessment and their assessment of the effectiveness of the internal controls. If the NCA finds irregularities, they first will have to evaluate the impact of these irregularities on their initial risk assessments and on their judgments of the effectiveness of internal control. For their estimation of the total error rate in the financial statements, they have to decide whether to just add the errors up or to extrapolate them. If the estimated irregularities are higher than a certain threshold, they cannot give an unqualified opinion to the financial statements.

When performing these audits they make use, where possible, of the work of the centralized internal audit service of the national government: the Central Government Audit Service.

The NCA has no other powers than to audit and to issue our reports to the Parliament. They do not have the power of issuing penalties in cases of errors, like some of the SAIs in southern countries have, often called ‘tribunals des comptes’.

However, for performing their audits they have been given the power of unrestricted access to all government information sources.

The reports are send to House of Parliament (the House of Representatives and the Senate) and made publicly available on their website. Reported shortcomings (of each ministers’ control over compliance with EU and national procurement regulations) have to be met by actions by ministers to improve the internal control, which are monitored by the NCA and made visible to House of Parliament. Members of House of Parliament are in the end empowered to decide whether continuation of lack of control will have consequences for their thrust in the minister’s capabilities, if they lack trust, they are the ones who in the end have the power to send the minister away, when needed.

Central (Government) Audit Service:

The Central Government Audit Service (ADR) conducts the accountants audit within the government, provides audits on request and promotes cooperation between the different departments in the area of governmental auditing. The Central Audit Service is the independent internal auditor of the Central Government and the Audit Authority in the Netherlands for the European Commission. The ADR is part of the Ministry of Finance and falls directly under the Deputy Secretary General. The ADR works on behalf of the ministries. In order to be able to develop good reporting standards for the public sector, but especially for the national government, the ADR follows international developments in the field of financial reporting. Such as IPSAS.

In Article 1.1 of the Accounting Act 2016, the ADR is defined as "the service component of the"

Ministry of Finance charged with the performance of the audit function at the State". The by the

The statutory duty to be performed by ADR is based on Article 2.37, first paragraph, of the Accounting Act 2016 (CW 2016), which states that the ADR prepares reports on the annual reports

(which are sent to the Court of Audit by the Minister of Finance). The powers of the ADR are laid down in the Central Government Audit Service Decree: in Article 5 for what concerns the tasks referred to in Article 3 (statutory task) and in Article 8 with regard to the tasks referred to in Article 7 (demand-driven services).

Article 3 of the Central Government Audit Service Decree elaborates on the task that follows from Article 2.37, first paragraph, of de CW 2016. This task includes providing assurance in the form of a auditor's opinion on the fairness of the financial statements in the departmental annual report and conducting research into the budget management conducted, the financial management, material business operations and the records kept for that purpose. Also, research to the preparation of the non-financial information included in the annual report is part from the statutory duty. The product of the statutory task is the annual audit report at the annual report and the auditor's report contained therein. Furthermore, the ADR is based on Article 3 of the Decree on the State Audit Service charged with investigating the annual financial report of the Empire and to the Central Administration of the Treasury of the Government. In addition, the ADR can pursuant to Article 3 of the Central Government Audit Service Decree, are instructed by a minister to conduct research into a 'major project' designated by the House of Representatives.

In the context of Article 7 of the Central Government Audit Service Decree, the ADR performs at the request of the political and official leadership also so-called demand-driven investigations into policy and the business operations. The ADR can also provide an auditor's report on the basis of this article in the annual accounts of agencies. Finally, the ADR carries out under Article 7,preamble and under d, of the Central Government Audit Service Decree on behalf of the relevant ministers carry out work on behalf of the European Commission, whereby the regulations of the European regulations are leading. In this context, the ADR is the audit authority funds or acts as a certifying body. Furthermore, the ADR is charged with carrying out monitoring activities over other Community programs and the ADR responsible for controlling the own resources to be paid to the European Union.

Due to its role as an independent internal auditor, the ADR may provide services that pose a threat do not provide forms for compliance with the fundamental principles. An example of this is (structural) support or administrative services. Such work lead to the risk of self-assessment and are therefore a threat to objectivity and independence.

Article 3 of the Central Government Audit Service Decree sets out the tasks relating to the investigation of central government accountability and management. This includes the task of carrying out an annual investigation into the financial and non-financial accounting information in the annual reports.

Please see the (not-official) translation of the relevant articles of the Decree below and Annex D for a translation of the Government Accounts Act 2016.

Central Government Audit Service Decree

Paragraph 3 The investigation into central government accountability and management

Article 3. Duties with regard to the investigation into the accountability and management of central government

1 Our Minister of Finance instructs the Central Government Audit Service to conduct an annual investigation into:

a. the financial reporting information in the annual reports, as referred to in Articles 1.1 and 2.31 of the Government Accounts Act 2016;

b. the non-financial accounting information in the annual reports, referred to in Articles 1.1 and 2.31 of the Government Accounts Act 2016.

2 Our Minister of Finance assigns to the Central Government Audit Service the task of carrying out investigations into budget management, financial management, material business operations and the administrations of central government kept for that purpose.

3 Our Minister of Finance assigns to the Central Government Audit Service the task of:

a. to conduct an annual review of the financial reporting information in the Central Government's Annual Financial Report, as referred to in Article 2.35 of the Government Accounts Act 2016;

b. to conduct an investigation into the central administration of the State Treasury, as referred to in Article 4.17 of the Government Accounts Act 2016.

4 Our Ministers may instruct the Central Government Audit Service to conduct an investigation into a major project designated by the House of Representatives of the States General.

5 The investigation referred to in the preceding paragraphs shall be conducted under the supervision of an accountant as referred to in Article 393(1) of Book 2 of the Dutch Civil Code.

Article 4. Scope of tasks with regard to the investigation into the accountability and management of central government

1 The investigation, referred to in Article 3, first paragraph, opening words and under a, and the third paragraph, under a, is aimed at verifying whether the standards referred to in Articles 3.8, first paragraph, and 3.10 of the Government Accounts Act 2016.

2 The investigation, referred to in Article 3, first paragraph, preamble and under b, is aimed at verifying whether the standards referred to in Article 3.9 of the Government Accounts Act 2016 have been met.

3 The investigation, as referred to in Article 3, paragraphs 2 and 3, under b, is aimed at verifying whether the standards referred to in Articles 3.2 to 3.5 of the Government Accounts Act 2016 have been met.

4 The investigation, referred to in Article 3, fourth paragraph, is aimed at verifying whether the standards referred to in the Major Projects Regulations have been met.

Article 5. Information and consultation of documents due to the tasks relating to the investigation into the accountability and management of central government

1 Our Ministers and the Boards are bound by the Central Government Audit Service:

to provide the information that may be important for the investigation referred to in Article 3;

b. to make available for that purpose all goods, records, documents and other information carriers whose consultation may be of importance for the investigation referred to in Article 3.

2 The first applies mutatis mutandis if an administration or the related tasks are outsourced to a third party.

Article 6. Reports in connection with the tasks related to the investigation into the accountability and management of central government

1 The results of the investigation, as referred to in Article 3, first and second paragraph, are recorded annually for each annual report in a report as referred to in Article 2.37, first paragraph, of the Government Accounts Act 2016.

2 The report, referred to in the first paragraph, contains an auditor's report in which an auditor's opinion is given on the fairness of the financial statements included in the annual report. The financial statements include:

a. the statement of account with the accompanying financial notes;

b. if applicable, the summary accountability statement of the agencies with the accompanying notes;

c. the trial balance with the accompanying notes;

d. the report on the legality of the results of the budget implementation, which is included in the explanation of the conduct of business;

e. if applicable, the overviews with the data referred to in Articles 4.1 and 4.2 of the Standards for Remuneration Act.[48]

3 Findings are reported on the results of the investigation, as referred to in Article 3, first paragraph, opening words and under b, and second paragraph.

4 The reports referred to in Article 3, paragraphs 1 and 4, are presented to Our Minister concerned, the relevant council or the House of Representatives of the States General.

5 Our Minister concerned or the relevant board will be informed by or on behalf of Our Minister of Finance if the investigation referred to in Article 3 gives cause to do so.

§ 4. Other duties and powers

Article 7. Other tasks

1 Our Ministers and the Boards may instruct the Central Government Audit Service to conduct an investigation into: a. the policy and operational management of Our Minister concerned or the performance of duties and operational management of the relevant council;

b. the annual accounts of an agency, as referred to in Article 1 of the Agencies Regulation;

c. the performance of duties by the legal entities, limited partnerships, general partnerships and the natural persons referred to in Article 6.1, opening words and under a to c, of the Government Accounts Act 2016;

d. compliance with the conditions set for the management and accounting of the subsidy, loan, guarantee, contribution in kind or the tax allowance by the legal entities, limited partnerships, general partnerships and natural persons, referred to in Article 6.1, preamble and under a to c of the 2016 Government Accounts Act.

2 Our Minister of Finance may instruct the Central Government Audit Service to conduct an investigation into the statement on the expenditure of European funds in shared management by the Member State of the Netherlands, as referred to in Article 6.9 of the Government Accounts Act 2016.

3 The investigation referred to in paragraph 1, opening words and under b and d and paragraph 2, shall be conducted under the supervision of an accountant as referred to in article 393, paragraph 1, of Book 2 of the Dutch Civil Code.

Article 8. Information and consultation of documents due to other tasks

Articles 5 and 6, paragraph 5, apply mutatis mutandis to the tasks referred to in Article 7.

Article 9. Reports in connection with other tasks

[48] For an English translation, see: Standards for Remuneration Act (The Netherlands) | Publication | Government.nl

1 The results of the investigation, as referred to in Article 7, are recorded in a report.

2 The report is presented to Our Minister concerned or the relevant board.

§ 5. Evaluation and other provisions

Article 10. Evaluation of tasks and organization

1 Our Minister of Finance shall ensure that the organization of the Central Government Audit Service and the performance of the tasks referred to in Articles 3 and 7 are evaluated every five years. The results of the evaluation are recorded in a report.

2 Notwithstanding the first paragraph, a shorter term may be applied for the period of five years referred to in the first paragraph, at the request of the Interdepartmental Committee for the Central Government Audit Service, as referred to in Article 11.

Article 11. Interdepartmental Committee for the Central Government Audit Service

1 There is an interdepartmental committee for the Central Government Audit Service.

2 The Secretary-General of the Ministry of Finance chairs the interdepartmental committee for the Central Government Audit Service.

3 The committee consists of at least two secretaries-general of the ministries.

4 The task of the committee is:

a. supervising the quality of the services provided by the Central Government Audit Service;

b.discussing the annual plan and the annual report and, if applicable, the transparency report of the Central Government Audit Service;

c. advising on the evaluation referred to in Article 10.

(b) Observations on the implementation of the article

The Netherlands has a decentralized government system and, therefore, a decentralized procurement system, the legal framework for which is established by the Public Procurement Act, the Public Procurement Decree, the Proportionality Guide, the Works Procurement Regulations 2016 and the European Single Procurement Document. The Public Procurement Act is based on the European Union procurement directives 2014/23/EU, 2014/24/EU and 2014/25/EU. For tenders with a value equal to or above the European Union thresholds, a European Union tendering procedure is obligatory (art. 2.1 of the Public Procurement Act). For tenders with a value below the European Union thresholds, part I of the Public Procurement Act applies.

Under the Public Procurement Act, government authorities are obliged to publish all calls for tenders on the TenderNed platform (chap. 2.3 and art. 4.13). Tenderers are selected on the basis of

award criteria (chap. 2.3.8) and, in specific cases, on the basis of selection criteria (chap. 2.3.6) provided for in the tender documents (art. 2.3.3).

After the provisional award decision, unsuccessful tenderers have 20 calendar days to appeal and institute summary proceedings, during which period no contract may be awarded (arts. 2.127 and 2.131 of the Public Procurement Act). A request for a review by a civil law judge can be made. In addition to the judicial procedure, a special form of dispute resolution is offered by the Committee of Procurement Experts, which issues non-binding advice when a party claims that procurement rules have been violated (art. 4.27 of the Public Procurement Act).

Economic operators must be excluded from participating in a procurement procedure in case of convictions for, among other offences, corruption and fraud, and may be excluded from participating in a procurement procedure where a conflict of interest cannot be effectively remedied (arts. 2.86 and 2.87 of the Public Procurement Act).

The Dutch Public Procurement Expertise Centre, PIANOo, is responsible for, inter alia, organizing training activities and improving administrative capacity among public procurement practitioners.

Paragraph 2 of article 9

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

(b) Timely reporting on revenue and expenditure;

(c) A system of accounting and auditing standards and related oversight;

(d) Effective and efficient systems of risk management and internal control; and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The Netherlands is in compliance with this provision. The fundament of the national Dutch public finances lies in the Government Accounts Act 2016. This law describes the rules and regulations with regard to the management of the public finances as well as the mandatory measures which should be taken in order to promote transparency and accountability.

Based on the Government Accounts Act, ministry of Finance and other ministries adopted subordinated regulations which give guidance on how to implement different measures.

Government Accounts Act

Article 1.1. Definitions

agency: a revenue-expense agency or a liability-cash agency;

Central Government Audit Service: the department of the Ministry of Finance responsible for exercising the audit function within the Central Government;

profit-cost agency: a department of a ministry that has been designated as a profit-cost agency on the basis of Article 2.20, first paragraph ;

accrual system: the financial and administrative system of accounts in which the monetary values of the consumption of goods and services (expenses) in a year and the monetary values of the rights to receipts (benefits) that arise in that year are recorded as expenditure and receipts in a year;

[…].

Article 2.23. Submission of the national budget

1. We submit the proposals for legislation for the adoption of the budget statements to the House of Representatives of the States General on the third Tuesday in September of the year preceding the budget year.

2. Notwithstanding the first paragraph, We may authorise Our Minister of Finance to submit proposals for legislation to establish the budget statements to the House of Representatives of the States General.

3. On the day of the submission of the proposals for legislation establishing the budget statements, Our Minister of Finance shall submit the Budget Memorandum to the States General.

4. The Budget Memorandum contains at least:

a. the overall budgetary picture for the budget year in question and the four subsequent years of the national budget and the budget discipline sectors not included in the national budget;

b. the budgetary considerations on the proposed policy for the collective sector;

c. an overview of expenditure and receipts in the budgets for the budget year and the four subsequent years.

Article 2.24. Entry into force of proposed laws on budget statements

The proposals for laws establishing the budget statements provide for a provision regulating the entry into force. This provision determines the entry into force on 1 January of the year to which the budget statements relate.

Article 2.28

Our Ministers, each with regard to the policy for which he is responsible, shall send annually in December, no later than three days before the start of the recess of the House of Representatives of the States General, to both Houses of the States General, an overview of major changes in the expenditure, obligations and receipts of the budget year that are not included in the bills to be submitted by 1 December at the latest pursuant to Article 2.26 .

Article 2.29. Composition and content of the accountability of the State

1. The government's responsibilities include:

a. the annual reports referred to in Article 2.31 ;

b. the Annual Financial Report of the Government, referred to in Article 2.35 .

2. Our Ministers, each with regard to the budget for which he is responsible, shall draw up an annual report after the end of a budget year.

3. At the end of a budget year, our Minister of Finance draws up the Central Government's Annual Financial Report.

Central Government Audit Service Decree

Article 3. Tasks relating to the investigation into the accountability and management of the State

1. Our Minister of Finance assigns the Central Government Audit Service the task of conducting annual research into:

a. the financial accountability information in the annual reports referred to in Articles 1.1 and 2.31 of the Government Accounts Act 2016 ;

b. the non-financial accountability information in the annual reports, referred to in Articles 1.1 and 2.31 of the Government Accounts Act 2016 .

2. Our Minister of Finance assigns the Central Government Audit Service the task of conducting research into the budget management, financial management, material business operations and the administrations maintained for that purpose by the Central Government.

3. Our Minister of Finance assigns the Central Government Audit Service the task of:

a. to conduct an annual investigation into the financial accountability information in the Central Government's Annual Financial Report, as referred to in Article 2.35 of the Government Accounts Act 2016 ;

b. to conduct research into the central administration of the State Treasury, as referred to in Article 4.17 of the Government Accounts Act 2016 .

4. Our Ministers may instruct the Central Government Audit Service to conduct an investigation into a major project designated by the House of Representatives of the States General.

5. The investigation referred to in the preceding paragraphs shall be carried out under the supervision of an accountant as referred to in Article 393, first paragraph, of Book 2 of the Civil Code .

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

As stated in the answer above, the Netherlands has the Government Accounts Act 2016 which serves as the fundament of the financial management of the public finances of the national government. Based on this law, the Ministry of Finance has formulated rules and regulations in order to promote transparency and accountability. Examples of this underlying rules and regulations are:

- Instructions, including the planning of the procedures with regards to the adoption and discharge of the national budget. These instructions promote transparency and secure the uniformity of the presentation of the budget and the annual reports.
- Regulation with regard to the accounting and auditing standards.
- Regulation with regard to the financial management of the national public institutions.
- Training of personnel: financial management, auditing, preventing and detecting fraud, the national budget process etc.
- Concerning the audit and control of the national public finances, the Netherlands knows 4 lines of defence. At first the department of economic and finance (of the different ministries) has a responsibility, the Ministry of Finance has an important rule-making and monitoring role, the Central Government Audit Service conducts the accountants audit within the government, provides audits on request and promotes cooperation between the different departments in the area of

governmental auditing, and finally the Supreme Audit Institution gives an opinion on the accountability of the annual reports.

A description of the Dutch budgeting process can be found here: https://www.government.nl/topics/budget-day/budget-process

(a) Procedures for the adoption of the national budget;

The government presents its central government budget on Budget Day, the third Tuesday in September, but preparations commence in October of the previous year when the Minister of Finance sends budget instructions to the ministries. The ministers then inform the Minister of Finance of their plans for the coming period by means of policy letters. In the spring, the Minister of Finance sends a framework letter, asking what setbacks and windfalls there have been, what additional funding is being requested, whether spending in one or more of the three sectors (central government, social security and care) must be reduced or whether spending can be increased (for example to cut taxes or improve public finances). In the aggregates letter in April/May, the Minister of Finance informs the ministries how much can be spent in the coming year. In June, every ministry prepares a initial draft budget, which is finalised in the summer months. The Ministry of Finance decides whether the initial draft budgets are consistent with the coalition agreement, the budget notice and the aggregates letter. The Budget Memorandum is prepared at the same time as the draft budgets. It summarises the main policy frameworks set out in the individual budgets and discusses the financial and economic position of the Netherlands. The ministers work with provisional figures until the summer. In August, the latest economic data published by the Netherlands Bureau for Economic Policy Analysis (CPB) in the Macro Economic Outlook (MEV) are incorporated into the final decisions on the central government budget. In August, all the ministries present their final budgets to the Ministry of Finance. Together, they form the central government budget. Like other Bills, the central government budget and the Budget Memorandum are forwarded to the Council of State for advice, which is received in the first week of September. The ministers respond to the advice in writing. The central government budget and the Budget Memorandum are then printed so that they will be ready on time. Any amendments necessitated by the Council of State's advice and the latest figures are made in the printer's proofs. The budget is then ready to be presented on Budget Day.

On behalf of the government, the Minister of Finance presents the central government budget and the Budget Memorandum to the House of Representatives on Budget Day, the third Tuesday in September. When he presents the documents, the Minister of Finance gives a speech on the state of the Dutch economy. Shortly after Budget Day, parliament begins to debate the central government budget and the Budget Memorandum. It first debates the main political issues and then the financial and economic policies. The budgets of the individual ministries are then debated, first in the House of Representatives, which can make amendments, and then in the Senate. Each of these bodies approve the presented budget.

(b) Timely reporting on revenue and expenditure;

Once parliament has approved the departmental budgets, the ministries carry out the policies. Both the ministries and the House of Representatives monitor the implementation of the budget. The ministries inform the House of the budget's implementation by means of memorandums. The most important memorandums are the Spring Memorandum and the Autumn Memorandum. The Spring Memorandum considers the status of the current budget. If necessary, measures are proposed to change revenues or expenditures in response to developments since the budget was prepared. The Minister of Finance sends the Spring Memorandum together with the first supplementary budgets

to the House of Representatives. The Spring Memorandum is issued no later than 1 June in the current budget year. The Autumn Memorandum is the final budget memorandum to be sent to the House of Representatives and the Senate during the budget year. It is issued no later than 1 December. The Autumn Memorandum considers the implementation of the budget since the adoption of the Budget Memorandum. The budget can be amended if there have been financial windfalls or setbacks or if policy has been changed. The ministries prepare annual reports after the close of the budget year. The reports look back at the plans presented in the central government budget and the Budget Memorandum and the government accounts for their implementation. Together, the annual reports of the individual ministries from the National Financial Annual Report.

(c) A system of accounting and auditing standards and related oversight and (d) effective and efficient systems of risk management and internal control;

With respect to its public finances, the Netherlands is divided in separate layers of government: the State, municipalities, provinces and water boards. Concentrating on the State level as pars pro toto, the Netherlands as of the nineties of the 20th century has in place organic budget legislation (Government Accounts Act and subordinated regulations) which constitutes a system of checks and balances. The Supreme Audit Institution (Algemene Rekenkamer) and internal audit organization are independent. Financial control is also independent vis-à-vis the line organization, both in terms of policy-making as well as the executive bodies. At financial management level the administrative organization is well described and inter alia provides for the separation of functions and the 4-eyes-principle. The aforementioned remarks are to be regarded as preventive measures with respect to integrity of public finance management

The Ministry of Finance does not only draw up the budget for its own ministry. She also supervises the budget process of all other ministries. The ministry also fulfils accounting duties for income-expense services. The ministry is developing good reporting standards for public sectors such as municipalities, provinces and water boards. The Ministry of Finance plays a central role in the budget process. The ministry draws up the rules for the budget proposal so that all ministries base their budgets on the same principles. Every month, the ministries report to the Ministry of Finance on the implementation of the budget plans. For example, the Minister of Finance supervises the implementation of the budget. At the end of a budget year, the national government prepares an annual report. The Central Government Annual Financial Report (FJR) shows the results of the financial year. The annual reports of all departments together form the national annual report. The FJR is an explanation of the national annual report. The ministry of Finance also answers questions about the meaning of the government's reporting rules. The ministry also maintains contacts with organizations in the field of reporting. Such as the BBV Committee, BBV Water Boards and the Council for Annual Reporting.

The Central Government Audit Service (ADR) conducts the accountants audit within the government, provides audits on request and promotes cooperation between the different departments in the area of governmental auditing. The Central Audit Service is the independent internal auditor of the Central Government and the Audit Authority in the Netherlands for the European Commission. The ADR is part of the Ministry of Finance and falls directly under the Deputy Secretary General. The ADR works on behalf of the ministries. In order to be able to develop good reporting standards for the public sector, but especially for the national government, the ADR follows international developments in the field of financial reporting. Such as IPSAS.
The legal task of the ADR consist of: The statutory task of the Central Government Audit Service ensues from the 2016 Government Accounts Act, which stipulates that the ADR publishes reports with the departmental annual reports of all ministers. The legal task includes:

- to provide assurance on the financial statements in the departmental annual report (audit);
- conducting research into budget management, financial management and material management.

The Minister of Finance sends the annual reports to the Netherlands Court of Audit (Algemene Rekenkamer) at the end of March. The National Financial Annual Report, consisting of explanatory notes on the ministries' annual reports and the central government statement of expenditure and revenue, is also sent to the Court of Audit. The Court of Audit must express an opinion on the documents before they are forwarded to the Senate and House of Representatives. The Minister of Finance presents the National Financial Annual Report and the ministries' annual reports on Accountability Day, the third Wednesday in May. The Court of Audit monitors the accuracy of central government income and expenditure and whether the central government implements policy as intended. The Court of Audit does this entirely independently and decides for itself what it investigates. Its critical findings are not always warmly welcomed by government organisations, but do ensure that political and public discussions on certain policies can be substantiated on the basis of its reports. The website of the Court of Audit contains an Integrity Guide on the main tips and standards for integrity within public organisations the Netherlands Court of Audit conducts regular audits of the status of integrity management, including in central government, and makes clear statements on any shortcomings

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

Of course, when violation of public finance integrity occurs, measures are in place to take corrective action. To a large extent violations by politically appointed ministers are discussed in parliament. This may end in a minister no longer enjoying the confidence of parliament in which case resignation will follow. Public Prosecution by the judiciary will take place in case of violations which are criminal offences.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Netherlands has a long tradition of promoting transparency and accountability in the management of public finances, among other things. Relevant rules and regulations are included in the Constitution as well as in basic laws. The right of budget exercised by Parliament is part of the Constitution. Another important act is the Government Accounts Act. https://english.rekenkamer.nl/about-the-netherlands-court-of-audit/publications/publications/2018/01/01/government-accounts-act-2016 Among other things, this act arranges management, provision of information, control and accountability of the State's public finances, including the specific tasks of the Court of Audit. The budgeting process of the Netherlands, including the appropriate actors can be found at https://www.government.nl/topics/budget-day or Rijksfinancien.nl. The full text (in Dutch) of the budget acts and explanatory memorandums is also available at www.rijksbegroting.nl Rijksfinancien.nl is also being further developed into "the integral portal for the financial information of the national government". In the context of openness, accountability and transparency, the financial open data is actively disclosed, visualized and linked to other information sources. The open data files are submitted to the Ministry of Finance for each budget chapter in the open data templates as described in the RBV (Budget procedures). The open data files contain the public information as it is also sent to the House of Representatives in the official documents and in this context, in particular, clarify the budget figures by visualizing them and making them traceable over time. Open data can be found at https://opendata.rijksbegroting.nl/

In the Netherlands, the Auditdienst Rijk (Government Audit Service) is the internal auditor, performing both financial and operational audits. Goals and functions are stated in Besluit Auditdienst Rijk. The Auditdienst Rijk carries out its audit (oversight) functions according to the regulations and quality standards of the Koninklijke Nederlandse Beroepsorganisatie van Accountants (Royal Netherlands Institute of Chartered Accountants) and the Institute of Internal Auditors (IIA).

The Supreme Audit Institution is an independent organization, performing audits and inquiries into the expenses and receipts of the Dutch Government. Goals and functions are stated in the Constitution and the Comptabiliteitswet 2016 (Government Accounts Act). The Supreme Audit Institution carries out its financial audit function according to the International Standards of Supreme Audit Institutions.

Risk identification and risk assessment

According to Comptabiliteitswet 2016 chapter 4, each Ministry is accountable for developing and maintaining a solid level of financial management. This includes investigations into the efficiency and effectiveness of operations as well as accountability for budgeting and accounting systems. In process, the ministry makes use of risk identification and risk assessment before implementing new legislations (especially for guarantees and debt instruments, Toetsingskader Risicoregelingen Rijksoverheid). Part of the investigations deal with prevention and fight against abuse of public means by corporate entities and individuals (M&O-beleid).

Integrity policy

According to article 4 of the Civil Service Act 2017 public employers (including central government, municipalities, provinces and other legal entities governed by public law) have to pursue an integrity policy that is aimed at promoting good official conduct and that pays attention to promoting integrity awareness and preventing misuse of powers, conflicts of interest and discrimination. The integrity policy has to be an integral part of the personnel policy of a public employer as well and public employers need to publish an annual account of the implementation of the integrity policy within the organization. A public employer is responsible for drawing up a code of conduct. For the central government (sector Rijk) this code of conduct is called the “Gedragscode Integriteit Rijk” (GIR).

The Dutch version of the GIR (2017) you can find via: https://www.rijksoverheid.nl/documenten/richtlijnen/2017/12/01/gedragscode-integriteit-rijk-gir.

Each Ministry is accountable for developing and maintaining a solid level of financial management. The Auditdienst Rijk (as the internal auditor) as well as the Supreme Audit Institution are carrying out financial and operational audits regarding operations and the (yearly) accounting reports of each Ministry. Twice a year, the Auditdienst Rijk publishes its findings in the audit reports. The Supreme Audit Institution also publishes its final findings for each Ministry findings in a Nota van Bevindingen (Note of Findings) and for

the Governement as a whole on the third Wednesday in Mai in Staat van RijksVerantwoording.

Relevant legal provisions:
- audit reports Auditdienst Rijk
- Nota van Bevindingen
- Staat van de Rijksverantwoording.

Article 9(2): On measures to promote transparency and accountability in the management of public finance (article 9(2)), kindly provide:

(a) The procedures for the adoption of the budget;

The government presents its central government budget on Budget Day, the third Tuesday in September, but preparations commence in October of the previous year when the Minister of Finance sends budget instructions to the ministries. The ministers then inform the Minister of Finance of their plans for the coming period by means of policy letters. In the spring, the Minister of Finance sends a framework letter, asking what setbacks and windfalls there have been, what additional funding is being requested, whether spending in one or more of the three sectors (central government, social security and care) must be reduced or whether spending can be increased (for example to cut taxes or improve public finances). In the aggregates letter in April/May, the Minister of Finance informs the ministries how much can be spent in the coming year. In June, every ministry prepares an initial draft budget, which is finalized in the summer months. The Ministry of Finance decides whether the initial draft budgets are consistent with the coalition agreement, the budget notice and the aggregates letter. The Budget Memorandum is prepared at the same time as the draft budgets. It summarizes the main policy frameworks set out in the individual budgets and discusses the financial and economic position of the Netherlands. The ministers work with provisional figures until the summer. In August, the latest economic data published by the Netherlands Bureau for Economic Policy Analysis (CPB) in the Macro Economic Outlook (MEV) are incorporated into the final decisions on the central government budget. In August, all the ministries present their final budgets to the Ministry of Finance. Together, they form the central government budget. Like other Bills, the central government budget and the Budget Memorandum are forwarded to the Council of State for advice, which is received in the first week of September. The ministers respond to the advice in writing. The central government budget and the Budget Memorandum are then printed so that they will be ready on time. Any amendments necessitated by the Council of State's advice and the latest figures are made in the printer's proofs. The budget is then ready to be presented on Budget Day.

On behalf of the government, the Minister of Finance presents the central government budget and the Budget Memorandum to the House of Representatives on Budget Day, the third Tuesday in September. When he presents the documents, the Minister of Finance gives a speech on the state of the Dutch economy. Shortly after Budget Day, parliament begins to debate the central government budget and the Budget Memorandum. It first debates the main political issues and then the financial and economic policies. The budgets of the individual ministries are then debated, first in the House of Representatives, which can make amendments, and then in the Senate. Each of these bodies approve the presented budget.

(b) the procedures on reporting on revenue and expenditure;

Once parliament has approved the departmental budgets, the ministries carry out the policies. Both the ministries and the House of Representatives monitor the implementation of the budget. The ministries inform the House of the budget's implementation by means of memorandums. The most important memorandums are the Spring Memorandum and the Autumn Memorandum. The Spring Memorandum considers the status of the current budget. If necessary, measures are proposed to change revenues or expenditures in response to developments since the budget was prepared. The Minister of Finance sends the Spring Memorandum together with the first supplementary budgets to the House of Representatives. The Spring Memorandum is issued no later than 1 June in the current budget year. The Autumn Memorandum is the final budget memorandum to be sent to the House of Representatives and the Senate during the budget year. It is issued no later than 1 December. The Autumn Memorandum considers the implementation of the budget since the adoption of the Budget Memorandum. The budget can be amended if there have been financial windfalls or setbacks or if policy has been changed. The ministries prepare annual reports after the close of the budget year. The reports look back at the plans presented in the central government budget and the Budget Memorandum and the government accounts for their implementation. Together, the annual reports of the individual ministries from the National Financial Annual Report.

(c) How the Central Government Audit Service and Supreme Audit Institution carry out their oversight functions;

Accountability Day: audit and accountability

The ministries prepare annual reports after the close of the budget year. The reports look back at the plans presented in the central government budget and the Budget Memorandum and the government accounts for their implementation. Together, the annual reports of the individual ministries from the National Financial Annual Report.

The Minister of Finance sends the annual reports to the Netherlands Court of Audit at the end of March. The National Financial Annual Report, consisting of explanatory notes on the ministries' annual reports and the central government statement of expenditure and revenue, is also sent to the Court of Audit. The Court of Audit must express an opinion on the documents before they are forwarded to the Senate and House of Representatives. The Minister of Finance presents the National Financial Annual Report and the ministries' annual reports on Accountability Day, the third Wednesday in May.

Supreme Audit Institution, the Netherlands Court of Audit (NCA), checks whether the Dutch central government spends public funds economically, efficiently and effectively. Their statutory task is to audit the revenue and expenditure of central government. The Netherlands Court of Audit is a High Council of State. It is an independent institution, separate from the government and parliament and has statutory powers to perform its work.

It is an independent institution, which means that it their selves decide what they audit. Members of parliament, ministers and state secretaries sometimes ask us to carry out audits. In practice, they usually honor their requests if the NCA can add value. The NCA responds carefully to suggestions and signs from society, the public, enterprises and organisations and may decide, for example, to involve them in their audits.

The government must account correctly for its revenues and expenditures and the statutory powers it exercises. The NCA tasks, responsibilities and their unique and special powers to audit the government are laid down in the constitution of the Netherlands and in the Government Accounts Act 2016. It can audit all ministries and other public organisations that are associated with central government. They can also audit organisations that are not part of the government but carry out a public task, such as the national police service and ProRail, the railway infrastructure manager. They have a right to access all the relevant information we need to perform our tasks, including confidential information.

This information includes data on the revenue and expenditure of ministries and institutions at arm's length from the government. The NCA does not have a right to inspect information on the revenue and expenditure of municipalities and provinces, not even if they are responsible for the use of central government funds. They can ask them, however, to cooperate in our audits.

The NCA does not express political opinions. It expresses an opinion on government policy; it does not express political opinions. The Court of Audit can say, for example, that a law is not working as intended and make recommendations for improvement. But it cannot express opinions on the political intentions of that law.

When performing audits it follows the ISSAI (International Standards of Supreme Audit Institutions).The NCA does regularity audits and performance audits.

Regularity audits:

All ministers submit annual reports to parliament each year to account for the tax money they receive and spend. The information in these annual reports are object of our regularity audits: an integrated combination of financial audit and compliance audits. The Netherlands Court of Audit checks that the annual financial reports present a true and fair view of the money received and spend, and that the money is spent regularly, i.e. in accordance with the regulations. It also audits the ministries' operational management and determine whether the policies have had the intended results. The NCA reports on its work once a year to parliament on Accountability Day (the third Wednesday in May). It issues reports for each ministry separately and we issue one report called 'State of Central Government Accounts' which summarizes its findings from the separate ministries.

The NCA reports on the ministries' annual reports explain whether the ministers spent tax money in accordance with the regulations. They determine whether the financial information presented in the annual reports and trial balances is complete and correct. The NCA also reports on the ministries' operational management and express an opinion on the policy information provided in the annual reports.

The reports consider the errors and uncertainties that we find in the annual reports and trial balances. They also look at problems, or 'shortcomings' as we refer to them, in the ministries' operational management. Our reports inform parliament and encourage the ministers to improve their operational management. All the reports are publically available on the website. See for the reports regarding 2020: https://www.rekenkamer.nl/onderwerpen/verantwoordingsonderzoek/verantwoordingsonderzoek-2020

Performance audits:

The NCA determine whether central government receives and spends public funds – about €290 billion every year – in accordance with the regulations, whether the ministers' policies are having the intended effect and whether central government is working efficiently. In short, they reveal what is done with public funds.

We audit the effectiveness of the ministers' policies. We ask whether they can achieve the intended results on the one hand and whether they are being implemented so as to achieve the agreed and intended results on the other.

The NCA makes recommendations to improve the efficiency and effectiveness of central government. Government policy sometimes does not achieve its intended results. Its audits are designed to provide an insight into the causes and to identify common factors so that they can advise the House of Representatives on what should be done to achieve the required results.

Cooperation with and using the work of the Central Government Audit Service (CGAS)

In the Netherlands we have the international unique situation that the internal auditor of the government also audits the financial statements of each minister. The background of this concept is that in our country each minister is not only responsible for its sound financial management, but also for achieving reasonable assurance on the reliability of the annual financial information that is send to House of Parliament. This means that all financial information, subject to the audit of the NCA, already is audited by the internal auditor of the government (CGAS). Hence, legal provisions are made that the NCA can make use of the audits of the CGAS. In day to day practice this means that the NCA performs its own risks assessments, reviews the quality of the work performed by the CGAS and decides to what extend it can rely on the work of the CGAS and to what extend additional work by NCA is required. Therefore, the two audit institutions audit the same objects (the financial annual report) with the same aspects (reliability and regularity) but for different actors. The internal audit of CGAS is needed for the minister, the -from the ministers independent- external audit of the NCA is needed for the House of Parliament.

(d) What internal control and risk management systems are in place;

With respect to its public finances, the Netherlands is divided in separate layers of government: the State, municipalities, provinces and water boards. Concentrating on the State level as pars pro toto, the Netherlands as of the nineties of the 20th century has in place organic budget legislation (Government Accounts Act and subordinated regulations) which constitutes a system of checks and balances. The Supreme Audit Institution (Algemene Rekenkamer) and internal audit organization are independent. Financial control is also independent vis-à-vis the line organization, both in terms of policy-making as well as the executive bodies. At financial management level, the administrative organization is well described and inter alia provides for the separation of functions and the 4-eyes-principle. The aforementioned remarks are to be regarded as preventive measures with respect to integrity of public finance management. The Ministry of Finance does not only draw up the budget for its own ministry. She also supervises the budget process of all other ministries. The ministry also fulfils accounting duties for income-expense services. The ministry is developing good reporting standards for public sectors such as municipalities, provinces and water boards. The Ministry of Finance plays a central role in the budget process. The ministry draws up the rules for the budget proposal so that all ministries

base their budgets on the same principles. Every month, the ministries report to the Ministry of Finance on the implementation of the budget plans. For example, the Minister of Finance supervises the implementation of the budget. At the end of a budget year, the national government prepares an annual report. The Central Government Annual Financial Report (FJR) shows the results of the financial year. The annual reports of all departments together form the national annual report. The FJR is an explanation of the national annual report. The ministry of Finance also answers questions about the meaning of the government's reporting rules. The ministry also maintains contacts with organizations in the field of reporting. Such as the BBV Committee, BBV Water Boards and the Council for Annual Reporting.

The Central Government Audit Service (ADR) conducts the accountants audit within the government, provides audits on request and promotes cooperation between the different departments in the area of governmental auditing. The Central Audit Service is the independent internal auditor of the Central Government and the Audit Authority in the Netherlands for the European Commission. The ADR is part of the Ministry of Finance and falls directly under the Deputy Secretary General. The ADR works on behalf of the ministries. In order to be able to develop good reporting standards for the public sector, but especially for the national government, the ADR follows international developments in the field of financial reporting. Such as IPSAS.

The legal task of the ADR consist of the statutory task of the Central Government Audit Service ensues from the 2016 Government Accounts Act, which stipulates that the ADR publishes reports with the departmental annual reports of all ministers. The legal task includes:

- to provide assurance on the financial statements in the departmental annual report (audit);
- conducting research into budget management, financial management and material management.

The Minister of Finance sends the annual reports to the Netherlands Court of Audit (Algemene Rekenkamer) at the end of March. The National Financial Annual Report, consisting of explanatory notes on the ministries' annual reports and the central government statement of expenditure and revenue, is also sent to the Court of Audit. The Court of Audit must express an opinion on the documents before they are forwarded to the Senate and House of Representatives. The Minister of Finance presents the National Financial Annual Report and the ministries' annual reports on Accountability Day, the third Wednesday in May. The Court of Audit monitors the accuracy of central government income and expenditure and whether the central government implements policy as intended. The Court of Audit does this entirely independently and decides for itself what it investigates. Its critical findings are not always warmly welcomed by government organisations, but do ensure that political and public discussions on certain policies can be substantiated on the basis of its reports. The website of the Court of Audit contains an Integrity Guide on the main tips and standards for integrity within public organisations the Netherlands Court of Audit conducts regular audits of the status of integrity management, including in central government, and makes clear statements on any shortcomings.

Please see also page 92 of the first Additional info document. Risk identification and risk assessment. According to Comptabiliteitswet 2016 chapter 4, each Ministry is accountable for developing and maintaining a solid level of financial management. This includes investigations into the efficiency and effectiveness of operations as well as accountability for budgeting and accounting systems. In process, the ministry makes use of risk identification and risk assessment before implementing new legislations

(especially for guarantees and debt instruments, Toetsingskader Risicoregelingen Rijksoverheid). Part of the investigations deal with prevention and fight against abuse of public means by corporate entities and individuals (M&O-beleid).

Answer Supreme Audit Institution:

In the Netherlands the rules regarding transparency, accountability, and the tasks of the ministries, Central Government Audit Service (CGAS) and the Supreme Audit Institution (NCA) are written down in laws and regulations. The Government Accounts Act 2016 is the most important one. This act contains rules regarding:

- The central government budget and accountability
- Budget management and financial management: standards
- Budget management and financial management: responsibilities
- Management of public liquid assets outside central government
- Supervision of the management of public funds outside central government
- Court of Audit

It is important to realize that all public money spend should be publicly accounted for. The rules concerning our central government budget and accountability arrange and secure that for each euro it should be and is clear which minister is responsible. In addition, that each minister will have to account for all the euro's that falls under its responsibility. In its financial report each minister will have to state to what amount(s) if any, the accounted money might not be spend in compliance with law and regulation. This part of each minister's public accountability is explicitly audited by both CGAS and NCA.

When composing and updating these laws and regulations the CGAS and the NCA are asked for feedback. Under the Government Accounts Act 2016 lies a whole set of other regulations. All of them are updated periodically.

Those laws and regulations are the base for the work we do. Those laws are based on the three-lines-of-defence model. First, the minister himself is responsible for taking the right measures for obeying the laws and working effectively and efficient. Second, the controlling department of each ministry should check the first line and help them where possible. The third line is the Central Government Audit Service, the internal auditor of the governments who report issues internally. In addition to that, the Supreme Audit Institution issues opinions and reports to House of Parliament.

(e) What sanctions or corrective action exists if these standards are not complied with.

When violation of public finance integrity occurs, measures are in place to take corrective action. To a large extent violations by politically appointed ministers are discussed in parliament. This may end in a minister no longer enjoying the confidence of parliament in which case resignation will follow. Public Prosecution by the judiciary will take place in case of violations, which are criminal offences.

Please see page 92 of the first Additional info document. Each Ministry is accountable for developing and maintaining a solid level of financial management. The Auditdienst Rijk (as the internal auditor) as well as the Supreme Audit Institution are carrying out financial and operational audits regarding

operations and the (yearly) accounting reports of each Ministry. Twice a year, the Auditdienst Rijk publishes its findings in the audit reports. The Supreme Audit Institution also publishes its final findings for each Ministry findings in a Nota van Bevindingen (Note of Findings) and for the Governement as a whole on the third Wednesday in May in Staat van Rijksverantwoording.

If the Supreme Audit Institution, the NCA, finds that processes are not working effectively (e.g. key controls are not present or not working) the NCA reports this issue as a shortcoming in the internal control of a ministry. If they find that, the financial statements are not correct or the amount of irregularities is too high they do not issue an unqualified opinion. Incorrect financial statements are in general always result of shortcomings in internal control. In both cases the NCA ask the ministries to write an improvement plan and in the next years, they check if the plan is executed.

The sanctions or corrective actions mainly come from the MPs. They have the power to discuss issues in the parliament and to force the ministers to take action.

In case of fraud, money laundering or suspicious transactions we have to report it to the Financial Intelligence Unit – Nederland (part of the Dutch National Police) or to the Prosecutor.

(b) Observations on the implementation of the article

Procedures for the adoption of the State budget are established in the Government Accounts Act 2016. Revenue and expenditure reports must be produced in accordance with articles 2.22, 2.23, 2.28 and 2.29 of the Act. The Netherlands Court of Audit is responsible for conducting an annual audit of the annual financial reports of each ministry, and the Central Audit Service is the independent internal auditor of central Government (art. 1.1 of the Act). The Service may be instructed by a minister to conduct specific audits of "major projects" designated by the House of Representatives (art. 3 of the Central Government Audit Service Decree). Decentralized governments are subject to an annual external audit, including of public procurement.

Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

With respect to its public finances, the Netherlands is divided in separate layers of government: the State, municipalities, provinces and water boards. Concentrating on the State level as pars pro toto, the Netherlands as of the nineties of the 20th century has in place organic budget legislation (Government Accounts Act and subordinated regulations) which constitutes a system of checks and

balances. The Supreme Audit Institution (Algemene Rekenkamer) and internal audit organization are independent. Financial control is also independent vis-à-vis the line organization, both in terms of policy-making as well as the executive bodies. At financial management level the administrative organization is well described and inter alia provides for the separation of functions and the 4-eyes-principle. The aforementioned remarks are to be regarded as preventive measures with respect to integrity of public finance management.

Government Accounts Act 2016
Applicable since 1 January 2018
Act of 22 March 2017 containing rules on managing, providing information on, auditing and reporting on central government finances, on managing public liquid assets outside central government and on supervising the management of public liquid assets and public funds outside central government

The Court of Audit must audit the following matters in relation to central government each year:
a. the financial reporting information in the annual reports;
b. the preparation of the non-financial reporting information in the annual reports;
c. the financial reporting information in the central government annual financial report.
2. The Court of Audit must audit the following matters in relation to central government:
a. budget management, financial management, material operational management and the central government accounting records kept for this purpose;
b. the central accounting records of the National Treasury of the Ministry of Finance.

Of course, when violation of public finance integrity occurs, measures are in place to take corrective action. To a large extent violations by politically appointed ministers are discussed in parliament. This may end in a minister no longer enjoying the confidence of parliament in which case resignation will follow. Public Prosecution by the judiciary will take place in case of violations which are criminal offences.

General Tax Act

Article 52

1. Persons required to keep records are required to keep records of their financial position and of everything relating to their business, independent profession or activity in such a way that meets the requirements of that business, independent profession or activity and to store the associated books, documents and other data carriers in such a way that their rights and obligations as well as the data that are otherwise relevant to the levying of tax are clear at all times.

2. Those required to keep records are:

a. bodies;

b. natural persons who run a business or independently conduct a profession, as well as natural persons who enjoy taxable profits from a business as referred to in Article 3.3 of the Income Tax Act 2001 ;

c. natural persons who are withholding agents;

d. natural persons who perform an activity as referred to in Articles 3.91 , 3.92 and 3.92b of the Income Tax Act 2001 .

3. The administration includes that which is kept, recorded or drawn up in accordance with other tax laws.

4. Unless otherwise provided by or pursuant to tax law, persons required to keep records are obliged to keep the data carriers referred to in the previous paragraphs for seven years.

5. The data stored on a data carrier, with the exception of the paper balance sheet and income statement, may be transferred to and stored on another data carrier, provided that the transfer is done with a correct and complete representation of the data and that this data is available for the entire retention period and can be made legible within a reasonable time.

6. The administration must be set up and maintained in such a way and the data carriers must be stored in such a way that the inspector can check them within a reasonable period. To this end, the person required to keep the administration must provide the necessary cooperation, including providing the necessary insight into the set-up and operation of the administration.

7. If an administratively liable person has complied with an obligation imposed by the inspector on the basis of the first paragraph but is of the opinion that the obligation was imposed unlawfully, he may request reimbursement of costs directly related to this compliance. The inspector shall decide on this request by means of a decision that is open to appeal and shall grant reasonable reimbursement of costs in the event of an obligation that was imposed unlawfully.

Article 68

1. The person who is obliged under tax law to:

a. providing information, data or instructions, and not providing it, or providing it incorrectly or incompletely;

b. making books, documents, other data carriers or their contents available for consultation and not making them available for this purpose;

c. making books, documents, other data carriers or their contents available for consultation and making them available for this purpose in a false or falsified form;

d. keeping records in accordance with the requirements set for this by or pursuant to the tax law, and not keeping such records;

e. the keeping of books, documents or other data carriers, and does not keep them;

f. providing cooperation as referred to in Article 52, paragraph 6 , and failing to do so;

g. issuing an invoice or note, and providing an incorrect or incomplete invoice or note;

shall be punished by imprisonment of not more than six months or a fine of the third category.

2. Any person who fails to comply with the obligation imposed on him by Article 47, paragraph 3 , shall be punished by a fine of the second category.

3. No criminal liability shall be imposed on any person who fails to comply with the obligation referred to in Article 47a as a result of a statutory or judicial prohibition, applicable to the body not established in the Netherlands or the natural person not resident in the Netherlands, to cooperate in the provision of the requested data or information or to make books, documents, other data carriers or their contents available for consultation, or as a result of a refusal by the body not established in the Netherlands or the natural person not resident in the Netherlands, which cannot be attributed to him, to provide the requested data or information or to make books, documents, other data carriers or their contents available for consultation.

Article 69

1. Any person who intentionally fails to file a tax return provided for in the tax law, fails to file within the period set for that purpose, or commits one of the acts described in Article 68, paragraph 1, subparagraphs a, b, d, e, f or g , shall, if the act results in too little tax being levied, be punished

by a prison sentence of not more than four years or a fine of the fourth category or, if this amount is higher, not more than the amount of the tax that was too little levied.

2. Any person who intentionally makes an incorrect or incomplete tax return as provided for in the Tax Act, or who commits the act described in Article 68, paragraph 1, subparagraph c , shall, if the act results in too little tax being levied, be punished with a prison sentence of not more than six years or a fine of the fifth category or, if this amount is higher, not more than the amount of the tax that was levied too little, provided that to the extent that the incorrectness or incompleteness of the return relates to taxable income as referred to in Article 5.1 of the Income Tax Act 2001, the fine shall not exceed three times the amount of the tax that was levied too little.

[…].

Economic Offences Act

Article 1

Economic crimes are:

[…]

2°.violations of regulations established by or pursuant to:

the General Customs Act , Articles 1:4, first and second paragraphs , and 3:1 , insofar as they relate to goods that are not regarded as strategic goods under international or national law;

the Banking Act 1998 , Article 9a, first to third paragraphs ;

[…].

Article 6

1. He who commits an economic offence shall be punished:

1°. in the event of a criminal offence, insofar as it concerns an economic offence referred to in Article 1, under 1° , or in Article 1a, under 1° , with a prison sentence of up to six years, a community service order or a fine of the fifth category;

2°. in the case of another offence punishable by imprisonment of up to two years, community service or a fine of the fourth category;

3°. if he has made a habit of committing the offence referred to in 2°, with a prison sentence of up to four years, community service or a fine of the fifth category;

4°. in the event of an infringement, insofar as it concerns an economic offence referred to in Article 1, under 1° , or in Article 1a, under 1° , with imprisonment of up to one year, community service or a fine of the fourth category;

5°. in the event of another offence, with imprisonment of up to six months, community service or a fourth category fine.

If the value of the goods with or in relation to which the economic offence was committed, or which were obtained in whole or in part by means of the economic offence, exceeds one quarter of the maximum fine that can be imposed in the cases under 1° to 5°, a fine of the next higher category may be imposed, without prejudice to the provisions of Article 23, seventh paragraph, of the Criminal Code .

2. In addition, the additional penalties referred to in Article 7 and the measures referred to in Article 8 may be imposed, without prejudice to the imposition, in appropriate cases, of the measures provided for elsewhere in legal provisions.

3. By way of exception to the provisions of the first and second paragraphs, any person who violates a regulation issued pursuant to Article 15, second paragraph, of the Distribution Act , or issued by or pursuant to Articles 10.2 , 10.3 , 10.6 to and including 10.10a , 10.10c to and including 10.10h , 10.13 to and including 10.15 , 10.16, first and second paragraphs , 10.17 , 10.18 , 10.19, first and second paragraphs , 10.19a , 10.20 , 10.21, first paragraph , 10.21a , 10.24 , 10.25 , 10.27, first and second paragraphs of the Environmental and Planning Act , shall be punished by imprisonment of not more than two months or a fine of the first category.

4. By way of exception to the provisions of the first paragraph, any person who violates a provision laid down in or pursuant to Articles 2 and 3, first paragraph, of the Chemical Weapons Convention Implementation Act , Article 3, first paragraph, of the Explosives Precursors Act , or Articles 2, first and third paragraphs , 3 and 4 of the Biological Weapons Convention Implementation Act , shall be punished by a prison sentence of not more than eight years or a category five fine, if the act was committed intentionally with a terrorist intent as referred to in Article 83a of the Criminal Code , or with the intent to prepare or facilitate a terrorist offence as referred to in Article 83 of that Code .

Civil Code Book 2

Article 10

1. The board is obliged to keep records of the financial position of the legal entity and of everything concerning the activities of the legal entity, in accordance with the requirements arising from these activities, and to store the associated books, documents and other data carriers in such a way that the rights and obligations of the legal entity can be known at all times.

2. Without prejudice to the provisions of the following titles, the board is obliged to draw up and record in writing the balance sheet and the statement of income and expenditure of the legal entity annually within six months after the end of the financial year.

3. The board is obliged to keep the books, documents and other data carriers referred to in paragraphs 1 and 2 for seven years.

4. The data stored on a data carrier, with the exception of the paper balance sheet and income statement, may be transferred to and stored on another data carrier, provided that the transfer is done with a correct and complete representation of the data and that this data is available for the entire retention period and can be made legible within a reasonable time.

Article 361

1. Annual accounts are defined as: the single annual accounts consisting of the balance sheet and the profit and loss account with the notes, and the consolidated annual accounts if the legal entity prepares consolidated annual accounts.

2. Cooperations and the foundations and associations referred to in Article 360 paragraph 3 shall replace the profit and loss account with an operating account if the insight referred to in Article 362 paragraph 1 is served by this; the provisions regarding the profit and loss account shall apply to this account as much as possible by analogy. Provisions regarding profit and loss shall apply to the operating balance as much as possible by analogy.

3. The provisions of this Title apply to annual accounts and their components, both in the form in which they are drawn up by the board and in the form in which they are established by the competent body of the legal entity.

4. When applying Articles 367, 370 paragraph 1, 375, 376 , 377 paragraph 5 and 381, corresponding entries as those relating to group companies must be included in respect of other companies:

a. who can exercise rights in the legal entity on the basis of paragraphs 1, 3 and 4 of Article 24a , regardless of whether they have legal personality, or

b. which are subsidiaries of the legal entity, of a group company or of a company as referred to in subparagraph (a).

Article 362

1. The annual accounts provide, in accordance with standards that are considered acceptable in society, such an insight that a responsible opinion can be formed regarding the assets and the results, and, to the extent that the nature of annual accounts permits, regarding the solvency and liquidity of the legal entity. If the international branching of its group justifies this, the legal entity may draw up the annual accounts in accordance with the standards that are considered acceptable in society in one of the other Member States of the European Communities and provide the insight referred to in the first sentence.

2. The balance sheet with the notes shall give a true, clear and systematic view of the size of the assets and their composition in assets and liabilities at the end of the financial year. The balance sheet may show the assets as they are composed taking into account the allocation of the profit or the processing of the loss, or, as long as this has not been established, taking into account the proposal to that effect. At the top of the balance sheet it shall be stated whether the allocation of the result has been processed therein.

3. The profit and loss account and its explanatory notes present the size of the result for the financial year and its derivation from the income and expenditure items in a fair, clear and systematic manner.

4. If providing the insight referred to in paragraph 1 so requires, the legal entity shall provide information in the annual accounts to supplement what is required in the special provisions of and pursuant to this Title. If this is necessary to provide that insight, the legal entity shall deviate from those provisions; the reason for this deviation shall be explained in the notes, where necessary stating its effect on capital and results.

5. The income and expenses of the financial year are included in the annual accounts, regardless of whether they have led to receipts or expenses in that financial year.

6. The annual accounts shall be established taking into account that which has become apparent regarding the financial situation on the balance sheet date between the preparation of the annual accounts and the general meeting at which they are discussed, insofar as this is indispensable for the insight referred to in paragraph 1. If it subsequently becomes apparent that the annual accounts seriously fail to provide this insight, the board shall immediately report this to the members or shareholders and shall file a notification to this effect with the trade register; an auditor's report shall be enclosed with the notification if the annual accounts have been audited in accordance with Article 393. A legal entity whose securities are admitted to trading on a regulated market as referred to in the Financial Supervision Act shall be deemed to have fulfilled the obligation to file the notification referred to in the second sentence with the trade register if it has sent the notification to the Dutch Authority for the Financial Markets pursuant to Article 5:25m, fifth paragraph, of that Act .

7. If the activities of the legal entity or the international branching of its group so warrant, the annual accounts or only the consolidated annual accounts may be drawn up in a foreign currency. The items are described in Dutch, unless the general meeting has decided to use another language.

8. A legal entity may prepare its annual accounts in accordance with the standards laid down by the International Accounting Standards Board and approved by the European Commission, provided that the legal entity applies all the established and approved standards applicable to it. A legal entity that prepares its consolidated annual accounts in accordance with this Title may not prepare its

single annual accounts in accordance with the established and approved standards. A legal entity that prepares its consolidated annual accounts in accordance with the standards referred to in the first sentence of this paragraph may apply the same valuation principles in the single annual accounts as it applied in the consolidated annual accounts.

9. The legal entity that draws up the annual accounts in accordance with the standards referred to in paragraph 8 shall apply only Sections 7 to 10 inclusive and Articles 362, paragraph 6, penultimate sentence, paragraph 7, last sentence and paragraph 10, 365, paragraph 2 , 373 , 379, paragraphs 1 and 2 , 380b, part d , 382 , 382a , 383 , 383b to 383e inclusive , 389, paragraphs 8 and 10 , and 390 of this Title. Banks shall also apply Article 421, paragraph 5. Insurers shall also apply Article 441, paragraph 10 .

10. The legal entity states in the notes the standards in accordance with which the annual accounts have been prepared.

Article 394

1. The legal entity is obliged to publish the annual accounts within eight days after adoption. The publication takes place by filing the annual accounts drawn up entirely in Dutch or, if these have not been drawn up, the annual accounts in French, German or English, with the trade register, if applicable in the manner prescribed by or pursuant to Article 19a of the Trade Register Act 2007. The date of adoption must be stated.

2. If the annual accounts have not been adopted in accordance with the statutory provisions within two months after the expiry of the period prescribed for their preparation, the board shall immediately publish the drawn up annual accounts in the manner prescribed in paragraph 1; the annual accounts shall state that they have not yet been adopted. Within two months after the judicial annulment of an annual account, the legal entity must deposit a copy of the orders contained in the judgment relating to the annual accounts with the trade register, stating the judgment.

3. The legal entity must have published the annual accounts in the manner prescribed in paragraph 1 no later than twelve months after the end of the financial year.

4. Simultaneously with and in the same manner as the annual accounts, the management report and the other information referred to in Article 392 shall be published in Dutch or in one of the other languages mentioned in the first paragraph. The foregoing shall not apply, except for the information referred to in Article 392, paragraph 1, under a and e, if the documents are kept available for inspection by anyone at the office of the legal entity and a full or partial copy thereof is provided upon request at no more than cost price; the legal entity shall make a statement thereof for registration in the trade register.

5. The previous paragraphs shall not apply if Our Minister of Economic Affairs has granted the exemption referred to in Article 58 , Article 101 or Article 210 ; in that case, a copy of that exemption shall be deposited with the trade register.

6. The documents referred to in the previous paragraphs shall be kept for seven years. The Chamber of Commerce may transfer the data placed on these documents to other data carriers, which it shall keep in their place in the trade register, provided that such transfer takes place with correct and complete representation of the data and that such data are available for the entire retention period and can be made legible within a reasonable time.

7. Any interested party may demand that the legal entity comply with the obligations described in paragraphs 1 to 5.

8. A company whose securities are admitted to trading on a regulated market as referred to in the Financial Supervision Act is deemed to have complied with:

a. paragraph 1, if it has sent the approved annual accounts to the Netherlands Authority for the Financial Markets Foundation pursuant to Article 5:25o, first paragraph, of that Act ;

b. paragraph 2, first sentence, if it has notified the Netherlands Authority for the Financial Markets Foundation pursuant to Article 5:25o, second paragraph, of that Act ;

c. fourth paragraph, first sentence, if it has sent the management report and the other information referred to in Article 392 to the Netherlands Authority for the Financial Markets Foundation pursuant to Article 5:25o, fourth paragraph, of the Financial Supervision Act .

Criminal Code

Article 225

1. Any person who falsely draws up or forges a document intended to serve as evidence of any fact, with the intention of using it or having it used by others as genuine and unadulterated, shall be punished as guilty of forgery by a prison sentence of not more than six years or a fine of the fifth category.

2. The same penalty shall be imposed on anyone who intentionally uses the false or forged document as if it were genuine and unadulterated, or who intentionally delivers or has in his possession such a document, while he knows or should reasonably suspect that the document is intended for such use.

3. If an act described in the first or second paragraph is committed with the intention of preparing or facilitating a terrorist offence, the prison sentence imposed for the act shall be increased by one third.

Article 336

The merchant, director, managing partner or commissioner of a legal entity or company who intentionally makes public an untrue statement or an untrue balance sheet, profit and loss account, statement of income and expenditure or explanation of any of those documents or intentionally allows such publication, shall be punished with a prison sentence of not more than six years or a fine of the fifth category.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

No examples provided.

(b) Observations on the implementation of the article

Civil, administrative and criminal measures on protecting the integrity of accounting books are laid down in the General State Taxes Act (arts. 52, 68 and 69), the Economic Offences Act (arts. 1 and 6), the Civil Code (for example, arts. 2:10, 2:361, 2:362 and 2:394) and the Criminal Code (arts. 225 and 336).

Article 10. Public reporting

Subparagraph (a) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Pursuant to Article 68 of the Constitution, Ministers and State Secretaries provide 'the information required by one or more of the members, orally or in writing, to the Houses of Parliament separately and in a joint session, provided that the disclosure of such information is not contrary to State interests'.

> Article 68
>
> *Ministers and State Secretaries shall provide, orally or in writing, the Houses either separately or in joint session with any information requested by one or more members, provided that the provision of such information does not conflict with the interests of the State.*

In addition, Article 110 of the Constitution stipulates that the public administration must allow 'public access in accordance with statutory rules' during the performance of its duties. These rules are set out in the Government Information (Public Access) Act (Wet openbaarheid van bestuur, Wob). The underlying principle of the Wob is that information in the possession of administrative bodies on an administrative matter is public (except for a closed number of statutory exceptions). Furthermore, the Wob stipulates that administrative bodies should provide information of their own accord in the interests of proper and democratic administration¬.

> Article 110
>
> *In the exercise of their duties government bodies shall observe the right of public access to information in accordance with rules to be prescribed by Act of Parliament.*

The Wob sets out which administrative bodies can be petitioned for the publication of information. These bodies include:

- the Ministries;
- the administrative bodies of the provinces (e.g. the Provincial Executive);
- the administrative bodies of the municipality (such as the Municipal Executive);
- the administrative bodies of the water authorities (including daily management);
- public-sector organisations;
- institutions, agencies and companies that operate under the responsibility of the aforementioned administrative bodies. The jurisprudence indicates that this body must have a significant impact on said institution, agency or company.

A key example of a special administrative body for which no Wob request can be submitted is the Whistleblowers Authority – for obvious reasons, in this case.

The disclosure and provision of information that can be requested on the basis of the Wob must relate to an administrative matter which concerns the policies of an administrative body. This definition also includes the preparation and the implementation of such policy. Whenever information is requested for internal reflection, any personal policy views contained therein must be redacted, however.

There are a number of exceptions to this rule. For example, it may be justifiable with a view to sound and democratic governance for a personal view on policy to be disclosed in an anonymous form. The importance of protecting personal policy views must also be considered against the importance of disclosure in the case of environmental information. In addition, it is a requirement that the information is held by an administrative body; the method of storage of the information is irrelevant. Information that is both retained on a written document and stored on another medium, such as an audio cassette or a data carrier, may be published.[49] In the case of rejected Wob requests, applicants may lodge a complaint, which may give rise to an appeal to the court if it is not honoured either. If the appeal is rejected in the lower court, applicants may appeal to a higher court.

Apart from access to information on the basis of the Dutch Constitution and the Freedom of Information Act, Ministers and State Secretaries publish their agendas, speeches and information on government meetings via www.rijksoverheid.nl.

In the Netherlands, draft legislation with major implications for citizens and companies is published for consultation on the website www.internetconsultatie.nl.[50] This has been government policy since 2011, after a two-year experiment with Internet consultation starting 2009. In practice, the minimum period for consultation is 4 weeks. Everyone can provide a comment/reaction. Commentators can decide whether they want their comment to be published on the website or not. The draft and the explanatory note are most commonly published for consultation, together with a summary of the answers to the seven questions of the Dutch comprehensive impact assessment system IAK (see www.naarhetiak.nl) and sometimes other background information documents (e.g. information about implementation aspects).

When the consultation period is finished, all comments (published on the website or not) are used in order to improve the quality of the draft and the explanatory note. A short summary of the comments and what is done with them in the draft or explanatory note is published on the website www.internetconsultatie.nl after the Council of Ministers has decided on the draft and the draft has been sent to the Council of State for advice. The draft and explanatory note remain confidential until the draft is sent to Parliament. In the explanatory note, it is explained which comments were provided and what has been done with them in the draft and/or explanatory note.

In addition to Internet consultation, other forms of consultation are also used; for example, meetings with representatives of parties which are affected by the draft or which have a role in the implementation of the draft. Social media (e.g. LinkedIn or Twitter) are sometimes used for consultation. More and more policy documents are also published for consultation on the website

[49] www.wob.nl
[50] Script for regulations (*Draaiboek voor de regelgeving*), No 9A.

www.internetconsultatie.nl. For example, the Ministry of Finance recently started a consultation on crowdfunding: https://internetconsultatie.nl/crowdfunding.

Information about drafts that are being prepared by the central government is published on the public website https://wetgevingskalender.overheid.nl/. When Parliament has decided on the drafts, the final versions of the drafts are published on http://wetten.overheid.nl/zoeken.

The explanatory note on the draft discloses the influence of third parties on the decision-making. However, not every contact with third parties is described. The Dutch government emphasises that it is only relevant to describe in the explanatory note which external input/comments have played an important role in the decision-making. Confidential communication is sometimes necessary to receive relevant information or real criticism. This manner of reporting on contacts with third parties is part of the Dutch directives on legislation issued by the Prime Minister.

Directive 213 of the directives on legislation concerns reporting on third parties contacts: 'In the explanatory note is described, if possible and relevant for the content of the regulation, which third parties have given input for the draft, in which way, the content of the input and what has been done with it in the draft.'

In order to increase transparency about the meetings of ministers on political and policy priorities, the Cabinet decided in 2016 to publish relevant agenda appointments and public speeches through its personal web page on the national government website www.rijksoverheid.nl. Each minister is responsible for the content of their own web page on www.rijksoverheid.nl.

The budget is adopted in legislation. This budget is debated at length in the Lower House of Parliament and is public. The budget accountability session is also held in public in the Lower House of Parliament.

At the start of 2019, a bill to amend the Open Government Act (Wet open overheid, Woo) was submitted to the Lower House of Parliament. The aim is for the bill to be debated in the House during the autumn. This bill is intended to increase the transparency of the government. The bill will enhance the focus on the proactive disclosure of public information in order to serve the rule of law, democracy, citizens and public governance better. The cornerstone of the bill is Section 1.1: 'Everyone is entitled to public information without having to assert interest in that regard, subject to the restrictions imposed by this Act.' As such, the Woo centres on a list of compulsory documents to be disclosed. Following its introduction, the Woo will replace the Wob.

The Freedom of Information Act

Article 6

1. The administrative body shall decide on the request for information as soon as possible, but no later than four weeks from the day after the request was received.

2. The administrative body may adjourn the decision for a maximum of four weeks. The applicant shall be notified of the adjournment in writing, with reasons, before the first term expires.

3. Without prejudice to Article 4:15 of the General Administrative Law Act, the period for issuing a decision shall be suspended from the day after the administrative body informs the applicant that Article 4:8 of the General Administrative Law Act has been applied , until the day on which the interested party or interested parties have submitted a point of view or the period set for this purpose has expired unused.

4. If the suspension referred to in the third paragraph ends, the administrative body shall notify the applicant thereof as soon as possible, stating the period within which the decision must still be given.

5. If the administrative body has decided to provide information, the information will be provided at the same time as the decision is announced, unless it is expected that an interested party will object, in which case the information will not be provided until two weeks after the decision has been announced.

6. To the extent that the request relates to the provision of environmental information:

a. the final decision period, by way of exception to the first paragraph, shall be two weeks if the administrative body intends to provide the environmental information and an interested party is expected to object to this;

b. the decision may only be adjourned pursuant to the second paragraph if the volume or complexity of the environmental information justifies an extension;

c. the third and fourth paragraphs do not apply.

Article 15b

1. In the event of a well-founded appeal against the failure to take a timely decision under this Act or a decision on an objection to such a decision where no decision has yet been announced, the administrative court shall, if the scope of the request gives reason to do so, determine, in deviation from Article 8:55d, first paragraph, of the General Administrative Law Act, the period within which the administrative body shall still announce a decision.

2. If the administrative court finds that the failure to take a decision in a timely manner is clearly the result of the manner in which the request was submitted and no decision has yet been announced, the administrative court shall, if the request gives reason to do so, determine, in deviation from Article 8:55d, first paragraph, of the General Administrative Law Act, a longer period within which the administrative body shall still announce a decision.

3. The administrative court may disregard the first paragraph of Article 8:74 of the General Administrative Law Act and may refrain from issuing an award of costs on the basis of the first paragraph of Article 8:75 of the General Administrative Law Act if the person lodging the appeal, given the scope of the request, has not sufficiently cooperated in reaching agreement on:

a. a suspension of the decision period as referred to in Article 4:15, paragraph 2, section a, of the General Administrative Law Act , or

b. further postponement of the decision period as referred to in Article 7:10, fourth paragraph, part a or b, of the General Administrative Law Act .

4. The administrative judge may also disregard Article 8:74, first paragraph, of the General Administrative Law Act and refrain from issuing an award of costs on the basis of Article 8:75, first paragraph, of the General Administrative Law Act if he finds that the failure to take a decision in a timely manner is clearly the result of the manner in which the request was submitted.

General Administrative Law Act

Article 6:4

1. An objection is made by submitting a letter of objection to the administrative body that took the decision.

2. An administrative appeal is lodged by submitting a notice of appeal to the appeals body.

3. An appeal to an administrative court is lodged by submitting a notice of appeal to that court.

Article 7:1

1. The person who has been granted the right to appeal to an administrative court must file an objection before filing the appeal, unless:

a. the decision has been taken in objection or administrative appeal,

b. the decision is subject to approval,

c. the decision contains an approval or a refusal thereof,

d. the decision was prepared in accordance with Section 3.4 ,

e. the decision was taken on the basis of a ruling in which the administrative court, applying Article 8:72, fourth paragraph, section a , has determined that Section 3.4 shall not apply in whole or in part,

f. the appeal is directed against the failure to take a decision in a timely manner,

g. the decision was taken on the basis of a provision as referred to in the Direct Appeal Regulation annexed to this Act or the decision is otherwise described in that regulation.

2. An appeal may be lodged against the decision on the objection, applying the regulations that apply to lodging an appeal against the decision against which the objection has been lodged.

Article 8:1

An interested party can appeal against a decision to the administrative court.

The major change foreseen by the future access to information law that certain appointed documents are to be made public obligatory (generally within 2 weeks). For the refusal grounds, a change is that the difference between standard information and environmental information is reduced. As a consequence, for a request for confidential information from companies a balance test will be needed. No oversight body is to be created (this part is skipped during parliamentary debate).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

The Freedom of Information Act establishes, on the basis of article 110 of the Constitution, the principle that, aside from specific statutory exceptions, information in the possession of administrative bodies is public. Public requests for information must be addressed within two weeks, with a possibility of extension for another two weeks (sect. 6 of the Freedom of Information Act). Although there is no oversight body to oversee the enforcement of the right of access to information, an appeal against any denial of access can be made to the public body concerned and in court (art. 6, para. 4, art. 7, para. 1, and art. 8, para. 1, of the General Administrative Law Act). The judge may order that access to the information be provided

within a certain time frame and issue a fine to the authority concerned (art. 15b of the Freedom of Information Act).[51]

Draft legislation may be published for consultation online and the comments received from the public are considered in the drafting process.

In 2019, a bill was prepared to amend the Freedom of Information Act, establishing the requirement that government institutions proactively publish certain documents and general information on their organization and functioning).[52]

The reviewing experts therefore recommended that the Netherlands consider establishing an oversight body to ensure effective access to information through the monitoring of implementation of the access to information legislation (art. 10 (a) and art. 13, para. 1).

Subparagraph (b) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

In order to reduce the regulatory burden experienced by citizens to a visible extent,

key issues and obstacles are identified in consultation with representatives of target groups as well as relevant organisations, and prioritised according to which issues must be resolved first. Citizen satisfaction with the provision of government services is measured periodically by way of a nationwide panel survey. Possible improvements will be implemented and evaluated. Two examples of measures that are being taken to enhance transparency in the public administration and simplifying administrative procedures:

Democratie in Actie cooperation programme

For citizens, the municipality will be the government authority closest and most accessible to them. A large number of opportunities for access rest on this relationship. Many of the activities of Democratie in Actie (Democracy in Action) in 2019 focused on supporting municipal councils; for example, through knowledge exchange and knowledge propagation. To this end, the Ministry of

[51] Following the country visit, the Freedom of Information Act was repealed and replaced by the Open Government Act.

[52] On 5 October 2021, the Senate approved the Open Government Act, which came into effect on 1 May 2022 and has replaced the Freedom of Information Act.

the Interior and Kingdom Relations is funding the development of various instruments, publications, regional consultations, conferences as well as studies (by third parties).

Democratie in Actie also focuses on living labs and pilots that experiment with ways to give residents more influence in the decision-making process. For example, experience is gained using digital means of participation, while a review is conducted of how the digital democracy of the future could take shape as well as what framework conditions would need to be created for this purpose by the Ministry of the Interior and Kingdom Relations. Various projects are commissioned to this end.

Democratie in Actie has incorporated the Open Government agenda (agenda Open Overheid). The third Open Government agenda was launched in the summer of 2018 and will run from 1 July 2018 to 1 July 2020. The focus of the Open Government agenda is on the following three items:

1. increasing and improving open decision-making in municipalities and provinces;
2. strengthening the transparency of funding for political parties in local and regional governance;
3. stimulating transparency in local politics by expanding the Open Government Network for Municipalities (Pioniersnetwerk Open Overheid voor Gemeenten).

‘Prettig contact met de overheid’ knowledge and information centre

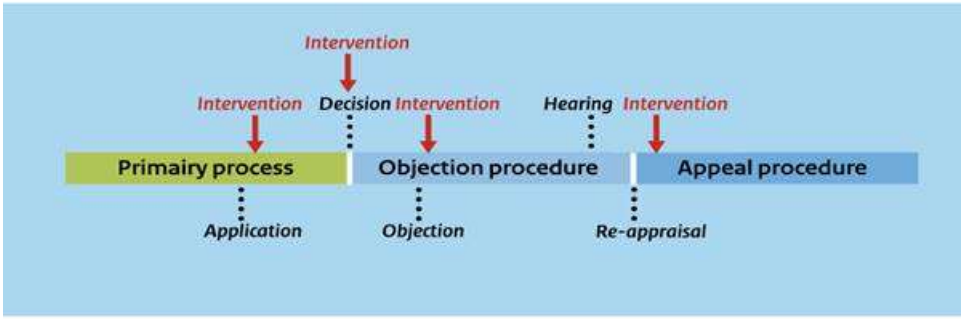
The ‘Prettig contact met de overheid’ (Smooth citizen-government communication) knowledge and information centre was set up with the aim of supporting administrative bodies in using an informal approach (e.g. by means of instruments and reference works), offering information on the opportunities and effects of the informal proactive approach, as well as providing administrative bodies with a platform on which to exchange knowledge and experiences.

In order to encourage the use of mediation skills by government organisations further both in the primary phase and following the receipt of objections, as well as to identify the opportunities, impact and differences among the various governmental domains, the Ministry of the Interior and Kingdom Relations set up a pioneering process which initially included 26 government organisations. This pioneering process was ultimately shaped by 21 participating governing bodies (municipalities, provinces, water authorities and a ministry) and 22 pilot projects.

The impact and effectiveness of using mediation skills were identified within 16 different government domains. Of the 22 pioneering projects, 15 focused on the objection phase, while 7 were aimed at the primary phase. A total of 920 cases were monitored completely in the objection phase and a total of 165 in the primary phase. This study included an analysis of the hours required, the costs, the turnaround times, and the extent and nature of solutions on the one hand, as well as of the perception of the relevant citizen(s) and the civil servants involved in handling the case on the other. Both at the start and at the end of the projects, a study was conducted into the characteristics of the projects (such as their purpose, structure and organisational vision) as well as into the attitude and satisfaction of the relevant civil servants.

The use of mediation skills pays off, regardless of the domain, nature and size of the organisation. Good governance entails that administrative authorities will investigate the opportunities for potential conflicts with citizens and companies to be handled informally.

The mythology used in the Prettig Contact met de Overheid project (in English: the Informal Pro-active Approach Model (IPAM) or Fair Tracks) consists out of several interventions during primary decision making procedures, during complaint and objection procedures and during appeal procedures. The public officials involved are trained in communication and conflict management skills and act pro-actively by seeking contact with the citizens involved, by discussing together with the citizens how to best handle the procedure, what the citizens involved aim to achieve and by actively seeking a solution for the problems at hand. The mythology used and the results achieved are further described in a brochure (bit dated) and a more recent peer reviewed article in English published in the Utrecht Law Review. See also the following appendixes:



Citizen satisfaction with 'normal' formal administrative procedures differs significantly from citizen satisfaction results in the IPAM/Fair Tracks projects. The IPAM/Fair Tracks project show an increase of citizen satisfaction of 40%. There have been several nationwide panel surveys to assess citizen satisfaction with 'normal/formal' administrative procedures (University of Tilburg and other nationwide studies) and the effect of the IPAM/Fair Tracks projects has been monitored and measured nationwide in 16 government domains (in cooperation with the University of Leuven – PCMO onderzoeksrapport 2). All results have been compared by the university of Groningen (meta-analyse). Unfortunately these reports are only available in Dutch.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

Measures aimed at simplifying administrative procedures include the establishment of a knowledge and information centre to facilitate effective communication between citizens and the Government and support administrative bodies in adopting an informal and proactive approach to the provision of public information. The centre also mediates between citizens and institutions in complaint,

objection and appeal procedures.

Subparagraph (c) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Each year, the NPIID publishes its annual figures through the Public Prosecution Service Annual Review (*Jaarbericht Openbaar Ministerie*). See for the Annual Review (in Dutch): https://www.om.nl/@105922/jaarbericht-2018/. The annual review also includes figures on the number of corruption cases that the NPIID has handled in a year. Furthermore, publications on corruption are regularly issued with the cooperation of the NPIID.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The report by Annika Smit is a key example of such a publication; please see https://www.politie.nl/binaries/content/assets/politie/nieuws/2019/rapport-lekken.pdf.

(b) Observations on the implementation of the article

The number of corruption investigations in the country's public administration are published by the National Internal Investigations Department through the Public Prosecution Service Annual Review. The Netherlands does not conduct periodic evaluations on the risks of corruption in its public administration.

The reviewing experts therefore recommended that the Netherlands consider publishing periodic reports on the risks of corruption in the public administration (art. 10 (c)).

(c) Successes and good practices

The establishment of the knowledge and information centre to facilitate effective communication between citizens and the Government, in order to support all administrative bodies in adopting an informal and proactive approach to the provision of public information (art. 10 and art. 13, para. 1 (b)).

Article 11. Measures relating to the judiciary and prosecution services

Paragraph 1 of article 11

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Constitution

Article 116

1. The courts which form part of the judiciary shall be specified by Act of Parliament.

2. The organisation, composition and powers of the judiciary shall be regulated by Act of Parliament.

3. In cases provided for by Act of Parliament, persons who are not members of the judiciary may take part with members of the judiciary in the administration of justice.

4. The supervision by members of the judiciary responsible for the administration of justice of the manner in which such members and the persons referred to in the previous paragraph fulfil their duties shall be regulated by Act of Parliament.

Article 117

1. Members of the judiciary responsible for the administration of justice and the Procurator General at the Supreme Court shall be appointed for life by Royal Decree.

2. Such persons shall cease to hold office on resignation or on attaining an age to be determined by Act of Parliament.

3. In cases laid down by Act of Parliament such persons may be suspended or dismissed by a court that is part of the judiciary and designated by Act of Parliament.

4. Their legal status shall in other respects be regulated by Act of Parliament.

In addition to a set of laws (consisting of constitutional, criminal and administrative law) that standardise and regulate judicial integrity in the Netherlands, the Dutch judiciary has formulated internal policy rules and codes of conduct related to judicial integrity at various levels in the judicial organisation (District Courts, Council of the Judiciary, Supreme Court, Administrative Jurisdiction Division of the Council of State and Dutch Association for the Judiciary). These documents are also inspired by the organisation's traditions and culture.

The Dutch Judiciary has set out its concept of judicial integrity in the:

1. Code of Conduct for the Judiciary, 2010 (Gedragscode Rechtspraak);

2. Code for Judges, 2011 (Rechterscode);

3. Guidelines for impartiality and ancillary positions in the Judiciary, 2014 (Leidraad onpartijdigheid en nevenfuncties in de Rechtspraak);

4. Recommendation on the Recusal Protocol (Aanbeveling wrakingsprotocol gerechtshoven en rechtbanken).

In the coming months, the Dutch Judiciary will try to merge all the documents mentioned above into one. However, this process appears to be difficult because of all the representatives from different layers of the Judiciary involved.

The Dutch Judiciary underlines the following international regulatory frameworks on judicial integrity:

1. UN Basic principles on the independence of the judiciary principles, 1985;

2. Bangalore Principles of Judicial Conduct, 2002;

3. Recommendation CM/Rec 2010(12) of the Committee of Ministers to Member States on Judges: independence, efficiency and responsibilities;

4. Magna Carta of Judges: Fundamental Principles of the Consultative Council of Judges in Europe, 2010;

5. London Declaration 2010 of the ENCJ Working Group 'Judicial Ethics Report 2009-2010: Judicial Ethics: Principles, Values and Qualities'.

Additionally, it is obligatory for judges to report on criminal offences, incompatibilities, ancillary positions and inappropriate behaviour, as well as to take an oath (in relation to integrity and confidentially).

Council for Judiciary

The process of merging all the different codes is not completed yet, this is partly due to the corona measures as a lot of different parties are involved in the process. The Judiciary expects to continue the process this year.

There is an internal procedure of complaints at every court for court users with complaints relating to the behavior of f.e. judges. There is also the possibility of appeal. Furthermore, the Judiciary has a specific protocol regarding breaches of integrity.

In 2011 the complaints regulation that dated from 2002 was evaluated. This evaluation coincided with a Parliamentary motion to expand the external input during the handling of

complaint on the behavior of a judge. In 2012 a projectgroup made several recommendations:

1. §1Set up a permanent complaints advisory committee with an external president.
2. Present all complaints regarding the behavior of a judges before an external president.

In view of these recommendations the court presidents of the District Court of Amsterdam, the District Court of The Hague and the District Court of Rotterdam decided, with approval of the Works councils of the specific courts, to install a complaints advisory committee including an external president.

The legal provision that ensures the independence and integrity of judges is written at the highest level of legislation: art. 116 of the Constitution. Furthermore, in Judicial Officers (Legal Status) Act (Wet rechtspositie rechterlijke ambtenaren) there are provisions regarding ancillary positions, which are publicised; incompatibilities; taking an oath; disciplinary measures and the obligation to request a 'certification of no objection' (VOG) at the time of a new appointment, which entails a search in the criminal history.

Art. 4a of the judicial officers act states that only a person who is in possession of a certificate of conduct, not more than three months old and that has been issued in accordance with the Dutch Judicial Data and Criminal Records Act, can be appointed as a judicial officer. This involves checking criminal records for a period of 30 years.

Furthermore, art. 5g states that when they are appointed to office and before the date of entering employment, judicial officers take an oath or make a solemn affirmation in accordance with the form set out in the appendix to the Act. Both articles apply for judges and prosecutors.

The National Selection Committee (Landelijke selectiecommissie rechters, LSR) looks into the (criminal) history of every person who applies to become a judge, until 30 years back. If there has been an incident with the law, the person cannot become a judge.

In the training programme for judges there is also a training on integrity. In addition, there are different courses on professional ethics and integrity for current judges. This is very important, since judges are appointed for life (that is, until they reach the age of 70). There is an upcoming change of law on financial interests, which will require judges to submit assets and interest declarations in the near future to their president. They will not be made public as this is considered too big a breach of privacy. There is already an obligation to submit any other jobs of committees, which are indeed published.

Each court has an integrity commission and a confidential advisor. The tasks of these two is to advice on integrity issues. In addition, the HRM department of the Council for the Judiciary also advices courts, might they have questions on integrity issues. However this all is additional to our bodies that investigate, prosecute and handle integrity and in the worst case corruption cases. In general corruption is investigated by the National Police Internal Investigations Department (Rijksrecherche). This organization is affiliated to the Public Prosecution Office. In general corruption is prosecuted by specialized prosecutors of the

Public Prosecution Office. Cases of integrity or corruption that relate to judges are handled by the Supreme Court. On average, 1 disciplinary measure (written warning by the President of the Court) is given to a judge related to unprofessional conduct per year (f.e. alcoholism, misconduct at work, breach of official secrecy).

The reporting of financial interests by judges will be arranged in the Judicial Officers (Legal Status) Act (Wet Rechtspositie rechterlijke ambtenaren). Following the revision of the Judicial act a specific category of judges will have to inform the President of the court on their financial interests. These category of judges have to deal with cases in which they should do not have the appearance against them regarding financial conflicts of interest. These financial interests will not be verified or published as this is considered too big a breach of privacy. If however someone chooses deliberately to withhold information, this may result in a disciplinary measure.

The PPS Integrity Bureau

(and its duties)

Version date 22 May 2012

Status Decision of the Board of Prosecutors General

Purpose

The PPS Integrity Bureau (PPS-IB/BI-OM) functions as a national centre of expertise that supports PPS divisions/departments in implementing their responsibilities in the area of integrity. This task is realised by addressing both sides of integrity: the 'soft side' (awareness, communication, debatability, and safe climate) and the 'hard side' (reporting procedure, uniform handling of violations, etc.).

In cooperation with the PPS divisions/departments, the PPS-IB/BI-OM wishes/intends to contribute actively to the aim of ensuring that all PPS employees are aware of the importance of integrity and of acting ethically. The aim is to internalise 'integrity' as a value, to create a 'safe' climate in which employees will feel responsible for integrity, and will conduct themselves accordingly.

The PPS-IB/BI-OM will also formulate conditions and frameworks that will contribute to a responsible system of investigating and settling matters involving suspicions of violations of integrity, across the PPS organisation as a whole.

Role Perception

The PPS-IB/BI-OM will attempt to achieve this aim from the standpoint of an encouraging, as well as a controlling, role.
The *encouraging* role is aimed at enabling senior officers within the PPS divisions/departments to assume their responsibilities and to actively implement integrity. The support provided by the PPS-IB/BI-OM consists of setting frameworks, making expertise available, and providing products that can be used by the senior officers to shape the learning process and enforcement.

As a result of this support, integrity will be guaranteed and enshrined within the PPS.

The *controlling* role of the PPS-IB/BI-OM includes the activities of maintaining an overall insight into violations of integrity and, from this position, providing support to the competent authority in complying with statutory requirements, and a uniform implementation of enforcement practices across the PPS organisation as whole.

Both roles also have a strong *advisory* component. In the area of integrity, the PPS-IB/BI-OM wishes/intends to provide maximum support, to give advice, and to be a 'sparring partner' for the PPS divisions/departments.

Below, both roles have been elaborated further. Many of the activities described will be performed by the PPS-IB/BI-OM in cooperation with others within the PPS. These may, for instance, be officers in the area of HRM and Communication, the Board, the Group Council, and the competent authorities of the PPS divisions/departments. In order to avoid repetition, this cooperation is not repeated for each activity; it is the intention that the PPS-IB/BI-OM will take the lead in this.

Encouraging role in ensuring ethical conduct

- To develop and propagate a vision on integrity and integrity policy for the PPS.
- To design tools to make standards and values, and professional dilemmas in connection with integrity, discussible.
- To be available for support and advice as a 'sparring partner' for the PPS divisions/departments, for the purpose of communication and awareness-raising on the subject of integrity.
- To have confidential integrity officers appointed and trained, and to develop a job description and a training programme for such officers.
- To formulate the component of 'integrity' in the training programme for superiors.
- To provide insight into specific working areas, positions, activities, and circumstances that increase the vulnerability to violations of integrity.
- To investigate and, where necessary, optimise the recruitment, selection, and acceptance policy, including screening possibilities for new employees.
- To contribute to clear standards and values for the PPS, in order to provide a framework and a starting point for employees, including by a revised PPS Code of Conduct.
- To combine, make accessible, and disclose/communicate all relevant documentation in an Integrity Manual for PPS employees and superiors.

Controlling role in tackling integrity problems

- To register violations of integrity or the suspicion thereof and to settle them on the basis of reports of the competent authorities of PPS divisions/departments. The PPS-IB/BI-OM will register the reports and settlements in the PPS-wide registration system (LIRS)[53].
- To conduct investigations into violations of integrity or the suspicion thereof at the request of the competent authority. The PPS-IB/BI-OM has investigators – from various PPS divisions/departments –trained for this purpose.[54]
- To give and support and advice with respect to the procedure after a violation of integrity or the suspicion thereof has been established, and/or with respect to settling the violation that has been established, at the request of the competent authority. This support includes formulating the practices for internal and external communication. In cases where the PPS-IB/BI-OM is not charged with the investigation or has nots specifically been requested to give advice, the PPS-IB/BI-OM may also serve as a 'sparring partner' in each stage of the investigation of a violation of integrity or the suspicion thereof.
- To encourage and maintain an insight into the uniform settling of violations of integrity. Each year, the PPS-IB/BI-OM will draw up an accountability report for the Board concerning, among other things, the state of affairs of the integrity policy, the number of violations, and the manner in which they were settled.

[53] After implementation of the LIRS, the competent authority will be able to enter such a report in the LIRS itself.

[54] The competent authority may also choose to have the investigation conducted by persons from its own PPS division/department designated for this purpose, or by an external party.

With regard to the foregoing it is must be emphasised that it is not the intention of the PPS-IB/BI-OM to take over the responsibilities of the competent authority. The competent authority will continue to be responsible for the following actions: assessing whether an incident must be reported to the PPS-IB/BI-OM as a violation of integrity or a suspicion thereof, giving the order to institute an investigation, choosing whether this investigation will be conducted by the PPS-IB/BI-OM or by their own investigators or by an external party, the manner in which an investigation is settled, etc. Each step in this process requires a thorough consideration and explicit decision to be taken by the competent authority.

Profile of investigators (for initial preliminary investigation or disciplinary investigation of the facts)[55]

- Affinity with integrity
- Support within the organisation (confidence, objectivity, and empathy)
- Self-insight
- Of impeccable character
- Able to adopt an independent attitude towards the commissioning authority
- Able to resist pressure
- Focused on investigating facts, not views
- Conscious of role and position
- Able to see things from another point of view (an investigation into a violation of integrity is different from a criminal investigation)
- Above average experience within the PPS (years of employment and positions)
- Eager to learn, enthusiastic to make himself/herself familiar with other disciplines

Blueprint of the desired composition of the PPS-IB BI-OM[56]

- Broad-based composition: in addition to the Integrity Programme Manager and an Integrity Coordinator, representatives from HRM, Expertisecentrum Arbeidsjuridisch/Employment-Law Expertise Centre, BVC, (MT) National Police Internal Investigations Department, Communication, Directors of Operations, as well as the coordinating officer of the National Police Internal Investigations Department; where necessary, the PPS Works Council will also be notified and engaged
- Balanced distribution between men/women and young/old
- Investigative experience
- Knowledge in the area of technical investigation possibilities
- Advisory capacity, both with regard to the 'hard side' (reporting procedure, uniform handling of violations, etc.) and the 'soft side' (awareness, communication, debatability, and safe climate) of integrity.

[55] On the basis of input: Henk Hummel (National Police Internal Investigations Department, deputy director), Piet Keesman (former Head of Internal Investigation Bureau, Amsterdam Police Force), Bert Aker (National Police Internal Investigations Department, detective, former Amsterdam Internal Investigation Bureau), Gerard Borghols (National Police Internal Investigations Department, former National Information Database of the Netherlands Police Agency), Hans Olde Hanhof (deputy director National Information Database of the Custodial Institutions Agency).

[56] On the basis of the same sources as used for the profile of investigators as well as HRM Manager of the National Office of the Public Prosecution Service (See also the Framework Memorandum on Integrity).

- **Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

- Each court has an integrity committee and a confidential adviser. The tasks of these two is to advise on integrity issues. In addition, the Human Resources Department of the Council for the Judiciary also advises courts should they have questions on integrity issues. However, these parties are all in addition to the bodies that investigate, prosecute and handle integrity, including matters of corruption in the worst case. In general, corruption in the Dutch public sector is investigated by the NPIID. This organisation is positioned in the Public Prosecution Service, where corruption is generally prosecuted by specialised prosecutors of the Public Prosecution Service. Cases of integrity or corruption which relate to judges are assigned by the Supreme Court to a court and prosecution office. On average, one disciplinary measure (written warning by the President of the Court) is given to a judge due to unprofessional conduct per year (for example, alcoholism, misconduct at work or a breach of official secrecy).

(b) Observations on the implementation of the article

At the time of the country visit, a plan was being developed to merge all codes of conduct and guidelines for the courts within the judiciary into a single code of conduct. Each court has an integrity committee and a confidential adviser that, along with the Human Resources Department of the Council for the Judiciary, provide advice on integrity issues.

Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Statutory rules for the promotion of integrity are embedded in law through the following legislation:

Civil servants act – predating January 2020

Section 125ter

The competent authority and civil servants are obliged to act in a manner as befits a good employer and good civil servants.

Section 125quarter

The competent authority of civil servants that have been appointed by or on behalf of the government, the provinces, the municipalities or the water authorities:

a. will pursue an integrity policy which is aimed at promoting proper conduct as befits civil servants and which in any case focuses on improving awareness of integrity as well as preventing misuse of powers, conflicts of interest and discrimination;

b. will ensure that the integrity policy is a fixed component of human resources policy, in any case by addressing integrity during appraisal interviews and work consultations as well as by providing training and education in the field of professional integrity;

c. will ensure the creation of a Code of Conduct with regard to proper conduct as befits civil servants;

d. will determine the method of annual accountability and reporting on the integrity policy in place as well as on compliance with the Code of Conduct, in accordance with the Lower House of Parliament or the Provincial Council, the executive board or general management.

General Civil Servant Regulation (ARAR)

Section 50

1. Civil servants are obliged to perform the duties arising from their position in an accurate and diligent manner as well as to conduct themselves as befits good civil servants.

2. Civil servants may not wear a uniform (or garments thereof) when on duty, unless such garments have been provided or prescribed by the government.

3. Civil servants may not wear uniform insignia or any other decorations, unless they have been provided or prescribed by the government, or permission to wear such insignia has been granted by Our Prime Minister.

Judicial Officers (Legal Status) Regulation (Besluit rechtspositie rechterlijke ambtenaren)

Section 34a

1. A disciplinary measure may be imposed on judicial civil servants who fail to fulfil an obligation imposed on them or who are guilty of negligence in their duties.

2. Negligence as referred to in Paragraph 1 includes both the contravention of any requirement and any act or omission of that which befits a good judicial civil servant in the same circumstances.

Enforcement of 125quarter Civil Servants Act (predating January 2020)

The Public Prosecution Service has set up the Public Prosecution Service Integrity Department (Bureau Integriteit Openbaar Ministerie, BI-OM) for the enforcement of Section 125c.

The subject of integrity is highlighted across the entire breadth of the issue by the BI-OM. First and foremost, this fact means that there is a great deal of focus on awareness, communication, open debate and a safe working environment. At the same time, a credible integrity policy also requires adequate, unambiguous and visible action in respect of conduct that clearly transgresses the norm.

The BI-OM is a national centre of expertise that has an advisory, stimulating and policy-oriented role in the field of integrity. It aims to support, advise and act as a ‘sparring partner’ for the units of the Public Prosecution Service as well as its employees across as broad a scope as possible.

Support takes place in many ways, such through developing and making available tools, guidelines as well as instruments aimed at integrity and awareness. The BI-OM also has drawn up a number of national guidelines, policies and instructions that provide a framework; for example, with regard to handling reports of integrity violations and performing integrity investigations.

In addition, the BI-OM is the internal investigation agency of the Public Prosecution Service and has 12 investigators at its disposal who will investigate any suspected integrity violation at the request of an office. The BI-OM also coordinates the confidential counsellors on integrity who operate within the various offices (25 individuals). Furthermore, the BI-OM facilitates and is part of the Advisory Committee on the Resolution of Integrity Violations (Adviescommissie Afdoening Integriteitsschendingen). This committee advises the competent authority on what measure can be imposed for negligence of duties (demonstrated by a disciplinary investigation of the facts or otherwise) resulting from an integrity incident. The BI-OM publishes a relevant annual report.

In addition, the BI-OM is an international player as well. For example, the department assisted the Kosovan Public Prosecution Office with the development of a new code of conduct at the request of the Dutch embassy.

Furthermore, the following codes of conduct apply to employees (both civil and judicial) of the Public Prosecution Office:

- Public Prosecution Service Code of Conduct;
- Government Code of Ethics;
- Guidelines on Reporting Integrity Violations;
- Instructions on how to handle integrity violations.

Public Prosecutors Office

In respect of "Article 11 Measures (including rules of conduct) to the judiciary and prosecution services to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may of members of the judiciary." The Netherlands profided earlier the following information (desk review chapter 2 page 85-86):

"The Public Prosecution Service has set up the Public Prosecution Service Integrity Department (Bureau Integriteit Openbaar Ministerie, BI-OM) for the enforcement of Section 125c".

The subject of integrity is highlighted across the entire breadth of the issue by the BI-OM. First and foremost, this fact means that there is a great deal of focus on awareness, communication, open debate and a safe working environment. At the same time, a credible integrity policy also requires adequate, unambiguous and visible action in respect of conduct that clearly transgresses the norm.

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- Public Prosecution Service Code of Conduct;
- Government Code of Ethics;
- Guidelines on Reporting Integrity Violations;
- Instructions on how to handle integrity violations

During the on-site evaluation the Netherlands was asked to provide further information regarding these subjects. First it has to be mentioned that Section 125c is an article concerning the obligation of implementing an integrity policy and a code of conduct, of the Civil Service Act (Ambtenarenwet) which has been replaced by the 2017 Civil Service Act for civil servants.

The BRRA, especially chapters 3 and 6 with regard to ancillary positions, chapter 4 for good judicial civil service, impose guidelines for the conduct of public prosecutors. More in general trading in shares with inside information is punishable on the basis of the WFT in connection with art. 1 and 6 of the WED (see e.g. https://www.afm.nl/nl-nl/professionals/veelgestelde-vragen/effectenmarkten-effectentypisch-gedragstoezicht/voorwetenschap). Because infringement in the right of privacy needs a legal basis in a formal law, the regulation of the reporting and registration of financial interests by

public prosecutors will be sought after by the occasion of adjustment of the Judicial Officers Legal Status Act (Wrra). This is in line with the comparable scheme for ordinary civil servants, as it applies from 1 January 2020 on the basis of Article 5, first paragraph, under d, and Article 8, first paragraph, under c, and second paragraph, part b, of the Civil Service Act 2017.

An important task of the BIOM 'investigators' is raising awareness. They are not full-time positions. Besides their work for BIOM they have regular jobs at the Public Prosecution Service. They are not allowed to conduct research concerning the PPS-office where they usual work(ed) or where they know a lot of the employees. Therefore, it is essential that the BIOM has enough staff. If necessary they are supported by two investigating officers of the 'Rijksrecherche' (National Criminal Investigation Department), who also do this additionally to their regular job.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Public Prosecution Service is transparent in how it deals with violations of integrity. For this reason, the BI-OM publishes an overview of reports handled, which are available to the general public via the following website: https://www.om.nl/onderwerpen/integriteit/.

In special cases, the Board of Procurators General (College van Procureurs-Generaal) may order independent investigations. A recently published investigation related to that of the Fokkens Committee on a secret relationship between two senior public prosecutors. Also in this case, the Public Prosecution Service reports on the progress and issues a publication in a transparent way. Please find an overview of this information on the following website:

https://www.om.nl/vaste-onderdelen/zoeken/@105665/presentatie/.

(b) Observations on the implementation of the article

All officials working for the Public Prosecution Office are bound by the Public Prosecution Service Code of Conduct, the Government Code of Ethics, the Guidelines on Reporting Integrity Violations and instructions on how to handle integrity violations. The Public Prosecution Service Integrity Bureau was set up to comply with the obligation to implement the integrity policy and code of conduct within the Public Prosecution Service (art. 4 of the Civil Servants Act). In addition to the Bureau's advisory and policymaking role, its investigators may carry out internal investigations into any suspected integrity violation within the Public Prosecution Service.

Article 12. Private sector

Paragraphs 1 and 2 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing

standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The Netherlands strives to fight corruption effectively. The authorities focus on giving presentations to public and private sector stakeholders in order to raise awareness of the subject, explain the approach adopted by the FIOD/ACC and the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation and why this is being intensified, and enhance their detection capacities. For example, many presentations are given at law firms and accountancy firms and for compliance staff, audit and fraud specialists (Association of Certified Fraud Examiners, special investigative services and the Tax and Customs Administration) and fellow investigators (e.g. at the money laundering conference and the national investigation day). In addition, presentations were given by the Ministry of Justice and Security, the FIOD and the National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation during the Corruption Study Day held by the Tax and Customs Administration at Nyenrode Business University on 21 March 2016. Three separate presentations were given on the following subjects:

- corruption from a national and international perspective (by the Ministry of Justice and Security);

- the part played by Tax and Customs Administration auditors in tackling corruption (by the FIOD);

- legal and prosecution aspects of combating corruption (by the DPPS).

One way in which the FIOD/ACC fights corruption is by adopting a project-based approach, for example by focusing on a particular industry, occupation or theme. The aim is to promote collaboration throughout the entire reporting chain. An example is a project started by the FIOD/ACC on the basis of transactions declared suspicious by FIU-Netherlands and originally reported as 'unusual' by auditors under the WWFT (referred to below as suspicious transaction reports or STRs).

A report submitted by an auditor to the FIU is hedged around by many safeguards based on statutory rules of conduct and professional rules and is prepared with such care that great value can be placed on its content. The aim of the suspicious transaction reports project is:

- in collaboration with enforcement partners, to use the reports for the purposes of investigation, supervision and prevention;

- to raise awareness among auditors about the various forms and indicators of corruption in order to increase the number and improve the quality of the reports;

- to improve the efficiency and effectiveness of the entire reporting chain.

The measures taken to achieve these aims include the following:

- routinely assessing suspicious transaction reports over a five-year period to identify possible signs of corruption. Under this project, 70 reports of corruption indications have led to the institution of eight criminal investigations (including one case of foreign bribery) and 60 reports have been forwarded to the authorities for use in levying and collecting tax;

- organising two workshops together with the AFM and DPPS for auditors to brief them on corruption indicators, investigation methods and the FIU reporting process;

- giving an interview in a national newspaper and communicating the FIOD's experiences at a corruption conference in Washington (November 2018) to raise awareness about identifying corruption and about how auditors can assist in this.

To enhance detection of suspected foreign bribery, self-reporting by the private sector is encouraged. Currently, there is no written policy on handling self-reporting by natural or legal persons. However, the basic principle is that suspects who self-report when foreign bribery is detected within or by their company or organisation and who act openly and transparently in their contacts with the DPPS can expect the public prosecutor takes that into account in deciding on the sanctions that will be demanded in court or in non-trial resolutions. In practice, this principle is communicated to external stakeholders such as law firms and companies through presentations by public prosecutors for the lawyers and their clients as well as through publications (i.e. press releases about settlements offered after an investigation based on self-reporting and newspaper interviews).

Presentations and workshops are organised by the FIOD/ACC and the DPPS to create more awareness of corruption and its red flags. For example, many presentations are given at law firms

(for their clients) and accountancy firms and for compliance staff, audit and fraud specialists (Association of Certified Fraud Examiners) By sharing knowledge about corruption and ways of detecting it in their own organisation, companies will be better able to report. In the last two years, the ACC has for example organised meetings with the Association of Certified Anti-Money Laundering Specialists (ACAMS), at which those attending were informed of the corruption red flags (based on the handbook created by the OECD's Task Force on Tax Crimes and Other Crimes (TFTC), and training was given on how to recognise corruption in these hypothetical cases.

ICC-Netherlands has established a platform on 'integrity encouragement'. This is intended for financial and compliance professionals. The FIOD/ACC has attended this platform to increase knowledge of corruption and detection capabilities.

The Financial Expertise Centre (FEC) is operated by various public authorities (DPPS, FIU, DNB, AFM, the Tax and Customs Administration, the National Police and the FIOD). The FEC is a partnership between authorities that have supervisory, control, prosecution or investigation tasks in the financial sector and was founded to strengthen the integrity of the sector by taking preventive action to identify and combat threats to this integrity. The FEC also plays an important role in providing and disseminating information. By arranging for FEC partners and observers to exchange information, knowledge and skills among themselves, the FEC can act effectively and efficiently in tackling specific problems and achieve a wide-ranging effect.

The FEC plays a role in promoting corruption detection by private sector

stakeholders. For example, it has prepared a corruption project for the FEC 2019 Annual Plan. The overall aim of the project is for the participants (FEC partners and private sector organisations, in this case banks) to explore together ways of fighting corruption more effectively, for example by:

- raising awareness of corruption risks;

- detecting corruption risks in time;

- discussing corruption indicators and trends.

This translates into the following ambitions in this public private project:

- to enable banks to learn from one another by exchanging indicators and indications and sharing the information with public sector partners;

- to jointly develop red flags and prepare a factsheet; and to improve the quantity and quality of reports to the FIU based on the experiences of FIU-Netherlands with the Egmont Group and OECD indicator list.

- the Dutch Banking Association (NVB) is responsible for ensuring that its wider membership is engaged with the theme of corruption.

A number of exploratory meetings were held in 2018 between the public sector partners (FIU, DPPS, DNB and FIOD/ACC) and the four major banks. Work has started in 2019 on compiling indicators for banks to enable them to detect corruption better. This is based on the OECD and Egmont indicators, as well as on the findings of criminal investigations into corruption. The banks have translated the indicators into a query that can be applied to transaction and customer data. In

the second half of 2019, the banks, together with the public sector partners, will analyse and discuss the findings from the queries. The query will then be refined still further.

A corruption factsheet will also be compiled for bank employees in the foreseeable future. The first version of the factsheet has already been drawn up at interbank level. After that the factsheet will be supplemented by the DPPS and FIOD/ACC. Once the factsheet is finished, it will be periodically updated.

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

The Chamber of Commerce (Kamer van Koophandel) applies various measures to promote transparency among private entities. For example, a compulsory identification requirement is in place for registration in and changes to the Trade Register (Handelsregister). In other words, identification with a valid identity document is required in order to guarantee that the personal details registered in the Trade Register are correct. Any accompanying party acting as a spokesperson or interpreter/translator must also be able to identify themselves. In cases where the accompanying party de facto handles the registration on behalf of a person, the Chamber of Commerce wishes to establish who this party is.

An identity document must be provided if:

- any person registers a company in the Trade Register;

- any person takes up a position at a company already enrolled in the Trade Register; for example, as a director, partner or proxy of a company;

- a person accompanies a man or woman intending to enroll as an entrepreneur, partner, director or proxy and acts as spokesperson or interpreter/translator.

AFM

In 2015, the Dutch Authority for the Financial Markets (AFM) conducted a thematic inspection of corruption control measures put in place by the Big Four audit firms. This inspection comprised an assessment of relevant procedures and policies. The inspection findings were shared with the market in order to promote the adoption of best practices. In 2016, the AFM carried out a follow-up inspection of the performance of the audit firms' fraud committees. This inspection involved an in-depth analysis of the quality of audit firms' fraud committee consultations on the basis of preselected consultation files.

In addition to its inspections, the AFM performed five investigations into the role and behaviour of audit firms in specific corruption cases. In this respect, the Dutch Audit Firms Supervision Act and related regulations provide a mandatory reporting policy for audit firms in the event that integrity issues such as corruption risks are detected at audit firms' clients. In one of the potential corruption cases investigated, the AFM filed disciplinary complaints against two individual accountants after significant omissions were found in their audit activities.

Furthermore, the Dutch Association of Chartered Accountants (NBA) provided guidance on the role of audit firms in the fight against corruption with the input of the AFM in 2016.

DNB

Furthermore, the website of De Nederlandsche Bank (DNB) has Guidelines on the Money Laundering and Terrorist Financing (Prevention) Act (Wet ter voorkoming van witwassen en financieren van terrorisme, Wwft) which outline the standards and procedures relating to compliance with the Wwft by institutions subject to regulatory supervision. The Netherlands has a broad money laundering definition, which also encompasses money flows generated by corruption. In addition, the Guidelines focus on the risks related to corruption, pointing to risks present in specific countries, risks for specific customers and risks present in certain sectors. They also focus on risks associated with services provided to politically exposed persons.

DNB has published Good Practices Fighting Corruption, which were developed in 2014 as a result of an investigation into a group of 13 banks and insurance companies. This investigation revealed that although the risk of corruption was recognised, it was still being tackled insufficiently.

In 2017, DNB carried out an investigation into conflicts of interest and corruption in the pensions sector. DNB also published various good practices on the control of integrity risks (including corruption) at institutions subject to regulatory supervision.

- Good practices: risk management for conflicts of interests in pension funds.
- Good practices: integrity risk analysis – more where needed, less where possible.
- Policy rule: integrity policy in respect of business property activities.

DNB is also part of the Financial Expertise Centre (Financieel Expertise Centrum, FEC). The FEC is a partnership between the various authorities that have a regulatory, control, prosecution or investigation remit within the financial sector and was founded to strengthen the integrity of this sector. This aim is accomplished by taking preventive and active action to counter threats that may affect this integrity.

Public-private partnerships

Collaboration also takes place in various ways between public- and private-sector parties in the Netherlands to prevent and tackle corruption. A key example includes the public-private partnership within the FEC between banks and public-sector parties, whereas an FEC public-private partnership was launched via the round table of the FEC. The objective of this project is exploring opportunities jointly to combat corruption more effectively as FEC partners and private-sector partners, including through:

- increasing awareness of corruption risks;

- detecting corruption risks in a timely fashion;

- making indicators of corruption and trends open to discussion.

More specifically, the following aims have been identified:

- interbank learning through exchanging indicators and signals as well as sharing insights gained with public-sector partners.

- jointly developing red flags and drafting a knowledge document; improving the quality of the reports to the FIU based on the experiences of FIU-NL with the Egmont Group and the OECD list of indicators;

- involving partners from the scientific community if necessary;

- having the Dutch Banking Association examine the involvement of a broader support base for the issue of corruption.

Parties involved in this partnership are DNB, the FIOD, FIU-Netherlands, the Public Prosecution Service and the FEC-PPS partners: ABN AMRO, ING, Rabobank, Volksbank and the Dutch Banking Association (Nederlandse Vereniging van Banken).

The fourth conference took place on 4 June and progress has clearly been made. Banks have conducted the first analyses and the corresponding results are currently being reviewed. In addition, a knowledge document has been drawn up by the banks.

With respect to private enterprises (f), see the answer to Article 5(4).

Corporate Governance Code

1.3.3 Internal audit plan

The internal audit function should draw up an audit plan after consultation with the management board, the audit committee and the external auditor. The audit plan should be submitted to the management board and then to the supervisory board for approval. In the internal audit plan, attention should be paid to interaction with the external auditor.

Fourth Anti-Money Laundering Directive (AMLD 4) (Directive (EU) 2015/849)

Article 30

1. Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.

Member States shall ensure that those entities are required to provide, in addition to information about their legal owner, information on the beneficial owner to obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter II.

2. Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.

3. Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State, for example a commercial register, companies register as referred to in Article 3 of Directive 2009/101/EC of the European Parliament and of the Council (1), or a public register. Member States shall notify to the Commission the characteristics of those national mechanisms. The information on beneficial ownership contained in that database may be collected in accordance with national systems.

4. Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current.

5. (a) Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:

competent authorities and FIUs, without any restriction;

(b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;

(c) any person or organisation that can demonstrate a legitimate interest.

The persons or organisations referred to in point (c) shall access at least the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held.

For the purposes of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and may be subject to online registration and to the payment of a fee. The fees charged for obtaining the information shall not exceed the administrative costs thereof.

6. The central register referred to in paragraph 3 shall ensure timely and unrestricted access by competent authorities and FIUs, without alerting the entity concerned. It shall also allow timely access by obliged entities when taking customer due diligence measures.

7. Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 3 to the competent authorities and to the FIUs of other Member States in a timely manner.

8. Member States shall require that obliged entities do not rely exclusively on the central register referred to in paragraph 3 to fulfil their customer due diligence requirements in accordance with Chapter II. Those requirements shall be fulfilled by using a risk-based approach.

9. Member States may provide for an exemption to the access referred to in points (b) and (c) of paragraph 5 to all or part of the information on the beneficial ownership on a case-by-case basis in exceptional circumstances, where such access would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable. Exemptions granted pursuant to this paragraph shall not apply to the credit institutions and financial institutions, and to obliged entities referred to in point (3)(b) of Article 2(1) that are public officials.

10. By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring the safe and efficient interconnection of the central registers referred to in paragraph 3 via the European central platform established by Article 4a(1) of Directive 2009/101/EC. Where appropriate, that report shall be accompanied by a legislative proposal.

Article 31

1. Member States shall require that trustees of any express trust governed under their law obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

(a) the settlor;

(b) the trustee(s);

(c) the protector (if any);

(d) the beneficiaries or class of beneficiaries; and

(e) any other natural person exercising effective control over the trust.

2. Member States shall ensure that trustees disclose their status and provide the information referred to in paragraph 1 to obliged entities in a timely manner where, as a trustee, the trustee forms a business relationship or carries out an occasional transaction above the thresholds set out in points (b), (c) and (d) of Article 11.

3. Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.

4. Member States shall require that the information referred to in paragraph 1 is held in a central register when the trust generates tax consequences. The central register shall ensure timely and unrestricted access by competent authorities and FIUs, without alerting the parties to the trust concerned. It may also allow timely access by obliged entities, within the framework of customer due diligence in accordance with Chapter II. Member States shall notify to the Commission the characteristics of those national mechanisms.

5. Member States shall require that the information held in the central register referred to in paragraph 4 is adequate, accurate and up-to-date.

6. Member States shall ensure that obliged entities do not rely exclusively on the central register referred to in paragraph 4 to fulfil their customer due diligence requirements as laid down in Chapter II. Those requirements shall be fulfilled by using a risk-based approach.

7. Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 4 to the competent authorities and to the FIUs of other Member States in a timely manner.

8. Member States shall ensure that the measures provided for in this Article apply to other types of legal arrangements having a structure or functions similar to trusts.

9. By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring safe and efficient interconnection of the central registers. Where appropriate, that report shall be accompanied by a legislative proposal.

Public Administration (Probity Screening) Act (Wet Bibob)

Article 3

1. To the extent that administrative bodies have been given the authority to do so by or pursuant to law, they may refuse to issue a requested decision or withdraw a decision that has been issued if there is a serious risk that the decision will also be used to:

a. to use monetary benefits obtained or to be obtained from criminal offences, or

b. to commit criminal offenses.

2. Insofar as the serious danger referred to in the first paragraph, opening sentence and part a, is concerned, the degree of danger is determined on the basis of:

a. facts and circumstances which indicate or reasonably suggest that the person concerned is involved in criminal offences as referred to in the first paragraph, part a,

b. in case of suspicion of the seriousness thereof,

c. the nature of the relationship and

d. the magnitude of the benefits obtained or to be obtained.

3. Insofar as the serious danger referred to in the first paragraph, opening sentence and part b, is concerned, the degree of danger is determined on the basis of:

a. facts and circumstances which indicate or reasonably suggest that the person concerned is related to criminal offences committed during activities that are similar to or related to activities for which the decision is requested or has been issued,

b. in case of suspicion of the seriousness thereof,

c. the nature of the relationship and

d. the number of criminal offenses committed.

[…].

Article 5

1. A candidate for a public contract to which the provisions referred to in the second paragraph of Article 9 do not apply may be excluded from the award of that contract or from the conclusion of the agreement envisaged by an award decision, taking into account the criteria for qualitative selection within the meaning of the provisions referred to in the second paragraph, subparagraphs (a) and (b) of Article 9.

2. The legal entity with a government task can ask the Bureau for advice:

a. before a decision is taken on the award of a public contract or the conclusion of the agreement envisaged by an award decision;

b. in the event that the legal entity has stipulated by agreement that the agreement will be dissolved if one of the situations referred to in Article 9, paragraph 2 , occurs, before invoking that condition precedent;

c. with regard to a subcontractor, solely with a view to its acceptance as such, if the legal entity with a government task has stipulated in the specifications that subcontractors will not be contracted without the consent of that legal entity and has reserved the right, in the context of that condition, to request advice from the Office.

Article 5a

A legal entity with a government task may ask the Office for advice on the data subject:

a. before a decision is made to enter into a real estate transaction;

b. in the event that it has been agreed in a real estate transaction that the agreement may be suspended or dissolved or the legal act may be terminated if one of the situations referred to in Article 9, paragraph 3 , occurs, before invoking that suspensive or resolutive condition.

Article 6

1. A subsidy to a legal entity or to a natural person may be refused or withdrawn in the case and under the conditions referred to in Article 3.

2. Before a decision as referred to in the first paragraph is taken, the administrative body authorised to take that decision may request advice from the Bureau.

Article 7

1. A municipal permit that is required for an establishment or company on the basis of a regulation may be refused or withdrawn by the municipal executive or the mayor in the case and under the conditions referred to in Article 3.

2. Before a decision as referred to in the first paragraph is taken, the municipal executive or the mayor may ask the Bureau for advice.

3. The first and second paragraphs apply accordingly to a municipal exemption.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

AFM

The efforts of the AFM to promote the adoption of corruption control measures by audit firms have led to the following results:

2015

- quick scan into corruption control measures of Big Four audit firms;

- round table conference on the role of audit firms in controlling corruption risks;

- publication of best practices in the field of corruption control measures.

2016

- individual letter to all registered audit firms (approx. 360) on the role of audit firms in the prevention and detection of acts of corruption;

- publication of the letter sent to individual audit firms.

2017

- round table conference on the role of audit firms in controlling corruption risks;

- investigations into the role and behaviour of audit firms in specific corruption cases. These investigations were initiated in response to mandatory incident reports of alleged omissions by audit firms to comply with corruption control measures;

- individual letter to holders of a licence for statutory audits of non-Public Interest Entities (non-PIE) to promote the implementation of a Systematic Integrity Risk Analysis (SIRA) in order to detect and prevent integrity risks such as corruption.

2018

- round table conference on the role of audit firms in controlling corruption risks;

- research into the implementation of the SIRA by non-PIE audit firms;

- seminar on 'Audit and Corruption' with representatives of audit firms, professional associations, the Public Prosecution Service, the FIOD and the Financial Supervision Office (BFT);

- disciplinary complaints against two individual accountants;

- administrative fine (900,000 euros) against one audit firm for insufficient integrity control measures.

DNB

As regards DNB, it has completed its themed study on Corruption 2015 among insurers. The overall conclusion is that the insurance sector is failing in terms of the identification and the control of corruption risks resulting from conflicts of interest and/or bribery:

https://www.dnb.nl/nieuws/dnb-nieuwsbrieven/nieuwsbrief-verzekeren/nieuwsbrief-verzekeren-februari-2016/dnb338101.jsp.

After previous studies conducted by DNB showed that the translation of the SIRA (systematic integrity risk analysis) into practice was still not always adequate among health-care insurance companies, DNB again focused on controlling the risk of conflicts of interest and corruption in pension funds and health-care insurers in 2017. The survey carried out in 2017 showed that the health-care insurers under investigation had recognised and addressed the risk of conflicts of interest and corruption. In recent years, important steps have been taken to control this risk. There is an increased degree of focus on ancillary positions, gifts & entertainment and sponsorship. In respect of the pension funds, DNB considered how the risk of conflicts of interest and corruption was controlled, which showed that although the risk analysis is sound in general, there are nevertheless areas for improvement. Pension funds should have a SIRA in place, which must specifically focus on preventing and combating conflicts of interest and corruption.

Listed companies in the Netherlands are under legal obligation to adhere to the Dutch Corporate Governance Code. The Code contains principles and best practice provisions that regulate relations between the management board, the supervisory board and the shareholders (including the general meeting of shareholders). The principles and provisions are aimed at defining responsibilities for long-term value creation, risk control, effective management and supervision, remuneration and the relationship with shareholders (including the general meeting of shareholders) and stakeholders. The principles may be regarded as reflecting widely held general views on good corporate governance.

The management board and the supervisory board are responsible for the corporate governance of the company and for compliance with this Code. Compliance with the Code is based on the 'comply or explain' principle. Unlike legislation, the Code offers flexibility in that it provides room to depart from the principles and best practice provisions. The management board and the supervisory board account for compliance with the Code in the

general meeting, and provide a substantive and transparent explanation for any departures from the principles and best practice provisions.

The broad outline of the company's corporate governance is set out each year in a separate chapter of the management report or published on the company's website, partly on the basis of the principles stated in this Code. Here the company explicitly states the extent to which it complies with the principles and best practice provisions stipulated in this Code and, where it does not comply with them, why and to what extent it deviates from them. Importantly, the explanation of any departures should in any event include the following elements:

i. how the company departed from the principle or the best practice provision;

ii. the reasons for the departure;

iii. if the departure is of a temporary nature and continues for more than one financial year, an indication of when the company intends to comply with the principle or the best practice provision again; and

iv. where applicable, a description of the alternative measure that was taken and either an explanation of how that measure attains the purpose of the principle or the best practice provision or a clarification of how the measure contributes to good corporate governance of the company.

The Minister of Economic Affairs has appointed a Corporate Governance Code Monitoring Committee. The Monitoring Committee reports annually on compliance with the Dutch Corporate Governance Code.

The Monitoring Committee's terms of reference are:

- to monitor the operation of the Dutch Corporate Governance Code and its implementation by listed companies and shareholders;
- to keep under review national and international developments in corporate governance generally, reflecting the Monitoring Committee's objective of promoting the use and topicality of the Code;
- to indicate whether there is any gap or indistinctness in the Code. The code is updated regularly, as need arises.

On beneficial ownership identification, see articles 30 and 31 of the 4th revised Transparency Directive. Article 30, regarding ultimate beneficial owners of companies, has been implemented in the "Wet van 24 juni 2020 tot wijziging van de Handelsregisterwet 2007, de Wet ter voorkoming van witwassen en financieren van terrorisme en enkele andere wetten in verband met de registratie van uiteindelijk belanghebbenden van vennootschappen en andere juridische entiteiten ter implementatie van de gewijzigde vierde anti-witwasrichtlijn (Implementatiewet registratie uiteindelijk belanghebbenden van vennootschappen en andere juridische entiteiten)" (Staatsblad 2020, 231) entailing mostly additions and modifications to the Trade Register Law. Similar legislation to implement article 31 of the directive, pertaining to ultimate beneficial owners of trusts and similar contracts is currently under preparation.

On preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities, one of the legal provisions is the Bibob Act. The National Bibob agency (part of the screening

authority of the Ministry of Justice and Security) carries out integrity screenings based on this Act. The National Bibob agency advises administrative bodies (such as municipalities) and legal persons with a governmental task on deciding whether to grant (an application for) permits, subsidies, real estate transactions or public procurement contracts. The recommendation addresses the degree of risk that a permit, subsidy, real estate transaction or public contract may be used to obtain illegally obtained benefits or to commit criminal offences. In order to substantiate this danger conclusion, use is made of data from a variety of information suppliers. The National Bibob agency also maintains contact with the national Bibob officer and officers and public prosecutors from other public prosecutors' offices.

The purpose of the recommendation or so called advisory report, is to provide administrative bodies with tools to protect their integrity when taking decisions on the aforementioned decisions, real estate transactions or public procurement contracts. The basis for such recommendation is the Public Administration (Probity Screening) Act, which is generally applied most frequently in the hospitality industry. Where there is a serious risk of, for example, the misuse of a grant or certain permit, the competent administrative body may refuse the application or withdraw the permit. If there are indications of criminal abuse, of which the governing body can also be informed by means of a PPS tip, governing bodies can ask the National Bibob agency for advice. In that case, the agency will carry out an extensive investigation, in which it can consult information and data from several parties, such as the Public Prosecution Service, the National Police, other special investigation services, the CJIB, JustID, the Tax and Customs Administration, Customs, the Benefits Agency, benefit agencies, and Inspectorates. The law requires a large number of authorities to provide this information.

The Dutch Corporate Governance code contains a principle and best practices (full text below) regarding the internal audit function. The code applies to listed companies. They are legally bound to address their own performance with regard to compliance to the Code in their annual statement. The statements are monitored by a Monitoring Committee appointed by the Minister of Economic Affairs.

Principle 1.3 Internal audit function

The duty of the internal audit function is to assess the design and the operation of the internal risk management and control systems. The management board is responsible for the internal audit function. The supervisory board oversees the internal audit function and maintains regular contact with the person fulfilling this function.

1.3.1 Appointment and dismissal

The management board both appoints and dismisses the senior internal auditor. Both the appointment and the dismissal of the senior internal auditor should be submitted to the supervisory board for approval, along with the recommendation issued by the audit committee.

1.3.2 Assessment of the internal audit function

The management board should assess the way in which the internal audit function fulfils its responsibility annually, taking into account the audit committee's opinion.

1.3.3 Internal audit plan

The internal audit function should draw up an audit plan, involving the management board, the audit committee and the external auditor in this process. The audit plan should be submitted to the management board, and then to the supervisory board, for approval. In this internal audit plan, attention should be paid to the interaction with the external auditor.

1.3.4 Performance of work

The internal audit function should have sufficient resources to execute the internal audit plan and have access to information that is important for the performance of its work. The internal audit function should have direct access to the audit committee and the external auditor. Records should be kept of how the audit committee is informed by the internal audit function.

1.3.5 Reports of findings

The internal audit function should report its audit results to the management board and the essence of its audit results to the audit committee and should inform the external auditor. The research findings of the internal audit function should, at least, include the following:

i. any flaws in the effectiveness of the internal risk management and control systems;

ii. any findings and observations with a material impact on the risk profile of the company and its affiliated enterprise; and

iii. any failings in the follow-up of recommendations made by the internal audit function.

1.3.6 Absence of an internal audit department

If there is no separate department for the internal audit function, the supervisory board will assess annually whether adequate alternative measures have been taken, partly on the basis of a recommendation issued by the audit committee, and will consider whether it is necessary to establish an internal audit department. The

supervisory board should include the conclusions, along with any resulting recommendations and alternative measures, in the report of the supervisory board.

(b) Observations on the implementation of the article

Listed companies must report on their adherence to the Corporate Governance Code, which sets out principles and best practices on internal auditing controls (principles 1.3 et seq.) and other preventive measures. On the basis of the "comply-or-explain" principle, listed companies must either comply with the provisions of the Code or explain their reasons for deviating from them. The Corporate Governance Code Monitoring Committee reports its findings to the Minister of Economic Affairs and Climate Policy, the Minister of Finance and the Minister of Legal Protection.

A public-private partnership through the Dutch Financial Expertise Centre provides for cooperation

between law enforcement and the private sector. Public bodies involved in the fight against corruption, such as the Fiscal Information and Investigation Service and the Public Prosecution Service, organize or contribute to joint workshops for the public and private sector aimed at raising awareness of specific risks of corruption.

Companies registered in the Trade Register must provide beneficial ownership information (arts. 30 and 31 of the fourth revised European Union Transparency Directive).

Provisions on the misuse of procedures governing private entities, including procedures relating to subsidies and licences granted by public authorities for commercial activities, are established in the Public Administration (Probity Screening) Act (chap. 2, arts. 5–7).

The Corporate Governance Code contains a principle on internal audit controls (principle 1.3), but the principle is not enforceable.

The Netherlands has not imposed restrictions on the professional activities of former public officials in the private sector. For a period of two years following their resignation, former ministers and State secretaries are prohibited from engaging with civil servants from their former ministry or from ministries with which the former minister had active involvement while in office (adjacent policy areas). However, the Secretary-General of the ministry concerned may authorize an exception to that rule.

The reviewing experts therefore recommended that the Netherlands impose restrictions for a reasonable period of time on the employment of public officials by the private sector, where such employment relates directly to the functions held during their tenure (art. 12, para. 2 (e)).

The reviewing experts also recommended that the Netherlands consider taking further measures to ensure that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption (art. 12, para. 2 (f)).

Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c) The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e) The use of false documents;

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Pursuant to the Supervision of Audit Firms Act (Wta) art. 21, the audit firm is required to give substance to controlled and ethical business operations, including corrupt activities.

Pursuant to article 26 of the Wta in conjunction with articles 36-38 of the Royal Decree on Supervision of Accountants (Bta), a reporting obligation applies when the accountant concludes that there is a reasonable suspicion of material fraud, in an audit engagement.

If the client refuses to adequately correct the fraud, the auditor will report this based on Article 26 of the Wta.

Based on the Anti-Money Laundering and Anti-Terrorist Financing Act (Wwft), the accountant has a reporting obligation with regard to unusual transactions. Whether a transaction is unusual depends on the facts and circumstances. In case there is corruption, there will generally also be an unusual transaction: there is often a benefit from a crime. Also facilitation payments must be evaluated in the context of the Wwft. Unusual transactions are to be reported to the Dutch Financial Intelligence Unit.

Civil Code

Article 2:10

1. The board is obliged to keep records of the financial position of the legal person and everything relating to the activities of the legal person, in accordance with the requirements arising from these activities, and to keep the associated books, documents and other data carriers in such a way that the rights and obligations of the legal person can be known at all times.

2. Without prejudice to the provisions of the following titles, the board is obliged to prepare and put on paper the balance sheet and the statement of income and expenditure of the legal person within six months of the end of the financial year.

3. The board is obliged to keep the books, documents and other data carriers referred to in paragraphs 1 and 2 for seven years.

4. The data recorded on a data carrier, with the exception of the balance sheet and statement of income and expenditure drawn up on paper, can be transferred and stored on another data carrier, provided that the transfer takes place with a correct and complete representation of the data and this data is available during the entire retention period. and can be made legible within a reasonable time.

Article 2:24

1. The books, documents and other data carriers of a dissolved legal entity must be kept for seven years after the legal entity has ceased to exist. The custodian is the person designated as such by or pursuant to the articles of association, or by the general meeting or, if the legal entity was a foundation, by the board.

2. If there is no custodian and the last liquidator is not prepared to act as custodian, a custodian, if possible from the circle of those who were involved in the legal entity, shall be appointed at the request of an interested party by the subdistrict court of the district in which the legal entity was domiciled. No legal remedies are available.

3. Within eight days of the commencement of his obligation to keep records, the custodian must provide his name and address to the registers in which the dissolved legal entity was registered.

4. The subdistrict court referred to in paragraph 2 may, upon request, grant permission to inspect the books, documents and other data carriers to any interested party, if the legal entity was a foundation; to any creditor, if the board of the legal entity has not complied with the obligations under Article 19b paragraph 1 and otherwise to any person who demonstrates that he has a reasonable interest in inspection in his capacity as former member or shareholder of the legal entity or holder of certificates of its shares, or as successor in title of such a person.

Article 2:361

1. Annual accounts are defined as: the single annual accounts consisting of the balance sheet and the profit and loss account with the notes, and the consolidated annual accounts if the legal entity prepares consolidated annual accounts.

2. Cooperatives and the foundations and associations referred to in Article 360 paragraph 3 shall replace the profit and loss account with an operating account if the insight referred to in Article 362 paragraph 1 is served by this; the provisions regarding the profit and loss account shall apply to this account as much as possible by analogy. Provisions regarding profit and loss shall apply to the operating balance as much as possible by analogy.

3. The provisions of this Title apply to annual accounts and their components, both in the form in which they are drawn up by the board and in the form in which they are established by the competent body of the legal entity.

4. When applying Articles 367, 370 paragraph 1, 375, 376, 377 paragraph 5 and 381, corresponding entries as those relating to group companies must be included in respect of other companies:

a. who can exercise rights in the legal entity on the basis of paragraphs 1, 3 and 4 of Article 24a , regardless of whether they have legal personality, or

b. which are subsidiaries of the legal entity, of a group company or of a company as referred to in subparagraph (a) .

The General Customs Act

Article 10:5

1) Any person who,
   a) […]

   b. under customs legislation, is obliged to

      i) providing information, data or instructions, and not providing it, or providing it incorrectly or incompletely;
      ii) the display, transfer or making available for consultation of certain data carriers, or the contents thereof, and fails to comply with such an obligation;
      iii) the display, transfer or making available for consultation of certain data carriers or the contents thereof, and displays, transfers or makes available for consultation false or falsified data carriers or makes the contents thereof available in a false or falsified form for this purpose;
      iv) keeping records in accordance with the requirements imposed on it by or pursuant to customs legislation, and does not keep such records;
      v) the keeping of books, documents or other data carriers, and does not keep them; shall be punished by imprisonment of not more than six months or a fine of the third category.

2. Any person who intentionally commits any of the acts described in the first paragraph, subparagraphs b, sections i, ii, iv or v, if the act results in insufficient import duties being levied, shall be punished by a prison sentence of not more than four years or a fine of the fourth category

or, if this amount is higher, not more than the amount of the duties that were insufficiently levied. […].

The General State Taxes Act

Article 52

1. All persons required to keep records are obliged to keep such records of their financial position and of everything relating to their business, independent profession, or activity, according to the requirements of that business, independent profession, or activity, and to store the records, documents, and other data carriers used therefor in such a fashion, that their rights and obligations and all other data relevant to the levying of taxes can clearly be evidenced thereby and derived therefrom.

2. The following persons are required to keep records:

a. bodies;

b. natural persons operating a business or practising an independent profession, as well as natural persons earning taxable profits from an enterprise as referred to in Article 3.3 of the Income Tax Act 2001;

c. natural persons liable to withhold taxes;

d. natural persons performing an activity as referred to in Sections 3.91, 3.92, and 3.92b of the Income Tax Act 2001.

3. All that must be recorded, laid down, or drawn up under other tax legislation shall be included in the records.

4. To the extent not provided otherwise by tax law, persons required to keep records are obliged to keep the data carriers referred to in the previous paragraphs for the term of seven years.

5. The data stored on data carriers, save for the balance sheet and statement of income and expenses recorded in writing, may be transferred to, and stored on, other data carriers, provided such data transmission is correct and complete and the data are available during the entire retention period and can be converted into legible form within a reasonable period.

6. The records must be organised and kept in such fashion and the data carriers must be stored in such a way as to allow for their inspection by the inspector within a reasonable term. The person required to keep records shall provide the cooperation necessary to effect such, including by granting the necessary insight into the structure and organisation of the records.

7. In case a person required to keep records has fulfilled an obligation imposed by the inspector on the basis of paragraph (1) but is of the opinion that such obligation has been wrongly imposed, he may request for compensation of the costs directly related to such fulfilment. The inspector shall issue a decision allowing for objection on this request and shall grant reasonable compensation in case of an obligation wrongly imposed.

Article 68

1. The person who is obliged under tax law to:

a. providing information, data or instructions, and not providing it, or providing it incorrectly or incompletely;

b. making books, documents, other data carriers or their contents available for consultation and not making them available for this purpose;

c. making books, documents, other data carriers or their contents available for consultation and making them available for this purpose in a false or falsified form;d. keeping records in accordance with the requirements set for this by or pursuant to the tax law, and not keeping such records;

e. the keeping of books, documents or other data carriers, and does not keep them;

f. providing cooperation as referred to in Article 52, paragraph 6 , and failing to do so;

g. issuing an invoice or note, and providing an incorrect or incomplete invoice or note;

shall be punished by imprisonment of not more than six months or a fine of the third category.

2. Any person who fails to comply with the obligation imposed on him by Article 47, paragraph 3, shall be punished by a fine of the second category.

3. No criminal liability shall be imposed on any person who fails to comply with the obligation referred to in Article 47a as a result of a statutory or judicial prohibition, applicable to the body not established in the Netherlands or the natural person not resident in the Netherlands, to cooperate in the provision of the requested data or information or to make books, documents, other data carriers or their contents available for consultation, or as a result of a refusal by the body not established in the Netherlands or the natural person not resident in the Netherlands, which cannot be attributed to him, to provide the requested data or information or to make books, documents, other data carriers or their contents available for consultation.

The Criminal Code

Article 225

1. Any person who falsely draws up or forges a document intended to serve as evidence of any fact, with the intention of using it or having it used by others as genuine and unadulterated, shall be punished as guilty of forgery by a prison sentence of not more than six years or a fine of the fifth category.

2. The same penalty shall be imposed on anyone who intentionally uses the false or forged document as if it were genuine and unadulterated, or who intentionally delivers or has in his possession such a document, while he knows or should reasonably suspect that the document is intended for such use.

3. If an act described in the first or second paragraph is committed with the intention of preparing or facilitating a terrorist offence, the prison sentence imposed for the act shall be increased by one third.

Article 336

The merchant, director, managing partner or commissioner of a legal entity or company who intentionally makes public an untrue statement or an untrue balance sheet, profit and loss account, statement of income and expenditure or explanation of any of those documents or intentionally allows such publication, shall be punished with a prison sentence of not more than six years or a fine of the fifth category.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Royal Dutch Institute of Chartered Accountants (*Koninklijke Nederlandse Beroepsorganisatie van Accountants, NBA*) developed guidelines for identifying corruption during a financial audit. An audit firm should make a risk analysis of its clients in which it takes into account the geographic location of the client's activities, organization culture, transparency of business and possibility to follow cash flows to its final beneficiaries.

Subsequently the accountant assesses whether those circumstances lead to risks of material misstatement at the financial statement level or to indications of corruption. This is based on Further Control Requirements and Other Standards (NV COS) 315, 240 (includes (references to) documentation requirements) and 250.

When the auditor encounters indications of violations of laws and regulations during his audit, he decides whether to follow a number of steps under Standard 250 and Standard 240.

In 2017/2018, the NBA also implemented compulsory training on fraud risk factors for auditing accountants. This training course was made compulsory for other chartered accountants as well in 2019, particularly for so-called accountants in business, who are principally chartered accountants who work in the private sector as Chief Financial Officers or controllers.

Article 15i CC Bk 3

1.

A person who carries on a business or independently exercises a profession shall keep books showing the state of his assets and liabilities and everything concerning his business or profession, according to the requirements of that business or profession, and he shall keep all books, papers and other records in respect thereof, so that his rights and obligations may be ascertained at any time.

2.

Paragraphs (2) to (4), inclusive, of Article 10 of Book 2 apply, mutatis mutandis.

Article 15j CC Bk 3

Provided they have a direct and sufficient interest in respect thereof, disclosure of books, papers and other data carriers may be demanded by:

a.

heirs as regards the bookkeeping of the deceased;

b.

partners in a community of property as regards the bookkeeping in respect of the community;

c.

partners as regards the bookkeeping of the partnership;

d.

creditors in the case of bankruptcy or the application of a personal debt relief arrangement as regards the bookkeeping of the bankrupt or the person to whom the debt relief arrangement applies.

Article 10 CC Bk 2

1.

The management1 shall administer the financial condition of the legal person and everything relating to its activities as such activities may require and keep the books, records and other databases pertaining thereto in such manner that its rights and obligations can be ascertained at any time.

2.

Without prejudice to the provisions in the following Titles, the management shall annually within six months from the end of its financial year prepare a balance sheet and a statement of income and expenditure of the legal person.

3.

The management shall retain the books, records and other databases referred to in paragraphs (1) and (2) for seven years.

4.

The information stored in a database, save for the balance sheet and statement of income and expenditure if recorded in writing, may be transferred to, and stored on, another database, provided such data transmission is correct and complete and the data are available during the entire required retention period and can be converted into legible form within a reasonable period.

Article 225 Criminal Code (WvSr) – Forgery

1 A person who falsely prepares or falsifies a document that is to serve as evidence of any fact, with the object of using it as genuine and unfalsified or having it used as such by others, shall be guilty of falsification of documents and shall be liable to a term of imprisonment not exceeding six years or a fine of the fifth category.

2 A person who intentionally uses the false or falsified document as if it were genuine and unfalsified, or hands over such a document or has such a document in his possession, while they know or should reasonably suspect that this document is intended for such use, shall be liable to the same punishment.

3 If an act, as defined in paragraph 1 or 2, is committed with the intention of preparing or facilitating a terrorist offence, the term of imprisonment prescribed for the offence shall be increased by one third.

The Civil Code also contains detailed regulations for the organization of the administration and the manner of accountability by legal entities. Sanctions for violation of these regulations are possible under the Economic Offenses Act (WED) and the Criminal code.

For example (not official translations):

Article 1 Economic offences Act (WED)

Economic offenses are:

Paragraph 4: violations of regulations imposed by or pursuant to

[…]

- the Civil Code, Book 2 (Legal Entities), – insofar as applicable or mutatis mutandis to foundations and associations as referred to in Section 360(3) of Book 2 of the Civil Code, cooperatives, mutual insurance associations, public limited companies, private limited

companies limited liability, European public limited liability companies, European economic partnerships, European cooperative societies or formally foreign companies as referred to in the Act on formally foreign companies – Articles 10, first paragraph, 19, fifth paragraph, second sentence, 56, second paragraph, 61, under b and d, 63b, 75, 76a, second paragraph, 85, 91a, 94b, fourth paragraph, 94c, fifth paragraph, 96, third and fourth paragraph, 96a, seventh paragraph, second sentence, 105, fourth paragraph, last sentence, 120, fourth paragraph, 153, 154, third paragraph, 186, 194, 230, fourth paragraph, 263, 264, third paragraph, 290, 359b, fifth paragraph, 362, sixth paragraph, last sentence, 392a, 393, first paragraph, 394, third l id, 395, 451, second paragraph, 452, fourth paragraph, and 455, second paragraph;

- […]

Article 6 Economic Offences Act (WED)

1He who commits an economic offense is punished:

1°. in the event of a crime, insofar as it concerns an economic offense referred to in Article 1, under 1°, or in Article 1a, under 1°, with a term of imprisonment not exceeding six years, community service or a fine of the fifth category;

2°. in the case of another offense with a term of imprisonment not exceeding two years, community service or a fine of the fourth category;

3°. if he has made a habit of committing the offense referred to under 2°, with a term of imprisonment not exceeding four years, community service or a fine of the fifth category;

4°. in the event of an offence, insofar as it concerns an economic offense referred to in Article 1, under 1°, or in Article 1a, under 1°, with detention for a maximum of one year, community service or a fine of the fourth category;

5°. in the event of another violation, with detention for a maximum of six months, community service or a fine of the fourth category.

If the value of the goods with which or with regard to which the economic offense has been committed, or which have been obtained wholly or partly through the economic offense, exceeds the fourth part of the maximum fine which in the cases under 1° up to and including 5°, a fine of the next higher category may be imposed, without prejudice to the provisions of Article 23, seventh paragraph, of the Criminal Code.

2In addition, the additional penalties referred to in Article 7 and the measures referred to in Article 8 may be imposed, without prejudice to the imposition, in appropriate cases, of the measures provided for elsewhere in legal provisions.

3 Notwithstanding the provisions of the first and second paragraph, he who violates a regulation laid down pursuant to Article 15, second paragraph, of the Distribution Act, will be punished with detention for a maximum of two months or a fine of the first category.

4 Contrary to the provisions of the first paragraph, a person who violates a regulation is subject to or pursuant to Articles 2 and 3, first paragraph, of the Chemical Weapons Convention Implementation Act, Article 3, first paragraph, of the Explosives Precursors Act, then or Articles 2, first and third paragraphs, 3 and 4 of the Biological Weapons Convention Implementation Act, punishable by a term of imprisonment not exceeding eight years or a fine of the fifth category, if the offense was committed intentionally with a terrorist objective as referred to in Article 83a of the Criminal Code, or with the intent to prepare or facilitate a terrorist offense as referred to in Article 83 of that Code.

Article 2:10 Civil Code

1The board is obliged to keep records of the financial position of the legal person and everything relating to the activities of the legal person, in accordance with the requirements arising from these activities, and to keep the associated books, documents and other data carriers in such a way that the rights and obligations of the legal person can be known at all times.

2 Without prejudice to the provisions of the following titles, the board is obliged to prepare and put on paper the balance sheet and the statement of income and expenditure of the legal person within six months of the end of the financial year.

3The board is obliged to keep the books, documents and other data carriers referred to in paragraphs 1 and 2 for seven years.

4The data recorded on a data carrier, with the exception of the balance sheet and statement of income and expenditure drawn up on paper, can be transferred and stored on another data carrier, provided that the transfer takes place with a correct and complete representation of the data and this data is available during the entire retention period. and can be made legible within a reasonable time.

Please, for articles that are relevant, see Annex E

Article 336 Criminal Code criminalizes the preparation of misleading ('untrue') annual accounts.

Section 336 of the Criminal Code – Fraud involving balance sheets and profit and loss accounts

A trader, managing director, managing partner or supervisory director of a legal person or a company who intentionally publishes a false statement or a false balance sheet, profit and loss account, statement of income and expenditure or false explanatory notes to any of those documents,

or intentionally allows such publication, shall be liable to a term of imprisonment not exceeding six years or a fine of the fifth category.

The State Taxes Act (Algemene Wet inzake Rijksbelastingen) lays down administrative obligations for all Dutch tax subjects, non-compliance with which has been established as a criminal offence.

Failure to keep records or to draw up false invoices is punishable by Article 68 of the General State Taxes Act. And if this leads to too little tax being levied, then Article 69 applies.

Section 68 of the State Taxes Act (AWR)

1 Any person who under tax legislation is obliged:

a. to provide information, data or instructions and does not provide them or provides them inaccurately or incompletely;

b. to make books, records, other data carriers or the contents thereof available for inspection and fails to make them available for this purpose;

c. to make books, records, other data carriers or the contents thereof available for inspection and makes them available for that purpose in a false or falsified form;

d. to keep accounts in accordance with the requirements set under or pursuant to tax legislation and fails to keep such accounts;

e. to keep books, records or other data carriers and fails to keep them;

f. to cooperate as referred to in Section 52(6) and fails to cooperate;

g. to issue an invoice or bill and provides an inaccurate or incomplete invoice or bill;

shall be liable to a term of detention not exceeding six months or a fine of the third category.

Section 69 of the State Taxes Act (AWR)

1 A person who intentionally fails to file a tax return provided for in tax legislation, fails to do so within the stipulated period or commits any of the acts defined in Section 68(1)(a), (b), (d), (e), (f) or (g) resulting in any underpayment of taxes shall be liable to a term of imprisonment not exceeding four years or a fine of the fourth category, or a fine not exceeding once the amount of the underpaid taxes if that amount is higher.

2 Any person who intentionally files a tax return provided for in tax legislation inaccurately or incompletely or commits an act defined in Section 68(1)(c) resulting in any underpayment of taxes shall be liable to a term of imprisonment not exceeding six years or a fine of the fifth category, or a fine not exceeding once the amount of the underpaid taxes if that amount is higher, with the proviso that, where the inaccuracy or incompleteness of the tax return pertains to taxable income as referred to in Section 5.1 of the Income Tax Act 2001 (Wet inkomstenbelasting 2001), the fine shall amount to up to three times the amount of the underpaid taxes.

3 The right to institute criminal proceedings under this section shall lapse if the offender later files an accurate and complete tax return or provides accurate and complete information, data or

indications before they know or may reasonably be expected to know that one or more of the officials referred to in Section 80(1) is aware of or will become aware of the inaccuracy or incompleteness of the tax return. In derogation of the first sentence, the right to institute criminal proceedings on the basis of this section shall not lapse in so far as the offender later files an accurate and complete return or provides accurate and complete information, data or instructions relating to income from a substantial interest as referred to in Section 4.12 of the Income Tax Act 2001 or to income from savings and investments as referred to in Section 5.1 of that Act.

4 Prosecution under Section 225(2) of the Criminal Code may not be brought if the offence for which the suspect may be prosecuted falls under the scope of any of the provisions of paragraph 1 or 2 and also under those of the aforementioned Section 225(2) of the Criminal Code.

5 Section 68(3) shall apply mutatis mutandis.

6 If the offender commits any of the criminal offences defined in paragraphs 1 and 2 in the exercise of their profession, they may be disqualified from the practice of that profession.

Article 52 of the State Taxes Act (AWR)

1. All persons required to keep records are obliged to keep such records of their financial position and of everything relating to their business, independent profession, or activity, according to the requirements of that business, independent profession, or activity, and to store the records, documents, and other data carriers used therefor in such a fashion, that their rights and obligations and all other data relevant to the levying of taxes can clearly be evidenced thereby and derived therefrom.

2. The following persons are required to keep records:

a. bodies;

b. natural persons operating a business or practising an independent profession, as well as natural persons earning taxable profits from an enterprise as referred to in Article 3.3 of the Income Tax Act 2001;

c. natural persons liable to withhold taxes;

d. natural persons performing an activity as referred to in Sections 3.91, 3.92, and 3.92b of the Income Tax Act 2001.

3. All that must be recorded, laid down, or drawn up under other tax legislation shall be included in the records.

4. To the extent not provided otherwise by tax law, persons required to keep records are obliged to keep the data carriers referred to in the previous paragraphs for the term of seven years.

5. The data stored on data carriers, save for the balance sheet and statement of income and expenses recorded in writing, may be transferred to, and stored on, other data carriers, provided such data transmission is correct and complete and the data are available during the entire retention period and can be converted into legible form within a reasonable period.

6. The records must be organised and kept in such fashion and the data carriers must be stored in such a way as to allow for their inspection by the inspector within a reasonable term. The person required to keep records shall provide the cooperation necessary to effect such, including by granting the necessary insight into the structure and organisation of the records.

7. In case a person required to keep records has fulfilled an obligation imposed by the inspector on the basis of paragraph (1) but is of the opinion that such obligation has been wrongly imposed, he may request for compensation of the costs directly related to such fulfilment. The inspector shall issue a decision allowing for objection on this request and shall grant reasonable compensation in case of an obligation wrongly imposed.

(b) Observations on the implementation of the article

Obligations on the maintenance of books by private sector entities are laid down in the Civil Code (articles 2:10, 2:24, 2:361, 2:362 and 2:392–395), the General Customs Act (article 10:5) and the General State Taxes Act (article 52). The preparation and use of false documents is criminalized by the Criminal Code (articles 225 and 336). The General State Taxes Act provides that any obliged person must keep accounting records and make them available for inspection (article 68 1 (a), (b) and (e)).

Paragraph 4 of article 12

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The Income Tax Act 2001 includes the following provision, which also applies to the Corporation Tax Act:

‘Section 3.14 General costs excluded from deduction

1. Costs and expenses relating to the following items shall not be deducted when determining profits:

(…)

h. gifts, promises or services in the case of an offence within the meaning of Sections 126(1), 177, 178, 178a, 328b(2) or 328c(2) of the Criminal Code.

Explanatory note

In part following OECD consultations, statutory regulations were introduced to exclude the costs of bribery as an item to be deducted from taxable profits. This situation led to the legislation that came into force on 1 August 2006. The deduction restrictions on bribes is intended to complement the existing restrictions (parts d and e). Even without a judgment from a criminal court, bribes cannot be deductible. The legislator did not envisage the tax inspector having to meet the burden of proof as stipulated by criminal law. The then State Secretary Joop Wijn expressed as much by stating that there is a middle ground between the lighter burden of making a reasonable case and the heavy burden of criminal evidence.

Jurisprudence (case law)

The judgment of the District Court of Haarlem of 6 July 2011, No 10/2778 and 10/2779, V-N 2011/57.10 (LJN BR0679) provides a clear example of this type of evidence gathering. It is clear that the tax inspector should not have to do the job of the criminal court.

There are no statistical data available that show in how many cases the deduction of bribes has been excluded from deduction when determining profits

The Directive on Foreign Corruption was revised and reissued on 1 October 2020. The revision removed references to a policy of not prosecuting small facilitation payments. In particular, section 1.2 of the Directive now expressly states that "[n]o criteria is laid down for distinguishing between gifts that would lead to a prosecution and those that would not".

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

The tax deductibility of expenses that constitute bribes is prohibited (article 3.14 of the Income Tax Act).

(c) Successes and good practices

The reviewing experts highlighted the establishment of two beneficial ownership registers as a good practice (article 12, paragraph 2 (c), and article 52, paragraph 1).

Article 13. Participation of society

Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The Netherlands recently introduced a so-called tougher approach to offenders in the case of aggression and violence against journalists. This approach relates to specific cases of aggression, violence or threats against journalists, where a tougher approach is taken to offenders. For example, the police and the Public Prosecution Service will prioritise these cases. As of 1 March 2019, a penalty increase of 200 per cent has been included in the Guidelines by the Public Prosecution Service as well.

Along with the Dutch Association of Journalists (Nederlandse Vereniging van Journalisten, NVJ), the police and the Public Prosecution Service also take part in a steering committee that focuses on strengthening the position of journalists. Within this steering committee, measures are devised and implemented that focus on prevention (e.g. resilience training for journalists) and repression (a tougher approach to offenders). The Ministry of Justice and Security is primarily responsible for ensuring a tougher approach to offenders. These preventive measures are partly subsidised by the Ministry of Education, Culture and Science, which bears primary responsibility for safeguarding the freedom of the press and the freedom of speech.

In addition, as of 2018, a law has come into force which aims to protect journalists' sources: the Journalistic Sources Protection Act (Wet Bronbescherming) and which ensures that journalists are less liable to be coerced into exposing their sources to the investigation services.

For a) and b) see article 10.

The Constitution

Article 110

In the exercise of their duties government bodies shall observe the right of public access to information in accordance with rules to be prescribed by Act of Parliament.

The Freedom of Information Act

Article 6

1. The administrative body shall decide on the request for information as soon as possible, but no later than four weeks from the day after the request was received.

2. The administrative body may adjourn the decision for a maximum of four weeks. The applicant shall be notified of the adjournment in writing, with reasons, before the first term expires.

3. Without prejudice to Article 4:15 of the General Administrative Law Act, the period for issuing a decision shall be suspended from the day after the administrative body informs the applicant that Article 4:8 of the General Administrative Law Act has been applied , until the day on which the interested party or interested parties have submitted a point of view or the period set for this purpose has expired unused.

4. If the suspension referred to in the third paragraph ends, the administrative body shall notify the applicant thereof as soon as possible, stating the period within which the decision must still be given.

5. If the administrative body has decided to provide information, the information will be provided at the same time as the decision is announced, unless it is expected that an interested party will object, in which case the information will not be provided until two weeks after the decision has been announced.

6. To the extent that the request relates to the provision of environmental information:

a. the final decision period, by way of exception to the first paragraph, shall be two weeks if the administrative body intends to provide the environmental information and an interested party is expected to object to this;

b. the decision may only be adjourned pursuant to the second paragraph if the volume or complexity of the environmental information justifies an extension;

c. the third and fourth paragraphs do not apply.

Article 15b

1. In the event of a well-founded appeal against the failure to take a timely decision under this Act or a decision on an objection to such a decision where no decision has yet been announced, the administrative court shall, if the scope of the request gives reason to do so, determine, in deviation from Article 8:55d, first paragraph, of the General Administrative Law Act, the period within which the administrative body shall still announce a decision.

2. If the administrative court finds that the failure to take a decision in a timely manner is clearly the result of the manner in which the request was submitted and no decision has yet been announced, the administrative court shall, if the request gives reason to do so, determine, in deviation from Article 8:55d, first paragraph, of the General Administrative Law Act, a longer period within which the administrative body shall still announce a decision.

3. The administrative court may disregard the first paragraph of Article 8:74 of the General Administrative Law Act and may refrain from issuing an award of costs on the basis of the first paragraph of Article 8:75 of the General Administrative Law Act if the person lodging the appeal, given the scope of the request, has not sufficiently cooperated in reaching agreement on:

a. a suspension of the decision period as referred to in Article 4:15, paragraph 2, section a, of the General Administrative Law Act , or

b. further postponement of the decision period as referred to in Article 7:10, fourth paragraph, part a or b, of the General Administrative Law Act .

4. The administrative judge may also disregard Article 8:74, first paragraph, of the General Administrative Law Act and refrain from issuing an award of costs on the basis of Article 8:75, first paragraph, of the General Administrative Law Act if he finds that the failure to take a decision in a timely manner is clearly the result of the manner in which the request was submitted.

Requests must be answered within 4 weeks, a period that can be prolonged with another 4 weeks if necessary. Overdue decisions can be appealed in court. The judge can order a decision within a certain time frame and can add a fine if the request is still not decided on within this time frame. The denial of access can be addressed, first at the public body concerned (bezwaar) then in court (beroep).

In 2019, the total number of request under the WOB was 1164. We do not have statistics on the number of request that were granted or the common reasons for refusal.

Whistleblowers Authority (WA). Source: https://www.huisvoorklokkenluiders.nl/onderzoek-naar-een-misstand

Below is a description of the working method that WA follows in its abuse investigations, treatment investigations or combinations thereof. WA is currently working on a (revised) Research Protocol, which will be published in the Government Gazette and made available on the website.

WA applies the following procedure (in any case) to requests it has received from 1 February 2020. The procedures in a treatment investigation and an abuse investigation may differ. In principle, the applicant's involvement in a treatment investigation is, for example, greater than in an abuse investigation. Moreover, research is tailor-made: WA can decide to tailor its method to specific cases. In outline, WA working method has the following components:

WA conducts procedural discussions with the applicant and the employer. WA then explains the further course of the investigation.

WA presents the petitioner and the employer with the draft research questions and gives them the opportunity to express their views on them. WA decides on the final research questions and how the research is conducted.

WA gives the petitioner and the employer the opportunity to make suggestions regarding persons that WA can hear as witnesses. WA decides who hears as witnesses.

WA draws up a statement of facts and gives the petitioner and the employer the opportunity to express their views. In principle, WA does not allow the applicant and the employer to inspect the documents on which the account of the facts is based.

In case of an abuse investigation, WA may refrain from submitting the investigation questions and the account of the facts to the applicant. This may be the case if, in WA's opinion, the importance of the research or the public interest so requires.

WA may decide to stop an investigation if the petitioner does not cooperate sufficiently in a careful course of the investigation and / or the confidentiality of the results of the investigation. WA may also decide to stop an investigation if a new fact or a new

circumstance becomes known, on the basis of which WA finds that the request is manifestly (as yet) unfounded.

Finally, WA writes the final report. After the petitioner and the employer have received the report, WA publishes the investigation report anonymously on its website.

Pursuant to Article 658c of the Dutch Civil Code 7, the employer may not disadvantage the employee as a result of reporting in good faith and properly a suspected abuse as referred to in Article 1, part d, of the Whistleblowers House Act during and after this report has been dealt with by the employer or the competent authority.

The Netherlands does not have educational programs to focus specifically on corruption. However, in general more and more attention is being paid over the last years to awareness raising regarding 'citizenship' and 'Bildung' among students. In November 2020 a bill to clarify that citizen mission passed the Lower House. It is currently in the Upper house for consultation. For more information about the bill, please see (in Dutch): https://zoek.officielebekendmakingen.nl/kst-35352-2.html. In short, the bill aims to promote knowledge of, and respect for, the basic values of the democratic constitutional state. The bill also offers more tools for enforcement if anti-democratic and/or anti-integration elements are integrated into in the school culture.

In higher education 'Bildung' is becoming increasingly important to ensure that the student becomes a personal, conscious and committed person who is able to actively relate to himself, his or her environment, society and the world around it. For more information about Bildung, please see:
- https://debildungacademie.nl/bildung/
- https://volwassenenleren.nl/bildung-een-antwoord-op-een-actuele-vraag/

Moreover, the Dutch cabinet intensified the approach to organized crime, including the 100 million euros in the anti-subversion fund and legislation. The offensive is now being broadened and reinforced with a combination of repressive and preventive measures and additional investments. In the spring of 2020, the Minister of Justice and Security presented a detailed plan.

Please see (in Dutch): https://www.rijksoverheid.nl/documenten/kamerstukken/2020/06/18/tk-uitwerking-breed-offensief-tegen-georganiseerde-ondermijnende-criminaliteit

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

The Freedom of Information Act establishes, on the basis of article 110 of the Constitution, the principle that, aside from specific statutory exceptions, information in the possession of

administrative bodies is public. Public requests for information must be addressed within two weeks, with a possibility of extension for another two weeks (sect. 6 of the Freedom of Information Act). Although there is no oversight body to oversee the enforcement of the right of access to information, an appeal against any denial of access can be made to the public body concerned and in court (article 6, paragraph 4, article 7, paragraph 1, and article 8, paragraph 1, of the General Administrative Law Act). The judge may order that access to the information be provided within a certain time frame and issue a fine to the authority concerned (article 15b of the Freedom of Information Act).

Draft legislation may be published for consultation online and the comments received from the public are considered in the drafting process.
In 2019, a bill was prepared to amend the Freedom of Information Act, establishing the requirement that government institutions proactively publish certain documents and general information on their organization and functioning).

Measures aimed at simplifying administrative procedures include the establishment of a knowledge and information centre to facilitate effective communication between citizens and the Government and support administrative bodies in adopting an informal and proactive approach to the provision of public information. The centre also mediates between citizens and institutions in complaint, objection and appeal procedures.

The reviewing experts therefore recommended that the Netherlands consider establishing an oversight body to ensure effective access to information through the monitoring of implementation of the access to information legislation (article 10 (a) and article 13, paragraph 1).

Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

FIOD/ACC

The ACC of the FIOD is tasked with detecting all types of bribery, with the exception of domestic bribery involving corruption in the public sector, which is the field of expertise of the NPIID.

The FIOD-ACC and the Public Prosecution Service focus strongly on giving presentations to public- and private-sector parties aimed at increasing corruption awareness, setting out the approach taken by the ACC of the FIOD as well as of the National Office for Serious Fraud, Environmental Crime and Asset Confiscation (Functioneel Parket) of the Public Prosecution Office and the intensification thereof, as well as increasing signaling capacity at these parties. For example, a large number of presentations are held for lawyers, accountancy firms, compliance officers, control and fraud specialists (Association of Certified Fraud Examiners, special investigation services, Tax and Customs Administration), and investigating officers (e.g. at the money laundering conference and the national investigation services trade show). During the Tax and Customs Administration

Corruption Study Day at Nyenrode Business University on 21 March 2016, the Ministry of Justice and Security, the FIOD, and the National Office for Serious Fraud, Environmental Crime and Asset Confiscation held a joint presentation. The presentation was made up of three individual presentations on the following subjects:

- Corruption in international and national terms (by the Ministry of Justice and Security);

- Contribution of Tax and Customs Administration accountants to fighting corruption (by the FIOD);

- Fighting corruption: aspects of law and prosecution (by the National Office for Serious Fraud, Environmental Crime and Asset Confiscation of the Public Prosecution Service).

In addition, the FIOD has a page on its website in which it outlines what it does to fight corruption (available for consultation via https://www.fiod.nl/wat-doet-de-fiod-tegen-corruptie/). This page also makes reference to the FIOD-ACC.

NPIID

The NPIID is the authority responsible for investigating corruption in the Dutch public sector. Until 2013, the NPIID was also responsible for investigating foreign bribery cases.

The NPIID has its own website, which is accessible to the general public. In addition, the NPIID can be found via the Public Prosecution Service, given that it is a department of the Public Prosecution Service. The website clearly outlines how to get in touch with the NPIID and how to submit a report. Reports to the NPIID can also be submitted anonymously.

The NPIID also has its own leaflets/brochures with information on the organisation itself as well as on how and when to contact the NPIID. The organisation occasionally gives interviews as well (e.g. in Dutch publications Blauw, Opportuun, Binnenlands Bestuur, Burgemeestersblad).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

The National Internal Investigations Department, which is responsible for investigating corruption in the public sector, is accessible to the public through its website, which allows for anonymous reporting.

(c) Successes and good practices

The establishment of the knowledge and information centre to facilitate effective communication between citizens and the Government, in order to support all administrative bodies in adopting an informal and proactive approach to the provision of public information (article 10 and article 13, paragraph 1 (b)).

Article 14. Measures to prevent money-laundering

Subparagraph 1 (a) of article 14

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The Netherlands has implemented the Fourth EU Anti-Money Laundering Directive (Directive 2015/849) into national legislation, which has been in force since 25 July 2018. The Netherlands also implemented the amendment to the Fourth Anti-Money Laundering Directive (Directive 2018/843), which entered into force on 21 May 2020. Both directives are implemented in the Wwft.

The Wwft includes obligations both for banks and for other financial institutions as well as for non-financial institutions, which also include natural persons or legal entities that provide formal or informal services for the transfer or transaction of money or value, and for other institutions (bodies) that are susceptible to money laundering as well as the financing of terrorism.

The scope of the Wwft is broad, extending to the following institutions and activities (see article 1a of the Wwft):

- Banks;
- Conducting the following activities: lending, financial leasing, issuance and management of instruments, provision of financial guarantees and commitments, advising companies on capital structure and business strategy as well as consultancy and service provision in the field of mergers and acquisitions of businesses, brokerage on the interbank market, custody and management of securities, and renting of safes;
- Payment service providers;
- Electronic money institutions;
- Investment firms;
- Investment institutions;
- Exchange institutions;
- Life insurance companies and brokerage in life insurances;
- UCITS;
- Tax advisers;
- Lawyers;
- Civil-law notaries;

- Trust offices and the making available of addresses or postal addresses (if it is not a trust office);
- Brokerage services when concluding agreements on immovable property and rights to which immovable property may be subject;
- Brokerage services for the purchase and sale of vehicles, ships, works of art, antiques, precious stones, precious metals, jewellery or jewels;
- Purchase or sale of goods, insofar as payments for these goods take place in cash for an amount of 10,000 euros or more;
- Gambling providers;
- Carrying out valuations of immovable property and rights to which immovable property may be subject;
- Pawn shops.

The bill which will implement the amendment of the Fourth Anti-Money Laundering Directive, and which is expected to come into force on 10 January 2020, adds the following two institutions to this list:

- Institutions offering services for the exchange between virtual currencies and fiduciary currencies;
- Institutions offering cryptocurrency wallets for virtual currencies.

The Wwft includes the following obligations (not exhaustive) for the foregoing institutions and activities:

- Carrying out customer due diligence;
- Monitoring transactions and reporting any unusual transactions to FIU-Netherlands;
- Risk management.

Client screening

The Wwft stipulates that the foregoing institutions must carry out customer due diligence. This customer due diligence must enable the institution to a) identify the client and verify its identity, b) identify the ultimate beneficial owner (UBO) and take reasonable measures to verify its identity, and take reasonable measures to gain insight into the client's ownership and control structure if the client is a legal entity, c) establish the purpose and envisaged nature of the business relationship, d) establish whether the natural person representing the client is authorised to do so and, if necessary, identify the natural person and verify its identity, and e) take reasonable measures to verify whether the client is acting on behalf of itself or on behalf of a third party (article 3(1) and (2) of the Wwft).

There is a result requirement in place for this screening process: institutions may not enter into the business relationship or carry out the transaction for the customer if the due diligence process has not led to the results outlined above (article 5(1) of the Wwft). In addition, institutions must continually monitor the business relationship and the transactions carried out during the duration of this relationship, in order to ensure that they correspond to the knowledge that the institution has of

the customer and its risk profile. If necessary, the institution may carry out another screening investigation into the source of the funds that are used in the business relationship or the transaction (article 3(1) of the Wwft). Furthermore, reasonable measures must be taken in order to ensure that the collected information is up to date (article 3(11) of the Wwft).

The customer due diligence must be demonstrably aligned with the risk sensitivity to money laundering or the financing of terrorist activities for the type of customer, business relationship, product or transaction (articles 3(8) and (9) of the Wwft). If there is a demonstrably low risk, an institution may apply a simplified customer due diligence process (article 6 of the Wwft). In case of a higher risk, the institution must enhance its customer due diligence (article 8 of the Wwft).

Transaction monitoring

As mentioned previously, institutions must carry out ongoing monitoring of their customers' transactions. An institution must report any unusual transaction that has either been proposed or carried out to the Financial Intelligence Unit (article 16 of the Wwft). In addition to unusual transactions, the institution must in any case notify the FIU in the following two cases: a) if the customer due diligence has not led to the intended result and there are indications that the customer is involved in money laundering activities or the financing of terrorist activities, and b) if the business relationship is to be terminated and there are indications that the customer is involved in money laundering activities or the financing of terrorism (article 16(4) of the Wwft).

When reporting unusual transaction, institutions must pay particular attention to unusual transaction patterns and transactions that entail a higher risk of money laundering or financing of terrorism by virtue of their nature (article 2a(1) of the Wwft).

Risk management

Institutions must take measures to determine and assess the risks of money laundering as well as the financing of terrorism (article 2b(1) of the Wwft). When determining and assessing these risks, the institution must in any case take into account the risk factors associated with the type of customer, product, service, transaction and supply channel, countries or geographical areas concerned (article 2b(2) of the Wwft). In addition, the institution must also put adequate measures in place to prevent risks that might arise from the use of new technologies in economic traffic (article 2a(2) of the Wwft). The institution must also have codes of conduct, procedures and measures at its disposal to control the risks of money laundering and terrorist financing in an effective manner (article 2c(1) of the Wwft).

We are fully compliant at this moment. The regulatory framework will be expanded in January 2020 once the implementation of the amendment to the Fourth Anti-Money Laundering Directive comes into force.

The Money-Laundering and Terrorist Financing (Prevention) Act

Article 1a

1. This Act applies to banks and other financial undertakings, as well as to natural persons, legal entities or companies designated pursuant to the fourth paragraph acting in the context of their professional activities.

2. A bank is considered to be a bank as referred to in Article 1:1 of the Financial Supervision Act , other than a natural person, legal entity or company for which no licence to conduct banking business is required pursuant to Article 2:11, second paragraph , or Article 2:16, fourth paragraph, of that Act, or a branch in the Netherlands of a bank with its registered office outside the Netherlands.

3. Other financial undertakings are considered to be:

a. those which, other than banks, principally carry on their business in one or more of the activities listed in points 2, 3, 5, 6, 9, 10, 12 and 14 of Annex I to the Capital Requirements Directive;

b. those who, other than banks, primarily conduct their business in providing payment services as referred to in Annex I to the Payment Services Directive;

c. investment firms as referred to in Article 1:1 of the Financial Supervision Act ;

d. investment institutions as referred to in Article 1:1 of the Financial Supervision Act ;

e. electronic money institutions as referred to in Article 1:1 of the Financial Supervision Act, insofar as they carry out transactions other than those referred to in Article 1:5a, paragraph 2, section k, of that Act ;

f. exchange institutions as referred to in Article 1:1 of the Financial Supervision Act ;

g. life insurers as referred to in Article 1:1 of the Financial Supervision Act , with the exception of life insurers that exclusively conduct the business of a funeral insurance company in kind as referred to in that Article;

h. ICBE's as referred to in Article 1:1 of the Financial Supervision Act ;

i. financial service providers as referred to in Article 1:1 of the Financial Supervision Act, insofar as they mediate in life insurance;

j. payment service agents as referred to in Article 1:1 of the Financial Supervision Act ;

k. branches in the Netherlands of other financial undertakings as referred to under a to i, with registered offices outside the Netherlands.

4. The following are designated as natural persons, legal entities or companies acting in the context of their professional activities to which this Act applies:

a. natural persons, legal entities or companies who independently exercise professional activities as tax advisors, or natural persons, legal entities or companies insofar as they otherwise independently, primarily, independently, whether or not via other natural persons, legal entities or companies affiliated with them, perform comparable activities professionally or commercially;

b. natural persons, legal entities or companies who independently perform professional activities, including forensic accounting, as external registered accountants or external accountant-administrative consultants, or natural persons, legal entities or companies, insofar as they otherwise independently perform comparable activities professionally or commercially;

c. natural persons, legal entities or companies who, as lawyers:

1. provide independent professional or business advice or assistance with:

i. the purchase or sale of registered property;

ii. the management of money, securities, coins, banknotes, precious metals, precious stones or other valuables;

iii. the establishment or management of companies, legal entities or similar bodies as referred to in Article 2, paragraph 1, section b, of the General Tax Act or the organisation of the contribution required for the establishment, operation or management thereof;

iv. the purchase or sale of shares in, or the full or partial purchase or sale or takeover of, companies, corporations, legal entities or similar bodies as referred to in Article 2, paragraph 1, section b, of the General Tax Act ;

v. activities in the tax field that are comparable to the activities of the professional groups described in section a;

vi. the establishment of a mortgage on a registered property; or

2. acting independently in a professional or business capacity on behalf of and for the account of a client in any financial transaction or real estate transaction;

d. natural persons, legal entities or companies who, as notary, associate notary or candidate notary:

1°. provide independent professional or business advice or assistance with:

i. the purchase or sale of registered property;
ii. the management of money, securities, coins, banknotes, precious metals, precious stones or other valuables;

iii. the establishment or management of companies, legal entities or similar bodies as referred to in Article 2, paragraph 1, section b, of the General Tax Act or the organisation of the contribution required for the establishment, operation or management thereof;

iv. the purchase or sale of shares in, or the full or partial purchase or sale or takeover of, companies, corporations, legal entities or similar bodies as referred to in Article 2, paragraph 1, section b, of the General Tax Act;

v. activities in the tax field that are comparable to the activities of the professional groups described in section a;

vi. the establishment of a mortgage on a registered property; or

2°. acting independently in a professional or business capacity on behalf of and for the account of a client in any financial transaction or real estate transaction;

e. natural persons, legal entities or companies that, in the exercise of a legal profession or business similar to that of a lawyer, notary, associate notary or candidate notary, perform the activities referred to in paragraph c or d;

f. trust offices as referred to in Article 1, first paragraph, of the Trust Offices Supervision Act 2018;

g. natural persons, legal entities or companies that provide an address or postal address for professional or commercial purposes, other than a trust office as referred to in Article 1, first paragraph, of the Trust Offices Supervision Act 2018 ;

h. natural persons, legal entities or companies that professionally or commercially mediate in the establishment and conclusion of agreements regarding immovable property and rights to which immovable property is subject, including the establishment and conclusion of a rental agreement as referred to in Article 7:201 of the Dutch Civil Code , to the extent that the monthly rent amounts to €10,000 or more;

i. natural persons, legal entities or partnerships acting professionally or commercially as purchasers or sellers of goods, provided that payment for these goods is made in cash for an amount of €10,000 or more, regardless of whether the transaction takes place in one act or by means of several acts between which there is a connection;

j. natural persons, legal entities or companies that professionally or commercially mediate in the purchase and sale of vehicles, ships, works of art, antiques, precious stones, precious metals, jewellery or jewels;

k. natural persons, legal entities or partnerships acting professionally or commercially as buyers or sellers of works of art, provided that payment for these works of art is made for an amount of €10,000 or more, regardless of whether the transaction takes place in one act or by means of several acts between which there is a connection;

l. natural persons, legal entities or companies that professionally or commercially offer services for exchanging between virtual currencies and fiat currencies;

m. natural persons, legal entities or companies that offer custody wallets on a professional or commercial basis;

n. natural persons, legal entities or companies that professionally or commercially provide opportunities as referred to in Article 1, paragraph 1, section a, of the Gambling Act or that carry out activities as referred to in Article 7a , 30b , 30h or 30z of that Act .

O. natural persons, legal entities or companies that professionally or commercially carry out valuations of immovable property and rights to which immovable property is subject;

p. pawnshops as referred to in Article 131, section a, of Book 7 of the Civil Code ;

q. natural persons, legal entities or companies belonging to a category of professions or persons to be designated by general administrative measure.

5. This Act does not apply to tax advisers as referred to in the fourth paragraph, part a, and persons as referred to in the fourth paragraph, parts c, d and e, insofar as they perform work for a client concerning the determination of his legal position, his representation and defence in court, the provision of advice before, during and after legal proceedings or the provision of advice on instituting or avoiding legal proceedings.

6. If an investment institution as referred to in the third paragraph, part d, is an investment company with a separate manager or an investment fund, or if an ICBE as referred to in the third paragraph, part h, is a fund for collective investment in transferable securities or a company for collective investment in transferable securities with a separate manager, the manager of the institution concerned shall ensure that the institution complies with the rules laid down by or pursuant to this Act.

Article 1d

1. The following are responsible for the implementation and enforcement of this law:

a. de Nederlandsche Bank NV: insofar as it concerns institutions as referred to in Article 1a, paragraph 2, paragraph 3, sub a, b, e, f, g and j, paragraph 4, sub l and m , or branches of such institutions with registered offices outside the Netherlands, as well as institutions as referred to in Article 1a, paragraph 4, sub f;

b. The Dutch Authority for the Financial Markets: insofar as it concerns institutions as referred to in Article 1a, third paragraph, parts c, d, h and i or branches of such institutions with registered offices outside the Netherlands, as well as managers as referred to in Article 1a, sixth paragraph;

c. the Financial Supervision Office: insofar as it concerns institutions as referred to in Article 1a, paragraph 4, subparagraphs a, b, d and e ;

d. the dean referred to in Article 22, paragraph 2, of the Dutch Advocates Act : insofar as it concerns institutions referred to in Article 1a, paragraph 4, sub c ;

e. Our Minister of Finance: insofar as it concerns institutions as referred to in Article 1a, fourth paragraph, parts g, h, i, j, k, o and p ;

f. the Gaming Authority: insofar as it concerns institutions as referred to in Article 1a, paragraph 4, section n .

2. De Nederlandsche Bank NV is responsible for the implementation and enforcement of the regulation on information accompanying transfers of funds.

3. The DutchAuthority for the Financial Markets is responsible for the implementation and enforcement of the Regulation on the auctioning of greenhouse gas emission allowances.

4. The administrative bodies referred to in the first paragraph may, if a regulation as referred to in Article 288 of the Treaty on the Functioning of the European Union concerns a subject related to the prevention of money laundering or terrorist financing, also be charged by general administrative measure with the implementation and enforcement of the rules laid down by or pursuant to that regulation.

5. For the purposes of this Act, the rules laid down by or pursuant to a regulation as referred to in the second, third or fourth paragraph shall be deemed to be equivalent to rules laid down by or pursuant to this Act.

6. The administrative bodies referred to in the first paragraph shall carry out their tasks in a risk-based and effective manner and shall comply with Article 48, paragraphs 6 to 8, of the Fourth Anti-Money Laundering Directive.

7. By regulation of Our Minister of Finance and Our Minister of Justice and Security, further rules may be laid down with regard to the performance of duties by the administrative bodies authorised under this article, with the exception of the dean referred to in the first paragraph, section d.

Article 1f

1. Our Minister of Finance and Our Minister of Justice and Security shall jointly publish a report on the identified, analysed and assessed national risks of money laundering and terrorist financing, as referred to in Article 7 of the Fourth Anti-Money Laundering Directive. This report shall be updated every two years.

2. In preparation for this report, Our Minister of Finance and Our Minister of Justice and Security jointly publish the statistics referred to in Article 44 of the Fourth Anti-Money Laundering Directive. These statistics are updated annually.

Article 2b

1. An institution shall take measures to identify and assess its money laundering and terrorist financing risks, whereby the measures are proportionate to the nature and size of the institution.

2. When determining and assessing the risks referred to in the first paragraph, the institution shall in any event take into account the risk factors associated with the type of client, product, service, transaction and delivery channel and with countries or geographical areas.

3. An institution shall record and keep up to date the results of identifying and assessing its risks and shall provide these results to the supervisory authority upon request.

4. The supervisory authority may grant an exemption from the first to third paragraphs if the institution belongs to a sector where the inherent specific risks of money laundering and terrorist financing are clear and transparent.

Article 2c

1. An institution shall have in place policies, procedures and measures to mitigate and effectively manage the risks of money laundering and terrorist financing and the risks identified in the most recent versions of the Supranational Risk Assessment and the National Risk Assessment.

2. The policies, procedures and measures referred to in the first paragraph shall be proportionate to the nature and size of the institution and shall at least relate to compliance with the provisions of Chapter 1 , paragraphs 1.2 , 1.3 , Chapter 2 , Chapter 3 , paragraph 3.2 and Chapter 5 .

3. The policies, procedures and measures require the approval of the persons who determine the day-to-day policy of an institution.

4. An institution shall ensure that the policies, procedures and measures are systematically tested and, where necessary, adjusted.

Article 3

1. An institution conducts customer due diligence to prevent money laundering and terrorist financing.

2. The customer due diligence enables the institution to:

a. to identify the client and verify his or her identity;

b. to identify the ultimate beneficial owner of the client and take reasonable steps to verify his identity, where the client is a legal entity, to take reasonable steps to obtain an understanding of the ownership and control structure of the client, and where the ultimate beneficial owner is a senior management employee, to take necessary reasonable steps to verify the identity of the natural person who is a senior management employee, recording the steps taken and the difficulties encountered during the verification process;

c. to determine the purpose and intended nature of the business relationship;

d. to exercise continuous control over the business relationship and the transactions carried out during the period of that relationship in order to ensure that they correspond to the institution's knowledge of the client and his risk profile, including, where necessary, an investigation into the source of the funds used in the business relationship or transaction;

e. to determine whether the natural person representing the client is authorised to do so and, where appropriate, to identify the natural person and verify his or her identity;

f. to take reasonable steps to verify whether the client is acting on his own behalf or on behalf of a third party. […].

Article 16

1. An institution shall report a completed or intended unusual transaction to the Financial Intelligence Unit without delay after the unusual nature of the transaction has become known.

2. In the event of a notification as referred to in the first paragraph, the institution shall provide the following information:

a. the identity of the client, the identity of the ultimate beneficial owners and, to the extent possible, the identity of the person on whose behalf the transaction is carried out;

b. the nature and number of the identity document of the client and, to the extent possible, of the other persons referred to in subparagraph (a);

c. the nature, time and place of the transaction;

d. the amount and destination and origin of the funds, securities, precious metals or other values involved in the transaction;

e. the circumstances under which the transaction is considered unusual;

f. a description of the relevant items of significant value in the case of a transaction exceeding €10,000;

g. additional data to be designated by general administrative measure.

3. By way of derogation from the second paragraph, an institution referred to in Article 1a, paragraph 4, subparagraph o , shall provide the data referred to in the second paragraph to the extent that it has them, as well as a description of the relevant immovable property and rights to which immovable property is subject.

4. The reporting obligation referred to in the first paragraph applies accordingly if:

a. customer due diligence as referred to in Article 3, paragraph 1 , does not lead to the result referred to in Article 5, paragraph 1, point (b), or to the implementation of the measures referred to in Article 3, paragraph 14, point (a), and there are also indications that the customer in question is involved in money laundering or terrorist financing;

b. a business relationship is terminated pursuant to Article 5, paragraph 3 , and there are also indications that the client in question is involved in money laundering or terrorist financing.

5. When making a notification pursuant to the fourth paragraph, an institution shall, in addition to the information referred to in the second paragraph, provide a description of the reasons why the fourth paragraph applies.

Article 33

[…].

3. An institution shall store the data referred to in the first and second paragraphs in an accessible manner for five years after the date of termination of the business relationship or for five years after the relevant transaction has been carried out. […].

Pursuant to Article 1f(1) Wwft, the Netherlands is obliged to regularly identify and assess ML/TF risks and to assess the effectiveness of its AML/CFT policies.

The starting point for assessing national risks and applying a risk-based approach are the results of the European Supranational Risk Assessment (hereinafter: SNRA), as well as the ML and TF NRAs which are done at the national level. The Ministry of Finance and the Ministry of Justice and Security have commissioned the Research and Documentation Centre (Wetenschappelijk Onderzoek- en Documentatiecentrum, hereinafter: WODC) to carry out the NRAs. The WODC is an independent and scientific research institute for policy research, especially in the field of law enforcement. All relevant competent authorities and (representatives of) FIs and DNFBPs are involved in assessing ML/TF risks for example via interviews and expert meetings. The NRAs identify the top 10-15 most significant ML/TF risks in terms of their potential impact and assess the effect of the policy instruments designed to prevent and combat ML/TF (resilience). The first Dutch ML/TF NRAs were published in 2017. Updated NRAs were published in mid-2020.

Based on these reports and study from 2018 into the nature and extent of criminal behaviour an overall national ML Action Plan was launched in 2019 by the Minister of Finance and the Minister of Justice and Security, who are also the national authorities responsible for coordination of ML/TF risk assessment.

Use the links below to find the English text:
NRA ML 2017 (summary)
NRA ML 2017 (full text)
NRA TF 2017 (summary)
NRA ML 2019 (summary)
NRA ML 2019 (full text)
NRA TF 2019 (summary)
NRA TF 2019 (full text)
SNRA 2017
SNRA 2019

The regulatory AML/CFT framework is formed by the international standards of the FATF, the European Anti-Money Laundering Directive and, at national level, by the Wwft. Please find an English translation of the Wwft in the following annex: Fin_Art.14 (1)(a)_question3.

The Wwft is therefore based on the international FATF Recommendations and the Anti-Money Laundering Directive. The first Anti-Money Laundering Directive focused on money laundering in terms of drugs offences and only contained obligations for the financial sector. The scope was extended by the second anti-money laundering Directive, both as regards the offences and the categories of professional and natural persons who became subject to the obligations of the Directive. The extension of the FATF Recommendations in June 2003 gave rise to the Third Anti-Money Laundering Directive. In line with the FATF Recommendations, this Directive also focused on terrorist financing and contained stricter rules on identifying and verifying the customer's identity. The Third Anti-Money Laundering Directive also prescribed enhanced or simplified customer due diligence depending on the risk of money laundering or terrorist financing in a given case. The Fourth Directive complements the existing anti-money laundering and anti-terrorist financing instruments.

In 2018 the Fourth Anti-Money Laundering Directive was amended at European level by:

- enhancing transparency by setting up publicly available registers for ultimate beneficial owners of companies, trusts and other legal arrangements;
- enhancing the powers of EU Financial Intelligence Units, and providing them with access to broad information for the carrying out of their tasks;
- limiting the anonymity related to virtual currencies and wallet providers, but also for pre-paid cards;
- broadening the criteria for the assessment of high-risk third countries and improving the safeguards for financial transactions to and from such countries;
- setting up central bank account registries or retrieval systems in all EU-member states;
- improving the cooperation and enhance of information between AML/CFT supervisors between them and between them and prudential supervisors and the European Central Bank.

These amendments are implemented in the Dutch legislation through the Implementatiewet wijziging vierde anti-witwasrichtlijn.

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The Dutch AML/CFT supervisors are:

Dutch AML/CFT supervisor	**Supervised institutions**

De Nederlandsche Bank N.V. (DNB, the Dutch Central Bank)	• Banks • Credit institutions • Payment service providers • Electronic money institutions • Currency exchange offices • Life insurers • Payment service agents • Branches in the Netherlands of the abovementioned institutions with a registered office in another Member State • Trust and company service providers • Crypto service providers
Authority for the Financial Markets (AFM)	• Investment firms • Investment institutions • UCITS • Branches in the Netherlands of the abovementioned institutions with a registered office in another Member State • Financial service providers mediating in life insurance
The Financial Supervision Office	• Tax advisers, or similar activities • Accountants or similar activities • Civil-law notaries • Legal profession or business similar to that of a lawyer or civil-law notary
The Dean of the Dutch Bar Association	• Lawyers

Bureau Toezicht Wwft (part of the Tax and Customs Administration)	• Those who provide an address or postal address (other than a trust and company services provider) • Mediators in the formation and conclusion of contracts relating to immovable property and rights to which immovable property is subject • Brokers for the purchase and sale of vehicles, ships, works of art, antiques, precious stones, precious metals, jewellery or jewels • Buyers or sellers of goods, where payment for these goods is made in cash for an amount of 10,000 euros or more • Valuers of immovable property and rights to which immovable property is subject (including estate agents) • Operators of pawn shops
The Gaming Authority (Ksa).	• Gaming providers

Ever since the implementation of the European AMLD4, the European Commission, acting in conformity with Article 6 of that Directive, conducts a supranational risk assessment (SNRA) once every two years. The SNRA addresses the ML and TF risks that may threaten the EU internal market and that relate to cross-border activities.

The SNRA uses a defined methodology[57] to provide a systematic analysis of the ML or TF risks linked to the modi operandi used by perpetrators. All EU member states contribute to the process. The aim is to identify circumstances in which the services and products delivered or provided by the various sectors could be abused for TF or ML purposes. The SNRA focuses on vulnerabilities identified at the EU level, both in terms of legal framework and in terms of effective application.

The results of the SNRA are taken into account in the process of assessing risks at a national level by the WODC (see also question 2 on Article 14(1)(e) above).

SNRA 2017
SNRA 2019

The Netherlands has had a formal anti-money laundering framework, implementing the EU Directives and other international treaties and conventions, in place since the early 1990s and the country has been building up a variety of measures, legislation and institutions since, such with the goal of achieving an optimal AML/CFT framework. The relevant EU

[57] For a description of the methodology of the SNRA 2017, see the Staff Working Document SWD(2017) 241, for a description of the methodology of the SNRA 2019, see the Staff Working Document SWD(2019) 650

Directives and Regulations, treaties and conventions are incorporated into various pieces of Dutch law. The main elements of EU legislation, including the Anti Money Laundering Directives, have been implemented in the Money Laundering and Terrorist Financing (Prevention) Act 2008 (Wet ter voorkoming van witwassen en financieren van terrorisme), as amended since, hereinafter referred to as: the Wwft. This law was most recently amended by the Fourth Anti-Money Laundering Directive (Amendment) (Implementation) Act (Implementatiewet wijziging vierde anti-witwasrichtlijn), which entered into force on 21 May 2020.
In addition to the Wwft, there are several other primary laws that make up the AML/CFT framework in the Netherlands:

i. Financial Supervision Act (Wet op het financieel toezicht, Wft)
ii. Criminal Code (Wetboek van Strafrecht, WvSr)
iii. Code of Criminal Procedure (Wetboek van Strafvordering, WSv)
iv. Sanctions Act 1977 (Sanctiewet 1977)
v. Trust and Company Service Providers Supervision Act 2018 (Wet toezicht trustkantoren 2018, Wtt)
vi. Economic Offences Act (Wet economische delicten)
vii. Legal Entities (Supervision) Act 2015 (Wet controle op rechtspersonen, Wcr)

Financial Supervision Act (Wet op het financieel toezicht, Wft). The Wft came into force in January 2007. This Act deals with the supervision on banks, insurance companies and other financial institutions. The Prudential Rules (Financial Supervision Act) Decree (Besluit prudentiële regels Wet op het financieel toezicht, BPR Wft) and the Market Conduct Supervision (Financial Institutions) Decree (Besluit Gedragstoezicht financiële ondernemingen Wet op het financieel toezicht, BGFO Wft) provide further rules, including rules providing measures to safeguard integrity of financial institutions. Such integrity measures have to be taken by financial institutions to mitigate, among other things, AML/CFT risks.

Criminal Code (Wetboek van Strafrecht, WvSr). Book II of the Criminal Code establishes criminal offences under Dutch law, including money laundering and financing of terrorism. The Netherlands has adopted an "all crimes approach" in defining predicate offences for money laundering. Money laundering has been included in the Criminal Code as an autonomous offence in 2001, meaning it can be prosecuted independently from the predicate offence. The section of the Code rendering money laundering punishable provides a broad definition. The following three types of money laundering are listed in the Criminal Code: laundering (Article 420bis), habitual laundering (Article 420ter) and negligent laundering (Article 420quater). The provisions merely require the prosecution to establish that objects are likely to be directly or indirectly derived from any offence, without the need to specify the predicate offence. In 2015, increased sentences for the various forms of money laundering for natural as well as legal persons were introduced. Furthermore, the criminalisation of simplified self-laundering, i.e. the acquisition or possession of an object that constitutes direct proceeds of one's own criminal activity, without this involving any 'concealing' or 'disguising', was introduced in 2017. The Criminal Code also contains provisions on terrorist financing. Article 83 of the Criminal Code lists terrorist offences and refers to Article 140a as one of them. This article includes the financing of criminal activities. Terrorist financing is specifically rendered punishable by Article 421 of the Criminal Code, which makes particular reference to the purpose of the money and the person making use of the money.

Code of Criminal Procedure (Wetboek van Strafvordering, WvSv). The Code of Criminal Procedure consists of eight books. The most relevant in light of AML/CFT are: the first book as regards criminal justice procedures, special and coercive investigative powers of law enforcement authorities, as well as criminal financial investigations, seizure and searching of premises; the second as regards criminal investigations and handling cases before court; the fifth book as regards international cooperation concerning inter alia mutual legal assistance, joint investigation teams and European legal assistance instruments; and the sixth book on sanctions and execution thereof.

Sanctions Act 1977 (Sanctiewet 1977, Sw). The Sanctions Act 1977 provides the basis for international and national freezing measures and other sanctions, and for supervision of compliance with sanction regulations. Examples of international sanctions include UN Security Council Resolution 1267 (1999) and UN Resolution 1373 (2001). These Resolutions have been rendered directly applicable in the Netherlands via EU Regulations. In accordance with the Regulation on Supervision pursuant to the Sanctions Act 1977, financial institutions and TCSPs must take measures with respect to their accounting system and internal audits so as to comply with the provisions of the sanctions regulations. The institutions concerned are listed in the Sanctions Act 1977.

Trust and Company Service Providers Supervision Act 2018 (Wet toezicht trustkantoren 2018, **Wtt 2018**). The Wtt 2018 entered into force on 1 January 2019. The primary objective of the Wtt 2018 is to promote the integrity of the Dutch financial system. Under the Wtt 2018, this is achieved on the basis of three pillars. First, the Wtt 2018 sets requirements on the operational management and organisation of trust and company service providers. Second, all policy-makers of trust and company service providers are subjected to a fit and proper assessment. Third, the Wtt 2018 sets requirements on the customer due diligence performed by trust and company service providers. With this Act, the Netherlands possesses one of the most stringent legal frameworks for the trust and company services sector in the EU. The Wtt 2018 will be further reinforced on the basis of the government's Anti-Money Laundering Action Plan.

Economic Offences Act (Wet op de Economische Delicten, WED)**.** The Economic Offences Act criminalises breaches of administrative legislation prescribing preventive measures in the field of AML/CFT, such as the Wwft, the Sw and the Wtt 2018. It proposes sanctions, including fines and imprisonment sentences, according to the gravity of the offence. In accordance with the Act, a judge may also impose confiscation measures. As a result, the Economic Offences Act serves as a complementary instrument to the Criminal Code for sanctioning breaches relating to money laundering and its predicate offences.

Other laws relevant with respect to AML/CFT include:

i. Company Register Act (Handelsregisterwet 2007, Hrw)
ii. Legal Entities (Supervision) Act (Wet controle op rechtspersonen, Wcr)
iii. Public Administration Probity Screening Act (Wet Bibob)
iv. State Taxes Act and other tax legislation
v. Audit Firms (Supervision) Act (Wet toezicht accountantsorganisatie)
vi. Civil Code (Burgerlijk Wetboek)
vii. General Administrative Law Act (Algemene wet bestuursrecht, Awb)
viii. Customs Act (Douanewet, DW)

ix. Counterterrorism (Interim Administrative Measures) Act (Tijdelijke wet bestuurlijke maatregelen terrorismebestrijding)
x. Intelligence and Security Services Act (Wet op de inlichtingen- en veiligheidsdiensten 2017)
xi. General Data Protection Regulation (Implementation) Act (Uitvoeringswet Algemene verordening gegevensbescherming, UAVG)
xii. Police Data Act (Wet politiegegevens, Wpg)
xiii. Judicial Data and Criminal Records Act (Wet justitiële en strafvorderlijke gegevens, Wjsg)
xiv. Legislative proposal: Data Processing by Partnerships Act (Wet gegevensverwerking door samenwerkingsverbanden)

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Payments in cash

- Mitigating measures: in their national risk assessments, Member States should take into account the risks posed by payments in cash so as to define appropriate mitigating measures such as the introduction of cash limits for payments, Cash Transaction Reporting systems or any other measures suitable to address the risks. Member States should consider making sectors that are particularly exposed to the risks of money laundering and terrorist financing subject to the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) preventive regime based on the results of their National Risk Assessment (NRA).

- Actions taken: financial institutions are obliged to report unusual transactions related to cash. In 2017, it was proposed to lower the objective thresholds that require the reporting of cash transactions from 15,000 euros to 10,000 euros. The website of FIU-Netherlands contains several anonymised cases for knowledge-sharing related to cash payments. Through knowledge derived from case investigations, several typologies have been constructed that are related to the use of cash payments by criminals to transfer illegal funds into legal funds. On a regular basis, FIU-Netherlands shares insights into the functioning of the objective thresholds to the Ministries. If the objective thresholds are adjusted, FIU-Netherlands informs the reporting entities by sending out a newsletter. The relevant information can be found on the website of FIU-Netherlands and is directly adjusted if needed. Here, the reporting entities can learn about the relevant legislation. In addition, social media are used as well to inform reporting entities.

Client due diligence in private banking

- Mitigating measures: Member States should ensure that supervisors conduct a sufficient number of on-site inspections commensurate with the Money laundering and terrorist financing (ML/TF) risks identified. In this context, supervisors should assess the implementation of rules on the identification of beneficial ownership (compliance with the BO definition). Member States' supervisory authorities should carry out a thematic inspection on private banking within 2 years, except for those that recently carried out such thematic inspections. The results of the thematic inspections should be communicated to the Commission.

- Actions taken: in 2014, DNB conducted a thematic review of private banking. DNB selected institutions with private banking activities which have an international focus. Both local private banks with international clients and banks related to a foreign private bank (branch, subsidiaries) were selected. The main focus of the examinations was on clients/UBOs based in high-risk countries and/or so-called offshore countries (tax havens). In 2015, DNB conducted a thematic investigation into Dutch banks with foreign (non-EU) private banking activities through branches or subsidiaries. The examination focused on monitoring from the head office on the foreign activities as well as on adherence to applicable Dutch legislation by the foreign entity. In 2017, DNB conducted on-site investigations of private banking activities in the Netherlands as well as abroad based on signals (Panama Papers) of non-adherence to Dutch legislation.

Virtual currencies/ICOs

- Mitigating measures: Member States should ensure that supervisors inform financial intuitions of the higher risk of accepting and using virtual currencies.

- Actions taken: the AFM issued a warning in November 2017 about the serious risks associated with Initial Coin Offerings (ICOs). Due to their unregulated status and the anonymous nature of the transactions involved, ICOs are attractive for the laundering of money obtained by criminal means. The AFM's advises consumers to avoid investing in ICOs (https://www.afm.nl/en/professionals/onderwerpen/ico).

- In December 2017, the AFM sent a self-assessment on their abidance/compliance with AML/CFT legislation to four AIFM light-regime (registered) investment firms which manage an investment fund investing in ICOs and cryptocurrencies. The AFM has conducted a risk-based investigation in 2018 at two of these investment firms.

- The AFM issued a position paper about cryptocurrencies on 24 January 2018. In this report, the AFM warns about the risks of cryptocurrencies, including AML. Special attention is paid to the role of ICOs.

- In July 2018, the AFM issued research conducted among Dutch consumers on the characteristics of the owners of crypto currencies. This research resulted in a report and a video. In July 2018 as well, the AFM issued a statement on the applicability of the AML/CFT legislation on the managers of investment firms which invest in cryptocurrencies.

- In 2017, DNB and other supervisors issued several warnings about accepting and using virtual currencies. Financial institutions put measures into place with the approval of clients who deal in cryptocurrencies. During on-site investigations, DNB warned financial institutions about the risks involved. DNB started interviewing professional exchanges in order to identify further risks.

- FIU-Netherlands informs reporting entities by sending out a newsletter on virtual currencies. The website of FIU-Netherlands contains several anonymised cases for knowledge-sharing on virtual currencies. FIU-Netherlands also supports local government bodies and investigative service

projects in the shape of a field lab (Harvard methodology) targeting the abuse of virtual currencies. Moreover, FIU-Netherlands participates in a specialist group focusing on the developments in virtual currencies. FIU-Netherlands shares knowledge and red flag indicators with banks, Payment Service Providers and other relevant obliged entities which may be confronted with virtual currencies.

- New payment methods are a priority for the Dutch Anti Money Laundering Centre (AMLC). Furthermore, several projects have been executed on the initiative of or in close cooperation with the Public Prosecution Service in relation to this topic, such as the bitcoin project (focusing on bitcoin traders, bitcoin ATMs and cryptocards). This process resulted in new typologies on virtual currency traders and mixers in virtual currencies. FIU-Netherlands distributed these typologies to all relevant parties in August 2017.

(b) Observations on the implementation of the article

The Money-Laundering and Terrorist Financing (Prevention) Act establishes obligations for various reporting entities, including banks, other financial institutions and designated non-financial businesses and professions (art. 1a). Relevant supervisory authorities include De Nederlandsche Bank N.V. (art. 1d (1a)), the Netherlands Authority for the Financial Markets (art. 1d (1b)), the Financial Supervision Office (art. 1d (1c)), the President of the Netherlands Bar (art. 1d (1d)), the Minister of Finance (art. 1d (1e)) and the Netherlands Gaming Authority (art. 1d (1f)). The customer due diligence requirements under chapter II of the Money-Laundering and Terrorist Financing (Prevention) Act provide for, inter alia, the identification and verification of clients and beneficial owners (art. 3 (2)). All institutions are obliged to file unusual transaction reports to the Netherlands Financial Intelligence Unit (art. 16). The obligation to keep records for at least five years is established under article 33 of the Act.

A risk-based approach is taken under the anti-money-laundering regime (art. 2b of the Money-Laundering and Terrorist Financing (Prevention) Act). The national risk assessment is conducted every two years, which requires the Minister of Finance and the Minister of Justice and Security to jointly publish a report on the risks identified (arts. 1 (1) and 1 (f) (1) of the Act). Reporting entities must use the results of the national risk assessment and the supranational risk assessments produced by the European Commission, in addition to the information they collect, to implement the risk-based approach (art. 2c of the Act). In 2019, the Government launched a national action plan to prevent and combat money-laundering.[58]

Subparagraph 1 (b) of article 14

1. Each State Party shall: ...

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a

[58] Following the country visit, the plan was renewed in 2022.

national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Since the introduction of the reporting obligation (1994), the Netherlands has had a point of contact to report unusual transactions – formerly the Unusual Transactions Disclosure Office (MeldpuntOngebruikelijkeTransacties) and FIU-Netherlands since 2006.

At a national level, FIU-Netherlands is designated under the Wwft as the only agency within the Netherlands to which institutions or entities under obligation must report any unusual transactions.

Article 13(g) of the Wwft outlines the possibility for information to be exchanged between FIU-Netherlands and regulatory bodies on the reporting behaviour of entities under obligation.

Article 13(f) of the Wwft outlines the possibility of information to be exchanged between FIU-Netherlands and the Public Prosecution Service as well as the other civil servants charged with investigating criminal offences on the reporting behaviour of institutions under obligation.

Article s 13b and 13c of the Wwft outline the obligation of information exchange between Member States.

FIU-Netherlands is a member of the international partnership of FIUs, the Egmont Group of FIUs, which aims to exchange financial intelligence with one another in a secure manner and increase the professionalism of affiliated FIUs. Article 13(h) of the Wwft outlines the possibility for information to be exchanged between FIU-Netherlands and other FIUs.

FIU-Netherlands collaborates intensively with network partners at both a national and an international level. Without these partnerships, it would be impossible for FIU-Netherlands to carry out its statutory responsibilities in an expertly and effective manner. The partnerships in which FIU-Netherlands participates vary from fully public sector (National Police, FIOD, Public Prosecution Service) and intermediate forms (educational institutions, information centres such as the various Regional Information and Expertise Centres (RIECs)) to fully private-public sector (the major banks, payment service providers, casinos).

The National Prosecutor for Money Laundering (LandelijkOfficierWitwassen) of the Public Prosecution Service and FIU-Netherlands collaborate closely. The information requests from investigations are submitted via the National Prosecutor for Money Laundering.

In recent years, various persons or entities/representatives of entities have been convicted for failing to report or incorrectly reporting unusual transactions or for reporting them too late. This outcome resulted from a joint project of the Public Prosecution Service, the FIOD, the police, FIU-Netherlands and the Wwft regulatory bodies aimed at improving Wwft compliance.

In the execution phase, the National Office for Serious Fraud, Environmental Crime and Asset Confiscation and the Central Judicial Collection Agency (CJIB) play a key role in the confiscation

of criminal assets. The databases of the CJIB and the National Office for Serious Fraud, Environmental Crime and Asset Confiscation are regularly compared with the database of FIU-Netherlands.

The Money-Laundering and Terrorist Financing (Prevention) Act

Article 13

With the aim of preventing and detecting money laundering and underlying predicate offences, as well as terrorist financing, the Financial Intelligence Unit has been tasked with:

a. the collection, recording, processing and analysis of the data it obtains in order to determine whether these data may be of importance for the prevention and detection of crimes;

b. the provision of personal data and other information in accordance with this Act and the provisions of or pursuant to the Police Data Act ;

c. informing an institution of the receipt of a report by that institution, the receipt of additional data or information provided by that institution, as well as of trends and phenomena that emerge from reports received, and, where appropriate, through the Public Prosecution Service, of the significance of a report by that institution for the prosecution of criminal offences;

d. conducting research into developments in the field of money laundering and terrorist financing and into improving methods to prevent and detect money laundering and terrorist financing;

e. making recommendations to the industries on the introduction of appropriate internal control and communication procedures and other measures to be taken to prevent the use of those industries for money laundering and terrorist financing;

f. providing information on the prevention and detection of money laundering and terrorist financing to:

1°.the industries and professional groups;

2°.the supervisory authority;

3°.the public prosecutor's office and other officials charged with investigating criminal offences;

4°.the public;

g. providing information regarding the reporting behaviour of the institutions to the supervisory authority and the persons referred to in section f, under 3°;

h. maintaining contacts with foreign government-designated bodies that have a similar task as the Financial Intelligence Unit;

i. the annual submission of a report on the performance of its duties and activities in the previous year and on its intentions for the coming year, which is submitted to Our Minister of Justice and brought to the attention of Our Minister of Finance.

Article 13a

1. In order to carry out its tasks under Article 13 , the Financial Intelligence Unit shall, to the greatest extent possible, cooperate with the Financial Intelligence Units of other Member States.

2. The Financial Intelligence Unit shall exchange with a Financial Intelligence Unit of another Member State, on its own initiative or at the request of that other Financial Intelligence Unit and, if necessary, subject to conditions or restrictions, all available information which may be relevant for the processing or analysis by that Financial Intelligence Unit of information relating to money laundering or terrorist financing and the natural or legal persons concerned.

3. The information referred to in the second paragraph shall also be exchanged if:

a. at the time of exchange it has not been established which predicate offence is involved in the information to be analysed or processed;

b. the definition of a fiscal offence in question in the other Member State is different from that defined under Dutch law.

4. A request as referred to in the second paragraph shall be processed by the Financial Intelligence Unit if:

a. the request contains the relevant facts and background information; and

b. the request sets out the reasons for the request and how the requested information will be used.

Article 16

1. An institution shall report a completed or intended unusual transaction to the Financial Intelligence Unit without delay after the unusual nature of the transaction has become known.

2. In the event of a notification as referred to in the first paragraph, the institution shall provide the following information:

a. the identity of the client, the identity of the ultimate beneficial owners and, to the extent possible, the identity of the person on whose behalf the transaction is carried out;

b. the nature and number of the identity document of the client and, to the extent possible, of the other persons referred to in subparagraph (a);

c. the nature, time and place of the transaction;

d. the amount and destination and origin of the funds, securities, precious metals or other values involved in the transaction;

e. the circumstances under which the transaction is considered unusual;

f. a description of the relevant items of significant value in the case of a transaction exceeding €10,000;

g. additional data to be designated by general administrative measure.

3. By way of derogation from the second paragraph, an institution referred to in Article 1a, paragraph 4, subparagraph o , shall provide the data referred to in the second paragraph to the extent that it has them, as well as a description of the relevant immovable property and rights to which immovable property is subject.

4. The reporting obligation referred to in the first paragraph applies accordingly if:

a. a customer due diligence as referred to in Article 3, paragraph 1 , does not lead to the result referred to in Article 5, paragraph 1, point (b), or to the implementation of the measures referred to in Article 3, paragraph 14, point (a), and there are also indications that the customer in question is involved in money laundering or terrorist financing;

b. a business relationship is terminated pursuant to Article 5, paragraph 3 , and there are also indications that the client in question is involved in money laundering or terrorist financing.

5. When making a notification pursuant to the fourth paragraph, an institution shall, in addition to the information referred to in the second paragraph, provide a description of the reasons why the fourth paragraph applies.

The FIU-NL has access to financial, administrative and law enforcement information for the purpose of analysing the unusual transactions received. These sources can be accessed either directly, or indirectly. In case of indirect access the confidentiality of the request has been secured by IT secured access and/or by personnel of the respective sources that are legally bound to secrecy based on their own respective laws and regulation. The sources vary from the Tax and Customs Administration, to judicial records and bank data.

De database van FIU-Nederland is uitsluitend toegankelijk voor geautoriseerd FIU personeel, met andere woorden geen andere organisatie heeft toegang tot de FIU database.

Sharing STRs with investigative services, the Public Prosecution Service and intelligence and security services.
The Netherlands has expressly decided to use the system of reporting unusual transactions (UTRs) rather than suspicious transactions (STRs). FIU-Netherlands has the task to analyse the reported transactions. Following analysis, the UTRs are declared suspicious by the head of FIU-NL where applicable.
As FIU-NL has been situated at the heart of intelligence-driven investigation since 2008, the STRs can be issued to the Dutch police organisation by means of an automated system. This means that the transactions also become available to other investigative services, the Public Prosecution Service and intelligence and security services.

Requests from investigative services
FIU-NL receives specific information requests from investigative services via a so-called 'LOvJ' (Dutch coordinating Public Prosecutor on Money Laundering). These LOvJ requests can be submitted for the purpose of criminal investigations or the confiscation of unlawfully obtained capital. In the case of an LOvJ request, FIU-NL will carry out a detailed investigation of its database. The request must therefore contain information about suspected committed crimes, a substantiation of the suspicion, personal data of any suspects, data of identity documents, bank accounts that are held, familial and criminal contacts, legal entities involved and other data that can be of importance for the transaction analysis. In addition, it will be considered whether any connections can be made while handling the request and, if an unusual transaction seems relevant, any necessary questions will be put to the organisations subject to notification under article 17 Wwft. FIU-NL can also put questions to international FIUs where necessary.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Please see the website of the FIU (https://www.fiu-nederland.nl/en/about-the-fiu/annual-reports) for the overview of figures relating to reports made to FIU-Netherlands in the FIU-Netherlands 2017 Annual Review.

(b) Observations on the implementation of the article

The Financial Intelligence Unit is responsible for collecting, processing and analysing information regarding money-laundering and terrorist financing, including the receipt of unusual transaction reports (arts. 13 and 16 of the Money-Laundering and Terrorist Financing (Prevention) Act). Information can be shared at the domestic level between the Unit and the Public Prosecution Service and other law enforcement and supervisory authorities (art. 13 (f) (3) and 13 (g) of the Act). The

Unit can also exchange information, spontaneously or upon request, with its foreign counterparts (art. 13a of the Act).

Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor themovement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Regulation 1889/2005 has laid down an obligation to declare cash and cash equivalents. The purpose of this obligation is to monitor and administratively record the transport of cash as well as cash equivalents in cross-border movements from and to the EU. Persons are required to declare any cash that is being transported upon entering or exiting the EU if the value of the cash is 10,000 euros or more. This regulation is the elaboration of Recommendation 32 of the Financial Action Task Force (FATF).

2019 Money Laundering Action Plan

In July 2019 proposals were presented to the Lower House of Parliament in a letter containing the joint 'Money Laundering Approach' from the Minister of Finance as well as the Minister of Justice and Security. Please refer to:

https://www.rijksoverheid.nl/documenten/kamerstukken/2019/06/30/aanbiedingsbrief-plan-van-aanpak-witwassen. (an English translation is available). A first report on the measures following from this plan was published on 14 January 2020 and a second one on 3 July 2020. At the end of this year a third follow-up report will be sent to Parliament.

In this framework, Section 1.3 on Countering abuse of large sums of cash applies. The use of cash entails increased risks of money laundering practices. As cash is difficult to trace, it is an attractive means to conceal the origin of criminal assets. High-value banknotes are frequently used in this regard to conceal the size of the amount. Undermining crime constitutes a shadow economy that is still largely based on cash. In order to make use of these illegally obtained cash sums in the formal, real economy, the money must be laundered first. This laundering can be accomplished in several ways, including the purchase of goods and services. In order to disguise the criminal origin of the money, the large sums of cash are often divided into much smaller amounts. International studies, including those of the FATF and Europol, have also shown that the criminal economy is an economy based on cash.

Customs checks on the transport of cash within the EU

Because organised crime often operates at an international level, criminal financial assets are frequently transported across borders. To this end, adequate monitoring of cross-border movement

of money is crucial. In monitoring and checking cross-border movement of goods from outside the EU, Customs regularly encounter substantial amounts of cash or cash equivalents (mainly cash), valuable goods (such as precious metals and stones) as well as documents indicating assets. At present, Customs are only authorised to conduct checks if cash or cash equivalents move across an external border of the EU. For this reason, the General Customs Act (AlgemeneDouanewet) will be amended to expand the scope of inspections to intra-EU movement and domestic traffic. This amendment will also enable Customs to inspect third-country traffic not only for cash and cash equivalents but also for other valuable goods such as jewellery, expensive watches, precious stones and antiques as well as for documents indicating assets. The amendment will allow checks for cross-border, international money laundering practices and confiscation of criminal funds to be strengthened significantly as well as expanded to intra-EU traffic and domestic traffic. This expansion will take place at sites where Customs already operate, such as at airports and domestic inspections.

The legislation is currently being developed and will enter into force in June 2021.

The Wwft includes an objective indicator for cash payments. This indicator varies for different reporting groups.

The answer has partly been provided under 1.

Procedure for cash (procesliquidemiddelen)

The purpose of the obligation to declare cash in Regulation 1889/2005 is to control and administratively record the movement of cash in cross-border traffic entering and exiting the EU. Persons are required to declare any cash that is being transported upon entering or exiting the EU if the value of the cash is 10,000 euros or more.

Monitoring compliance with this declaration obligation is a key link in a chain of measures within the EU aimed at fighting money laundering and terrorist financing. There are substantial penalties for any party that fails to comply with this obligation.

Penalty policy as of May 2019

Violation of declaration obligation	Level of fiscal penalty
No intent	10% of the total value of the cash and cash equivalents (in euros) (up to a maximum fine of the third category)
Intent	30% of the total value of the cash and cash equivalents (in euros) (up to a maximum fine of the fourth category)
The Fraud Penalty Coordinator (BFC) may increase or decrease the penalty if the facts and circumstances require.	

Repeat offenders	In the case of repeat offenders, there will always be a reasonable suspicion of money laundering practices. The case will be transferred. If there is a case of recidivism and it is established at a later point that there is no reasonable suspicion of money laundering practices, the BFC may decide to increase the fiscal penalty order.

Statistics: please see below.

Customs will pass on the information of cash declarations to FIU-Netherlands, the Tax and Customs Administration, as well as other partners that execute responsibilities in the field of tackling money laundering and terrorist financing.

Right to report procedure

The procedure on the right to report (procesMeldrecht) is closely related to the procedure for cash. Both procedures aim to tackle money laundering and terrorist financing practices by way of reporting to the FIU. Each process is clearly delineated. Generally speaking, the procedure for cash (procesliquidemiddelen) deals with natural persons entering or exiting the EU while carrying cash. The procedure on the right to report (Meldrecht) has a broader definition: in this case, items such as watches, jewellery, gold, diamonds, intra-community movement of money and art will be reported to the FIU as unusual transactions. Consequently, the Meldrecht procedure operates as a safety net for goods sensitive to money laundering which do not fall under the regulation for cash. However, as this procedure is not yet uniform across the country, the statistics only include reporting figures of Customs Schiphol Passengers.

At the end of 2017, a start was made in consultation with the Ministry of Finance to set up a new programme in order to codify and professionalise this duty as well as provide a robust statutory basis for Customs' right to report. This relevant legislation is currently at an advanced stage and was recently announced as being part of the 2019 Money Laundering Action Plan as well (see above).

Regulation (EU) 2018/1672 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005

Article 3

1. Carriers who carry cash of a value of EUR 10 000 or more shall declare that cash to the competent authorities of the Member State through which they are entering or leaving the Union and make it available to them for control. The obligation to declare cash shall not be deemed to be fulfilled if the information provided is incorrect or incomplete or if the cash is not made available for control.

2. The declaration referred to in paragraph 1 shall provide details about the following:

(a) the carrier, including full name, contact details, including address, date and place of birth, nationality and identification document number;

(b) the owner of the cash, including the full name, contact details, including address, date and place of birth, nationality and identification document number, where the owner is a natural person, or

the full name, contact details, including address, registration number and, where available, value added tax (VAT) identification number, where the owner is a legal person;

(c) where available, the intended recipient of the cash, including the full name, contact details, including address, date and place of birth, nationality and identification document number, where the intended recipient is a natural person, or the full name, contact details, including address, registration number and, where available, VAT identification number, where the intended recipient is a legal person;

(d) the nature and the amount or value of the cash;

(e) the economic provenance of the cash;

(f) the intended use of the cash;

(g) the transport route; and

(h) the means of transport.

3. The details listed in paragraph 2 of this Article shall be provided in writing or electronically, using the declaration form referred to in to point (a) of Article 16(1). An endorsed copy of the declaration shall be delivered to the declarant upon request.

Article 9

1. The competent authorities shall record the information obtained under Article 3 or 4, Article 5(3) or Article 6 and transmit it to the FIU of the Member State in which it was obtained, in accordance with the technical rules referred to in point (c) of Article 16(1).

2. The Member States shall ensure that the FIU of the Member State in question exchange such information with the relevant FIUs of the other Member States in accordance with Article 53(1) of Directive (EU) 2015/849.

3. The competent authorities shall transmit the information referred to in paragraph 1 as soon as possible, and in any event no later than 15 working days after the date on which the information was obtained.

General Customs Act

Article 10:1

1. The one who:

a. in breach of Articles 127, first to sixth paragraphs, and 130 of the Union Customs Code in conjunction with, where applicable, Articles 105, 106 or 110 of the Union Customs Code Delegated Regulation, fails to lodge a summary declaration or fails to lodge a summary declaration on time or incompletely;

b. fails to submit, or fails to submit in a timely manner, an arrival notification as referred to in Article 133 of the Union Customs Code;

c. brings goods into the customs territory of the Union in breach of the first and sixth paragraphs of Article 135 or Article 137 of the Union Customs Code;

d. in breach of the first or second paragraph of Article 139 of the Union Customs Code, fails to present or fails to present in good time to the inspector goods brought in;

e. acts in breach of the first, third, fourth or fifth paragraph of Article 145 of the Union Customs Code or Article 193 of the Union Customs Code Implementing Regulation during temporary storage;

f. without the permission of the inspector, removes goods in violation of the seventh paragraph of Article 139 of the Union Customs Code or unloads them in violation of the first paragraph of Article 140 of the Union Customs Code;

shall be punished by a fine of the third category or, if that amount is higher, a maximum of one time the amount of the import duties payable in respect of the goods.

2. Any person who commits any of the acts described in the first paragraph with the intention of evading or promoting the evasion of import duties payable in respect of the goods shall be punished by a term of imprisonment not exceeding four years or a fine of the fourth category or, if this amount is higher, a fine not exceeding the amount of those duties.

[…].

The revised law will enter into force on 3 June 2021 and includes the obligation for a disclosure declaration when entering or leaving the Netherlands of cash, valuable goods and documents and is part of measures to prevent money laundering and to combat terrorist financing. This obligation is based on the new Articles 3.4 and 3.5 Dutch General Customs Act.

The sender, carrier or recipient of cash or valuable goods with a value of € 10,000 or more shall provide the Customs inspector with a disclosure declaration at his request. The obligation to submit this declaration also applies to documents concerning foreign or domestic possession of assets. If the disclosure declaration is not made, made incorrect or incomplete or is not made within the 30-day period, the obligation is not met and a fine may be imposed. Cash, valuables or documents may also be held in custody or confiscated. The information and personal data provided are recorded and processed by Customs and made available to Financial Intelligence Unit Netherlands.

Valuable goods for reporting purposes are:
- vehicles and vessels
- precious stones (worked and unprocessed)
- watches
- investment and commemorative coins
- precious metals
- jewelry
- works of art and antiques

Documents are understood to mean: documents proving (foreign) possession of assets. Examples bank books, evidence of ownership of movable and immovable property, contracts, payment orders and documents relating to foreign trusts. There is no value threshold for this.

The purpose of this new law as a national measure is to combat money laundering / terrorist financing and to create a legal competence for those situations in which Regulation 2018/1672 does not apply. The disclosure declaration is based on the EU disclosure as described in Regulation 2018/1672. A completely unique procedure for this was undesirable.

Revised Dutch General Customs Act (in force per 3 June 2021):

Article 3:2
1. For the implementation of the Cash and Cash Equivalents Regulation, the legal acts based thereon, and Articles 3:4 and 3:5 and the provisions based thereon, during the application of this Act and the provisions based thereon the following shall also be understood to mean:
a. goods: cash and cash equivalents as referred to in Article 2, paragraph 1 (a) of the Cash and Cash equivalents Regulation;
b. customs declaration or declaration: declaration as referred to in Article 3(1) of the Cash and Cash Equivalents Regulation or notification as referred to in Article 4(1) of that Regulation.
2. The identity of the declarant or notifier shall be established by means of a document as referred to in Article 1 of the Compulsory Identification Act.
3. Regulations issued by Our Minister of Finance lay down rules for the implementation of the Cash and Cash Equivalents Regulation:
a. the exchange rate to be used to determine the equivalent in euro of cash as referred to in Article 2(1)(a)(i) of that Regulation, the amount of which is expressed in another currency;

b. value of the goods to be taken into account, as referred to in Article 2, paragraph 1 (a) (ii) to (iv) of that regulation, and as referred to in Article 3:4.
4. Our Minister of Finance may lay down rules on how the declaration referred to in paragraph 1(b) may be made electronically.

Article 3:2a
The carrier referred to in Article 6(1) of the Cash and Cash Equivalents Regulation or the consignor or consignee of the cash referred to in Article 6(2) of that Regulation shall, at the request of the inspector, provide the information referred to in Article 3(2) or Article 4(2), respectively, of that Regulation.

Article 3:2b
Contrary to Article 1:3(1)(d), the competent authority referred to in Article 13(1) of the Cash and Cash Equivalents Regulation shall be Our Minister of Finance.

Article 3:3
1. A decision to seize cash in accordance with Article 7 of the Cash and Cash Equivalents Regulation shall be taken in writing by the inspector. The written decision shall be deemed to be an order. Publication thereof shall be made either to the natural person who has failed to comply with the obligation to declare pursuant to Articles 3 or 4 of that Regulation, or, if that person is unknown, in public in accordance with rules to be laid down by order of the Minister of Finance.
2. The decision states which data has not been provided, is incomplete or is incorrect in violation of the obligation to declare and refers to the general order in council, referred to in the seventh paragraph.
3. The inspector is authorised to continue to hold the case and cash equivalents in custody for as long as the necessary information referred to in Article 3(2) or Article 4(2) of the Cash and Cash Equivalents Regulation has not been provided.
4. The seizure of cash and cash equivalents is terminated by confiscation under criminal law or by a written decision of the inspector. A written decision of the inspector as referred to in the first sentence shall be considered an order. The third sentence of paragraph 1 shall apply mutatis mutandis to this decision.
5. The decision referred to in the fourth paragraph states the time of termination of the holding in custody of the cash and cash equivalents and further states that these remain available up to and including the calendar year following the year in which the decision referred to in the fourth paragraph has been published for payment by the inspector to a person entitled in so far as the cash and cash equivalents do not serve to pay the costs referred to in the seventh paragraph.
6. If cash and cash equivalents that remain available in the sense of the fifth paragraph have not been paid out to an entitled party before the end of the calendar year following the year in which the decision referred to in the fourth paragraph has been published, either the amount thereof or - insofar as the cash and cash equivalents are not Dutch lawful means of payment - the sales proceeds thereof are included in the deposit fund. Article 9(2) to (6) of the Money Consignment Act shall remain inapplicable.
7. A general order in council may be adopted to determine cases in which the costs related to the seizure of cash pursuant to "Article 7 of the Cash and Cash Equivalents Regulation" are to be wholly or partly reimbursed by the natural person who has not complied with the obligation to declare pursuant to Article 3 or Article 4 of that Regulation. The levying and collection of costs to be reimbursed shall take place in accordance with the statutory rules for the levying or collection, as the case may be, of costs of official activities as referred to in Article 1:19.

Article 3:4
1. The consignor, the carrier or the consignee of cash and cash equivalents with a value of € 10,000 or more as referred to in Article 2(1)(a) of the Cash and Cash Equivalent Regulation or of valuable goods with a value of € 10,000 or more, shall, upon request, provide the inspector within 30 days, a notification containing the information referred to in Article 4(2) of that Regulation.
2. The notification shall be made in the manner referred to in Article 4(3) of the Cash and Cash Equivalents Regulation.
3. The inspector may hold the cash or valuables in custody until notification has been given. Article 3:3 shall apply mutatis mutandis.
4. The notification shall be deemed not to have been made if it is not made before the expiry of the period referred to in paragraph 1 or if the information provided is incorrect or incomplete or if the cash or valuable goods are not made available for inspection.
5. Articles 6 and 9 of the Cash and Cash Equivalents Regulation and Articles 3:2 and 3:2a shall

apply mutatis mutandis.
6. Goods designated as valuables as referred to in the first paragraph shall be designated by or by virtue of an order in council.

Article 3:5
1. The consignor, the carrier or the recipient of documents evidencing foreign or domestic possession of property or assets that may constitute money laundering or terrorist financing shall, upon request, provide the inspector within 30 days with a notification containing the following:
a. the content of the documents concerned by means of a copy thereof;
b. details of the notifier: full name, address, place, date of birth, nationality and identification document number;
c. the particulars of the owner, sender and receiver or prospective receiver of the documents and, where applicable, the assets representing those documents:
- if he is a natural person: his full name, address, place, date of birth, nationality and identification document number;
- if it is a legal person: its full name, address, registration number and, where applicable, VAT identification number;
d. the nature and amount or value of assets to which the documents relate.
2. Our Minister of Finance shall lay down rules on the manner in which the notification referred to in paragraph 1 shall be made. An authenticated copy of the notification shall be issued to the notifier upon request.
3. The inspector may retain the documents until notification has been given. Article 3:3 shall apply mutatis mutandis.
4. The notification shall be deemed not to have been given if it is not made before the expiry of the period referred to in paragraph 1 or if the information provided is incorrect or incomplete or if the documents are not made available for inspection.
5. Article 9 of the Cash and Cash Equivalents Regulation and Articles 3:2 and 3:2a shall apply mutatis mutandis.

Part 10.1. Criminal offences

Article 10:1
1. Any person who:
a. fails to lodge a summary declaration, or does not lodge it on time or in full, contrary to Articles 127 (1) to (6) and 130 of the Union Customs Code in conjunction with, where applicable, Articles 105, 106 or 110 of the Delegated Regulation Customs Code;
b. fails to submit or submit on time an arrival notification as referred to in Article 133 of the Customs Code of the Union;
c. brings goods into the customs territory of the Union in breach of Articles 135(1) and (6) or 137 of the Customs Code of the Union;
d. fails to present goods or present them on time to the inspector in violation of Article 139(1) or (2) of the Customs Code of the Union;
e. in the case of temporary storage, acts contrary to Article 145(1), (3), (4) or (5) of the Customs Code of the Union or Article 193 of the Customs Code Implementing Regulation of the Union;
f. removes goods without the permission of the inspector in violation of Article 139, seventh paragraph, of the Customs Code of the Union or unloads in violation of Article 140, first paragraph, of the Customs Code of the Union;
shall be punishable by a fine of the third category or, if the amount is higher, by a fine not exceeding once the amount of import duties due in respect of the goods.
2. Any person who commits one of the offences described in the first paragraph with a view to evading import duties owed in respect of the goods or to facilitating the evasion thereof shall be liable to a term of imprisonment not exceeding four years or to a fine in the fourth category or, if this amount is higher, to a maximum of one time the amount of those duties.
3. Any person who brings in goods from sea or by air in respect of which the evidence to the contrary referred to in Article 2:2 is not furnished shall be deemed to have brought those goods from sea or by air, respectively, into the customs territory of the Union.
4. Any person who is obliged to file a declaration pursuant to Article 3 or Article 4 of the Cash Regulation or Article 3:2a and fails to file such a declaration or, in the case of Article 3:2a, fails to provide the information requested, shall be liable to a third category fine.

5. Any person who is obliged under Articles 3:4 or 3:5 to provide the notification and fails to do so, or does so incompletely or incorrectly, shall be liable to a fine of the third category.
6. A person who intentionally commits one of the offences described in the fourth paragraph shall be punishable by imprisonment of up to four years or a fourth category fine.
7. Article 10:15(2)(d) does not apply to the offences referred to in the fourth, fifth and sixth paragraphs.

Customs is responsible for cash controls at the borders in the Netherlands. By applicable European law, the import/export/transit of cash into/outside the EU must be declared if it concerns a value of €10,000 or higher. The definition of "cash" is laid down in Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community. The obligation to declare cash is imposed by Regulation 1889/2005 has been embedded in the General Customs Act (Article 3:2). Customs checks for compliance with this declaration obligation. Whenever a natural person enters or leaves the EU and carries cash to a value of €10,000 or over, he must declare this cash. This declaration must be made in the EU Member State of entry or exit. It is not relevant in this connection:
• whether the cash is taken along as carry-on baggage or hold baggage;
• whether the bearer owns the cash;
• which currency the cash is composed of, as long as the converted value is equal to or higher than €10,000.

This declaration obligation applies to natural persons only. Regulation 1889/2005 therefore does not apply to cash entering or leaving the EU as part of a bulk shipment or by postal, parcel, or courier delivery.

In the table are the statistics concerning the entering of cash via sea and via air and the total amount of cash registered. All declarations are transmitted also to the Financial Intelligence Unit Netherlands for further analysis and investigation.

Declarations	2017	2018	2019	2020
Sea	1.428	1.412	1.778	1492
Air	3.247	3.121	3.242	1651
Total number of declarations	4.675	4.542	5.050	3143
Total value of declarations (amounts in 1,000 euros	€ 171.4	€ 199.1	268,5	184,4

If a violation of the declaration obligation is identified, a penalty may be imposed accordingly. The penalties are the following:

Violation declaration obligation	Penalty amount
No deliberate intent (ADW011)	10% of the total cash value (in euros) (to a maximum equal to that of a fine of the 4th category, i.e. €8.700)
Deliberate intent (ADW012)	30% of the total cash value (in euros) (to a maximum equal to that of a fine of the 4th category, i.e. €21.750)
Repeat offence	In case of a repeat offence, a reasonable suspicion of money laundering always exists. Customs initiates a ML investigation, which is transferred to FIOD or KMar.. If the case concerns a repeat offence and it is later determined that no reasonable suspicion of money laundering exists, the penalty fraud coordinator may decide to increase the penalty for recidivism, above the maximum of 30% listed above.

A penalty can be increased or decreased if the facts or circumstances give cause to do so.

Statistics penalties

Violations of the declaration obligation	2017	2018	2019	2020
Number of violations	1,249	1,054	1143	624

Number of penalty cases	968	920	965	460
Total amount of penalties	€718,6	€603,2	814.7	€ 543.0
Amounts in €1,000				

Not every registered violation results in a penalty. This can be for various reasons. In the vast majority of cases, coordinator penalties does not consider it proportional to impose a fine if those involved miss their aircraft as a result. It is also sometimes set at zero because mistakes have been made (by customs) in the process.

Part 10.1. Criminal offences

Article 10:1 General Customs Act

1. Any person who:
a. fails to lodge a summary declaration, or does not lodge it on time or in full, contrary to Articles 127 (1) to (6) and 130 of the Union Customs Code in conjunction with, where applicable, Articles 105, 106 or 110 of the Delegated Regulation Customs Code;
b. fails to submit or submit on time an arrival notification as referred to in Article 133 of the Customs Code of the Union;
c. brings goods into the customs territory of the Union in breach of Articles 135(1) and (6) or 137 of the Customs Code of the Union;
d. fails to present goods or present them on time to the inspector in violation of Article 139(1) or (2) of the Customs Code of the Union;
e. in the case of temporary storage, acts contrary to Article 145(1), (3), (4) or (5) of the Customs Code of the Union or Article 193 of the Customs Code Implementing Regulation of the Union;
f. removes goods without the permission of the inspector in violation of Article 139, seventh paragraph, of the Customs Code of the Union or unloads in violation of Article 140, first paragraph, of the Customs Code of the Union;
shall be punishable by a fine of the third category or, if the amount is higher, by a fine not exceeding once the amount of import duties due in respect of the goods.

2. Any person who commits one of the offences described in the first paragraph with a view to evading import duties owed in respect of the goods or to facilitating the evasion thereof shall be liable to a term of imprisonment not exceeding four years or to a fine in the fourth category or, if this amount is higher, to a maximum of one time the amount of those duties.

3. Any person who brings in goods from sea or by air in respect of which the evidence to the contrary referred to in Article 2:2 is not furnished shall be deemed to have brought those goods from sea or by air, respectively, into the customs territory of the Union.

4. Any person who is obliged to file a declaration pursuant to Article 3 or Article 4 of the Cash Regulation or Article 3:2a and fails to file such a declaration or, in the case of Article 3:2a, fails to provide the information requested, shall be liable to a third category fine.

5. Any person who is obliged under Articles 3:4 or 3:5 to provide the notification and fails to do so, or does so incompletely or incorrectly, shall be liable to a fine of the third category.

6. A person who intentionally commits one of the offences described in the fourth paragraph shall be punishable by imprisonment of up to four years or a fourth category fine.

7. Article 10:15(2)(d) does not apply to the offences referred to in the fourth, fifth and sixth paragraphs.

Customs is responsible for cash controls at the borders in the Netherlands. By applicable European law, the import/export/transit of cash into/outside the EU must be declared if it concerns a value of €10,000 or higher. The definition of "cash" is laid down in Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community.
The obligation to declare cash is imposed by Regulation 1889/2005 has been embedded in the General Customs Act (Article 3:2) as well as Article 4.2(1) of Wwft BES. Customs checks for compliance with this declaration obligation. Whenever a natural person enters or leaves the EU and carries cash to a value of €10,000 or over, he must declare this cash This declaration must be made in the EU Member State of entry or exit. It is not relevant in this connection:

- whether the cash is taken along as carry-on baggage or hold baggage;
- whether the bearer owns the cash;
- which currency the cash is composed of, as long as the converted value is equal to or higher than €10,000.

This declaration obligation applies to natural persons only. Regulation 1889/2005 therefore does not apply to cash entering or leaving the EU as part of a bulk shipment or by postal, parcel, or courier delivery.

The new Regulation (EU) 2018/1672 on controls and cash entering or leaving the Union will enter into force on 3 June 2021 and will contain a disclosure declaration obligation on cash entering or leaving the EU in postal packages, courier shipments, unaccompanied luggage or containerised cargo.

The current declaration, which is to be made using a declaration form, must provide the following details:
- the owner of the cash
- the intended recipient of the cash
- the amount and nature of the cash
- the provenance and intended use of the cash
- the transport route and the means of transport

More information:
https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/abroad_and_customs/restricted_prohibited_import_export/10_000_or_more/10_000_more_cash_securities

Declaration form on internet:
https://download.belastingdienst.nl/douane/docs/cash_declaration_form_iud0952z4foleng.pdf

All declaration forms are stored and archived in conformity with the standard procedures. The normal retention period is five years. Declarations which were found to contain irregularities are retained for seven years.

Sharing of cash declaration information
The cash declaration information is on the national level 100% shared with relevant enforcement partners, such as FIU-NL, iCOV, AMLC and the fiscal department of the Tax and Customs Administration. The FIU-NL goAML reporting system is used to exchange the information with FIU-NL. Customs in the Netherlands exchanges information structurally by making use of the Customs Information Centre (DIC).

Cash investigation
Customs is charged with:
- executing Regulation 1889/2005 by initially, always performing a global check
- performing a "cash investigation" in certain cases
- meeting the statutory obligation of verifying the declarant's identity
- contributing to the collection of correct and complete information

Customs investigation competencies
Customs is empowered to start up an investigation. As described the Customs officers working in the field are appointed as special investigating officers. These officers have investigative powers with respect to criminal offences such as ML, predicate offences and TF. Customs may exercise the criminal investigative powers relating to ML/TF when it finds any cash or other negotiable instruments when carrying out customs operations within the context of import, export or transit. It may also exercise its powers in case of the failure to declare cash, which is also a criminal offence.
Moreover, Customs is the designated authority for monitoring compliance with the declaration obligation under Regulation 1889/2005 by conducting inspections of natural persons, their baggage, and their means of transport. These powers are laid down in the General Customs Act.
The investigation into cash can result in the following conclusions:

- the declaration obligation has been complied with
- the declaration obligation has not been complied with, because:
1. no declaration was made
2. an incorrect declaration was made
3. an incomplete declaration was made
- a reasonable suspicion of money laundering remains

Establishing a violation of the cash declaration obligation under Regulation 1889/2005

On 20 February 2018, the Supreme Court delivered a judgment that is of great importance to the procedures used by Customs in the context of its monitoring of the cash declaration obligation under Regulation 1889/2005. The legal safeguards provided in the caution - i.e., the right to consult a lawyer and to the assistance of an interpreter - are of fundamental importance. Since the judgment, the procedures for violations of the declaration obligation have further been clarified. The person who violates the cash declaration obligation is suspected of two punishable offences upon violation of the declaration obligation:
1: violation of the cash declaration obligation;
2: suspected money laundering.

The courts, delivering judgment in money laundering cases originating from customs cash controls, find that a reasonable suspicion of money laundering is justified in the case where there is only a failure to declare the cash. This means that all the rights / safeguards a suspect of a crime is entitled to also apply when the suspicion of money laundering is only established due to the violation of the cash declaration obligation. The suspect must therefore also be informed of the offence they are suspected of, namely violation of the declaration obligation and money laundering.

The following standard procedure is applied by Customs in case a violation of the cash declaration obligation is established:
1. No questions, other than about the amount of cash, are asked of the person concerned in the stage where the cash is detected and valued for determining the application of the declaration obligation and the stage where it becomes established that a declaration obligation exists (€10,000 or over).
2. Next, Customs immediately cautions the person concerned, clearly informing them that they are suspected of the following criminal offences: violation of the declaration obligation and money laundering. Customs must also be able to provide an explanation if necessary.
3. At the same time the suspect is cautioned, the other applicable legal safeguards are observed: the right to consultation with a lawyer and the right to the assistance of an interpreter (where applicable).
4. The suspect is then handed the declaration form and requested to complete it.
5. Questions are asked to verify the information provided / to verify involvement with criminal offences. The inquiry form (the former in-depth inspection form) is used to do so.
• The standard “extensive cash controls inquiry” which Customs performs in case of a failure to declare cash consists of:
i. counting the cash;
ii. (hand) luggage inspection;
iii. copying the proof of identity and relevant documents;
iv. body search, if necessary;
v. checking for Dutch levying interests;
vi. alertness for suspicion of money laundering;
vii. recording through the inquiry form.
6. At the end of this procedure, a conclusion is reached as concerns the suspicion of money laundering on the basis of the information/answers provided: the suspicion is lifted or not.
• In case the suspicion of money laundering is not lifted:
- Act in accordance with the standard procedure: a ML investigation may be initiated by Customs. Indicate in the official report that the suspect was cautioned about being suspected of violating the declaration obligation and money laundering and that all other legal safeguards have been observed.
• In case the suspicion of money laundering is lifted:
- The suspect is informed that they are no longer suspected of money laundering. A settlement is reached in connection with the offence of violating the declaration obligation.

There is a reasonable suspicion of money laundering in the events of:
- no declaration;
- an incomplete declaration (after a correction possibility);
- an incorrect declaration of the personal details such as ID number;
- specific facts and circumstances that lead to a reasonable suspicion of money laundering

Cash declaration and suspicion of ML

	2018	2019	2020
Suspicion of ml and prosecution	32	37	33
Amount seized	€ 2.098.000	€ 2.958.004	€ 1.840,606

These are cases in which customs has a suspicion of ml based after an investigation of a (violation) of a declaration obligation. Customs initiates a ML investigation, which is later transferred to FIOD or Kmar.

Reporting of unusual transactions [MELDRECHT]
Customs can submit two types of reports to FIU-NL.
1. The first type regards the reporting of unusual transactions or situations that Customs encounters in the performance of its regular tax and non-tax duties (right of filing 'unusual transactions/situations reports'). In these cases Regulation 1889/2005 is not applicable. The majority of unusual transactions or situations is related to transport of money within the EU and expansive valuables such as (very) expensive watches.

2. The second type (see above) relates to transactions (declarations) in the scope of the 'cash Regulation' (1889/2005) which may indicate ML or TF. All (100%) signals on the basis of these declarations are reported to FIU-NL. For FIU-NL, these notifications by Customs are a useful additional to the entire financial intelligence process.
Table: number of reports and amount involved made by Customs in 2016-2020 for 'unusual transactions/situations'

2018	351	€ 40,104,130
2019	253	€ 25,182,858
2020	**192**	**€ 24.475.152**

	Reports	Value	Reports	Value	Reports	Value
	2018	**2018**	**2019**	**2019**	**2020**	**2020**
Watches	145	€ 16.564.698	92	€ 10.361.940,76	63	€ 5.350.110
Gold	41	€ 5.723.965	20	€ 3.176.800,10	15	€2.334.066
Transport of cash within the EU	90	€ 2.356.158	87	€ 3.115.448,17	78	€2.010.434
Jewellery	36	€ 7.182.215	24	€ 5.676.439,43	11	€ 4.104.141
Precious stones	11	€ 3.753.316	6	€ 816.327,82	2	€ 6.856.282
Art/other	9	€ 2.307.710	4	€ 150.950,53	xxx	xxx
Assets held abroad	19	€ 2.603.355	14	€ 1.179001,37	14	€1.230.119
Coins			6	€ 705.950,27	6	€ 518.63
Mobile telephones					2	€90.000
Antiquiteiten					1	€ 2.500.000
Total	**351**	**€ 40.104.130**	**253**	**€ 25.182.858,45**	**192**	**€ 24.475.152**
		2018		**2019**		**2020**
Money laundering	**Reports**	**Value**	**Reports**	**Value**	**Reports**	**Value**
ML suspicion and seized for prosecution	43	€ 1.588.265	38	€ 2.069.229,33	51	€ 3,199.862

These are cases in which customs has a suspicion of ml based after an investigation of a (violation) of a declaration obligation.

Cash declaration

	2018	2019	2020
Suspicion of ML and prosecution	32	37	33

Seizures	€ 2.098.000	€ 2.958.004	€ 1.840,606

These are cases in which customs has a suspicion of ML based after an investigation of a (violation) of a declaration obligation.

	2018		2019		2020	
ML cases	**Reports**	**Value**	**Reports**	**Value**	**Reports**	**Value**
ML suspicion and seized for prosecution	43	€ 1.588.265	38	€ 2.069.229,33	51	€ 3,199.862

Total cases ML suspicion and prosecution by Customs for 2020: 84 cases (2020 (33 Vo 1889/2005 cases and 51 (Unusual transaction reports. Customs initiates a ML investigation, which is later transferred to FIOD or KMar.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

(amounts in 1,000,000 euros)

Declarations	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**
Amounts by sea	1,525	1,338	1,475	1,097	1,428	1,412
Amounts by air	3,799	3,497	3,311	3,280	3,247	3,121
Total number of declarations	5,324	4,835	4,786	4,377	4,675	4,542
Total value of declarations	175.1	158.7	284.5	201.3	171.4	199.6

(amounts in 1,000 euros)

Declarations	2013	2014	2015	2016	2017	2018
Number of violations	450	480	281	39	1,247	1,054

Number of fiscal penalties	403	332	277	349	968	731
Value of fiscal penalties	287.3	278.8	304.5	344.8	718.6	551.3

Area of law	Activity	Plan	Implementation
Cash and cash equivalents	Physical inspection of air passengers	20,000	23,041

The right to report (*Meldrecht*) allows Customs to report any unusual transactions or situations that they encounter in the execution of their normal (fiscal and non-fiscal) responsibilities to FIU-Netherlands if they do not fall under the application of the 'Cash Regulation' but may potentially point to money laundering. In passenger traffic, this situation may include a natural person importing or exporting 'cash equivalents' (such as gold or precious stones). The right to report is regularly applied, particularly at Amsterdam Airport Schiphol. Although the procedure may be used elsewhere, the figures only include the number of cases in which an unusual transaction was reported to FIU-Netherlands by Schiphol. These figures are shown in the table below.

Product group	Number of reports	Amount
Watches	145	€16,564,698.73
Gold	41	€ 5,723,965.93
Movement of money within EU	90	€ 2,356,158.11
Jewelery	36	€ 7,182,215.25
Diamonds	11	€ 3,753,316.75
Other	9	€ 2,307,710.31
Detained assets from abroad	19	€ 2,603,355.05
Total	351	€ 40,104,130.13

Customs submit all information to FIU-Netherlands in automated form. The status of the transaction can be changed by the FIU from unusual to suspect if the FIU establishes a match with existing police or investigation databases or after the FIU has investigated the transaction itself. If so, the information from the declaration will be made available to the investigation. In 2017, a total of 70 cash declarations were declared to be suspect by the FIU. By carrying out checks on the obligation to declare cash, Customs contribute to tackling money laundering and terrorist financing.

Cash Expert training programme

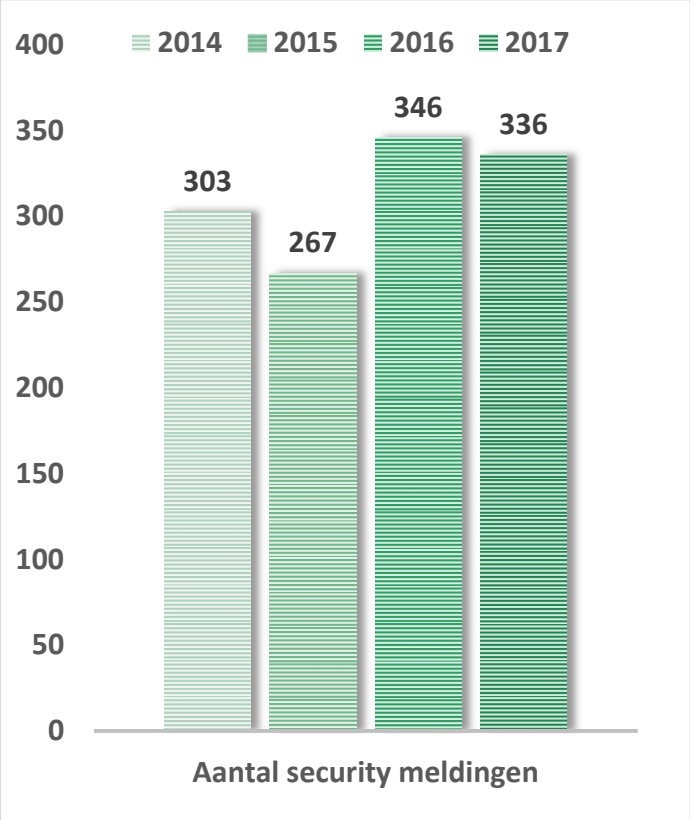
Dutch Customs set great store by their contribution to tackling money laundering and terrorist financing practices. Fighting money laundering is also a key objective and part of the Customs Netherlands 2018 enforcement plan. For this reason, the national Cash Expert training programme (*opleidingvraagbaakliquidemiddelen)* was organised in 2018, which consisted of 9 training days. The training programme was co-developed by, and under the auspices of, the Tax and Customs Administration Academy (*BelastingdienstAcademie*). The Netherlands Customs Office (*Douane LandelijkKantoor*, DLK), Customs Schiphol Passengers and Customs Office Eindhoven made a key contribution to developing as well as teaching the programme. In 2018, 19 employees of various regions took part in the training programme. Customs Schiphol Passengers had 9 employees take part in the training programme. In 2018, the deployment of cash experts was decisive in the increased number of transfers based on a suspicion of money laundering.

Rif/CIS reports

Customs report cases that relate to money laundering activities and any corresponding practices of 'smuggling' cash or cash equivalents to the European risk databases. These cases really matter, are worth sharing and will occasionally include photographs of the smuggling methods used. In 2017, 21 cases with the corresponding risk information were shared.

Agreements with Security

At airports, agreements have been made with airport security, which is a very effective and successful type of collaboration. These security reports make up an important part of monitoring the obligation to declare cash. As a result of the reports from airport security, Customs were able to make an additional 336 reports to the FIU. These reports related to a total amount of 8,643,802 euros. In addition to the fact that these situations mostly involve a violation of the obligation to declare cash amounts and the imposition of a fiscal penalty, a reasonable suspicion of money laundering practices may occasionally arise during inspection.



Below are the judgments in which the inspection by Customs for cash or cash equivalents resulted in a suspicion of money laundering practices and where the case was subsequently transferred to the investigation services, ultimately resulting in a conviction for money laundering.

- 6 RECHTBANK NOORD-HOLLAND, 08-07-2016 [ECLI:NL:RBNHO:2016:5926]
- 7 HOGE RAAD, 14-06-2016 [ECLI:NL:HR:2016:1197]
- 8 RECHTBANK NOORD-HOLLAND, 15-04-2016 [ECLI:NL:RBNHO:2016:3882]
- 9 RECHTBANK NOORD-HOLLAND, 15-04-2016 [ECLI:NL:RBNHO:2016:3876]
- 10 RECHTBANK NOORD-HOLLAND, 15-04-2016 [ECLI:NL:RBNHO:2016:3873]
- 11 RECHTBANK NOORD-HOLLAND, 15-04-2016 [ECLI:NL:RBNHO:2016:3883]
- 12 GERECHTSHOF AMSTERDAM, 11-03-2016 [ECLI:NL:GHAMS:2016:2719]
- 13 GERECHTSHOF AMSTERDAM, 02-03-2016 [ECLI:NL:GHAMS:2016:786]
- 14 RECHTBANK ROTTERDAM, 11-02-2016 [ECLI:NL:RBROT:2016:1028]
- 15 RECHTBANK ROTTERDAM, 04-02-2016 [ECLI:NL:RBROT:2016:877]
- 16 RECHTBANK NOORD-HOLLAND, 23-02-2016 [ECLI:NL:RBNHO:2016:3213]
- 17 GERECHTSHOF AMSTERDAM, 18-12-2015 [ECLI:NL:GHAMS:2015:5279]
- 18 GERECHTSHOF AMSTERDAM, 20-11-2015 [ECLI:NL:GHAMS:2015:4866]
- 19 GERECHTSHOF AMSTERDAM, 25-09-2015 [ECLI:NL:GHAMS:2015:3979]
- 20 RECHTBANK NOORD-HOLLAND, 21-08-2015 [ECLI:NL:RBNHO:2015:7297]
- 21 RECHTBANK NOORD-HOLLAND, 17-06-2015 [ECLI:NL:RBNHO:2015:5130]
- 22 RECHTBANK NOORD-HOLLAND, 24-04-2015 [ECLI:NL:RBNHO:2015:3476]
- 23 RECHTBANK NOORD-HOLLAND, 23-04-2015 [ECLI:NL:RBNHO:2015:3473]
- 24 RECHTBANK NOORD-HOLLAND, 08-04-2015 [ECLI:NL:RBNHO:2015:6072]
- 25 RECHTBANK OOST-BRABANT, 04-02-2015 [ECLI:NL:RBOBR:2015:3464]
- 26 RECHTBANK OOST-BRABANT, 04-02-2015 [ECLI:NL:RBOBR:2015:3466]
- 27 HOGE RAAD, 19-12-2014 [ECLI:NL:HR:2014:3687]
- 28 RECHTBANK NOORD-HOLLAND, 01-12-2014 [ECLI:NL:RBNHO:2014:11716]
- 29 RECHTBANK NOORD-HOLLAND, 20-10-2014 [ECLI:NL:RBNHO:2014:10018]
- 30 RECHTBANK NOORD-HOLLAND, 30-06-2014 (ECLI:NL:RBNHO:2014:6341)
- 31 RECHTBANK NOORD-HOLLAND, 28-05-2014 (ECLI:NL:RBNHO:2014:5337)
- 32 RECHTBANK NOORD-HOLLAND, 17-04-2014 (ECLI:NL:RBNHO:2014:4275)
- 33 GERECHTSHOF AMSTERDAM, 10-03-2014 (ECLI:NL:GHAMS:2014:667)
- 34 RECHTBANK NOORD-HOLLAND, 28-02-2014 (ECLI:NL:RBNHO:2014:4916)
- 35 RECHTBANK NOORD-HOLLAND, 14-02-2014 (ECLI:NL:RBNHO:2014:4920)
- 36 RECHTBANK OOST-BRABANT, 04-02-2014 (ECLI:NL:RBOBR:2014:436) 168

- 37 RECHTBANK NOORD-HOLLAND, 19-12-2013 (ECLI:NL:RBNHO:2013:13007)
- 38 HOGE RAAD,17-12-2013 (ECLI:NL:HR:2013:2001)
- 39 RECHTBANK NOORD-HOLLAND, 11-10-2013 (ECLI:NL:RBNHO:2013:9532)
- 40 RECHTBANK NOORD-HOLLAND, 16-09-2013 (ECLI:NL:RBNHO:2013:9087)
- 41 RECHTBANK NOORD-HOLLAND, 10-09-2013 (ECLI:NL:RBNHO:2013:10247)
- 42 RECHTBANK NOORD-HOLLAND, 03-09-2013 (ECLI:NL:RBNHO:2013:8069)
- 43 GERECHTSHOF AMSTERDAM, 06-08-2013 (ECLI:NL:GHAMS:2013:2315)
- 44 GERECHTSHOF AMSTERDAM, 22-04-2013 (ECLI:NL:GHAMS:2013:BZ8274)
- 45 RECHTBANK HAARLEM, 10-12-2012 (ECLI:NL:RBHAA:2012:BZ8974)
- 46 RECHTBANK HAARLEM, 11-10-2012 (ECLI:NL:RBHAA:2012:BZ9986)
- 47 RECHTBANK HAARLEM, 31-07-2012 (ECLI:NL:RBHAA:2012:BZ8979)
- 48 RECHTBANK HAARLEM, 04-05-2012 (ECLI:NL:RBHAA:2012:BW6640)
- 49 RECHTBANK HAARLEM, 17-04-2012 (ECLI:NL:RBHAA:2012:BW9284)
- 50 GERECHTSHOF AMSTERDAM, 27-03-2012 (ECLI:NL:GHAMS:2012:BW4378)
- 51 RECHTBANK HAARLEM, 28-12-2011 (ECLI:NL:RBHAA:2011:BV3115)
- 52 RECHTBANK HAARLEM, 24-11-2011 (ECLI:NL:RBHAA:2011:BV0880)
- 53 GERECHTSHOF AMSTERDAM, 27-10-2011 (ECLI:NL:GHAMS:2011:BU294
- 54 RECHTBANK HAARLEM, 03-11-2011 (ECLI:NL:RBHAA:2011:BV3108)
- 55 RECHTBANK HAARLEM, 12-08-2011 (ECLI:NL:RBHAA:2011:BS8704)
- 56 RECHTBANK HAARLEM, 07-04-2011 (ECLI:NL:RBHAA:2011:BR1515)
- 57 RECHTBANK HAARLEM, 24-12-2010 (ECLI:NL:RBHAA:2010:BP7841)
- 58 RECHTBANK HAARLEM, 24-12-2010 (ECLI:NL:RBHAA:2010:BO8966)
- 59 RECHTBANK HAARLEM, 09-12-2010 (ECLI:NL:RBHAA:2010:BO8149)
- 60 RECHTBANK HAARLEM, 03-11-2010 (ECLI:NL:RBHAA:2010:BO2789)
- 61 RECHTBANK HAARLEM, 30-11-2010 (ECLI:NL:RBHAA:2010:BO6464)
- 62 RECHTBANK HAARLEM, 18-11-2010 (ECLI:NL:RBHAA:2010:BO8061)
- 63 RECHTBANK HAARLEM, 04-10-2010 (ECLI:NL:RBHAA:2010:BO2155)
- 64 GERECHTSHOF AMSTERDAM, 29-07-2010 (ECLI:NL:GHAMS:2010:BN8628)

(b) Observations on the implementation of the article

Any natural person entering or leaving the European Union and carrying cash, including bearer negotiable instruments, with a value equal to or exceeding 10,000 euros, should declare that sum to the competent authorities (art. 3 of Regulation (EU) 2018/1672). The customs authorities are responsible for cash controls at the borders. Failure to declare or the act of falsely declaring cash movements are punishable with a fine or a term of imprisonment of not more than four years in the

case of intentional failure to declare (art. 10:1 of the General Customs Act). At the time of the country visit, the General Customs Act was being revised to include an obligation to declare cash or cash equivalents of 10,000 euros when entering or leaving the Netherlands; the customs authorities are required to report such transactions to the Financial Intelligence Unit (art. 9 of Regulation (EU) 2018/1672).

Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

This description is fully included in Regulation 2015/847 (on information accompanying transfers of funds), which has direct effect in the Netherlands.

This regulation applies to any transfer of funds (regardless of which currency) which is sent or received by an intermediary payment service provider established in the European Union. The term payment service provider has a broad definition: it covers banks (credit institutions), electronic money institutions and payment institutions. All of the above are financial institutions that are able to transfer funds electronically (including money transfers).

a)

Regulation 2015/847 stipulates that the payment service provider of the payer (originator) must include the following information on the payer with the transfer of funds:

- the name of the payer;
- the payer’s payment account number; and
- the payer’s address, official personal document number, customer identification number or date and place of birth.

In addition, the payment service provider of the payer (originator) shall ensure that transfers of funds are accompanied by the following information on the payee:

- the name of the payee;
- the payee's payment account number.

In the case of a transfer not made from or to a payment account, the payment service provider of the payer shall ensure that the transfer of funds is accompanied by a unique transaction identifier

(please see Article 4(1–3) of Regulation 2015/847). A number of exceptions to this rule are included in Articles 5 and 6 of Regulation 2015/847.

b)

The Regulation requires the payment service provider of the payee to implement effective procedures to detect whether the information on the payer or the payee is missing (Article 7(1–2) of Regulation 2015/847).

c)

Before transferring funds, the payment service provider of the payer shall verify the accuracy of the information referred to under a) on the basis of documents, data or information obtained from a reliable and independent source. The payer's identity must have been verified. The payment service provider of the payer shall not execute any transfer of funds before such verification has been executed (Article 4(4–5) of Regulation 2015/847).

Before crediting the payee's payment account or making the funds available to the payee, the payment service provider of the payee shall verify the accuracy of the information on the payee on the basis of documents, data or information obtained from a reliable and independent source (Article 7(3) of Regulation 2015/847). An exception can be made in the case of transfers of funds not exceeding 1,000 euros (Article 7(4) of Regulation 2015/847).

In addition, the payment service provider of the payee shall implement effective risk-based procedures, including procedures based on the risk-sensitive basis for determining whether to execute, reject or suspend a transfer of funds lacking the required complete payer and payee information and for taking the appropriate follow-up action. Where the payment service provider of the payee becomes aware, when receiving transfers of funds, that the information is missing or incomplete, the payment service provider of the payee shall reject the transfer or ask for the required information on the payer and the payee. Where a payment service provider repeatedly fails to provide the required information on the payer or the payee, the payment service provider of the payee shall take the necessary steps (Articles 8 and 9 of Regulation 2015/847).

The same foregoing obligations apply to the intermediary payment service provider as well. Intermediary payment service providers must also ensure that all the information received on the payer and the payee which accompanies a transfer of funds is retained with the transfer (Articles 10, 11, 12 and 13 of Regulation 2015/847).

Regulation (EU) 2015/847 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006

Article 4

Information accompanying transfers of funds

1. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payer:

(a) the name of the payer;

(b) the payer's payment account number; and

(c) the payer's address, official personal document number, customer identification number or date and place of birth.

2. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payee:

(a) the name of the payee; and

(b) the payee's payment account number.

3. By way of derogation from point (b) of paragraph 1 and point (b) of paragraph 2, in the case of a transfer not made from or to a payment account, the payment service provider of the payer shall ensure that the transfer of funds is accompanied by a unique transaction identifier rather than the payment account number(s).

4. Before transferring funds, the payment service provider of the payer shall verify the accuracy of the information referred to in paragraph 1 on the basis of documents, data or information obtained from a reliable and independent source.

5. Verification as referred to in paragraph 4 shall be deemed to have taken place where:

(a) a payer's identity has been verified in accordance with Article 13 of Directive (EU) 2015/849 and the information obtained pursuant to that verification has been stored in accordance with Article 40 of that Directive; or

(b) Article 14(5) of Directive (EU) 2015/849 applies to the payer.

6. Without prejudice to the derogations provided for in Articles 5 and 6, the payment service provider of the payer shall not execute any transfer of funds before ensuring full compliance with this Article.

Article 7

Detection of missing information on the payer or the payee

1. The payment service provider of the payee shall implement effective procedures to detect whether the fields relating to the information on the payer and the payee in the messaging or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with the conventions of that system.

2. The payment service provider of the payee shall implement effective procedures, including, where appropriate, ex-post monitoring or real-time monitoring, in order to detect whether the following information on the payer or the payee is missing:

(a) for transfers of funds where the payment service provider of the payer is established in the Union, the information referred to in Article 5;

(b) for transfers of funds where the payment service provider of the payer is established outside the Union, the information referred to in Article 4(1) and (2);

(c) for batch file transfers where the payment service provider of the payer is established outside the Union, the information referred to in Article 4(1) and (2) in respect of that batch file transfer.

3. In the case of transfers of funds exceeding EUR 1 000, whether those transfers are carried out in a single transaction or in several transactions which appear to be linked, before crediting the payee's payment account or making the funds available to the payee, the payment service provider of the payee shall verify the accuracy of the information on the payee referred to in paragraph 2 of

this Article on the basis of documents, data or information obtained from a reliable and independent source, without prejudice to the requirements laid down in Articles 69 and 70 of Directive 2007/64/EC.

4. In the case of transfers of funds not exceeding EUR 1 000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, the payment service provider of the payee need not verify the accuracy of the information on the payee, unless the payment service provider of the payee:

(a) effects the pay-out of the funds in cash or in anonymous electronic money; or

(b) has reasonable grounds for suspecting money laundering or terrorist financing.

5. Verification as referred to in paragraphs 3 and 4 shall be deemed to have taken place where:

(a) a payee's identity has been verified in accordance with Article 13 of Directive (EU) 2015/849 and the information obtained pursuant to that verification has been stored in accordance with Article 40 of that Directive; or

(b) Article 14(5) of Directive (EU) 2015/849 applies to the payee.

Article 8

Transfers of funds with missing or incomplete information on the payer or the payee

1. The payment service provider of the payee shall implement effective risk-based procedures, including procedures based on the risk-sensitive basis referred to in Article 13 of Directive (EU) 2015/849, for determining whether to execute, reject or suspend a transfer of funds lacking the required complete payer and payee information and for taking the appropriate follow-up action.

Where the payment service provider of the payee becomes aware, when receiving transfers of funds, that the information referred to in Article 4(1) or (2), Article 5(1) or Article 6 is missing or incomplete or has not been filled in using characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system as referred to in Article 7(1), the payment service provider of the payee shall reject the transfer or ask for the required information on the payer and the payee before or after crediting the payee's payment account or making the funds available to the payee, on a risk-sensitive basis.

2. Where a payment service provider repeatedly fails to provide the required information on the payer or the payee, the payment service provider of the payee shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider, or restricting or terminating its business relationship with that payment service provider.

The payment service provider of the payee shall report that failure, and the steps taken, to the competent authority responsible for monitoring compliance with anti-money laundering and counter terrorist financing provisions.

Article 16

Record retention

1. Information on the payer and the payee shall not be retained for longer than strictly necessary. Payment service providers of the payer and of the payee shall retain records of the information referred to in Articles 4 to 7 for a period of five years.

2. Upon expiry of the retention period referred to in paragraph 1, payment service providers shall ensure that the personal data is deleted, unless otherwise provided for by national law, which shall

determine under which circumstances payment service providers may or shall further retain the data. Member States may allow or require further retention only after they have carried out a thorough assessment of the necessity and proportionality of such further retention, and where they consider it to be justified as necessary for the prevention, detection or investigation of money laundering or terrorist financing. That further retention period shall not exceed five years.

3. Where, on 25 June 2015, legal proceedings concerned with the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing are pending in a Member State, and a payment service provider holds information or documents relating to those pending proceedings, the payment service provider may retain that information or those documents in accordance with national law for a period of five years from 25 June 2015. Member States may, without prejudice to national criminal law on evidence applicable to ongoing criminal investigations and legal proceedings, allow or require the retention of such information or documents for a further period of five years where the necessity and proportionality of such further retention has been established for the prevention, detection, investigation or prosecution of suspected money laundering or terrorist financing.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

At the moment, we do not have examples of the implementation of these measures.

(b) Observations on the implementation of the article

Regulation (EU) 2015/847 on information accompanying transfers of funds is directly applicable in the Netherlands. The Regulation requires reporting entities to obtain adequate information on payers and payees and maintain proper records (arts. 4, 7, 8 and 16).

Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The Netherlands has been a member of the FATF since 1990. In addition, the Netherlands is an EU Member State. The international standards of the FATF and the European Anti-Money Laundering Directive are implemented in Dutch national law.

The evaluation of the Netherlands in the third evaluation round by FATF has been completed in 2011. Following this evaluation several recommendations have been addressed. In February 2014, the FATF recognized that the Netherlands had made significant progress in addressing the deficiencies identified in the 2011 mutual evaluation report and should be removed from the regular follow-up process.

The Netherlands is currently preparing for the fourth evaluation round. The results of this round will be published in March-April 2022.

Please find below a list of the positions of Political Exposed Persons (PEPs). This list is not exhaustive, but the persons occupying these politically exposed positions should in any case be regarded as PEPs. Institutions, such as a banks, must check if a (potential) client is a PEP using the below list. If a (potential) client qualifies as a PEP the institution has to carry out more stringent customer due diligence measures.

In addition to the list below article 2 of the Money Laundering and Terrorist Financing Prevention Act Implementation Decree 2018 is also relevant.

Position	**Specification**
Heads of State, Heads of Government, Ministers, State Secretaries or Secretaries of State	• King • Prime Minister, Minister and State Secretaries
Member of Parliament or member of a similar legislative body	• Members of the Senate of the States General • Members of the House of Representatives of the States General
Members of the executive of a political party	• Members of the executive of a political grouping with a registration as referred to in article G1 of the Elections Act
Members of a supreme court, constitutional court or other supreme court issuing judgments which, other than in exceptional circumstances, are not open to appeal	• The members, the Councils of State and the Councils of State in extraordinary service appointed in the Administrative Jurisdiction Division of the Council of State • The President, the Vice-Presidents, the Councillors and the Councillors in Extraordinary Service of the Supreme Court of the Netherlands • Members of the Board of Appeal for Trade and Industry with responsibility for case law • The members in charge of case law of the Central Board of

	Appeal
Members of a court of auditors or an executive board of a central bank	• Members in ordinary and extraordinary service of the Court of Auditors • President and directors of the director of De Nederlandsche Bank
Ambassadors, chargé d'affaires or senior officer of the armed forces;	• Ambassadors with Dutch nationality or residing in the Netherlands • Chargé d'affaires with Dutch nationality or residing in the Netherlands • Commander of the Armed Forces • Naval Command • Army Command • Air Force Command • Royal Netherlands Marechausse Command
Member of the management body, supervisory body or governing body of a state-owned enterprise	None

Director, deputy director, member of the board of directors or holder of an equivalent position in an international organisation.	**Courts and tribunals** • International Court of Justice (IGH; ICJ) (UN body) (1945) • International Residual Mechanism for Criminal Tribunals (MICT) (UN body) (2010) • International Criminal Court (ICC) (2002) • Iran-United States Claims Tribunal (IUSCT) (1981) • Kosovo Court (2015) • Permanent Court of Arbitration (PHA; PCA) (1899) • Residual Mechanism of the Special Court for Sierra Leone (RSCSL) (2012) • Special Tribunal for Lebanon (STL) (2007) **EU bodies** • Eurojust (2002) • European Parliament, Information Office in the Netherlands (1977) • European Commission, Joint Research Centre Petten (JRC Petten)(1958) • European Commission, Representation in the Netherlands(1969) • European Investment Bank (EIB)(1958) • European Police Office (EUROPOL)(1993) • Galileo Reference Centre (GRC)(2016)

Based on article 30 of the European Anti-money laundering directive article 15a of the Commercial Register Act states that the beneficial owners (BOs) of legal entities (companies and other legal entities) must be registered in the BO-register for legal entities. Upon registration documentation needs also be provided consisting of identity documents of the BO as well as documents detailing the nature and extent of the beneficial interest held.

A natural person is deemed to be a BO of a legal entity in case that person ultimately owns or controls the legal entity. This is set out in paragraph 2.4a Wwft. Article 3 of the Money Laundering and Terrorist Financing Prevention Act Implementation Decree 2018 contains more details on when one is deemed to ultimately own or control a company or legal entity. For instance, if a natural person directly or indirectly holds more than 25% of the shares, voting rights or ownership interest in a limited liability company, this person is a BO of that company and must therefore be registered in the BO-register. The BO-register is currently accessible to the public (https://www.kvk.nl/producten-bestellen/bedrijfsproducten-bestellen/uittreksel-ubo-register/). Certain authorities have access to more information (not only the publicly available information).

Besides the registration obligation in the BO-register for legal entities, obliged entities are also held to perform customer due diligence on the basis of article 3 Wwft and independently identify the BO's of their customer. During this process they are also held to check the BO-register, and report any discrepancies (ex. Article 10c Wwft) between the register and the information they have.

The BO-register for legal entities has been live since the 27th of September 2020. The BO-information publicly available in the register is: name; month and year of birth, country of residence, nationality, nature and extent of beneficial interest held. Competent authorities also have access to: the full date of birth, place and country of birth, address, Citizens Service Number/TIN, identity documents, documents detailing the nature and extent of the beneficial interest held. The register is currently being populated with data (legal entities receive written requests to register their BO in a phased manner), and the deadline for registration expires on the 27th of March 2022.

Based on article 31 of the European Anti-money laundering directive the Netherlands is currently establishing a BO-register containing information on the BOs of trust and similar legal arrangements. This BO-register is being developed (and therefore not yet accessible). The register will be publically available through the internet. Certain authorities have access to more information (not only the publicly available information).

The following information will be publically available: Name of trust, type of trust, date of establishment of trust, place establishment of trust, objective/purpose of trust, nature and extent of beneficial interest held by BO, name, month of birth, year of birth, country of residence and nationality of BO. Additionally, competent authorities will have access to: full date of birth, place and country of birth, address, Citizens Service Number/TIN, identity documents, documents detailing the nature and extent of the beneficial interest.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

None.

(b) Observations on the implementation of the article

The Netherlands is a member of the Financial Action Task Force and has undergone three rounds of evaluation so far.[59] It was reported that the fourth and fifth European Union money-laundering directives were duly transposed into national law. The national authorities have the ability to cooperate widely with their counterparts through various networks in order to prevent money-laundering.

Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Many important parties are involved in the international arena.

FIU- the Netherlands has an extensive international network, which is necessary to ensure that FIU-the Netherlands can meet its statutory duties. FIU- the Netherlands has been very active in international cooperation with and between FIUs in Europe and worldwide. This at both the executive and strategic levels, and to both share and request information. In this way, the FIU remains in contact with its international partners. The FIOD, Customs, the Tax and Customs Administration, the Royal Netherlands Marechaussee and the Public Prosecution Service, among others, also cooperate internationally.

Financial supervisory authorities are also involved in international cooperation. DNB and AFM, for example, actively participate in international consultative bodies both within and outside Europe, and both have contacts with other supervisory bodies on specific supervisory dossiers. Due to the international nature of the Dutch financial sector, good international cooperation is a precondition for effectively combating financial-economic crime.

The various authorities, each in their own policy area, actively participate in (existing) international networks. The aim of building networks is to lower barriers between partners, discover synergies and thus identify new opportunities for cooperation. For investigation services, this means that the BODs and the Public Prosecution Service work a lot in international investigation teams and regularly share intelligence and analyses. Existing international connections such as Interpol, Europol and Eurojust are used for this purpose. Some more specialised examples are the Anti Money Laundering Centre (AMLC) from the theme of Trade Based Money Laundering (TBML),

[59] Following the country visit, the Netherlands completed its fourth evaluation in 2022.

the EU Food Fraud Network for combating food fraud, the Joint Chiefs of Global Tax Enforcement, the European Network for Environmental Prosecutors (ENPE). The Financial Investigation Net is an international system under development, which enables connected investigative services with the same field of activity as the FIOD to verify, by means of a hit/no hit qualification, whether information about the subject in question is present in each other's system.

In addition, the Government has identified the following priorities for the development of international cooperation in the context of the detection and investigation of money laundering and terrorist financing:

1. European Public Prosecutor's Office: the Netherlands is committed to the formation of a European Public Prosecutor's Office to tackle the misuse of financial EU flows.

2. Legal aid. The provision of legal aid will be professionalised where necessary. OM and BODs are committed to carrying out more joint international (sub)investigations, both within and outside Europe. The execution of requests for judicial assistance shall be shortened and substantive (technical) knowledge shall be improved, and Eurojust shall be more and more involved. Cooperation with liaisons and attachés of the Netherlands abroad has been intensified.

3. Exchange of international knowledge and experience. Finally, knowledge and expertise of technological developments is actively exchanged in order to provide insight into, and optimise the approach to, new forms of virtual crime. The Public Prosecution Service and the BODs play a role in sharing investigative experience and case studies in various (existing) international contexts and in contact with attachés at Dutch embassies.

Commitment to European supervision by independent supervisor

Money laundering and terrorist financing involve cross-border money flows, but supervision of these flows is carried out at national level. This leads to sub-optimal information exchange and cooperation, and an uneven level-playing field for financial companies. In order to achieve a more effective approach to money laundering at the European level, the Netherlands is committed to a European supervisor. To this end, the Minister of Finance, in cooperation with DNB and the AFM, has drawn up a non-paper with which we wish to draw attention to our Dutch efforts in Brussels. The non-paper is intended as a start to the discussion. We are committed to working together with other member states. This may lead to a more sharpened joint paper.

The new European regulator must be independent and able to supervise directly. The structure of supervision is derived from the SSM model (for prudential supervision), in which supervision is divided between a central European supervisor and national supervisors. The scope of European supervision should extend to financial undertakings, as they are largely harmonised by European rules. Whether a particular institution is subject to European or national supervision should be determined on a risk-based basis. European supervision of high risk institutions and national supervision of lower risk institutions. The risk is determined by an institution's activities, customers and products (for example, cross-border activities represent a higher risk). The new supervisor should be a newly created agency. Existing agencies or institutions, such as the ECB and the EBA, are less obvious. The scope of the ECB is too limited, which means that it cannot be supervised throughout the European Union. Given the governance of the EBA, with a board of supervisors composed of representatives of national prudential supervisors, it seems less obvious to transform the EBA into an independent supervisor.

Commitment to effective follow-up of post-mortem investigations EC

In addition, the Netherlands has been active at European level in the effective follow-up of post-mortem investigations at European banks. This falls within the framework of the anti-money laundering plan adopted at European level in December 2018. The anti-money laundering plan (action plan) contains a number of short-term actions that are not of a legislative nature. These actions are being taken for eight key purposes, including a study of the factors that contributed to the recent money laundering scandals at European banks (post-mortem review). The results are expected after the summer and could be used to identify additional actions in the medium and long term. We are committed to ensuring that the results of this analysis are effectively followed up.

EU Financial Investigation Action Plan 2016

Under and at the initiative of the Dutch EU Presidency in 2016, the action plan for strengthening financial investigation in Europe was adopted. This plan is being implemented and monitored within the EU framework. It focuses on strengthening financial investigation expertise through training, the deployment of the EU agencies Europol and Eurojust and specialised networks, including the deployment of liaison officers focused on financial investigations. It also focuses on ensuring financial investigation in the EU against crime and promoting financial investigation strategies.

Other initiatives

European Multidisciplinary Platform Against Criminal Threats (EMPACT)

AMLC is involved in the European Multidisciplinary Platform Against Criminal Threats (EMPACT). EMPACT is an initiative of and financed by the European Commission. The purpose of this platform, which has a programme in cycles of four years, is to promote international cooperation in tackling organised crime. Within this platform, various crime priorities are distinguished. These priorities are chaired by member states, which act as so-called drivers and co-drivers. One of the priorities is no. 9 called 'Criminal Finances, Money Laundering and Asset Recovery (CFMLAR)'. This priority has its own vertical goals as well as horizontal goals in the other priorities. Criminal finances is therefore a subject that receives attention within all the priorities. France is the driver and the Netherlands is the co-driver for this priority. Halfway through the cycle, responsibilities change between France and the Netherlands and the Netherlands becomes the driver. Within the Netherlands, this responsibility is assigned to the AMLC.

International public-private partnership

Initiatives are also being taken at international level in the field of public-private partnerships. Europol's Financial Intelligence Public Private Partnership is organised from within Europol. This aims at cooperation between banks and investigation within Europe. AMLC and FIU- the Netherlands are represented in this programme.

Anti-Money laundering Operational Network (AMON)

The Netherlands also takes part in the steering group of the Anti-Money laundering Operational Network of Europol since 2012. This is an informal network between professionals combating money laundering. The aim of the network is to provide contacts in all associated countries (+50) for the members. These contacts can be used to enquire about formal legal procedures, best practices and informal case related questions. Each year the network aims to hold a grand meeting for all members in the country of that year’s chair. The Netherlands chaired AMON in 2019.

Joint Chiefs in Action (J5)

The Netherlands have formed an international cooperation platform with a fiscal orientation in which the criminal investigative units of the tax administrations of the US, the UK, Canada and Australia participate since 2018. The name of the platform is Joint Chiefs in Action (J5). In this structure three major points of focus have been set: 1. Professional enablers; 2. Cyber and Dark Web; and 3. Data and tools. Close cooperation exists in relation to the topics which are relevant in both the J5 and EMPACT. The J5 is involved in more than 50 investigations involving sophisticated international enablers of tax evasion, including a global financial institution and its intermediaries who facilitate taxpayers to hide their income and assets. These highly harmful, high-end enablers of tax evasion were previously thought to be beyond the reach of the member countries. The agencies are also cooperating on cases covering crimes from money laundering and the smuggling of illicit commodities to personal tax frauds and evasion. Additionally, there have already been hundreds of data exchanges between J5 partner agencies with more data being exchanged in the past year than the previous 10 years combined.

In addition to the group's work with enablers and virtual currency, the J5 also focused on platforms that enable each country to share information in a more organized manner. FCInet is one such platform that each country has invested in to further that goal. FCInet is a decentralized virtual computer network that enables agencies to compare, analyse and exchange data anonymously. It helps users to obtain the right information in real-time and enables agencies from different jurisdictions to work together while respecting each other's local autonomy. Organizations can jointly connect information, without needing to surrender data or control to a central database. FCInet doesn't collect data, rather it connects data.

AFM

The AFM engages in various types of national and international cooperation in order to combat money laundering and terrorist financing. Within the organisation, a project team works on AML/CFT supervision. This team consists of both dedicated inspectors and liaisons from other AFM departments, such as asset management, policy and public affairs, and legal counsel.

The project team cooperates with other AML/CFT regulators, FIU-Netherlands and other law enforcement agencies (such as the National Police, the FIOD and the Public Prosecution Service). This approach has resulted in various cooperation efforts. Below is an overview of both national and international cooperation.

National cooperation:

- The AFM participates in the FEC. The FEC is a partnership between authorities whose tasks include supervision, control, prosecution or investigation in the financial sector and was founded to strengthen the integrity of the sector. It does so by taking preventive action that identifies and combats threats to this integrity as well as by playing a role in the sharing of information between FEC partners.
- The AFM works with Dutch regulators in various settings and participates in:
    - the Wwft coordination meeting*('WwftToezichthoudersoverleg'),* which includes the supervisory authorities, FIU-Netherlands and government representatives. Meetings are held every two months to share information and views;

- the Committee on Money Laundering *('Commissieinzake de meldingsplicht van ongebruikelijketransacties'),* which is a more general coordinating body acting as a discussion partner for the responsible Ministries on the functioning of the duty to disclose in practice and the determination of the indicators;
- a Task Force on non-compliance with the reporting obligation *('Niet-melders-project').* This task force includes the FIOD, the Public Prosecution Service, FIU-Netherlands and the AML supervisors. Based on signals from these parties, non-compliant institutions and persons are identified and prosecuted for failing to report unusual transactions to the Dutch FIU;
- multiple working groups coordinated by the Ministry of Justice and Security as well as the Ministry of Finance to prepare for the upcoming FATF evaluation of the Netherlands in 2021/2022.

- The AFM works closely with the DNB on a bilateral basis on cases in which the supervision under the Financial Supervision Act (Wft) relates to the Wwft.
- The AFM provides guidance to the financial sector (guidelines) in a coordinated effort with the other AML supervisors. Furthermore, the AFM organises round tables for the sector and periodically sends out newsletters.

International cooperation

- The AFM participates in the AMLC of the joint European Supervisory Authorities (ESAs): EBA, ESMA and EIOPA. The AMLC facilitates and fosters the cooperation of competent AML/CFT authorities across the EU. It promotes the development of a common understanding among competent authorities as well as credit and financial institutions of what the risk-based approach to AML/CFT entails as well as how it should be applied.
- The AFM subscribes to guidelines in the area of AML/CTF which are published by the ESAs and provides input into the writing to these guidelines at earlier stages of the drafting process.
- The AFM has signed an agreement to exchange information between the European Central Bank (ECB) and all competent authorities responsible for supervising the compliance of credit and financial institutions with AML/CFT obligations under the fourth Anti-Money Laundering Directive. This agreement, which creates a clear framework for the exchange of information between the ECB and the competent authorities, aims to enhance the effectiveness of their supervisory practices.
- The AFM attends FATF plenaries as part of the Dutch delegation to learn from Mutual Evaluations of other countries to improve its own AML/CTF supervision.
- The AFM has various bilateral contacts with AML/CTF regulators in other European Member States. In 2018, the project team visited two other AML/CTF supervisors for the financial sector. The project team will visit two more supervisors in 2019.

<u>DNB</u>

DNB is committed to effective cooperation with other supervisory and regulatory bodies. Drafting a Memorandum of Understanding (MoU) is instrumental to such cooperation. A Memorandum of Understanding lays down agreements and arrangements relating to information exchange, the rights and obligations associated with requesting and furnishing information, collaboration in the field of

regulatory supervision (e.g. on-site inspections), and confidentiality with regard to information provided and received. DNB has an MoU with various regulators across the world, including with various EU Member States, Australia, Canada and the United States.

At present, efforts are ongoing within an ESA context on drafting a Guidance for the creation of AML Colleges with an emphasis on cooperation and information exchange between AML/CFT supervisory authorities:

https://eba.europa.eu/-/esas-consult-on-guidelines-on-cooperation-and-information-exchange-for-aml-cft-supervision-purposes.

Moreover, DNB participates in international conferences at which AML/CFT is discussed with other supervisory and regulatory authorities such as the EBA (European Banking Authority), ESMA (European Securities and Markets Authority) and EIOPA (European Insurance and Occupational Pensions Authority), as well as international organisations such as the FATF, IAIS/FCTF (International Association of Insurance Supervisors/Financial Crime Task Force), ESA-AMLC and the IMF (International Monetary Fund).

DNB also takes part in the FEC, where intensive collaboration takes place between supervisory authorities, investigation organisations and the Public Prosecution Service with a view to safeguarding the integrity of the financial system. Knowledge exchange takes place within the FEC and operational information is shared in order to develop an appropriate enforcement strategy together for tackling financial-economic crime, including corruption.

The Netherlands seeks to establish and enhance international cooperation and exchange of information with foreign countries in criminal matters, and has developed a thorough procedure and framework for this purpose. The Netherlands regards providing and seeking MLA as equal; we seek MLA in the same manner as we provide it and therefore strive for the best results in both.

All incoming and outgoing MLAs are dealt with and executed through the International Legal Assistance Centres (Internationaal Rechtshulp Centrum; IRCs). An IRC is a cooperation between the Public Prosecution Service (PPS) and LEA and consists of prosecutors, assistants to the prosecutor, administrative staff and police officers. For international cooperation in matters of asset recovery, the Netherlands has established both a police and a judicial Asset Recovery Office (ARO). The judicial ARO is part of the IRC and is specialized in international confiscation procedures. It consists of five International Advisers, an international asset-tracer and a prosecutor.

The Netherlands maintains a dynamic international cooperation and the number of MLA requests received and sent are steadily rising. Since 2017, more than 35.000 police and judicial-requests were received annually. Even though the numbers have been more or less on a steady level for the last years, the requests themselves have become more extensive. The same development can be seen with outgoing requests: since 2017 approximately 12.000 police and judicial requests were send out annually.

All incoming and outgoing MLAs are dealt with and executed through the IRCs, within the EU as well as all the requests from outside the EU, but for the latter the Department of International Legal Assistance in Criminal Matters (AIRS) of the Ministry of Justice and Security is the Central Authority for international (judicial) mutual legal assistance. Within the EU, there is direct mutual legal assistance between judicial authorities, meaning that EU-requests will be sent directly to and from the IRCs. MLA requests to non-treaty countries are made through diplomatic channels, through the intervention of the Ministry of Justice and Security (AIRS) and the Ministry of Foreign Affairs.

IRC: International Legal Assistance Centers
An IRC is a cooperation between the OM and the LEA and consists of prosecutors, assistants to the prosecutor, administrative staff and police officers. They work together on international MLA requests, both police and judicial MLAs. This set-up was organised to enhance efficiency of cooperation in international affairs and guarantees a high quality of responses and swift execution. All incoming and outgoing requests go through one of the IRCs and are assessed on the bases of their content.

All incoming requests are handled and executed by or through the IRCs. Most cases are executed by the IRCs themselves. This can be different when the execution calls for more capacity than the IRC has available, or when the request has links with an (ongoing) Dutch investigation. In that case it can be decided to let the LEAs and prosecutor responsible for the investigation handle the execution. In those cases, the IRC will coordinate the handling of the request and send the end result to the requesting country.

The IRCs are also the point of contact for foreign authorities for either questions they have, or to address their MLA requests to. Every IRC provides contact details of its contact points on the website of the European Judicial Network (EJN), making it easy for countries which are part of the network to find them.

Structurally, IRCs are part of the public prosecutor's office, even though IRC staff consists of both police officers and public prosecutors. This cooperation enables a swift execution of both police and judicial MLA requests. Another advantage of specialised staff, is the fact that they are fully devoted to the provision of MLA. This stimulates the development of expertise in the field of international legal cooperation. It also guarantees that the execution of the MLAs is the number one priority of the staff and not influenced by the demands of day-to-day police and prosecutorial work.

As for the outgoing requests: the IRCs do not only play a formal role because of the obligation to register the MLA request at the IRC, but they also play an important part in maintaining a high level of quality. The IRCs are the first point of contact for Dutch LEAs and the OM for any questions on international cooperation and they will advise and support them on a practical and substantive level. IRCs provide formal as well as more informal information: from contact data of authorities abroad to specific questions like whether the requested country will accept a verbal European Investigation Order (EIO) in case of urgency. Furthermore, outgoing MLAs can be looked at by the IRCs textually and content-wise before they are sent abroad, which leads to a better quality of MLAs and prevents any unnecessary delays because of errors in the request. In the situation in which a case can profit from using a different international channel like Eurojust, the IRCs will give their advice on this.

In March 2020, the Minister of Justice and Security and the Public Prosecutor's Office issued a new Protocol on International Cooperation and MLA. The Minister of Justice and Security indicated that the Protocol serves as a guideline for all parties involved in MLA and extradition requests. The Protocol is intended to 'arrive at more checks and balances in the considerations surrounding requests for international legal assistance to countries outside the EU'. It describes the relevant agencies responsible for MLA, namely the IRCs, AIRS and the police. The Protocol sets out a procedure for requesting MLA, which, amongst others, permits exploratory consultations with foreign authorities before making the formal MLA request.

According to the procedure, the public prosecutor must submit an MLA request through the national IRC to AIRS for assessment (if necessary in consultation with the MFA and/or police liaison officers posted abroad) based on a prescribed framework. The framework for assessing whether the MLA request is legal or desirable is to be applied primarily in relation to countries with which the Netherlands does not have a long-term or stable international cooperation relationship.

Whether incoming and outgoing requests can be sent directly to the IRCs or will first go through AIRS depends on which foreign country is involved. Any incoming MLA request, European Investigation Order (EIO or in Dutch: EOB (Europees Opsporings Bevel') and European Arrest Warrant (EAW, or in Dutch EAB (Europees Arrestatiebevel)) can be sent by EU member states directly to respective IRC, or they can be sent to the LIRC which will then send the request to the relevant IRC. Outgoing request follow the same route. Any requests for of from countries outside of the EU go through AIRS and are from there on distributed to the relevant IRC.

There are in total twelve IRCs. Of those IRCs, ten have regional competence, the IRC FP (IRC Functioneel Parket) is specialised in serious fraud and complicated asset recovery and the LIRC is national/coordinating. The LIRC has several specific duties. The police department of the LIRC is responsible for maintaining the so-called 5 channels (Europol, Interpol, SIRENE, Foreign Liaison Officers (LOs) in the Netherlands and Dutch LOs abroad). The judicial side of the LIRC has amongst its responsibilities the coordination of joint investigation teams (JITs), execution of the Prüm Treaty and all cross-border surveillance. Furthermore, the LIRC coordinates all incoming MLAs that are not sent directly to the corresponding IRCs. Finally, the LIRC usually provides national input for upcoming treaties and international or EU-legislation if so requested.

The IRC FP is part of the OM for Serious Fraud, Environmental Crime and Asset Confiscation. The IRC FP cooperates with the Fiscal Intelligence and Investigation Service (Fiscale Inlichtingen en Opsporingsdienst: FIOD), which also has a centralised, dedicated team for international cooperation. The FIOD is part of the Ministry of Finance. Together they handle all incoming MLA requests concerning tax fraud investigation, as well as larger investigations into investment fraud, corruption and cybercrime amongst other things. They are also responsible for all terrorism financing (TF) requests and the more elaborate or complicated cases of money laundering (ML). These are defined as the cases in which for instance there is extensive cash flow, where legal structures such as trust offices or Dutch legal entities are being used, where national or international PEPs (Politically Exposed Person) are involved, or where alternative payment platforms are being used. This has led to the development of extensive expertise in the field of international cooperation in

combination with TF/ML, so that the judicial MLAs as well as the MLAs at police level can be executed swiftly and efficiently.

All IRCs are in close contact with each other. There is a standing consultation structure in which the IRCs, AIRS and other stakeholders meet to discuss operational problems and exchange expertise and experience. These meetings are chaired by the LIRC and take place around 5 times a year. Topics for discussion vary and can be introduced by either the LIRC or one of the participants of the meeting: for instance upcoming legislation, manuals for drafting or evaluating EIOs, practical arrangements made with neighbouring countries, or the need to distribute some of the pending requests in times of increased workload. This contributes to a uniform way of working within the IRCs.

ARO: Asset Recovery Office
For international cooperation in matters of asset recovery, the Netherlands has established both a police and a judicial Asset Recovery Office (ARO). EU law (2007/845/JHA) requires all EU Member States to have a central contact point for exchanging information on the existence of criminal assets and exchanging best practices and providing assistance. The existence of these AROs has significantly improved cooperation within the EU.

The AROs serve to locate and identify assets that are proceeds of illegal activity which can be frozen, seized or confiscated in a criminal procedure. Both AROs are the expertise centres for international cooperation in asset recovery in all phases: asset tracing, freezing and seizing, prosecution and execution. The judicial ARO forms part of the IRC FP and the police ARO is connected to the regional IRC in the Hague.

The judicial ARO is part of the IRC network and is specialized in international confiscation procedures. It consists of five International Advisers, an international asset-tracer and a prosecutor. It forms part of the IRC FP but serves the country as a whole with its expertise, and works closely with all the IRCs. Prosecutors and LEAs can also contact the judicial ARO directly for any question or support request in asset recovery cases. The judicial ARO can call upon the expertise of accountants, asset tracers, civil law advisers and the Asset Management Office (AMO) as well as specialized prosecutors and assistants to the prosecutor.

All IRCs are capable of handling incoming and outgoing requests for asset freezing or confiscation. However, complicated, urgent or (politically) sensitive requests, requests that involve large sums of money or requests from non-treaty countries will be handled by the judicial ARO. Furthermore, the judicial ARO focuses on new developments like crypto-currencies. Together with other stakeholders like Europol, FIOD and the Dutch police, it has developed expertise in this field. The ARO focuses on freezing and seizing of different cryptocurrencies, while other stakeholders focus on the exchange of information. The judicial and police ARO are working on a standardised method with regard to requesting information from crypto-currencies exchanges and the freezing and confiscation of crypto-currencies.

Just like the IRCs, the judicial AROs have an external and internal role. Internally, the AROs advise and support ongoing investigations on the possibilities of cross-border asset recovery. Externally, they serve as a first point of contact and have close ties to different international organisations. AROs are active participants in the EU ARO Platform. The platform is used to keep everybody informed about the latest developments, to connect all the members and

to share best practices. The AROs are also connected to the CARIN-network. CARIN is an international informal network of asset recovery practitioners, aiming to increase the effectiveness of its members' efforts in depriving criminals of their illicit profits. Its members can use the network to quickly exchange or obtain information in an informal way. The judicial ARO for instance has used its contacts within the CARIN network to request information about procedures and execution, or about bitcoin exchange. This is done in parallel with the official process of the request for mutual legal assistance.

The conditions under which the police ARO can exchange information are laid down in Council Framework Decision 2006/960/JBZ. In essence, LEAs of EU member states can request and exchange any information that is available to them through their own police registers or any other registers which they can access, such as the land registry or the chamber of commerce. By ways of a standardised form, the request can be sent directly to the police ARO. The exchange of data takes place through the Secure Information Exchange Network Application (SIENA). The information cannot be used as evidence in court. Requests are registered in the National Uniform Registration System for International Legal Assistance in Criminal Matters (LURIS). Different time frames are set for the execution of the request: 8 hours for urgent requests, 1 week for non-urgent requests if the requested information is held in a database directly accessible by the LEA and in case the crime is mentioned on the list of Council Framework Decision 2006/960/JBZ, and 14 days for all other cases. All requests concerning information about the identification and location of assets that fall within the scope of the framework decision, is executed by the police ARO. All other requests are forwarded to the IRC.

Police and judicial ARO keep in close contact, and also have regular meetings with the AMO. The numbers of the police ARO show a stark contrast compared to the regular MLA requests: where IRCs receive more requests than they send out, the police ARO sends out more requests than they receive. The numbers show overall an increase in both incoming and outgoing requests.

Liaison Officers

Since 2007, the police and KMar have cooperated in a joint network of liaison officers (LO's), who are stationed within Dutch representations in and outside Europe. They are awarded a diplomatic status and, if necessary, are accredited for neighbouring countries. LO's are authorised to receive and provide confidential criminal investigation information to the relevant police and judicial authorities, if so permitted under treaty law. LOs may also receive requests from other countries. Based on the Benelux Police Treaty, the LO's abroad from Belgium and the Netherlands, can handle each other's files and fulfil their role as channel for the exchange of police information for both countries.

The PPS and FIOD may call upon the help of Police LO's. But besides the network of Police Liaison officers there are also PPS Liaison Officers to strengthen the cooperation with foreign authorities in combating money laundering and other crimes that transcend borders.

Since 2014 the PPS has a representative Magistrate Liaison Officer stationed in Rome. Initially this was a temporary position, but due to its successes, efforts and added value, it has been made permanent in the summer of 2019. Also it was decided to deploy at the same time another liaison officer in Madrid, and it is intended to deploy more liaison officers abroad. These liaison magistrates focus on international organised crime, which also includes money laundering, terrorism and asset confiscation. The LO in Rome has established a broad

network in Italy in the last six years. This network works both ways: Dutch seizure requests can be executed very quickly to ensure that assets have not gone lost, and Italian LEAs are assisted by the LO Magistrate to find the appropriate IRC for their requests.

The LO in Madrid has been concentrating on removing obstacles, tracing mislaid requests and generally speeding up procedures. A lot of dormant confiscation procedures have been re-awakened and others put to eternal sleep. She also managed to send missing Spanish evidence on a confiscated valuable Mercedes Benz to her Dutch colleague just in time, so that it could being forfeited by the Dutch court.

The PPS may also make use of informal contacts at foreign counterparts. For instance, informal contacts are established and exchanges are made during European and international conferences, training courses and meetings. This allows for quick switching before a new initiative, for example when setting up a JIT or before a formal MLA request is submitted .

The PPS has established in 2016 a Bureau for International Affairs as part of the head office of the PPS. This bureau acts as a non-operational advisory body to gain more coherence and overview in the field of international matters. One of its projects is the support of Dutch prosecutors abroad: in several EU-projects in the Western-Balkan the OM has provided prosecutors to be deployed for longstanding projects in countries like Serbia, Albania and North-Macedonia.

Execution of MLA's, knowledge exchange, training and direct police-to-police MLA cooperation. Although question 14(5) concerns the cooperation of the Public Prosecution Service with other foreign authorities, it has to be mentioned that of course Police and other LEA's play a key role in the execution of the PPS cooperation. Besides executive tasks the Police and FIOD (and, especially for money laundering, the AMLC department of the FIOD) also support knowledge exchange and training to LEA's in other countries.

Furthermore the Dutch National Police works together with LEA's in other countries through direct police-to-police exchanges of police information. During the period between 2015 and 2020, a total of 7744 incoming police MLA requests concerning money laundering or terrorism were registered. The National Police makes most use of the following instruments to exchange police information:
- On a 24/7 basis, police information can be exchanged through SIRENE. This channel is stipulated in Article 108 of the SIC: each country that is connected with the Schengen Information System (SIS) has a SIRENE bureau which runs on a 24/7 basis. The Member States are supposed to furnish the SIRENE-bureau with human and technical resources in such a way that continuity can be guaranteed. In the Netherlands, these bureaus or desks are accommodated within the LIRC, which manages all information channels.
- Secondly, Europol works with a system of Europol National Units (ENUs), which form the bridge between Europol and the competent authorities in the other 26 member states. In the Netherlands, this unit is LIRC. The ten Dutch Europol liaison officers represent several investigation authorities (a multidisciplinary team) and are authorised to exchange information between the Dutch unit, Europol and other EU member states. They also have access to a variety of computer systems in use by Europol in order to be able to perform their tasks.
- Thirdly, Interpol's global network of national contact points or bureaus for the exchange of police information. Some of Interpol's members are countries with which the Netherlands does not maintain a mutual legal assistance relationship. The National Central Bureau (NCB)

of the Netherlands, established within the Department of International Legal Assistance in Criminal Matters (AIRS) is responsible for international police information exchange from and to the Interpol Secretariat.

The police can also receive foreign police requests directly, besides receiving police requests through IRCs. In principle, the police may independently handle a police request from a foreign state if that foreign state asks for police data that are stored in national police files. This is established in further Instructions on the application of Article 5.1.2 Dutch Criminal Procedure Code which allows for a direct international exchange of information by police professionals. The police-to-police cooperation without going through the IRC process guarantees efficiency and a swift handling of the request.

If a police-to-police request is made for information that involves the use of coercive measures, the request must be forwarded to the PPS. Such request must also be forwarded if special investigative powers must be exercised or if the information obtained is used as evidence abroad. In these cases, the IRC structure is directly involved again.

Police-to-police cooperation is based on a number of treaties, to which the Netherlands is a party, such as but not limited to the Schengen Implementing Convention (SIC), the Prüm Treaty, the Senningen Treaty, the Enschede Treaty, the Swedish Framework Decision and the EU Convention on Mutual Assistance in Criminal Matters. All legal instruments offer plenty of opportunity for direct cross-border police information exchange. The National Police makes use of various information systems for the exchange of police data, such as the Europol Information System (EIS), SIENA, the Europol Analysis System (EAS) and the Schengen Information System II (SIS II).

Eurojust cases
Eurojust is an EU-agency, based in The Hague which task is to facilitate the proper coordination of national prosecuting and judicial authorities and to support cross-border criminal investigations in serious and complex crimes, including terrorism, fraud and money laundering. At Eurojust, every EU member state has a national desk headed by a National Member. Several Liaison Prosecutors from third states are stationed at Eurojust, such as Switzerland, the USA and Norway. Eurojust facilitates national authorities of EU member states in bringing together judicial and investigating officials in order to exchange information, to overcome differences in legal systems, to organise a Coordination Meeting between national authorities or to set up a Coordination centre for joint action days. Contact with Eurojust is usually established through the IRCs.

In the Netherlands, the National Public Prosecution Service initiated a CFT-related international cooperation and exchange within Eurojust. The reason for this was given in the provisions by Western Union, FIU-NL, criminal investigations and media reports. This information revealed the presumption that FTF's in Syria and Iraq were funded through middlemen in Turkey and Lebanon and money transfers to these middlemen, not only from the Netherlands, but from several countries worldwide. Within this Eurojust-case several coordination meetings took place between the USA, Spain, France, Belgium and other countries, and information and best practices were shared.

In international terms, there is added value because the approach provides an insight into the functioning of networks, particularly the role of intermediaries involved (those who operate between the financiers and the FTFs). The focus on 1 on 1 financing of FTFs constitutes

evidence of offences by the funders. However, it is important (and that's exactly what the cooperating countries learned from each other here) that the approach also gains intelligence for investigations into offences committed by the FTFs themselves and may be of importance in the subsequent return of these FTFs. This international cooperation therefore provides steering information and evidence in both CT and CFT cases.

Joint Investigation Teams (JITs)
A JIT is one of the most advanced tools used in international cooperation in criminal matters, comprising a legal agreement between competent authorities of two or more states for the purpose of carrying out criminal investigations. A JIT can be established on the initiative of the Netherlands (outgoing request) or on the initiative of a foreign country (incoming request). See for the legal basis the Council Framework Decision 2002/465/JHA on joint investigation teams and Articles 5.2.1 – 5.2.5 Dutch Criminal Procedure Code). A MLA is always the basis of a JIT. The relevant MLA request comes from the initiating country and is addressed to the participating countries. For more information about the outgoing requests with regard to establishing a JIT.

Incoming JIT requests are registered with the IRC where the request is received. That request is always notified in writing to the national public prosecutor's office by the regional IRC. Requests to participate from Eurojust, Europol or OLOF shall be forwarded to the LIRC. The LIRC involves the relevant public prosecutor, who checks whether the criteria have been met. If that is the case, the request is notified in writing to the national public prosecutor's office. This is followed by the same phases as for setting up a JIT on Dutch initiative.

A joint investigation team may consist of investigating officers, but also public prosecutors or examining judges from the relevant countries, officials from the other participating countries and/or members of international organisations such as Europol. The Dutch members of the team may, for the purpose of the investigation, provide data that are available in the Netherlands, in accordance with Dutch law and the powers of those members. The Police Data Decree [Besluit politiegegevens] provides that Dutch police data can be provided to the other members of a joint investigation team. Data may be provided to seconded members of a Netherlands-based team in the same way as to Dutch police officers. Moreover, data may be provided to Dutch police officers in a foreign team for the purpose of the investigation.

The decision to set up da JIT often takes shape at Eurojust and Eurojust can supported a JIT during the cross-border investigation. Once parallel or linked investigations have been identified by the National Desks at Eurojust, and the case is registered, Eurojust may organize a coordination meeting between the involved States. During the meeting, Eurojust helps authorities assess the suitability of the case for the purpose of establishing a JIT. The setting up of JITs can also be agreed upon without, or prior to, a coordination meeting. Next, Eurojust supports the national authorities in setting up the team, and assisting in the drafting of JIT agreements etc. Throughout the operational phase, Eurojust works with the partners to ensure the smooth running, providing legal and prosecutorial strategies and enable the coordination. As a follow up, Eurojust is involved in an evaluation of the JIT.

Treaties
Since the Netherlands is a party to a number of Council of Europe conventions and EU instruments which provide rules, benchmarks and opportunities for MLA, it is in the position to request MLA from all European countries. The European Convention on Mutual Legal

Assistance in Criminal Matters allows for broad cooperation with European countries outside the EU and a selective number of non-European countries, such as South Korea, Bolivia and Israel.

The Netherlands has concluded multilateral conventions with countries outside the EU, such as the UN Convention against Transnational Organised Crime and the International Convention for the Suppression on the Financing on Terrorism. In the absence of a bilateral treaty, it still enables the Netherlands to seek legal assistance from other countries. If both a bilateral treaty and a multilateral convention are absent, it is possible to seek assistance without a treaty basis. This can for example be done on the basis of the principle of reciprocity. The Minister of Justice and Security is ultimately responsible for sending MLA requests to another State outside of the EU. This responsibility particularly applies if a request is made to a country with which there is no treaty relation. For these countries, AIRS on behalf of the Minister of Justice and Security and together with the Ministry of Foreign Affairs assesses whether it is possible or desirable to make an MLA request to a certain non-treaty country.

The Netherlands is party to the main international instruments for promoting MLA, and makes regular use of them. They include, but are not limited to, the European Convention on Mutual Assistance in Criminal Matters (Council of Europe, ETS No. 030) and its additional protocols (ETS No. 099 and ETS No. 182); the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS No. 198); the European Investigation Order and its Directive 2014/41/EU (EIO), the European Arrest Warrant and its Framework Decision 2002/584/JHA; The European Convention on Extradition (Council of Europe ETS No. 0.24); The Enforcement of Criminal Judgments (Transfer) Act ("WOTS", for non-EU member states); the Mutual Acknowledgment and Execution of the Transfer of Sentences Act ("WETS", for EU member states); the United Nations Convention against Transnational Organized Crime and the Protocols Thereto (UNTOC) and the United Nations Convention Against Corruption (UNCAC).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

AFM

- Bilateral contacts with other AML/CTF regulators have contributed to the improvement of our risk-based approach, have supplemented our guidance with further examples and details, and have improved our data collection. Our guidance has been published and can be found here. (https://www.afm.nl/~/profmedia/files/wet-regelgeving/beleidsuitingen/leidraden/wwft.pdf)

- Signals collated and further investigated by the task force on non-compliance with the reporting obligation resulted in ten convictions and four closed cases, while one case resulted in a so-called transaction agreement between 2013 and 2016. At that moment, multiple prosecutions were pending. Later data are unavailable.

- The FEC annually reports about its projects via https://www.fec-partners.nl/nl/nieuws/nieuwsberichtjaarplan2016/167.Unfortunately, these reports are only available in Dutch. In 2018, projects focused on terrorist financing (typologies and identification of potential TF networks), cash payments, trust offices and associations.

- The ESA guidelines and other regulatory standards can be found via https://eba.europa.eu/regulation-and-policy/anti-money-laundering-and-e-money.

DNB

After several criminal investigations by the police and the FIOD into corruption and money laundering, it was revealed that suspected persons and legal entities held one or more bank accounts with ING NL. Based on these findings, it was suspected that ING NL had violated several sections of the AML/CFT Act and was guilty of money laundering and/or culpable money laundering. This situation gave rise to the suspicion that ING NL may have been partly responsible for enabling money laundering by its clients. In the so-called tripartite consultation (a regular consultation held between the Public Prosecution Service and DNB, among other parties), it was decided to conduct a criminal investigation into these facts. The Public Prosecution Service sees the payment of 775,000,000 euros in total as an appropriate and effective non-trial resolution. The non-trial resolution will also affect the future, as ING NL has acknowledged that there have been serious shortcomings and the bank has taken a significant number of measures to put its house in order. DNB will ensure that the remediation measures are carried out properly. For the Public Prosecution Service, the introduction of an adjusted compliance policy at ING Netherlands and the supervision of that policy by DNB were decisive factors in offering this non-trial resolution.

Also see https://www.om.nl/%40103952/ing-pays-775-million/.

(b) Observations on the implementation of the article

The Netherlands is a member of the Financial Action Task Force and has undergone three rounds of evaluation so far. It was reported that the fourth and fifth European Union money-laundering directives were duly transposed into national law. The national authorities have the ability to cooperate widely with their counterparts through various networks in order to prevent money-laundering.

V. Asset recovery

Article 51. General provision

> *Article 51*
>
> *1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.*

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The Netherlands has a broad range of instruments (in terms of criminal law as well as in the fiscal and administrative domain) for the confiscation of financial gains from criminal activities.

There are various confiscation options available under criminal law within the confiscation chain. Dutch criminal law provides for a number of economic sanctions. The Public Prosecutor may:

- impose a confiscation order with regard to the proceeds or instrumentalities of crime (object confiscation) (article 33a of the Criminal Code);

- order payment of an amount to the Dutch state as unlawfully obtained gains (value based confiscation) (article 36e of the Criminal Code);

- impose a financial fine, including a fine aimed at the confiscation of unlawful gains (e.g. article 6(1) of the Economic Offences Act (WED));

- arrange a settlement (article 511c of the Code of Criminal Procedure);

- offer a transaction with financial conditions (article74 of the Criminal Code);

- issue a penalty order with a confiscation component.

The public prosecutor may also opt for penalties that have a similar effect, such as requesting a measure to compensate the victim (article 36f of the Criminal Code), claiming victim compensation as a special condition to a suspended sentence (article 14c(2)(1) of the Criminal Code), imposing victim compensation as part of a transaction (article 74(2) of the Criminal Code) or ordering victim compensation as a condition to dismissal of the case.

When selecting the confiscation option, compensation to the victim will be given priority over payment to the State. This process allows compensation of the damage incurred by the victim to be the main focus at an early stage (e.g. a transaction with a compensation component).

The Netherlands has also entered into bilateral conventions with various countries on cooperation in case of confiscation procedures relating to criminal offences, including corruption. This matter will be discussed in more detail in Article 59. The bilateral relations with other countries on the subject of international legal assistance in criminal matters focuses on the confiscation of criminal assets. The IRC/ARO (Centre for International Legal Assistance in criminal matters/Asset Recovery Office) acts as a Dutch international point of contact for the confiscation and recovery of unlawfully obtained gains. Under European legislation, Member States are required to have a so-called ARO in place to ensure efficient and effective cooperation between Member States.

The Netherlands also takes part in several international consultation frameworks, including the OECD, UNODC and FATF, in which the importance of cooperation in the confiscation of criminal assets and the removal of any obstacles is actively promoted.

<u>Overview of the Dutch criminal law on asset recovery:</u>

The Dutch criminal law provides for two confiscation schemes: A) object confiscation and B) Value based confiscation.

A) *Object confiscation (punitive sentence):* instrumentalities or direct proceeds from crime (article 33 Criminal Code):

An investigative officer can seize assets that are the instrumentalities or (in)direct proceeds from any crime, objects that can disclose the truth and objects that can demonstrate unlawfully obtained advantage as referred to in Article 36e of the Code of Criminal Procedure. These assets can be seized and (in the end) confiscated. This confiscation is only possible (in the end) if the suspect has also been convicted in the criminal procedure. The assets must have partly or as a whole been obtained from the criminal fact . If the assets don't belong to the suspect, these can still be confiscated if the other person to whom the assets belong knew or could reasonably have known that the assets have been obtained by the criminal fact. If assets don't belong to the suspect, these can still be confiscated if it is not possible to determine to whom these assets belong. If the defendant is convicted for committing the crime, the object confiscation of the instrumentalities or profits form crime can be imposed as a ***punitive sentence*** as well (Article 33 Criminal Code)

B) Value based confiscation (***reparatory measure***): If there is reasonable suspicion that the criminal actions by the defendant have resulted in illegal profits, proceedings against these defendants can be] initiated for the purpose of confiscating these illegally obtained profits.
This value based confiscation procedure forms part of the criminal investigation and serves as a tool to order the person who has been convicted, by separate judicial decision, to pay a certain amount to the State as illegally obtained profits (Article 36e of the Criminal Code). This sanction is considered as a reparatory measure to restore an illegal situation. The aim is to bring the convicted back into the financial position before the criminal facts were committed.

The value based confiscation procedure (deprivation of illegally obtained assets) contains amongst others the following elements:

1. Extension of the offences for which a deprivation measure can be imposed. For instance, apart from the deprivation of illegally obtained advantages resulting from offences for which one has been convicted, deprivation is also possible in the case of other offences (extended confiscation).
2. For the purpose of deprivation another evidence regime applies. The deprivation amount must be based on legal evidence, but as regards the estimation of the advantage the required burden of proof is not as demanding.
3. Since it is possible to try the criminal case and the deprivation case separately, more time has been created for financial investigations. The decision in respect of a deprivation case might be taken a long time after the hearing of the criminal case. The only condition being that the Public Prosecutor files his claim as soon as possible but, at the latest, within two years following the judgment in the first instance.
4. For the purpose of the financial investigation determining the scope of the illegally obtained advantages and the tracking of assets, the law includes the possibility to initiate a Criminal Financial Investigation (CFI) (Art. 126 Criminal Proceedings Code).
5. The law also includes the possibility of a precautionary seizure to secure the implementation of fines, the compensation of victims and deprivation measures.
6. A settlement regarding the amount to be paid to the State can be entered.
7. After confiscation any injured party can claim (part of) the confiscated assets. The Court will handle such a claim (art. 577b Criminal Proceedings Code).

Criminal Financial investigation:

In order to be able to implement a deprivation claim, there must be a conviction of a criminal offence and illegally obtained advantage. In a number of cases the information obtained as a result of the

criminal investigation will suffice to meet these conditions. Therefore, the legislator created the possibility to conduct a Criminal Financial Investigation (CFI). On the one hand, the CFI focuses on illegally obtained advantage and on the other hand on tracing capital assets.

Article 126 Criminal Proceedings Code, states that, for the determination of the illegal advantage obtained by the accused, and with a view to its deprivation based on art. 36e Penal Code, a criminal financial investigation can be initiated. The criminal financial investigation is just like a preliminary enquiry and an ordinary investigation, an investigative framework within which investigative measures and coercive measures can be used.

In order to initiate a CFI the following conditions must be met:

- there must be a suspicion of a criminal offence subject to a fine of the fifth category;
- there must be a suspicion that the criminal offence resulted in a significant illegally obtained advantage.

The initiation of a CFI has a number of consequences:

- Each investigator with a CFI authority is entitled, upon production of that authority, to order anybody to provide statements, allow access to and seize written documents;
- during the CFI, the Public Prosecutor is entitled without further judicial authority to order the precautionary seizure of objects within the scope of the deprivation measure.

A CFI is initiated under the supervision of a Public Prosecutor following authority from the Examining Magistrate. Because in many cases a CFI is a complicated investigation, the legislator has determined that it will be run independently of the criminal case and that a deprivation claim may still be filed two years after the accused has been convicted in the first instance for the offence concerned. This implies that the CFI may also continue until that time. It is possible that a CFI and a preliminary enquiry are conducted simultaneously and independently from one another. If the criminal case results in an acquittal, the CFI must be closed.

As soon as the authority has been given the CFI can start. The (legal) person, who is subject of this investigation, need not be informed of the start of the investigation. This would put him in a position where would be able to obstruct the CFI.

However, as soon as items are being seized as a precautionary measure within the scope of the CFI, the investigated person must be informed accordingly. During the first interview of the accused within the scope of a CFI (the person against whom the investigation is directed) must be given a copy of the claim and the authority by the interviewing judge or official.

With regard to the value based confiscation procedure any property can be seized and confiscated of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property, once the examining judge has given a

written authorization to start a CFI or a separate written authorization to seize assets (Art. 103 Criminal Proceedings Code).

Apart from the object confiscation procedure, all assets that belong to a suspect can be seized regardless whether these assets have been obtained legally or illegally. Even assets that in fact belong to the suspect, but are registered in the name of another person can be seized (third party seizure, Article 94a (4) Criminal Proceedings Code). This seizure is only possible if the reason for putting the assets in the name of the other person is to prevent the possibility of confiscation and the other person knew this or could reasonably have known this (e.g. if the transfer was done without an economic reason, or the other person didn't do anything in return).

This scheme serviced as an example for the European Commission to make this mandatory for all other EU member states. Since 2018, all other EU Member States should be able to make such a seizure. (See EU Directive of 3 April 2014 on the freezing and confiscation of instrumentalities and the proceeds of crime in the European Union (Directive 2014/42/EU).)

Furthermore, according to the Dutch Criminal Proceedings Law, if the other person has transferred the assets again to a third person. It is even possible to seize any item of the other person as replacement of the value of the item that has been transferred to the third person (Article 94 (5) Criminal Proceedings code).

For the internal policy for asset recovery please refer to the Confiscation Instruction that is provided to you earlier in English translation (or the official text in Dutch https://wetten.overheid.nl/BWBR0038996/2017-01-01). This instruction lays down rules for the confiscation of financial gains derived from criminal activities under criminal law. The instruction lists the various powers of confiscation available under criminal law. The guiding principle is that effectiveness must be core when choosing the confiscation measure or combination of confiscation measures to impose. Cooperation with all partners is key to confiscating assets.

Article 23, paragraph 3 of the Dutch Criminal Code stipulates that the maximum fine that may be imposed for a criminal offence shall be equal to the amount of the category specified for that offence. At this moment the fifth category is € 87,000. The sixth category is € 870,000. Paragraph 7 states that In the case of conviction of a legal person, a fine up to the maximum of the next highest category may be imposed if the fine category specified for the offence does not provide for an appropriate punishment. And if a fine of the sixth category can be imposed for the act and that fine category does not permit appropriate punishment, a fine can be imposed up to a maximum of ten percent of the annual turnover of the legal person in the financial year preceding the judgment or punishment.

Every crime in the Dutch Criminal Code (DCC) stipulates in its applicable article, how high the maximum prison sentence is and which category of fine can be imposed. Most crimes that intend to gain monetary benefits are punishable with a fine of at least the fifth category. This fine is applicable per act.

The crimes that are most important for the Convention are punishable as follows:

• Money Laundering: four years imprisonment and/or a fine of the fifth category (art. 420bis DCC) and habitual money laundering: eight years imprisonment and/or a fine of the fifth category (art. 420ter DCC).
• Forgery: six years imprisonment and/or a fine of the fifth category (art. 225 DCC).
• Commercial bribery of someone else other than a civil servant / public official (: four years imprisonment and/or a fine of the fifth category (art. 328ter DCC, active and passive bribery).
• Bribery of a civil servant / public official: Six years imprisonment and/or a fine of the fifth category (art. 177 DCC active bribery and art. 363 DCC passive bribery). This includes persons working in the public service of a foreign state or an organization governed by international law and former public officials (Art. 178a DCC).
• Bribery of a judge: nine up to twelve years imprisonment and/or a fine of the fifth category (art. 178 DCC active bribery and art. 364 DCC passive bribery). This includes judges in a foreign state or an organization governed by international law are equivalent to judges (art. 178a / 364a DCC).
• When passive bribery accurse in connection with the capacity as a minister, state secretary, royal commissioner, member of the provincial executive, mayor, member of the municipal executive or member of a general representative body: eight years imprisonment and/or a fine in the fifth category (art.363 paragraph 3 DCC).
• Bribery of a person who is employed to provide information regarding telecommunications to judicial officers or police officers, or cooperate in intercepting or recording telecommunications: four years imprisonment and/or a fine in the fifth category (art. 328quater DCC, active and passive bribery).

In the Netherlands, the Department of International Legal Assistance in Criminal Matters (AIRS) of the Ministry of Justice and Security is the Central Authority for mutual legal assistance outside the EU. Within the EU, there is direct mutual legal assistance between judicial authorities.

MLA requests are sent to the Central Authority for evaluation before they are sent abroad. The Central Authority seeks the advice of the Ministry of Foreign Affairs if there are political sensitivities, legal constraints or possible unforeseen consequences underlying the MLA request. Particular attention is paid to potential human rights violations, detention conditions, the possibility for foreign authorities to start their own criminal investigation on the basis of the information provided in the MLA request and the possibility that the death penalty is imposed. On the basis of its own expertise and information provided by the Ministry of Foreign Affairs and foreign liaison officers, the Central Authority advises International Legal Assistance Centres (Internationaal Rechtshulp Centrum or “IRC”) and via them, the public prosecutor.

On a regional level, police officers and public prosecutors work together on international MLA requests in IRCs. There are eleven IRCs (ten IRCs with regional competence and one national/coordinating IRC) which are responsible for registering, dealing with and coordinating the execution of MLA requests in criminal matters. Structurally, IRCs are part of the public prosecutor’s office, even though IRC staff consists of both law enforcement officers and public prosecutors. This cooperation enables a swift execution of MLA requests. MLA requests to foreign countries are sent via the national or regional IRC to the competent foreign authorities.

Since 1 July 2018, the Dutch Code of Criminal Procedure has been changed and the possibilities for providing mutual legal assistance to foreign countries in criminal matters have been further extended. Apart from the possibilities for executing MLA requests if an underlying treaty provides for this, a full execution of non-treaty requests is now also possible since the widening of the Dutch Code of Criminal Procedure, provided that the request is not contrary to a statutory provision or the general interest.

The Protocol on International Legal Assistance in Criminal Matters was drawn up by the Minister of Justice and Security and the public prosecutor's office, which entered into force on 1 March 2020. The Minister of Justice and Security indicated that the Protocol is soft law; it serves as a clarification of existing practice and acts as an agreement between parties involved in MLA and extradition requests. The Protocol is intended to "arrive at more checks and balances in the considerations surrounding requests for international legal assistance to countries outside the EU". It describes the relevant agencies responsible for MLA, namely the IRCs, AIRS, and the police.

The Protocol sets out a procedure for requesting MLA, which, amongst others, permits exploratory consultations with foreign authorities before making the formal MLA request. According to the procedure, the public prosecutor must submit an MLA request through the national IRC to AIRS for assessment (if necessary in consultation with the MFA and/or police liaison officers posted abroad) based on a prescribed framework. The framework for assessing whether the MLA request is legal or desirable is to be applied primarily in relation to countries with which the Netherlands does not have a long-term or stable international cooperation relationship and countries outside the EU.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

The Netherlands can apply relevant provisions of the Criminal Code, the Code of Criminal Procedure, the Financial Penalties and Confiscation Orders (Mutual Recognition and Enforcement) Act and the Enforcement of Criminal Judgments (Transfer) Act for the purpose of asset recovery. The Central Authority for Mutual Legal Assistance in Criminal Matters within the Ministry of Justice and Security is the central authority for all forms of judicial mutual legal assistance with regard to non-member States of the European Union, while the Asset Recovery Office acts as the national point of contact for the confiscation and recovery of assets. A bank data retrieval portal serving as the central bank register was created by the Bank Data Retrieval Portal Act.

The reviewing experts therefore recommended that the Netherlands clarify the application of different legal bases for mutual legal assistance and asset recovery by, for example, developing an asset recovery guide (art. 51).

Article 52. Prevention and detection of transfers of proceeds of crime

Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Article 3 of the Wwft requires the execution of customer due diligence. The customer due diligence must allow the institution to:

- identify the customer and verify its identity;
- identify the ultimate beneficial owner and verify its identity and, if the customer is a legal entity, take reasonable measures to gain insight into the ownership and control structure of the customer;
- establish the purpose and the envisaged nature of the business relationship;
- exercise ongoing monitoring of the business relationship and the transactions carried out throughout the duration of this relationship, in order to ensure that they correspond to the knowledge that the institution has of the customer and their risk profile, if necessary through an investigation into the source of the funds that are used in the business relationship or the transaction;
- determine whether the natural person representing the customer is authorised to do so, and identify the natural person and verify its identity in such cases (article 3(2) of the Wwft).

In addition to the measures of the customer due diligence outlined above, institutions must also apply the following measures when entering into or continuing a business relationship with or conducting a transaction on behalf of a politically exposed person, meaning someone entrusted with a prominent public function:

- Entering into or continuing the business relationship or conducting a transaction requires the permission of one person who is part of the senior management staff.
- Appropriate measures will be taken to determine the source of the assets and of the funds that are used in this business relationship or this transaction.
- The business relationship will continually be subject to stricter controls (article 8(5)(b) of the Wwft).

In addition to the measures of the customer due diligence outlined above, the institution must take reasonable measures to determine whether the beneficiary or the ultimate beneficial owner of the beneficiary of a life insurance policy is a politically exposed person, no later than at the payment of

the policy or at the full or partial transfer of the policy. If this situation is the case, the institution must take the following measures:

- Prior to the payment of the policy proceeds, a person who is a member of the senior management staff will be informed of the payment of the policy proceeds to the beneficiary or the ultimate beneficial owner of the beneficiary.

- The entire business relationship with the policyholder is subject to stricter control (article8(6) of the Wwft).

If the customer or the ultimate beneficial owner no longer holds a prominent public function, the institution will apply appropriate risk-sensitive measures for as long as is necessary but at least for a period of 12 months, until this person is no longer subject to this higher level of risk associated with politically exposed persons (article 8(7) of the Wwft).

The measures outlined in the above, which apply in the event that the customer is a politically exposed person, will also apply similarly to family members of politically exposed persons and persons known to be close associates of politically exposed persons (article8(8) of the Wwft).

If the customer or the ultimate beneficial owner should become or appears to be a politically exposed person, the institution shall apply the additional measures applicable to politically prominent persons outlined in the foregoing without delay (article 8(9) of the Wwft).

Institutions must take reasonable measures to ensure that the information that is collected about politically exposed persons is kept up to date (article 8(11) of the Wwft).

The Money-Laundering and Terrorist Financing (Prevention) Act

Article 3

1. An institution conducts customer due diligence to prevent money laundering and terrorist financing.

2. The customer due diligence enables the institution to:

a. to identify the client and verify his or her identity;

b. to identify the ultimate beneficial owner of the client and take reasonable steps to verify his identity, where the client is a legal entity, to take reasonable steps to obtain an understanding of the ownership and control structure of the client, and where the ultimate beneficial owner is a senior management employee, to take necessary reasonable steps to verify the identity of the natural person who is a senior management employee, recording the steps taken and the difficulties encountered during the verification process;

c. to determine the purpose and intended nature of the business relationship;

d. to exercise continuous control over the business relationship and the transactions carried out during the period of that relationship in order to ensure that they correspond to the institution's knowledge of the client and his risk profile, including, where necessary, an investigation into the source of the funds used in the business relationship or transaction;

e. to determine whether the natural person representing the client is authorised to do so and, where appropriate, to identify the natural person and verify his or her identity;

f. to take reasonable steps to verify whether the client is acting on his own behalf or on behalf of a third party.

[…].

Article 3a

1. In addition to Article 3, paragraphs 2 to 4 , customer due diligence enables a bank or other financial undertaking, without delay after a beneficiary of a life insurance policy has been identified or designated:

a. to record the name of the person, if the beneficiary is identified as a named natural person or legal entity or legal arrangement;

b. to obtain sufficient information concerning the beneficiary to be satisfied that at the time of payment the identity of the beneficiary can be established, if the beneficiary has been identified by characteristics or by category or otherwise.

2. Verification of the identity of the beneficiary referred to in the first paragraph shall take place at the time of payment of the life insurance policy.

3. If a life insurance policy is transferred to a third party, a bank or other financial undertaking that is aware of the transfer shall identify the beneficial owner at the time of the transfer to the natural person, legal entity or legal arrangement that receives the value of the transferred policy for its own benefit.

Article 4

1. An institution shall comply with Article 3, paragraph 2, subparagraphs (a) and (b) , and, where applicable, the third and fourth paragraphs of that Article, before entering into the business relationship or carrying out an incidental transaction as referred to in Article 3, paragraph 5, subparagraphs (b) and (g), and paragraphs 6 and 7.

2. When entering into a new business relationship with a client as referred to in Article 3, paragraph 2, part b, or paragraph 4 , the institution shall have proof of registration in the trade register referred to in Article 2 of the Trade Register Act 2007 , and the institution shall determine whether the ultimate beneficial owners of the client are included as referred to in Article 15a of that Act.

3. By way of exception to the first paragraph, an institution is permitted to verify the identity of the client and, if applicable, the identity of the ultimate beneficial owner when entering into the business relationship, if this is necessary in order not to disrupt the provision of services and if there is little risk of money laundering or terrorist financing. In that case, the institution shall verify the identity as soon as possible after the first contact with the client.

4. By way of derogation from the first paragraph, a bank or other financial undertaking shall be permitted to open an account, including an account for securities transactions, before the verification of the client's identity has taken place, if it guarantees that the account cannot be used before the verification has taken place.

5. By way of exception to the first paragraph, a notary, additional notary or candidate notary as referred to in Article 1a, paragraph 4, section d , may verify the identity of the client and, if applicable, of the ultimate beneficial owner at the time when identification is required on the basis of Article 39 of the Civil-law Notaries Act .

6. By way of derogation from the first paragraph, an institution shall be permitted to establish the identity of the beneficiary of a trust or similar legal arrangement only at the time of payment or at

the time at which the beneficiary exercises his definitive rights, provided that the beneficiary is defined by specific characteristics or by category before entering into the business relationship or carrying out an incidental transaction and that the institution obtains such information that it is able to establish the identity of the beneficiary at the time of payment or at the time at which the beneficiary exercises his definitive rights.

Article 8

1. In addition to Article 3, paragraphs 2 to 4 , an institution shall conduct enhanced customer due diligence in at least the following cases:

a. if the business relationship or transaction by its nature entails a higher risk of money laundering or terrorist financing;

b. if the state in which the client is resident, established or has its registered office has been designated by the European Commission as a state with a higher risk of money laundering or terrorist financing pursuant to Article 9 of the Fourth Anti-Money Laundering Directive.

2. An institution shall take into account at least the risk factors referred to in Annex III to the Fourth Anti-Money Laundering Directive in order to determine whether the first paragraph, point (a), applies.

3. An institution shall take reasonable steps to investigate the background and purpose of complex or unusually large transactions, transactions with an unusual pattern or without a clear economic or lawful purpose, and shall in such cases subject the entire business relationship with the client to enhanced scrutiny.

4. Without prejudice to the first paragraph, a bank or other financial undertaking which enters into or has entered into a correspondent relationship with a respondent institution in a non-Member State and with which payments are made shall, when entering into the business relationship, ensure that:

a. it collects sufficient information about the respondent institution concerned to obtain a full picture of the nature of its business activities and, on the basis of publicly available information, assesses the reputation of the respondent institution and the quality of the supervision exercised over the respondent institution;

b. it assesses the procedures and measures for preventing money laundering and terrorist financing of the respondent institution concerned;

c. if the relationship is a new correspondent relationship, the decision to enter into that relationship is taken or approved by the senior management of the bank or other financial undertaking;

d. the responsibilities of the bank or other financial undertaking and of the respondent institution are recorded;

e. the respondent institution concerned has identified the clients who have direct access to transit accounts, has verified their identity and, in addition, continuously monitors these clients and is able to provide it with the relevant client data upon request.

5. In addition to the customer due diligence measures referred to in Article 3 :

a. does an institution have appropriate risk management systems, including risk-based procedures, to determine whether the client or the ultimate beneficial owner is a politically exposed person;

b. an institution shall apply the following measures when entering into or continuing a business relationship with or carrying out a transaction for a politically exposed person:

1°. to enter into or continue this business relationship or to carry out this transaction, the consent of a person who is part of the senior management is required;

2°. appropriate measures are taken to establish the source of the wealth and resources involved in this business relationship or transaction;

3°. the business relationship is subject to continuous enhanced monitoring.

6. In addition to the customer due diligence measures referred to in Article 3 :

a. an institution shall take reasonable steps, at the latest upon payment of the policy or upon full or partial transfer of the policy, to determine whether the beneficiary or the ultimate beneficial owner of the beneficiary of a life insurance policy is a politically exposed person;

b. an institution shall apply the following measures if the person referred to in subparagraph (a) is a politically exposed person:

1°. a person who is part of the senior management is informed of the payment of the policy proceeds to the persons referred to in subparagraph (a) prior to such payment;

2°. the entire business relationship with the policyholder is subject to enhanced control.

7. If the client or the ultimate beneficial owner no longer holds a prominent public function, the institution shall apply appropriate risk-based measures for as long as necessary, but at least for 12 months, until that person no longer poses the higher risk associated with politically exposed persons.

8. The measures referred to in the fifth to seventh paragraphs shall apply mutatis mutandis to family members of politically exposed persons and persons known to be close associates of politically exposed persons.

9. If the client or the ultimate beneficial owner becomes or appears to be a politically exposed person during the business relationship, the institution shall comply with the fifth paragraph, the sixth paragraph, part b, and the seventh and eighth paragraphs without delay after this has become apparent.

10. Where a client is a branch or majority-owned subsidiary with its registered office or establishment in a State as referred to in the first paragraph of an institution established in a Member State, and the branch or majority-owned subsidiary in question fully complies with the group policies and procedures in accordance with the second paragraph of Article 2f , client due diligence may be carried out instead of enhanced client due diligence that is tailored to the money laundering or terrorist financing risks associated with that client.

11. An institution shall take reasonable steps to ensure that the data collected pursuant to the third to sixth, eighth and tenth paragraphs are kept up to date.

Article 9

1. Without prejudice to the first paragraph of Article 8 , an institution shall carry out the following enhanced investigative measures in relation to transactions, business relationships and correspondent banking relationships related to States designated in delegated acts of the European Commission pursuant to Article 9 of the Fourth Anti-Money Laundering Directive as States posing a higher risk of money laundering or terrorist financing:

a. collecting additional information about those clients and ultimate stakeholders;

b. collecting additional information regarding the purpose and nature of that business relationship;

c. collecting information on the origin of the funds used in that business relationship or transaction and the source of wealth of those clients and of those ultimate beneficial owners;

d. collecting information about the background and motivations for the intended or completed transactions of those clients;

e. obtaining approval from senior management to enter into or continue such business relationship;

f. carrying out enhanced controls on that business relationship with and the transactions of those clients, by increasing the number of checks and the frequency of updates to data on those clients and those ultimate beneficial owners and by selecting transaction patterns that require further investigation.

2. In addition to the first paragraph, a ministerial regulation may determine that an institution also applies one or more of the following additional risk-limiting measures with regard to clients who carry out transactions related to states as referred to in the first paragraph:

a. applying additional elements of enhanced customer due diligence;

b. introducing enhanced reporting mechanisms or systematic reporting of financial transactions;

c. limiting those transactions, business relationships or correspondent banking relationships;

d. not carrying out those transactions and terminating those business relationships and correspondent banking relationships;

e. other measures to be designated by general administrative measure.

Article 9a

Our Minister of Finance and Our Minister of Justice and Security jointly establish a list of functions that qualify as prominent public functions in the Netherlands. This list is kept up to date.

Article 10a

1. By way of derogation from Article 1, paragraph 1 , in this paragraph, ultimate beneficial owner means: the natural person who is the ultimate owner of or has control over a company or other legal entity or over a trust or similar legal arrangement as referred to in Article 2, paragraph 3 , and Article 3 of the Implementation Act on the Registration of Ultimate Beneficial Owners of Trusts and Similar Legal Arrangements. […].

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The integrity monitoring carried out by DNB focuses on the extent to which financial corporations meet the statutory obligations that are required of them, such as the customer due diligence provision, and thus focus on controlling the risk of financial and economic crimes. This monitoring is risk-based. In doing so, DNB takes a cross-sectoral approach where possible and carries out thematic investigations. During a thematic investigation, DNB will zoom in on a specific subject and financial companies from various sectors will be the subject of investigation. This procedure allows DNB to take a wide view and make comparisons across various sectors.

If DNB’s investigation should show that the financial company has taken insufficient measures to prevent financial and economic crime from taking place, DNB has the power to impose an enforcement measure in order to ensure that the situation is remedied, such as an instruction or an incremental penalty or a punitive measure such as an administrative fine. The following factors are crucial in the consideration of appropriate measures: the severity and duration of an infringement, the culpability, the extent to which the offence damages the confidence in the financial sector and the question whether it is a repeat offence. If DNB believes that the severity and nature of the facts warrant a criminal sanction, the matter may be reported to the Public Prosecution Service.

An investigation will often involve conducting a series of interviews with policymakers and other relevant officials (such as compliance officers, account managers or employees at the internal audit

service), analysing documents and customer dossiers, and testing the operation of control measures. In the event that shortcomings have been identified in the compliance with obligations, DNB will consider formal measures and the company will be obliged to resolve these shortcomings as soon as possible. As a result of a thematic investigation, DNB may also decide to provide financial companies with guidance on complying with a specific standard in the form of a guidance document. Unlike the communication aimed at a specific company, this document will be publicly available.

(b) Observations on the implementation of the article

Chapter II of the Money-Laundering and Terrorist Financing (Prevention) Act prescribes specific customer due diligence requirements, including verification of customer identities. Reporting entities must conduct enhanced customer due diligence if the business relationship or transaction entails a greater than average risk or if there is an increased geographical risk (art. 8 (1)). Enhanced due diligence measures must also be taken in respect of politically exposed persons (art. 8 (5) to (9)), including both foreign and domestic politically exposed persons. Such measures are also applicable to family members and close associates of politically exposed persons. The Minister of Finance and the Minister of Justice and Security are required to establish a list of positions that qualify as prominent public positions, including domestic politically exposed persons and foreign politically exposed persons based in the Netherlands (art. 9a). Measures on the identification of beneficial owners are provided under chapter 2 of the Money-Laundering and Terrorist Financing (Prevention) Act (arts. 3, 3a, 4, 8 and 9 and sect. 2.4a), and the beneficial ownership registers for legal entities and for trusts and similar legal arrangements have been established accordingly. All beneficial owners must be identified by obliged entities.

Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The DNB Guidelines also focus on when stricter customer due diligence must take place and what measures may be included in such stricter screening. During supervisory investigations, this matter will also be reviewed and the DNB regulators will assess whether the institution has to take adequate measures in the context of customer due diligence as well as whether there has been compliance with other statutory obligations.

DNB published the most recent version of the Guidance on the Prevention of Money Laundering and Terrorist Financing Act (Wet ter voorkoming van witwassen en financiering van - Wwft) and the Sanctions Act (Sanctiewet - Sw) in December 2019 (the initial Guidance document on the Anti-

Money Laundering and Anti-Terrorist Financing Act and the Sanctions Act was published 2011).The Guidance document discusses subjects such as the risk-based approach of integrity regulations, customer due diligence, transaction monitoring, reporting of unusual transactions, training, education and awareness, and the regulatory framework for sanctions, but also the subject of enhanced due diligence.

In section 4.9 (pages 40 to 48) DNB provides guidance to the institutions under its supervision with regard to enhanced due diligence. This concerns the situations in which enhance due diligence should be carried out, but also which conditions this should meet.

The AML/CFT supervisors have issued more specific guidance:

- Guidance DNB: https://www.toezicht.dnb.nl/binaries/50-212353.pdf
- Guidance AFM: https://www.afm.nl/nl-nl/nieuws/2018/juli/leidraad-herziene-wwft
- Guidance BFT - notaries https://www.bureauft.nl/wp- content/uploads/2018/10/Specific-Guidance-compliance-Wwft-for-notaries-version-24- october-def-.pdf
- Guidance BFT - Accountants, tax advisors, administration offices https://www.bureauft.nl/wp-content/uploads/2018/10/Specifieke-leidraad-naleving-Wwft- for accountants and tax advisors.-version-24October.pdf
- Leidraad BFT – bijlage I: https://www.bureauft.nl/wp- content/uploads/2018/10/voorbeelden-WWFT-bij-subjectieve-indicator-defconcept-24- oktober-def.pdf
- Guidance BFT - https://www.bureauft.nl/wp- content/uploads/2018/10/20180918-10-stappenplan-2018-finaal-def-september.pdf
- Guidance Netherlands Bar Association https://www.advocatenorde.nl/handleiding- wwft-voor-advocaten
- Guidance BTWWFT - buyers and sellers of goods https://download.belastingdienst.nl/belastingdienst/docs/leidraad_wwtf_richtlijnen_verkopers_goods_tz0131z3fd_en.pdf
- Guidance BTWWFT - intermediaries in the purchase and sale of goods: https://download.belastingdienst.nl/belastingdienst/docs/leidraaad_wwft_richtlijnen_bemiddelaars_aan_verkoop_goederen_TZ0141z2fd.pdf
- Guidance VATWFT - domiciles https://download.belastingdienst.nl/belastingdienst/docs/leidr_wt_voork_ww_domreg_tz0081z4fd.pdf
- Guidance BTWWFT - estate agents and valuers https://download.belastingdienst.nl/belastingdienst/docs/leidraad_wwft_richtl_handelaren_tz0041z6fd.pdf
- Guidance BTWWFT - pawnshops https://download.belastingdienst.nl/belastingdienst/docs/leidr_wt_voork_ww_richtl_pandhuizen_tz0121z3fd.pdf
- Guidance KSA https://kansspelautoriteit.nl/nieuws/nieuwsberichten/2019/juli/ksa- published/

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

The Ministry of Finance and the Ministry of Justice and Security have issued general guidance on the Money-Laundering and Terrorist Financing (Prevention) Act. In addition, the supervisory authorities have issued various guidelines and advisories tailored to specific sectors, such as the De Nederlandsche Bank N.V. Guidance on the Money-Laundering and Terrorist Financing (Prevention) Act, to assist reporting entities under their supervision in carrying out their obligations under the Act, including in the area of enhanced customer due diligence.

Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

In relation to the Paradise Papers, for example, DNB notified financial institutions and requested that they determine whether any of the parties involved in those papers were on the books as well as to notify DNB in such case. This situation happens more often when DNB comes into information that is relevant to the institutions. Please also see:

- https://www.dnb.nl/nieuws/dnb-nieuwsbrieven/nieuwsbrief-banken/NieuwsbriefBankennovember2017/dnb366425.jsp

- https://www.dnb.nl/nieuws/dnb-nieuwsbrieven/nieuwsbrief-banken/NieuwsbriefBankennovember2017/dnb366425.jsp

- https://www.dnb.nl/nieuws/dnb-nieuwsbrieven/nieuwsbrief-trustkantoren/NieuwsbriefTrustkantorenaugustus2018/dnb378421.jsp

In addition, work is ongoing within the FEC to create a Serious Crime Task Force. Within this task force, the banks would collaborate with investigation authorities and the Public Prosecution Service to share specific information in respect of subjects that could be associated with serious crime, also including corruption.

FIU-NL is able, on the basis of a foreign request from another FIU or on the basis of their own investigation, ask additional questions to reporting institutions on the basis of Article 17 Wwft.

There is no option to pass on names of (legal) persons to banks for enhanced customer due diligence.

FIU-NL is able, on the basis of a foreign request from another FIU or on the basis of their own investigation, ask additional questions to reporting institutions on the basis of Article 17 Wwft.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

The Ministry of Finance and the Ministry of Justice and Security have issued general guidance on the Money-Laundering and Terrorist Financing (Prevention) Act. In addition, the supervisory authorities have issued various guidelines and advisories tailored to specific sectors, such as the De Nederlandsche Bank N.V. Guidance on the Money-Laundering and Terrorist Financing (Prevention) Act, to assist reporting entities under their supervision in carrying out their obligations under the Act, including in the area of enhanced customer due diligence.

Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The records and data are subject to a statutory retention period of five years following the date of termination of the business relationship or five years after the execution of the relevant transaction. These records include customer information, their risk profile, the nature of the services and the transaction history, including UBO information.

The Money-Laundering and Terrorist Financing (Prevention) Act

Article 33

[…]

3. An institution shall store the data referred to in the first and second paragraphs in an accessible manner for five years after the date of termination of the business relationship or for five years after the relevant transaction has been carried out.

[…].

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

Institutions must maintain records for at least five years after the date of termination of the business relationship or up to five years after completion of the relevant transaction (art. 33 of the Money-Laundering and Terrorist Financing (Prevention) Act).

Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Financial institutions must hold a permit to operate in European Member States. DNB regulates when parties without a permit operate in the Netherlands.

It has a public register that lists the banks which have a registered office in the Netherlands or a permit in another Member State and those that are notified to carry out services in the Netherlands. Dutch banks that carry out cross-border services are also included in the public register.

The Wwft Guidelines highlight the risks of correspondent banking relationships. Institutions must investigate any bank with which it enters into a relationship.

The Financial Supervision Act

Article 2:11

1. It is prohibited for any person with a registered office in the Netherlands to operate a banking business without a permit granted for that purpose by the European Central Bank.

2. The first paragraph does not apply to persons to whom the Part Prudential Supervision of Financial Undertakings does not apply pursuant to Article 3:2.

The Money-Laundering and Terrorist Financing (Prevention) Act

Article 5

[…]

5. A bank or other financial undertaking is prohibited from entering into or continuing a correspondent relationship with a shell bank or with a bank or other financial undertaking known to allow a shell bank to use its accounts.

A shell bank is a bank or other financial undertaking established in a State where it has no physical presence and which is not part of a supervised group. Entering into a correspondent relationship with a shell bank is prohibited. It is prohibited to establish or continue correspondent relationships with a shell bank or with a bank or other financial enterprise known to allow a shell bank to use its accounts. Due to the nature of their organisation, Shell banks involve risks: they offer services in a country without having a physical presence there, i.e. no board and management in that country. The activities of such institutions are therefore difficult for supervisors to monitor.

Article 5 paragraph 5 of the Wwft states: A bank or other financial undertaking shall not be permitted to enter into or continue a correspondent relationship with a shell bank or with a bank or other financial undertaking which is known to allow a shell bank to use its accounts.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

The Financial Supervision Act prohibits all persons with a registered office in the Netherlands from providing banking services without a licence granted by the European Central Bank (art. 2:11). In addition, it is prohibited for banks and other financial undertakings to enter into or continue a correspondent relationship with a shell bank or with a bank or other financial undertaking that is known to allow a shell bank to use its accounts (art. 5 (5) of the Money-Laundering and Terrorist Financing (Prevention) Act).

Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

For the existing measures and standards concerning financial disclosure for appropriate public officials see: article 8.

The Civil Servants Act 2017

Article 5

1. […]

d. the designation of civil servants who perform activities that involve a particular risk of financial conflict of interest or the risk of improper use of price-sensitive information, the designation of the financial interests that they may not possess or acquire and the registration of the notifications made by them as referred to in Article 8, paragraph 2, sub b ; […].

Article 8

1. The official is not allowed to:

a. to perform secondary activities that would not reasonably ensure the proper performance of the duties or the proper functioning of the public service, insofar as this is related to the performance of his duties;

b. to participate directly or indirectly in contracts and deliveries for public services, unless the government employer with whom he has an employment contract has given permission to do so;

c. to have financial interests, to own securities or to conduct securities transactions as a result of which the proper performance of his duties or the proper functioning of the public service, insofar as this is related to the performance of his duties, would not reasonably be assured;

d. to possess or acquire financial interests which have been designated by the government employer with whom he has an employment contract pursuant to Article 5, paragraph 1, section d ;

e. to accept or solicit gifts, compensation, rewards and promises from a third party without the permission of the government employer, if the civil servant has relations with this third party as a civil servant.

2. The civil servant is obliged to the government employer with whom he has an employment contract:

a. to report any secondary activities that he performs or intends to perform, which may affect the interests of the service insofar as they are related to the performance of his duties;

b. if he has been designated within the meaning of Article 5, paragraph 1, subparagraph d , to report his financial interests as well as the ownership of and transactions in securities that may affect the interests of the public service insofar as these are related to the performance of his duties and to provide further information in this regard upon request.

3. Rules regarding the application of the first and second paragraphs may be established by general administrative measure.

Civil servants:
Pursuant to Article 8, paragraph 1, part A of the Civil Service Act 2017, civil servants are not permitted to perform ancillary activities as a result of which the proper performance of the position or the proper functioning of the public service, insofar as this is related to his performance, is not reasonably would be insured;
Pursuant to paragraph 2, part A of this article, the civil servant is obliged to report to the government employer with which he has an employment contract of the ancillary activities that he performs or intends to perform, which affect the interests of the service insofar as these are related can touch with his job performance;

1. Cabinet members.
2. Council members municipal and provincial. Municipalities Act and the Provinces Act
3. Executive members municipal and provincial.

Government Code of Ethics Ad 4.1.3. The employer designates high-risk positions in the organization. These positions are subject to a legal obligation to disclose financial interests that could affect the interests of the service. However, the code of conduct calls on all officials to do this. A statutory registration requirement applies to reported financial interests. Financial interests that are for public service are prohibited by law.

Government Code of Ethics Ad 4.1.5. The code of conduct appeals to the responsibility of civil servants, there is no legal obligation. Free choice of employment is enshrined in the Constitution. If a follow-up job could lead to a conflict of interests with the government service being abandoned, the civil servant is urged to report and discuss this in a timely manner to mitigate as much as possible.

Article 5, paragraph 1, opening words and part d of the Civil Service Act 2017 (obligations of the employer with regard to the appointment of risk positions,
financial interests and registration obligation);

Article 8, first paragraph, opening words and parts c and d Civil Service Act 2017 (prohibition on certain financial interests);

Article 8, second paragraph, opening words and part b of the Civil Service Act 2017 (reporting and information obligation designated civil servant regarding
financial interests).

The declaration process is as follows:
1. The government employer designates high-risk positions within its organization (article 5 (1) (d) of the Civil Servants Act 2017).
2. Civil servants in the designated positions have a statutory duty to report and provide information for financial interests that may affect the service; the Code of Conduct broadens this and calls on all officials to report. The government employer is obliged to register and internally registers these reports.
3. Some (especially financially oriented) organizations have a compliance officer who is notified, but this is not a legal general obligation. The employer is in principle free how to further organize this. The organizations have their own procedures for this. The employer / compliance officer assesses the reports for risks of a conflict of interest and harmfulness to the service. This is done on the basis of the information provided; if necessary, further information is requested (based on the aforementioned reporting and information obligation).
4. Financial interests that are harmful to the service are prohibited (legal prohibition).
5. There is no further central control of authorization monitoring
There are no specific sanctions for non-declaring or incomplete declaring. It is dereliction of duty. Employment law consequences can be attached to this.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None

(b) Observations on the implementation of the article

"High-risk" public officials, as designated by the Civil Servants Act, must declare financial interests (art. 5 (1) (d) and art. 8 of the Act), which do not include all types of assets. Each government entity must internally register the declarations. However, there is no centralized monitoring, verification or appropriate sanctioning for non-compliance, or an authority to verify that government entities enforce this obligation.

The reviewing experts therefore recommended that the Netherlands strengthen systems to prevent conflicts of interest and endeavour to extend the obligation to report interests to include assets, and include the interests and assets of close family members; consider establishing a monitoring, verification and sanctions mechanism to ensure compliance with reporting obligations; and consider permitting its competent authorities to share such information with foreign competent authorities (art. 7, para. 4, art. 8, para. 5, and art. 52, para. 5).

Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

For the existing measures and standards to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities, see also: NJ*um article 8.

The Civil Servants Act 2017

Article 5

1. […]

d. the designation of civil servants who perform activities that involve a particular risk of financial conflict of interest or the risk of improper use of price-sensitive information, the designation of the financial interests that they may not possess or acquire and the registration of the notifications made by them as referred to in Article 8, paragraph 2, sub b ; […].

Article 8

1. The official is not allowed to:

a. to perform secondary activities that would not reasonably ensure the proper performance of the duties or the proper functioning of the public service, insofar as this is related to the performance of his duties;

b. to participate directly or indirectly in contracts and deliveries for public services, unless the government employer with whom he has an employment contract has given permission to do so;

c. to have financial interests, to own securities or to conduct securities transactions as a result of which the proper performance of his duties or the proper functioning of the public service, insofar as this is related to the performance of his duties, would not reasonably be assured;

d. to possess or acquire financial interests which have been designated by the government employer with whom he has an employment contract pursuant to Article 5, paragraph 1, section d ;

e. to accept or solicit gifts, compensation, rewards and promises from a third party without the permission of the government employer, if the civil servant has relations with this third party as a civil servant.

2. The civil servant is obliged to the government employer with whom he has an employment contract:

a. to report any secondary activities that he performs or intends to perform, which may affect the interests of the service insofar as they are related to the performance of his duties;

b. if he has been designated within the meaning of Article 5, paragraph 1, subparagraph d , to report his financial interests as well as the ownership of and transactions in securities that may affect the interests of the public service insofar as these are related to the performance of his duties and to provide further information in this regard upon request.

3. Rules regarding the application of the first and second paragraphs may be established by general administrative measure.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

"High-risk" public officials, as designated by the Civil Servants Act, must declare financial interests (art. 5 (1) (d) and art. 8 of the Act), which do not include all types of assets. Each government entity must internally register the declarations. The legislation contains no provisions on the reporting of accounts that public officials have an interest in or signature or other authority over in foreign jurisdictions.

The reviewing experts therefore recommended that the Netherlands consider requiring appropriate public officials to report foreign accounts in a foreign country that they have an interest in or signature or other authority over and to maintain relevant records (art. 52, para. 6).

(c) Successes and good practices

The reviewing experts highlighted the establishment of two beneficial ownership registers as a good practice (art. 12, para. 2 (c), and art. 52, para. 1).

Article 53. Measures for direct recovery of property

Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

First of all, it is vital to discuss how the term 'victim' is defined by the Dutch Code of Criminal Procedure (Wetboek van Strafvordering). Article 51a of the Code of Criminal Procedure gives the following definition of the term victim:

'a person who has suffered an economic loss or other harm which was directly caused by a criminal offence. The definition of victim shall extend to legal entities that have suffered an economic loss or other harm directly caused by a criminal offence'.

In other words, a victim can also be a legal entity. As a result, a State can act as an injured party in criminal proceedings as a public body or a legal entity governed by public law. A public body may also be an entitled party and in this capacity claim seized items or confiscated unlawfully obtained assets or advantages both during and as a result of criminal proceedings.

Article 94 of the Code of Criminal Procedure lists the cases in which items may be seized. Pursuant to this section, objects can only be seized:

1. to reveal the truth;

2. to demonstrate unlawfully obtained gains;

3. for the purposes of confiscation; or

4. for their withdrawal from circulation.

In addition, Section 116 of the Code of Criminal Procedure defines what the rights and procedures of an entitled/injured party are in order to recover the seized objects during the investigation phase.

Additionally under civil law legal entities may also submit claims.

Investigation phase

Article 116

1. The acting public prosecutor or the public prosecutor who has been informed of the notice of seizure under Article 94(3) shall decide on the continuation of the seizure in the interest of the criminal procedure. If such an interest does not exist or is no longer present, this party shall terminate the seizure and shall return the object without delay to the party from whom the object was seized. If advisable, the acting public prosecutor shall consult with the public prosecutor before taking such a decision.

2. If the person from whom the object was seized declares in writing to waive their rights to the object before the examining magistrate, the public prosecutor or an investigating officer, the acting public prosecutor or the Public Prosecution Service may:

a. return the object to the party that can reasonably be regarded as the entitled party;

b. order that the object will remain in custody for the benefit of the entitled party, if return of the object to the party that can reasonably be regarded as the entitled party is not yet possible;

c. order that the object should be treated as though it had been confiscated or withdrawn from circulation, if the person from whom the object has been seized claims ownership.

3. If a declaration as referred to in Paragraph 2 is not made, the Public Prosecution Service may nevertheless take the decision referred to in (a) or (b) if the person from whom the object has been seized has not filed a complaint against such decision within fourteen days after the Public Prosecution Service has given notice of its intention to take such decision or the complaint filed by them has been declared ill-founded. Part IX of Book Four shall apply mutatis mutandis to the complaint.

4. If a declaration as referred to in Paragraph 2 is not made and the Public Prosecution Service intends to return the object to the person who may be regarded as the person entitled thereto, it shall be authorised to place it immediately in the custody of this person pending the possibility of return, if the person from whom the object was seized evidently removed or withheld it from the person entitled thereto by means of a criminal offence. In this case, the person to whom the object has been released shall be entitled to use it.

5. If the Public Prosecution Service has ordered that the object should be taken into custody in accordance with Paragraph 2 or 4 or the court in accordance with Article 353(2), the Public Prosecution Service shall return it to him after the person entitled to the object has been established.

6. The decisions referred to in this section shall be without prejudice to any person's right in respect of the object.

In addition, Article 353 of the Code of Criminal Procedure provides for the possibilities of returning objects during the prosecution phase.

Prosecution phase

Article 353

1. In the case of the application of Article 9a of the Criminal Code, imposition of a punishment or measure, acquittal or dismissal of the charges, the court shall give a decision on seized objects whose return has not been ordered, subject to the application of Section 94. This decision shall be without prejudice to any person's right in respect of the object.

2. Without prejudice to Article 351, the court shall order:

a. the return of the object to the person from whom it was seized;

b. the return of the object to the person who may be reasonably regarded as the person entitled thereto; or

c. if there is no person who may be reasonably regarded as the person entitled thereto, the custody of the object for the benefit of the person entitled thereto.

3. Article 119 shall apply mutatis mutandis to an order as referred to in Paragraph 2.

4. The court may order the return of seized objects against the provision of security. Article 118a shall apply mutatis mutandis.

Article 574 of the Code of Criminal Procedure provides for the possibilities of returning seized objects to the victim during the enforcement phase.

Enforcement phase

Article 574 (predating January 2020)

1. Recovery shall be made against objects seized under Article 94a in the manner provided for in the Code of Civil Procedure pursuant to the irrevocable judgment or appeal judgment or the irrevocable sentencing order in which the fine, the obligation to pay a monetary amount to the State for the purpose of the confiscation of unlawfully obtained gains as referred to in Article 36e of the Criminal Code and the obligation to pay the State a monetary sum for the benefit of the victim as referred to in Article 36f of the Criminal Code have been imposed.

2. This judgment or appeal judgment or this punishment order shall be deemed to be the title as referred to in Article 704(1) of the Code of Civil Procedure. Service of this title on the convicted offender and, if garnishment has been levied against a third party, on this third party as well may be made by service of notice containing the punishment imposed in the judgment or appeal judgment or the punishment order insofar as is relevant for the recovery to be made.

3. The provisions of the Code of Civil Procedure shall apply in respect of third parties who believe that they are entitled in whole or in part to the seized objects.

Under Article 577b of the Code of Criminal Procedure, the convicted person may also submit an application to the court for the reduction or waiver of the amount of the confiscation measure in addition to the Public Prosecution Service.

Article 577b (predating January 2020)

1. If the measure referred to in Article 36e of the Criminal Code is imposed, Article 561(2) and (3), Article 572(1)–(2) and (4), Article 573(1) and (2), and Articles 574 to 576 inclusive shall apply mutatis mutandis.

2. On the request of the Public Prosecution Service charged with enforcement, or upon a written and reasoned application of the convicted offender or of an injured third party, the court which imposed the measure referred to in Paragraph 1 may reduce or remit the sum set therein. If the sum has already been paid or recovered, the court may order it to be given back or paid out in whole or in part to a third party which it has designated. The order shall be without prejudice to the right of any person to the recovered or paid-out sum.

[…]

The Civil Code Book 5

Article 2

The owner of a thing is entitled to reclaim it from any person who holds it without right.

The Civil Code Book 6

Article 103

Compensation is paid in money. However, the court may, at the request of the injured party, award compensation in a form other than payment of a sum of money. If such a ruling is not complied with within a reasonable period, the injured party regains his right to claim compensation in money.

Article 162

1. He who commits an unlawful act against another for which he can be held liable is obliged to compensate the other for the damage suffered as a result.

2. An unlawful act is defined as an infringement of a right and an act or omission that is contrary to a legal obligation or to what is appropriate in social intercourse according to unwritten law, unless there is a ground for justification.

3. An unlawful act may be attributed to the perpetrator if it is due to his fault or to a cause for which he is responsible under the law or generally accepted views.

Article 212

1. He who has been unjustly enriched at the expense of another is obliged, insofar as this is reasonable, to compensate the latter for his loss up to the amount of his enrichment.

2. To the extent that the enrichment is reduced as a result of a circumstance that cannot be attributed to the enriched person, it will not be taken into account.

3. If the enrichment has been reduced in the period in which the enriched person could not reasonably have expected to have an obligation to compensate for the damage, this will not be attributed to him. In determining this reduction, expenses that would not have been incurred without the enrichment will also be taken into account.

Foreign states have full capacity to serve as a party in civil action both as plaintiff and as defendant (in the latter case subject to constraints as a result of sovereign immunity and jurisdiction of the Netherlands courts), see e.g. Supreme Court 18 December 2020, ECLI:NL:HR:2020:2103 (Republic of Kazakhstan as plaintiff in cassation, defendant in first instance); Supreme Court 4 December 2020, ECLI:NL:HR:2020:1952 (Russian Federation as plaintiff); District Court of Amsterdam 14 December 2016, ECLI:NL:RBAMS:2016:8264 (Republic of Ukraine as intervening claimant); and Court of Appeal of The Hague 18 June 2013, ECLI:NL:GHDHA:2013:1940 (Republic of Ecuador as plaintiff).

The legal standing of foreign states is recognized by consistent legal doctrine, see in particular Asser Procesrecht/Van Schaick 2 2016/30: “(…) national and foreign (…) existing (…) public legal entities (…) are authorized to act as parties in civil proceedings.”

Legal personality is required to act as a party in civil action, as has been held by the Netherlands Supreme Court in its judgement of 25 November 1983, ECLI:NL:HR:1983:AG4696, para 3.4: “in principle, only natural persons and legal persons are entitled to be parties to civil proceedings.”

Whether a foreign state has legal personality, is determined by the national law of the foreign state under the applicable rules of private international law:

The Civil Code Book 10
Article 117
a.In the present title 'cooperation' means a corporation, association, cooperative, mutual insurance society, foundation and any other body or way of collaboration that towards the outside acts as an independent entity or organisation.

Article 118
A cooperation which, due to a contract of incorporation or the deed of incorporation, has its seat, or in the absence thereof, its centre of its outward activities at the moment of its formation, within the territory of the State under the law of which it is formed, shall be governed by the law of that State.

Article 119
The law that is applicable to a cooperation governs, besides its formation, in particular also the following subject-matters:
a. the possession of legal personality or of the competence to bear rights and obligations, to perform juridical acts and to act in court.

The Netherlands does not have case examples. The case examples below do not concern claims of ownership of property acquired through the commission of corruption offences. But they do show that foreign states can take part as a party in civil action lawsuit in the Netherlands, also as plaintiff:

Examples of cases that illustrate that Foreign States (and for example their central banks) can take part in civil and criminal procedures in the Netherlands:

- https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBOVE:2017:1630: Equatoriaal Guinea interested party concerning criminal seizure (on a multi-million luxury yacht called Ebony Shine);
- https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2018:1791 : republic of Kazachtstan and National bank of Kazachstan claim the lifting of seizure through (civil) summary proceedings ;
- https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBNHO:2019:10644: in this case a Dutch Court ordered the lifting of the seizure on € 19,499,000 and the return of this amount to the central bank of Surinam, being (according to the court) the interested party and entitled party. The Court decided that the seizure that was imposed on cash money in The Kingdom of- the Netherlands was in fact imposed “onder een andere staat, namelijk Suriname.” In this case an appeal was made on United Nations Convention on Jurisdictional Immunities of States and Their Property (not ratified by the Netherlands). Although the PPS does not agree with the outcome of this specific case, it is an example of how a State can claim it’s belongings in the Netherlands when assets that belong to the Foreign state are seized in a Dutch criminal investigation.
- Please also refer to the caselaw mentioned before: Supreme Court 18 December 2020, ECLI:NL:HR:2020:2103 (Republic of Kazakhstan as plaintiff in cassation, defendant in first instance); Supreme Court 4 December 2020, ECLI:NL:HR:2020:1952 (Russian Federation as plaintiff); District Court of Amsterdam 14 December 2016, ECLI:NL:RBAMS:2016:8264 (Republic of Ukraine as intervening claimant); and Court of Appeal of The Hague 18 June 2013, ECLI:NL:GHDHA:2013:1940 (Republic of Ecuador as plaintiff).

A claim to ownership of property or the title to property can be based on Article 2 of Book 5 of the Dutch Civil Code:

“The owner of a property is entitled to (re)claim it from everyone who keeps it without a right or title.”

The Minister of Foreign Affairs specifically refers to this clause in its letter to the Chairpersons of the Senate and the House of Representatives of 4 September 2006, Kamerstukken I en II 2005/06, 30 808 (R 1815) nr. 1/A, on the implementation of the UN Convention against Corruption.

In addition, transfer of ownership of a property might be awarded as a means of damages in kind if a party is liable to pay damages on the basis of tort or unjustified enrichment, as has been held by the Dutch Supreme Court in its judgement of 24 February 2017, ECLI:NL:HR:2017:309, para 3.7.3:
"In such a case, it is likely that the court will, on the basis of Article 6:103 of the Civil Code, order the [defendant], by way of compensation, to transfer ownership of the unlawfully taken property to the injured party, if the [plaintiff] so demands and the [defendant] is still the owner."

Besides the claim of ownership of the property through 'revindication' (Article 2 of Book 5 of the Dutch Civil Code), a foreign state could claim could claim compensation of damages through a claim for 'unlawful enrichment' (article 212 of Book 6 of the Dutch Civil Code) or an unlawful act (article 162 of Book 6 of the Dutch Civil Code).

See beneath the relevant articles (in Dutch) (English version is provided above):

The Civil Code Book 5
Article 2"De eigenaar van een zaak is bevoegd haar van een ieder die haar zonder recht houdt, op te eisen."

The Civil Code Book 6
Article 2121. Hij die ongerechtvaardigd is verrijkt ten koste van een ander, is verplicht, voor zover dit redelijk is, diens schade te vergoeden tot het bedrag van zijn verrijking.
2. Voor zover de verrijking is verminderd als gevolg van een omstandigheid die niet aan de verrijkte kan worden toegerekend, blijft zij buiten beschouwing.
3. Is de verrijking verminderd in de periode waarin de verrijkte redelijkerwijze met een verplichting tot vergoeding van de schade geen rekening behoefde te houden, dan wordt hem dit niet toegerekend. Bij de vaststelling van deze vermindering wordt mede rekening gehouden met uitgaven die zonder de verrijking zouden zijn uitgebleven.
Article 162
1. Hij die jegens een ander een onrechtmatige daad pleegt, welke hem kan worden toegerekend, is verplicht de schade die de ander dientengevolge lijdt, te vergoeden.
2. Als onrechtmatige daad worden aangemerkt een inbreuk op een recht en een doen of nalaten in strijd met een wettelijke plicht of met hetgeen volgens ongeschreven recht in het maatschappelijk verkeer betaamt, een en ander behoudens de aanwezigheid van een rechtvaardigingsgrond.
3. Een onrechtmatige daad kan aan de dader worden toegerekend, indien zij te wijten is aan zijn schuld of aan een oorzaak welke krachtens de wet of de in het verkeer geldende opvattingen voor zijn rekening komt.

If a foreign state has a claim on the assets, the easiest way is to transfer the assets to the requesting state after confiscation. This will be done between the central authorities mentioned in the treaty or EU regulation. For the Netherlands asset share agreements will be closed by the Minister of Justice and Security (as central authority).

If there are victims involved the Netherlands can 'share' the assets 100 % to 0%. In practice, there is an international, well-respected principle that the compensation of victims prevails before confiscation. In many cases the Netherlands has transferred 100% of the assets after confiscation (and e.g. in this case the sale of the immovable property) to the requesting member state in order to compensate victims. The Netherlands has also asked for 100% to foreign countries of the assets after confiscation. This has never been refused.

In some treaties the restitution of confiscated assets is regulated. In the new EU Confiscation regulation the restitution is regulated. If a member state transfers a confiscation order to another member state it can order the restitution. This can even be done after the seizure of assets (and before confiscation) if the national law in the requesting state provides for this possibility.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

Foreign States have legal standing in the country's courts. They can initiate action in civil proceedings to establish title to or ownership of property, for example through "revindication" or through a claim for unlawful enrichment or an unlawful act (arts. 5:2, 6:212 and 6:162 of the Civil Code). In addition, when the defendant is the "owner" of the disputed property, foreign States may obtain ownership of the property that has been unlawfully taken in lieu of compensation as an injured party in civil proceedings (art. 6:103 of the Civil Code).

Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law: ...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Articles 51a to 51h inclusive of the Code of Criminal Procedure include the possibility for parties to join criminal proceedings as an injured party. The Code of Criminal Procedure is vital in relation to the question of what claims for compensation the Dutch criminal court is able to consider. Under article 51f(1) of the Code of Criminal Procedure, the person who has suffered harm as a direct result of a criminal offence may join criminal proceedings as an injured party in respect of their claim for compensation. The person entitled to join criminal proceedings may join the proceedings by submitting a claim for compensation to the court.

Code of Criminal Procedure

Article 51a

1. In this title the following terms shall have the following meanings:

a. Victim:

1°. the person who has suffered financial loss or other disadvantage as a direct result of a criminal offence. The legal person who has suffered financial loss or other disadvantage as a direct result of a criminal offence is considered to be the victim;

2°. surviving relative: family members of a person whose death was directly caused by a criminal offence.

b. Family members: the spouse, registered partner or other life companion of the victim, blood relatives in the direct line, blood relatives in the collateral line up to and including the fourth degree and persons dependent on the victim;

c. Underage victim: any victim under the age of eighteen;

d. Restorative justice: enabling the victim and the suspect or convicted person, if they voluntarily consent, to actively participate in a process aimed at resolving the consequences of the crime, with the help of an impartial third party.

2. In the interest of proper procedural order, rules may be laid down by general administrative measure regarding:

a. limiting the number of family members who may claim the rights set out in this Title, taking into account each specific circumstance, and

b. determining which surviving relatives have priority in the exercise of the rights included in this title.

Article 51f

1. Any person who has suffered direct damage as a result of a criminal offence may join the criminal proceedings as an injured party in respect of his claim for compensation.

[…].

Criminal Code

Article 36f

1. A person who is sentenced by a court decision to a penalty for a criminal offence or who is given a measure by a court decision or in respect of whom a care order has been issued pursuant to Article 2.3, section 1°, 2° or 4° of the Forensic Care Act , or in respect of whom the court has taken into account a criminal offence in the sentencing, of which it has been stated in the summons that it has been acknowledged by the suspect and is being brought to the attention of the court or in respect of whom a penalty order has been issued, may be required to pay the State a sum of money for the benefit of the victim or the persons referred to in Article 51f, paragraph 2, of the Code of Criminal Procedure . The State shall immediately pay any amount received to the victim or the persons referred to in Article 51f, paragraph 2, of the Code of Criminal Procedure.

2. The measure may be imposed if and to the extent that the suspect is liable to the victim under civil law for the damage caused by the criminal offence.

3. The measure may be imposed together with penalties and other measures.

4. Article 24a applies accordingly.

5. When imposing the measure, the judge shall determine the duration according to which, pursuant to Article 6:4:20 of the Code of Criminal Procedure, detention may be applied. When determining the duration, no more than one day shall be counted for each full €25 of the amount imposed. The duration shall not exceed one year.

Art. 361 paragraph 3 of the Dutch Criminal Procedural Code states "If the District Court considers that the hearing of the claim of the injured party imposes a disproportionate burden on the criminal proceedings, the District Court may, on application of the defendant or the public prosecutor or ex officio, determine that the claim is inadmissible, in whole or in part, and that the injured party may only file his claim, or the part of the claim which is inadmissible, with the civil court."

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

Foreign States can also join criminal proceedings and claim compensation or damages as a victim that has suffered an economic loss or other harm directly caused by a criminal offence (arts. 51 (a)–(h) of the Code of Criminal Procedure; art. 36f Criminal Code).

Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law: ...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

As outlined previously under Article 53, a State may join criminal proceedings as an injured party as a public body or legal entity under public law.

According to the Dutch law there are several mechanisms to return property to a legitimate owner:

- After the seizure of (stolen) property, the public prosecutor can return the seized object to another person (e.g. a foreign state) that can reasonably be regarded as the legitimate owner (article 116, 2(a) Code of Criminal Procedure, see above). The rights of third persons that handled in good faith should be respected. Against this decision a complaint can be filed. The court will handle this complaint. In this case a conviction is not necessary;
- A foreign state can join criminal proceedings as an injured party (Articles 51a to 51h inclusive of the Code of Criminal Procedure, see above) or ask for victim compensation Article

36f of the Criminal code). For a successful claim there should be a conviction in the criminal procedure in the end.
- After (value based) confiscation, any interested party (such as a foreign state) can claim the confiscated assets (Article 6.6.26 Code of Criminal Procedure).
- After confiscation a harmed state can claim the confiscated assets on the basis of the UNCAC Treaty.

The Code of Criminal Procedure

Article 116

1. The assistant public prosecutor or the public prosecutor who has been notified of the notification of seizure pursuant to Article 94, paragraph 3, shall decide on the continuation of the seizure in the interest of the criminal proceedings. If this interest does not or no longer exist, he shall end the seizure and have the object returned without delay to the person from whom the object was seized. If necessary, the assistant public prosecutor shall consult with the public prosecutor before making the decision.

2. If the person from whom the object has been seized declares in writing to the examining magistrate, the public prosecutor or an investigating officer that he or she is relinquishing the object, the assistant public prosecutor or the public prosecutor may

a. have the object returned to the person who can reasonably be considered the rightful owner;

b. order that the object be kept in custody for the benefit of the rightful owner if return to the person who can reasonably be regarded as the rightful owner is not yet possible;

c. if the person from whom the object has been seized declares that it belongs to him, order that it be treated as if it had been declared forfeit or withdrawn from circulation.

3. If a statement as referred to in the second paragraph is not made, the Public Prosecution Service may still take the decision under a or b, if the person from whom the object has been seized has not complained about it within fourteen days after the Public Prosecution Service has notified him in writing of the intention to take such a decision, or the complaint lodged by him has been declared unfounded. Title IX of Book Four applies mutatis mutandis to the complaint.

4. If a statement as referred to in the second paragraph is not made and the Public Prosecution Service intends to return the object to the person who can reasonably be regarded as the rightful owner, it is authorised to immediately hand over the object to that person for safekeeping, pending the possibility of return, if the person from whom the object was seized has clearly withdrawn or held it from that rightful owner by means of a criminal offence. In that case, the person to whom the object was delivered is authorised to use the object.

5. If the Public Prosecution Service has ordered the custody of the object in accordance with the second or fourth paragraph or the court in accordance with the second paragraph of Article 353 , the Public Prosecution Service shall return the object to the rightful owner after it becomes known.

6. The decisions referred to in this Article shall not affect the rights of any person in respect of the subject matter.

Article 353

1. In the event of application of Article 9a of the Criminal Code , imposition of a penalty or measure, acquittal or dismissal from all prosecution, the court shall make a decision on the objects seized pursuant to Article 94 for which no order for return has yet been given. This decision shall not affect anyone's rights with respect to the object.

2. The Court orders, without prejudice to Article 351,

a. the return of the object to the person from whom it was seized;

b. the return of the object to the person who can reasonably be regarded as the rightful owner; or

c. if no person can be regarded as the rightful owner, the safekeeping of the object for the benefit of the rightful owner.

3. Article 119 applies mutatis mutandis to an order as referred to in the second paragraph .

4. The court may order the return of seized objects against security. Article 118a shall apply accordingly.

Article 361

[…]

3. If, in the opinion of the court, consideration of the claim of the injured party would impose a disproportionate burden on the criminal proceedings, the court may, at the request of the suspect or at the request of the public prosecutor or ex officio, determine that the claim is inadmissible in whole or in part and that the injured party may only bring its claim, or the part of the claim that is inadmissible, before the civil court.

[…].

Article 552b

1. Interested parties, other than the suspect or convicted person, may complain in writing about the confiscation of their belongings or about the removal of such objects from circulation. No complaint shall be open if the amount at which the confiscated objects were estimated in the judgment has been paid or collected, or if a substitute prison sentence has been imposed.

2. The complaint shall be filed with the registry of the court that took the decision at the highest instance within three months after the decision has become enforceable. The complaint may be transmitted electronically using an electronic facility designated by or pursuant to a general administrative measure.

3. The hearing of the complaint by the council chamber takes place in public.

4. If the court finds the complaint to be well-founded, it shall revoke the confiscation or removal from circulation and issue an order as referred to in Article 353, paragraph 2, sub a or b .

5. In the event of the revocation of a forfeiture, the court may declare the objects withdrawn from circulation if they are susceptible to this. Articles 33b, 33c and 35, paragraph 2, of the Criminal Code shall apply accordingly.

Art. 116(2)(a) of the Code of Criminal Procedure can be used to return seized property to the original owner in international cases as well. For the use of this article it is not relevant whether the original owner is from another state or is a foreign state. As long as the original owner can reasonably be regarded as the rightful owner and if the rights of third parties will be acknowledged. This article can be used in domestic procedures in which property is seized or in case the property is seized on the request of a foreign competent authority. In art. 13d (2) of the act on the Transfer of Sentences (WOTS) it is mentioned that Article 116 applies mutatis mutandis in case of seizure of property on the request of a foreign competent authority.

Article 13d (2) Act on the Transfer of Sentences (WOTS):

2. The articles 94b, 94c, 94d, 97-102, 103, 104-114, 116-117a, 118, 118b, 119, 552a, 552c - 552e and 6:1:5 of the Code of Criminal Procedure apply mutatis mutandis

In practice, this article is used in many occasions. For example, in cases of fraud (e.g.. in Corona-related fraud cases). If money is fraudulently transferred from a foreign account to an account in the Netherlands (e.g. on the name of a strawman). In such a case, after the seizure of the Dutch account, article 116 of the Code of Criminal Procedure can be used to transfer the money back to the original account.

Furthermore, judges/courts have the competence (on the basis of art. 353 of the Dutch Code of Criminal Procedure), even when there is an acquittal or dismissal of the charges, to take a decision on seized objects whose return has not been ordered, without prejudice to any person's right in regard of the object. Art. 353 of the Dutch Code of Criminal Procedure provides for, amongst others, the decision of the judge/court to return the object to the party who may be reasonably regarded as entitled. Or, if there is no one who may be reasonably regarded as entitled, the judge/court can decide the custody of the object for the benefit of the entitled party.

Art. 6:6:26 of the Dutch Code of Criminal Procedure:
1. On application of the Public Prosecution Service, or on written and reasoned application of the convicted offender or of an injured third party, the court, which imposed the obligation to pay a sum of money to the state to confiscate unlawfully obtained profits, may reduce or remit the determined sum of money. If the sum has already been paid or recovered, then the court may order that it be given back or paid out, in whole or in part, to a third party designated by it. The order shall be without prejudice to the right of any person to the sum given back or paid out.
2. If it appears that a higher amount has been set than the amount of the actual gains, the court shall give in chambers a decision ordering reduction or return which shall be at least equivalent to the difference.
3. The Public Prosecution Service and the suspect or the injured third party shall be heard, or at any rate shall be called to be heard for that purpose, unless – in the case of a second or subsequent application of the suspect or the injured third party – this application is manifestly ill-founded.
4. The application, referred to in first paragraph, may no longer be made after three years have expired since the date on which the sum, or the last part thereof, was paid or recovered.
5. The court may order, ex officio, non-enforcement of the measure, pending its decision. The order shall be promptly notified to the Minister of Justice and Security.

Furthermore, on the basis of art. 552b of the Dutch Code of Criminal Procedure, a interested parties, other than the suspect or convicted offender, may file a written complaint about the confiscation of objects belonging to them or about the withdrawal from circulation of such objects. A complaint may not be filed if the amount, at which the objects were estimated in the decision, has been paid or collected, or a default custodial sentence has been imposed. If the court finds the complaint well-founded, it shall revoke the confiscation or the withdrawal from circulation and shall issue an order as referred to in article 353(2)(a) or (b).

On the basis of art. 353 of the Dutch Code of Criminal Procedure, judges/courts have the competence to take a decision on seized objects whose return has not been ordered, without prejudice to any person's right in regard of the object. Art. 353 of the Dutch Criminal Procedural Code provides for, amongst others, the decision of the judge/court to return the

object to the party who may be reasonably regarded as entitled. Or, if there is no one who may be reasonably regarded as entitled, the judge/court can decide the custody of the object for the benefit of the entitled party.

On the basis of art. 552a of the Dutch Code of Criminal Procedure interested parties may file a written complaint about seizures. If the court finds the complaint or the application well-founded, then it shall issue an order in accordance therewith.

On the basis of art. 552ab of the Dutch Code of Criminal Procedure interested parties, persons other than the suspect, former suspect or convicted offender, may file a written complaint about an out-of-court settlement as referred to in article 511c on the grounds that said order or settlement pertains to objects which belong to the and the public prosecutor, who issued the instructions or entered into the out-of-court settlement, did not appear to be prepared to return those objects or to reimburse the value which said objects should have reasonably fetched when sold. If the Court finds the complaint well-founded, then it shall declare the cancellation of the conditions or the out-of-court settlement.

On the basis of art. 552ca of the Dutch Code of Criminal Procedure, the Public Prosecution Service that has grounds to believe that a seized object does not belong exclusively to the suspect, shall conduct the necessary inquiries in order to establish the party who could be regarded as entitled thereto, and when it wishes to apply the provisions of article 116(3), it shall notify the person from whom the object has been seized of his rights pursuant to article 552a.

In the Netherlands there are two schemes of confiscation:

A) Object confiscation: (art. 33 of the Dutch Criminal Code). The proceeds of crime or instrumentalities of crime can be seized and confiscated. This confiscation is a punishment that can be imposed in the criminal case. The public prosecutor can order the seizure of the proceeds or instrumentalities of crime without a court order.

B) Value based confiscation (art. 36e of the Dutch Criminal Code). This is a measure that can be imposed to restore an illegal situation. It serves to bring the convicted person back in the financial situation before he or she committed the offence. This confiscation procedure is a separate procedure that forms part of the criminal investigation and serves as a tool to order the person who has been convicted, by separate judicial decision, to pay a certain amount to the State (see the enclosed Article 36e of the Dutch Criminal Code). This measurement can only be imposed after conviction (therefore this procedure follows the criminal charge procedure). There is no possibility to impose such a confiscation order if the suspect has been acquitted from all charges. However, the measure can be imposed in connection with offences for which the person has not been prosecuted as well.

For example, if a person is convicted for two drugs transportations. A calculation can be made with regard to the profits that the convicted has gained with the two transportation. However if there is evidence on the basis of which can be concluded that the convicted arranged three other transportation (for which he has not been prosecuted) a possible profit that he has gained with these transportations can be calculated as well.

The Dutch Code of Criminal Procedure provides the possibility to levy a pre-judgement attachment. All assets of the suspect can be seized regardless whether these assets have been gained legally or illegally.

During the entire proceedings, this seizure provides for the possibility of preserving the right to recover (parts of) the person's assets in connection with a payment obligation still to be imposed for a fine in respect of that crime, see article 94a paragraph 1 of the Dutch Criminal Code of Procedure. Furthermore, all objects that may be ordered to be forfeited or withdrawn from circulation are subject to seizure, see article 94a paragraph 2 of the Dutch Criminal Code of Procedure.

Not only the suspect's assets/capital qualify for pre-judgement seizure, but also in certain circumstances such a seizure can be imposed on other persons' assets (article 94a, paragraph 4 of the Dutch Code of Criminal Procedure). This is also referred to as third persons' garnishment. In short, those circumstances imply that objects belonging to another person can be seized if there is sufficient evidence that the objects were wholly or partly attached to the other person with the obvious purpose of interfering or preventing the confiscation of those objects and that the other person knew this or could reasonably suspect this. It is even possible according to Dutch law to seize items of this third person as a replacement of the items that in fact belong to the suspect, but have been registered under the name of the third person and have been dissipated by this third person (article 94a, paragraph 4 and 5 of the Dutch Code of Criminal Procedure)

In the context of the abovementioned confiscation procedure, an authorization to levy a pre-judgement attachment under Article 103 in conjunction with Article 94a of the Dutch Code of Criminal Procedure from the Examining Judge is needed.

Another possibility is to open a Criminal Financial Investigation (CFI).

See further the remarks in the desk review with regard to article 51 of the Convention: "Overview of the Dutch criminal law on asset recovery."

A foreign state could join the criminal procedure during the start of the criminal (charge) procedure (See further the comment in the desk review with regard to Subparagraph (b) of article 53).

The return of property to the victim is not the same as compensation of the victim. Return of property is only possible if the victim is the owner of the objects which were seized in the case against the suspect. If this is the case, as mentioned before, the return of these objects to the rightful owner is possible on the basis of article 116 (for the PPS) or article 353 (for the courts) of the Dutch Code of Criminal Procedure.

The Dutch criminal procedure provides for the possibility that A) the Public Prosecutor will order the Court to impose on the convicted the obligation to pay an amount to the victim as victim compensation (article 36f of the Dutch Criminal Code) next to this it is possible for the injured party to claim damage in the criminal procedure. Since this is a civil claim (article 51f of the Dutch Code of Criminal Procedure), there should be a direct link between the damage and the offence and) that it should not be too complicated for the criminal court.

Normally, the compensation of a victim in a criminal case, takes place on the basis of article 36f of the Dutch Criminal Code. This consists of the obligation to pay the damages to the victim (furthermore, this entails the obligation for the Dutch State to collect these damages and to pay the victim € 5.000 in advance). For this obligation to be imposed, the judge has to determine if the suspect is liable for these damages under civil law.

Mostly (but not necessarily) the court will first assign the civil claim to the victim, on the basis of article 51f of the Dutch Code of Criminal Procedure, which gives the victim a court order to (try to) collect the claim himself from the convicted person. While the obligation is a criminal measure, the assignment of the claim is an order by civil law which the victim can ask for in the criminal procedure (to the effect that it's not necessary for the victim to file a separate claim at the civil court).

When the victim is an able-bodied third party (parties who can take care of themselves), courts can declare their civil claim and the claim of the PPS to impose an obligation inadmissible

Article 51f of the Dutch Code of Criminal Procedure
1. The person who has incurred direct damage as a result of a criminal offence may join the criminal proceedings in his capacity as injured party and claim compensation

Article 36f of the Dutch Criminal Code (January 2011)
1. A person who is convicted of a criminal offence by judgment or where in the imposition of the punishment the court takes into account a criminal offence which, as is stated in the summons, the defendant admitted and is brought to the knowledge of the court, or against whom a punishment order is issued, may be ordered to pay the State a sum of money for the benefit of the victim or his surviving relatives within the meaning of article 51f(2) of the Code of Criminal Procedure. The State shall promptly pay the amount received to the victim or his surviving relatives within the meaning of article 51f(2) of the Code of Criminal Procedure.
2. The court may impose the measure if and insofar as the defendant is liable to the victim under civil law for the damage or loss caused by the criminal offence.
3. The measure may be imposed in conjunction with punishments and other measures.
4. Article 24a and 24b(1) to (4) inclusive shall apply mutatis mutandis, on the understanding that the increase in the amount due under the measure shall be payable to the State.
5. Payments made by the convicted offender to the State shall first serve to pay the amount due under the measure and subsequently to pay the increases due under paragraph (4).
6. If the offender convicted of a serious offence has not complied in full or in part with his obligation within eight months after the day on which the judgment or appeal judgment, in which the measure referred to in paragraph (1) was imposed, becomes final, the State shall pay the remaining amount to the victim not being a legal person. It may be stipulated by Governmental Decree that only victims of violent and sexual offences shall be eligible for this payment for a period of time to be set in this Governmental Decree. It may also be stipulated by Governmental Decree that the amounts to be paid out shall be subject to an upper limit of € 5,000 or more, on the understanding that this upper limit shall not apply to payments made to victims of violent or sexual offences. The State shall recover the amount paid out and the increases due under paragraph (4) from the convicted offender.
7. Articles 24c and 77l (2) to (6) inclusive shall apply mutatis mutandis, on the understanding that enforcement of the default detention or default juvenile detention shall not cancel the obligation to pay compensation to the victim under the compensation measure.

Article 353 of the Dutch Code of Criminal Procedure

1. In the case of application of section 9a of the Criminal Code, of imposition of a punishment or measure, of acquittal or dismissal of the charges, the District Court shall, subject to application of section 94, give a decision on seized objects whose return has not been ordered. This decision shall be without prejudice to any person's right in regard of the object.
2. The District Court shall order, without prejudice to article 351,
a. the return of the object to the person from whom it was seized;
b. the return of the object to the person who may be reasonably regarded as the person entitled thereto; or
c. if there is no person who may be reasonably regarded as the person entitled thereto, the custody of the object for the benefit of the person entitled thereto.
3. Article 119 shall apply mutatis mutandis to an order as referred to in paragraph (2).
4. The District Court may order the return of seized objects against provision of security. article 118a shall apply mutatis mutandis.

Article 116 of the Dutch Code of Criminal Procedure

1. The assistant public prosecutor or the public prosecutor, who has been informed of the notice of seizure under article 94(3), shall decide on the continuation of the seizure in the interest of the criminal proceedings. If this interest is not, or no longer, present, he shall terminate the seizure and return the object to the person from whom it was seized. If advisable, the assistant public prosecutor shall consult with the public prosecutor before he takes the decision.
2. If the person from whom the object was seized declares in writing before the examining magistrate, the public prosecutor or an investigating officer that he waives his right to the object, the assistant public prosecutor or the Public Prosecution Service may:
a. instruct the return of the object to the person who may be reasonably regarded as the person entitled thereto;
b. order that the object remain in custody for the benefit of the person entitled thereto, if it is not yet possible to return it to the person who may be reasonably regarded as the person entitled thereto;
c. if the person from whom the object has been seized states that it belongs to him, order that it be treated as though it had been confiscated or withdrawn from circulation.
3. If a declaration, as referred to in paragraph (2), is not made, then the Public Prosecution Service may nevertheless take the decision referred to in (a) or (b) if, within fourteen days after the Public Prosecution Service has given notice of its intention to take such decision to the person from whom the object has been seized, he has not filed a complaint against such decision or the complaint filed by him has been declared ill-founded. Part IX of Book Four shall apply mutatis mutandis to the complaint.
4. If a declaration, as referred to in paragraph (2), is not made and the Public Prosecution Service intends to return the object to the person who may be regarded as the person entitled thereto, it shall be authorised to immediately place it in the custody of this person, pending the possibility of return, if the person from whom the object was seized evidently removed or withheld it from the person entitled thereto by means of a criminal offence. In that case, the person to whom the object has been released shall be entitled to use it.
5. If the Public Prosecution Service in accordance with paragraphs (2) or (4) or the District Court in accordance with article 353(2) has ordered that the object be taken into custody, the Public Prosecution Service shall, after the person entitled to the object has been established, return it to him.

6. The decisions referred to in this section shall be without prejudice to any person's right to the object.

A foreign state could only join as a victim in the trial of the criminal case. The deprivation procedure will follow the criminal trial (but can be considered as being part of the criminal procedure). However, if the foreign state did not join as a victim in the criminal case trial, there is still the possibility to claim compensation after confiscation on the basis of article 6:6:26 of the Dutch Code of Criminal Procedure.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

The Netherlands reported that in criminal proceedings, property can be returned directly to original owners, including foreign States, pursuant to the Code of Criminal Procedure (arts. 116 and 353). If the judge finds that the hearing of the claim of the injured party imposes a disproportionate burden, the injured party can be referred to a civil court (art. 361 of the Code of Criminal Procedure). In addition, the interested parties may file a written complaint to the criminal court about the confiscation of objects belonging to them within three months of a decision becoming enforceable (art. 552 (b) of the Code of Criminal Procedure).

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Pursuant to articles 15, 18, 31, and 31a of the Enforcement of Criminal Judgments (Transfer) Act (Wet op de Overdracht van de Tenuitvoerlegging van Strafvonnissen, WOTS), irrevocable judgments handed down in foreign courts for confiscation under the Convention will be transposed into a Dutch confiscation judgment and enforced in the Netherlands.

Such a request must be submitted to the central authority, the Minister of Justice and Security, International Legal Assistance (Criminal Matters) Division (AIRS). The Minister of Justice and Security will refer the request to the Public Prosecution Service, unless this party already considers

that the request for enforcement must be refused. For example, this situation could be the case if there are imperative grounds for refusal, such as a suspicion that the imposition of the sanction was motivated by considerations of the race, religion, beliefs, nationality or political convictions of the convicted person (article 5 of the WOTS).

The Minister will have to refer the request for enforcement to the public prosecutor who has jurisdiction over the place of residence or the location of the convicted person, or to the public prosecutor who was previously involved in the case; for example, due to a previous request for the seizure of objects for eventual confiscation.

A sanction imposed in a foreign country can only be confirmed in the Netherlands if the offence for which the person has been convicted is also punishable under Dutch law.

Within two weeks following receipt of the request, the Public Prosecution Service must then petition the court to grant leave for enforcement. Subsequently, the convicted person will be summoned to appear at the hearing. The court will examine the possibility of enforcing the judgment handed down by a foreign court in the Netherlands during a public hearing. In doing so, the court will not touch on a fresh investigation of the facts (article 28(3) of the WOTS). A deviation from this position is only possible if it is established that the conviction resulted from a complete disregard of the fundamental principles of criminal justice (see the judgment of the Supreme Court HR 01 July 2008 LJN BC9545). If the court has granted leave for the enforcement of the judgment, this decision can only be appealed within two weeks, either by the convicted person or by the Public Prosecution Service. This appeal will be heard by the Supreme Court of the Netherlands.

Under the WOTS, both confiscation decisions that specifically relate to objects either seized or not (object confiscation) and confiscation decisions that relate to an obligation for the convicted person to pay an amount to the State as unlawfully obtained assets (value confiscation) will be enforced. A conviction for the payment of a fine can also be confirmed for enforcement under the WOTS. The WOTS does not provide for the possibility to confirm a decision to enforce an obligation for the payment of compensation to a victim or the payment of litigation costs (article 3(1)(a) of the WOTS).

In anticipation of the confirmation of a confiscation judgment of a foreign court, objects in respect of which the foreign court has issued a confiscation order (value confiscation or object confiscation) may be seized, if a treaty provides for this possibility (Article 13b of the WOTS).

However, if the confiscation judgment of the foreign court includes victim compensation or if the requesting Member State indicates that the proceeds of the confiscation should be used as victim compensation, the Minister of Justice and Security (as the central authority to the Convention) may decide that the proceeds following confiscation may be transferred to the requesting State either wholly or in part with a view to victim compensation in the context of asset sharing.

Act on Mutual Recognition and Enforcement of Financial Sanctions and Confiscation Orders

Article 4

1. The public prosecutor in the district of Northern Netherlands is authorised to recognise a decision imposed in another Member State of the European Union containing:

a. a financial penalty;

b. a decision to confiscate;

c. a confiscation order.

2. Our Minister is authorised to enforce the decision or order.

Article 22

1. This Section applies to a confiscation order issued by another Member State of the European Union which is not bound by Regulation 2018/1805 .

2. A confiscation decision that is open to recognition shall be recognised and executed in accordance with Dutch law. To the extent that the confiscation decision:

a. if the decision is to pay a sum of money to the State for the purpose of confiscating unlawfully obtained benefits, the decision shall be executed in accordance with Articles 6:1:9, 6:4:9, first paragraph, and 6:6:25 of the Code of Criminal Procedure, provided that the District Court of Northern Netherlands has jurisdiction to hear the claim for the application of the coercive measure of detention and Article 36e, eleventh paragraph, of the Criminal Code applies accordingly;

b. relates to a specific object, the decision shall be executed in accordance with Article 6:5:1 of the Code of Criminal Procedure , unless otherwise provided in this Act.

3. Where the confiscation order concerns a specific item of property, the public prosecutor may agree with the competent authority of the issuing Member State that enforcement shall take the form of an obligation to pay a specified sum of money to the State. In that case, Articles 6:1:1, 6:1:2, 6:1:9, 6:4:1 to 6:4:6 and 6:4:8 of the Code of Criminal Procedure shall apply mutatis mutandis.

4. An alternative penalty or measure shall only be enforced after the competent authority in the issuing Member State has given its consent.

Article 27

1. The convicted person, as well as interested parties, may appeal against the recognition and execution of a confiscation decision to the court of Noord-Nederland. The appeal shall be lodged no later than seven days from the day on which the convicted person or interested party became aware of the decision to recognise and execute. Articles 21 to 25 of the Code of Criminal Procedure shall apply. An appeal lodged shall have a suspensive effect.

2. The provisions of the Code of Civil Procedure shall apply to interested parties who believe that they are entitled in whole or in part to objects seized under this Act.

3. If an appeal is lodged against the recognition and execution of a confiscation order, the competent authority of the issuing Member State shall be informed thereof.

4. Article 15 applies.

Article 35

1. A confiscation order is recognised in accordance with Regulation 2018/1805. To the extent that the order concerns the confiscation of:

a. a sum of money, the order shall be executed in accordance with Articles 6:1:1 to 6:1:5 , 6:1:9 and 6:6:25 of the Code of Criminal Procedure , the second title of the fourth chapter of Book Six of the Code of Criminal Procedure and the rules laid down by or pursuant to a general administrative measure on the basis of Article 6:4:19 of the Code of Criminal Procedure , provided that the claim for the application of the coercive measure of detention and the notice of opposition to the execution of a coercive order shall be submitted to the District Court of Noord-Nederland;

b. an object, the order shall be executed in accordance with Articles 6:1:2 to 6:1:5 and 6:1:9 of the Code of Criminal Procedure , Chapter 5 of Book 6 of the Code of Criminal Procedure and the rules laid down by or pursuant to a general administrative measure pursuant to Article 6:5:3 of the Code of Criminal Procedure, provided that the notice of opposition to the execution of a writ of execution shall be filed with the District Court of Noord-Nederland.

2. If the issuing authority has decided to return an object or a corresponding sum of money to the victim, or to transfer a sum of money as compensation to the victim, the execution of the order shall be completed in accordance with Article 30, paragraphs 1 to 4, of Regulation 2018/1805.

3. If the confiscation order is intended to:

a. transfer of an object, or an object in lieu of a sum of money, to the issuing State, the execution of the order shall be completed in accordance with Article 30, paragraph 6(b) of Regulation 2018/1805;

b. transfer of a sum of money to the issuing State, the execution of the order shall be completed in accordance with Article 30, paragraph 7, of Regulation 2018/1805.

Article 39

1. The convicted person, as well as interested parties, may appeal against the decision of the public prosecutor to recognise and execute a confiscation order to the court of Noord-Nederland. The appeal shall be lodged no later than seven days from the day on which the convicted person or interested party became aware of the decision to recognise and execute the confiscation order. Articles 21 to 25 of the Code of Criminal Procedure shall apply. The appeal shall not have a suspensive effect.

2. The provisions of the Code of Civil Procedure apply to third parties who believe they have a right, in whole or in part, to objects against which recovery is sought .

Act on the Transfer of Enforcement of Criminal Sentences

Article 14

If, in the opinion of Our Minister, the documents submitted by the foreign State are insufficient to make a decision on a request for enforcement, he shall give the authorities of the requesting State the opportunity to provide additional documents or information within a reasonable period to be set by him.

Article 15

1. Unless Our Minister immediately decides that the request for enforcement should be rejected, he shall submit it and the accompanying documents to the public prosecutor in whose jurisdiction the convicted person resides or is located.

2. If a request for provisional detention has been preceded, the documents will be sent to the public prosecutor who has already been involved in the case in connection with that request.

3. If the convicted person is being prosecuted in the Netherlands, notwithstanding the foregoing, the documents may be sent to the public prosecutor charged with the prosecution.

4. If the convicted person is a person referred to in Article 2 of the Military Criminal Justice Act, Our Minister shall send the documents to the public prosecutor in the district in which the court is located that is authorised to exercise jurisdiction over that person under that Act.

5. If the request concerns the enforcement of a property sanction and the convicted person is a natural person without a fixed place of residence or domicile in the Netherlands or a legal person whose board does not have a seat or office in the Netherlands, or whose head of the board does not have a fixed place of residence in the Netherlands, the documents will be sent to the public prosecutor in whose jurisdiction there are objects on which the sanction can be enforced. If a request for seizure has been preceded, the documents will be sent to the public prosecutor who has dealt with that request.

6. If no competent public prosecutor can be designated in advance on the basis of the previous paragraphs, Our Minister shall send the documents to the public prosecutor at the Amsterdam district court.

Article 16

If the public prosecutor who has received the request for enforcement is of the opinion that it cannot be granted or that there is reason to use one of the grounds for refusing enforcement as described in the applicable treaty, he shall forthwith notify this opinion, together with his advice, to Our Minister, who shall decide on the matter. The public prosecutor shall forthwith inform the convicted person who has been deprived of his liberty under this Act of the date on which he submitted his advice to Our Minister.

Article 18

1. The public prosecutor shall, within two weeks after the day on which he received the documents referred to in Article 15 or 17, request in writing that the court grant permission for execution. With his request, the public prosecutor shall submit the documents to the court. A copy of the request shall be served on the convicted person. With his request, the public prosecutor shall also submit a list of objects or claims that have been seized pursuant to Section B of Chapter II .

2. The term set in the first paragraph shall be suspended from the time at which the public prosecutor advises Our Minister in accordance with Article 16 until the time at which the public prosecutor receives notification from Our Minister that enforcement must be requested.

3. If the convicted person is deprived of his liberty under this law, the suspension shall in any event end after fourteen days.

4. The provisions of the previous paragraphs shall not apply if the sanction to be enforced consists solely of a fine.

Article 28

[…]

2. The public prosecutor and the convicted person and his counsel shall be given the opportunity to be heard at the court hearing.

[…].

Article 30

1. Does the court find:

a. that the documents submitted do not meet the requirements of the applicable treaty;

b. that the convicted person could have successfully relied on grounds which, under Dutch law, but not under the law of the foreign state, exclude the criminal liability of the act or the perpetrator, and that he does not require compulsory psychiatric care;

c. that enforcement in the Netherlands cannot take place on the basis of one of the provisions of Articles 2, 3, 4, 6, or 7; or,

d. in a case where enforcement may be refused under the applicable treaty, that after weighing all the interests involved, a decision to enforce in the Netherlands cannot reasonably be taken;

then it declares the execution inadmissible.

2. The public prosecutor may withdraw his claim as long as the investigation at the hearing has not been concluded. He shall immediately inform the convicted person of the withdrawal of the claim.

3. In cases other than those provided for in the preceding paragraphs, the court shall declare the execution admissible, stating the applicable provisions of law and treaty. Articles 345, with the exception of the fourth paragraph, 346 and 347 of the Code of Criminal Procedure shall apply accordingly.

4. If the claim is heard by a single-member chamber of the court, Articles 378 – 381 of the Code of Criminal Procedure shall apply accordingly, except to the extent that these articles relate to a witness whose identity is not or only partially apparent. If the claim is heard by a multiple-member chamber, Article 362 of that Code shall apply accordingly.

5. Articles 363 to 365, first to fifth paragraphs, of the Code of Criminal Procedure shall apply mutatis mutandis.

Article 31a

1. Permission to enforce a sanction imposed in a foreign state aimed at depriving the State of unlawfully obtained benefits may be limited to the enforcement of the obligation to pay a sum of money to the State representing only a portion of that benefit.

2. If the sanction imposed in the foreign state is aimed at the confiscation of unlawfully obtained profits, the court shall, if the foreign state has expressly requested that the sanction be enforced only on objects representing those profits, declare them forfeit.

3. The provisions of Articles 552b, 552d, 552e and 552g of the Code of Criminal Procedure apply mutatis mutandis to judgments containing a forfeiture .

4. The provisions of Articles 6:4:9 and 6:6:26 of the Code of Criminal Procedure apply mutatis mutandis to judgments imposing an obligation to pay a sum of money to the State for the purpose of confiscating unlawfully obtained benefits.

5. Article 13e shall apply mutatis mutandis. Article 32

1. An appeal in cassation against the court's decision on the request for enforcement may be lodged by both the public prosecutor and the convicted person.

2. The clerk of the court shall immediately notify Our Minister of any declaration in which the right to appeal in cassation is waived or in which such an appeal is withdrawn.

3. The public prosecutor is obliged, under penalty of inadmissibility, to submit a written statement containing his grounds for appeal to the Supreme Court within one month of having lodged an appeal in cassation.

4. The convicted person who has lodged an appeal in cassation is obliged, under penalty of inadmissibility, to have his counsel submit a written statement containing his grounds for appeal before the hearing date at the Supreme Court.

[…]

A. Tracing of Assets
B. The use of coercive measures
C. Seizure of Assets
D. Confiscation of Assets

A) The Tracing of assets

Within the EU: (principle of availability of information and free flow of information)

ARO (police-police) request for the existence of criminal assets in another (EU member state including Switzerland) based on the Swedish framework decision. Exchange of information without the use of coercive measures via the ARO network.

Article 15a. Wet politiegegevens
1 Politiegegevens worden of kunnen worden ter beschikking gesteld aan de bevoegde autoriteiten in andere lidstaten van de Europese Unie of aan organen en instanties die zijn opgericht krachtens de hoofdstukken 4 en 5 van Titel V van het verdrag betreffende de werking van de Europese Unie, die zijn belast met de taken, bedoeld in artikel 1, onderdeel a, voor zover dat voortvloeit uit een rechtsinstrument op grond van het verdrag betreffende de werking van de Europese Unie.
2 Bij algemene maatregel van bestuur worden nadere regels gesteld over de ter beschikkingstelling van politiegegevens, bedoeld in het eerste lid, alsmede over de verdere verwerking en de daarbij te stellen voorwaarden aan het gebruik daarvan door ontvangstgerechtigde autoriteiten of internationale organen en instanties, en over de ontvangst van politiegegevens vanuit andere lidstaten van de Europese Unie. Onverminderd specifieke voorzieningen in een rechtsinstrument, bedoeld in het eerste lid, mogen de voorwaarden niet afwijken van de voorwaarden voor vergelijkbare doorzendingen van politiegegevens binnen het Europese deel van Nederland

For the use of coercive measures all provisions of the Dutch Code of Criminal Proceedings apply, since the definition of mutual legal assistance has recently been broadened: legal assistance includes requests for the search of illegally obtained assets.

Article 5.1.1. of the Dutch Code of Criminal Procedure (verzoeken om rechtshulp)

2. Als verzoeken om rechtshulp worden aangemerkt verzoeken van daartoe bevoegde autoriteiten van een staat aan de bevoegde autoriteiten van een andere staat tot het al dan niet gezamenlijk verrichten van handelingen van onderzoek of het verlenen van medewerking daaraan, verzoeken ter bepaling van de aanwezigheid van wederrechtelijk verkregen voordeel, het toezenden van documenten, dossiers of stukken, of het geven van inlichtingen, dan wel het betekenen of uitreiken van stukken of het doen van aanzeggingen of mededelingen aan derden.

Outside the EU:

Sharing of police information:
Article 5.1.7 of the Dutch Code of Criminal Procedure (zelfstandige inwilliging en uitvoering door opsporingsambtenaren)

1. Indien in het verzoek om rechtshulp uitsluitend om inlichtingen is gevraagd en voor het verkrijgen daarvan geen dwangmiddelen of bevoegdheden als bedoeld in de artikelen 126g tot en met 126z, 126zd tot en met 126zu en 126gg dan wel toepassing van artikel 126ff nodig zijn, kan de inwilliging en de uitvoering van het verzoek geschieden door een opsporingsambtenaar.
2. Uitvoering van verzoeken om rechtshulp krachtens het eerste lid vindt plaats onder gezag van de officier van justitie. Bij de afdoening van het verzoek worden de door de officier van justitie gegeven algemene en bijzondere aanwijzingen in acht genomen.
3. Van elke inwilliging van een verzoek om rechtshulp overeenkomstig het eerste lid wordt aantekening gehouden in een register waarvan het model door Onze Minister van Veiligheid en Justitie wordt vastgesteld. In de aantekening worden in ieder geval de aard van het verzoek, de hoedanigheid van de verzoeker en het gevolg dat aan het verzoek gegeven is opgenomen.

Article 17a. Wet politiegegevens (doorgiften aan derde landen)
1. Politiegegevens kunnen met inachtneming van het bij of krachtens deze wet bepaalde worden doorgegeven aan een verwerkingsverantwoordelijke in een derde land of aan een internationale organisatie, voor zover dit noodzakelijk is voor de doeleinden, bedoeld in artikel 1, onderdeel a, en indien de Commissie van de Europese Unie heeft besloten dat het derde land of de internationale organisatie een toereikend beschermingsniveau voor de voorgenomen gegevensverwerking verzekert.

2. Bij ontstentenis van een besluit van de Commissie, bedoeld in het eerste lid, kunnen politiegegevens worden verstrekt of doorgegeven indien:
a. in een juridisch bindend instrument passende waarborgen voor de bescherming van persoonsgegevens zijn geboden; of
b. de verwerkingsverantwoordelijke na beoordeling van alle omstandigheden heeft geconcludeerd dat het derde land of de internationale organisatie passende waarborgen biedt voor de bescherming van persoonsgegevens. De verantwoordelijke informeert de Autoriteit persoonsgegevens over de categorieën van doorgifte op grond van dit onderdeel.

3. Bij ontstentenis van een besluit van de Commissie, bedoeld in het eerste lid, of van passende waarborgen, bedoeld in het tweede lid, is een doorgifte of een categorie van doorgiften van politiegegevens aan een derde land of internationale organisatie slechts toegelaten indien de doorgifte noodzakelijk is:
a. om een vitaal belang van de betrokkene of van een andere persoon te beschermen;
b. is om de gerechtvaardigde belangen van de betrokkene te beschermen, wanneer het recht van de lidstaat van waaruit de doorgifte van politiegegevens plaatsvindt aldus bepaalt;
c. is om een onmiddellijk en ernstig gevaar voor de openbare veiligheid van een lidstaat of derde land te voorkomen;
d. in afzonderlijke gevallen met het oog op de uitvoering van de taak, bedoeld in artikel 1, onderdeel a;
e. in afzonderlijke gevallen met het oog op het instellen, uitoefenen of verdedigen van rechtsvorderingen in verband met de uitvoering van de taak, bedoeld in artikel 1, onderdeel a,

en de grondrechten en fundamentele vrijheden van de betrokkene niet prevaleren boven het algemeen belang van de doorgifte, bedoeld in de onderdelen d en e.

4. In het geval de doorgifte, bedoeld in het eerste, tweede en derde lid en onverminderd een

internationale overeenkomst tussen lidstaten en derde landen, politiegegevens betreft die van een andere lidstaat afkomstig zijn, is onverminderd deze leden toestemming van de bevoegde autoriteit uit die lidstaat vereist voor doorgifte, tenzij de doorgifte noodzakelijk is met het oog op het voorkomen van een onmiddellijk en ernstig gevaar voor de openbare veiligheid van een lidstaat of een derde land of voor de fundamentele belangen van een lidstaat, en voorafgaande toestemming niet tijdig kan worden verkregen. De voor het geven van voorafgaande toestemming verantwoordelijke autoriteit wordt onverwijld in kennis gesteld.

5. In afwijking van het eerste, tweede en derde lid, en onverminderd een van kracht zijnde bilaterale of multilaterale internationale overeenkomst tussen lidstaten en derde landen op het gebied van justitiële samenwerking in strafzaken en politiële samenwerking kunnen in afzonderlijke en specifieke gevallen politiegegevens worden doorgegeven aan een ontvanger in een derde land, zonder tussenkomst van een bevoegde autoriteit in dat land, indien de doorgifte strikt noodzakelijk is voor de uitvoering van de taak, bedoeld in artikel 1, onderdeel a, en indien aan de volgende voorwaarden is voldaan:
a. de doorgifte is strikt noodzakelijk voor de uitvoering van een in het Unierecht of het lidstatelijke recht omschreven taak van de bevoegde autoriteit die de doorgifte doet, ter verwezenlijking van de doeleinden van artikel 1, eerste lid, van de richtlijn;
b. de bevoegde autoriteit die de doorgifte doet, bepaalt dat er geen grondrechten en fundamentele vrijheden van de betrokkene zijn die zwaarder wegen dan het openbaar belang dat de doorgifte in dat specifieke geval noodzakelijk maakt;
c. de bevoegde autoriteit die de doorgifte doet, is van mening dat de doorgifte aan een autoriteit die in het derde land bevoegd is voor de in artikel 1, eerste lid, van de richtlijn, bedoelde doeleinden, ondoeltreffend of ongeschikt is, met name omdat de doorgifte niet tijdig kan worden bewerkstelligd;
d. de autoriteit die in het derde land bevoegd is voor de in artikel 1, eerste lid, van de richtlijn, bedoelde doeleinden wordt zonder onnodige vertraging op de hoogte gebracht, tenzij dit ondoeltreffend of ongeschikt is;
e. de bevoegde autoriteit die de doorgifte doet, licht de ontvanger in over het nader bepaalde doel of de nader bepaalde doeleinden waarvoor de persoonsgegevens bij uitsluiting door laatstgenoemde mogen worden verwerkt, op voorwaarde dat een dergelijke verwerking noodzakelijk is.

6. Politiegegevens kunnen door een derde land of internationale organisatie verder worden doorgegeven aan een ander derde land of een andere internationale organisatie, indien de bevoegde autoriteit toestemming verleent voor die verdere doorgifte, na alle relevante factoren naar behoren in aanmerking te hebben genomen, waaronder de ernst van het strafbare feit, het doel waarvoor de gegevens oorspronkelijk waren doorgegeven en het niveau van gegevensbescherming in het derde land of de internationale organisatie waaraan de persoonsgegevens verder worden doorgegeven.

7. Bij algemene maatregel van bestuur worden nadere regels gesteld over de doorgifte van politiegegevens, bedoeld in het eerste, tweede, derde en zesde lid, alsmede over de verdere verwerking en de daarbij te stellen voorwaarden aan het gebruik daarvan door ontvangstgerechtigde autoriteiten of internationale organen, en over de ontvangst van politiegegevens vanuit derde landen.

Artikel 16a Wet justitiële en strafvorderlijke gegevens

1. Justitiële gegevens kunnen met inachtneming van het bij of krachtens deze wet bepaalde worden doorgegeven aan rechterlijke ambtenaren dan wel aan andere bevoegde autoriteiten in een derde land of aan een internationale organisatie, voor zover dit noodzakelijk is ten behoeve van de strafrechtspleging, en indien de Commissie van de Europese Unie heeft besloten dat het derde land of de internationale organisatie een toereikend beschermingsniveau voor de voorgenomen gegevensverwerking verzekert.
2. Bij ontstentenis van een besluit van de Commissie, bedoeld in het eerste lid, kunnen justitiële gegevens worden doorgegeven, indien:
a. in een juridisch bindend instrument passende waarborgen voor de bescherming van persoonsgegevens zijn geboden, of
b. de verwerkingsverantwoordelijke na beoordeling van alle omstandigheden heeft geconcludeerd dat het betreffende derde land of de ontvangende internationale organisatie passende waarborgen biedt voor de bescherming van persoonsgegevensverwerking. De verwerkingsverantwoordelijke informeert de Autoriteit persoonsgegevens over de categorieën van doorgifte op grond van dit onderdeel.
3. Bij ontstentenis van een besluit van de Commissie, bedoeld in het eerste lid, of van passende waarborgen, bedoeld in het tweede lid, is een doorgifte of een categorie van doorgiften van justitiële gegevens aan een derde land of internationale organisatie slechts toegelaten indien de doorgifte noodzakelijk is:
a. om een vitaal belang van de betrokkene of van een ander persoon te beschermen;
b. om de gerechtvaardigde belangen van de betrokkene te beschermen, wanneer het recht van de lidstaat van waaruit de doorgifte van justitiële gegevens plaatsvindt aldus bepaalt;
c. om een onmiddellijk en ernstig gevaar voor de openbare veiligheid van een lidstaat of derde land te voorkomen;
d. in afzonderlijke gevallen met het oog op de strafrechtspleging;
e. in afzonderlijke gevallen is met het oog op het instellen, uitoefenen of verdedigen van rechtsvorderingen met het oog op de strafrechtspleging,
en de grondrechten en fundamentele vrijheden van de betrokkene niet prevaleren boven het algemeen belang van de doorgifte, bedoeld in de onderdelen d en e.
4. In afwijking van het eerste, tweede en derde lid en onverminderd een internationale overeenkomst tussen lidstaten en derde landen, kunnen in afzonderlijke en specifieke gevallen justitiële gegevens worden doorgegeven aan een ontvanger in een derde land, zonder tussenkomst van een bevoegde autoriteit in dat land, indien de doorgifte strikt noodzakelijk is voor de strafrechtspleging en indien aan de volgende voorwaarden is voldaan:
a. de doorgifte is strikt noodzakelijk voor de uitvoering van een in het Unierecht of het lidstatelijke recht omschreven taak van de bevoegde autoriteit die de doorgifte doet, ter verwezenlijking van de doeleinden van artikel 1, eerste lid, van de richtlijn;
b. de bevoegde autoriteit die de doorgifte doet, bepaalt dat er geen grondrechten en fundamentele vrijheden van de betrokkene zijn die zwaarder wegen dan het openbaar belang dat de doorgifte in dat specifieke geval noodzakelijk maakt;
c. de bevoegde autoriteit die de doorgifte doet, is van mening dat de doorgifte aan een autoriteit die in het derde land bevoegd is voor de in artikel 1, eerste lid, van de richtlijn, bedoelde doeleinden, ondoeltreffend of ongeschikt is, met name omdat de doorgifte niet tijdig kan worden bewerkstelligd;
d. de autoriteit die in het derde land bevoegd is voor de in artikel 1, eerste lid, van de richtlijn, bedoelde doeleinden wordt zonder onnodige vertraging op de hoogte gebracht, tenzij dit ondoeltreffend of ongeschikt is;
e. de bevoegde autoriteit die de doorgifte doet, licht de ontvanger in over het nader bepaalde doel of de nader bepaalde doeleinden waarvoor de persoonsgegevens bij uitsluiting door

laatstgenoemde mogen worden verwerkt, op voorwaarde dat een dergelijke verwerking noodzakelijk is.
5. Indien een doorgifte als bedoeld in het eerste, tweede of derde lid justitiële gegevens betreft die van een andere lidstaat afkomstig zijn, is onverminderd deze leden toestemming van de bevoegde autoriteit uit die lidstaat voor doorgifte vereist, tenzij doorgifte noodzakelijk is met het oog op het voorkomen van een onmiddellijk en ernstig gevaar voor de openbare veiligheid van een lidstaat of derde land of voor de fundamentele belangen van een lidstaat. De voor het geven van voorafgaande toestemming verantwoordelijke autoriteit wordt onverwijld in kennis gesteld.
6. Justitiële gegevens kunnen door een derde land of internationale organisatie verder worden doorgegeven aan een ander derde land of een andere internationale organisatie, indien de verwerkingsverantwoordelijke die deze gegevens oorspronkelijk had doorgegeven toestemming verleent voor die verdere doorgifte, na alle relevante factoren naar behoren in aanmerking te hebben genomen, waaronder de ernst van het strafbare feit, het doel waarvoor de gegevens oorspronkelijk waren doorgegeven en het niveau van gegevensbescherming in het derde land of de internationale organisatie waaraan de persoonsgegevens verder worden doorgegeven.
7. Bij algemene maatregel van bestuur worden nadere regels gesteld over de doorgifte van justitiële gegevens, bedoeld in het eerste tot en met derde en zesde lid, alsmede over de aan het gebruik daarvan te stellen voorwaarden door ontvangstgerechtigde autoriteiten of internationale organen, en over de ontvangst van justitiële gegevens vanuit derde landen.

B) The use of coercive measures:

- All provisions of the Dutch Code of Criminal Procedure apply, since the definition of mutual legal assistance has recently been broadened;
- Legal assistance includes requests for the search of illegally obtained assets (see above);
- Another option: on the basis of article 13a WOTS, a criminal financial investigation can be opened. Once the examining magistrate has given a written authorization to open this investigation, all investigation measures can be used that are provided for according to Dutch Law.

C) Seizure of assets:

Within the EU:
Since 19 December 2020, the use of the EU Regulation 2018/1805 (freezing order based on the principle of mutual recognition): articles 5.5.1. – 5.5.19 of the Dutch Code of Criminal Procedures.

On the basis of article 13a WOTS, a criminal financial investigation can be opened. Once the examining magistrate has given a written authorization to open this investigation the public prosecutor can seize assets in case of a deprivation procedure (value based confiscation).

Outside the EU:
Articles 13 – 13d WOTS provide for the possibility to seize assets on the request of a foreign competent authority.

On the basis of article 13a WOTS, a criminal financial investigation can be opened. Once the examining magistrate has given a written authorization to open this investigation the

public prosecutor can seize assets in case of a deprivation procedure (value based confiscation).

D) Confiscation of assets:

Within the EU: (principle of mutual recognition) via central authority (central fine collection agency (CJIB):

Articles 6:1:1 – 6:7:8 of the Dutch Criminal Proceedings Code: The National Public Prosecutor will recognize the foreign confiscation order. The involved party can oppose against this decision within 7 days after notification. In case of appeal, the court in Noord-Nederland will handle this procedure. The decision of the Court is final.

Outside the EU: via the exequatur procedure: Via central authority: Ministry of Justice and Security:

Articles: articles 14 – 16, 18 – 28, 30 – 33 WOTS. The court will transfer the foreign confiscation order into a Dutch confiscation order. The procedure will be handled by the court during a public hearing. There is a possibility to appeal against the decision of the court. The Dutch Supreme Court will handle the appeal case.

The double criminality will be checked on the basis of the description of the facts in the foreign request or the foreign Court decision and not on the basis of the foreign legal qualification.

Within the EU, there is no dual criminality check if the criminal fact concerns an 'EU list fact' and this criminal fact can be punished with at least three years of imprisonment in the requesting member state. If the criminal fact is not a list fact, then there will be a dual criminality check as described above.

Table 1:. All incoming MLA requests on ML/TF for the purposes of freezing assets or levying prejudgment attachment between 2015-2020

Incoming MLA requests on ML/TF (freezing assets/attachment)	2015	2016	2017	2018	2019	2020	total
Total	**15**	**14**	**12**	**7**	**6**	**4**	**58**

Between 2015 and 2020, the CJIB registered 17 incoming and 13 outgoing EU requests for the mutual recognition to confiscation orders concerning money laundering cases.

Table 2: Incoming and outgoing EU requests on confiscation orders relating to money laundering

	2015	2016	2017	2018	2019	2020	total

INCOMING	0	2	1	6	4	4	17
OUTGOING	2	3	2	2	4	0	13

*registered by CJIB

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

On a regular basis, foreign confiscation orders are transposed to Dutch confiscation decisions. Dutch confiscation decisions are transferred to foreign jurisdictions on a regular basis as well.

For example, an Italian in rem confiscation decision was transposed into a Dutch confiscation decision and was enforced under the WOTS in 2016, despite the fact that in rem proceedings do not exist in the Netherlands (see judgment HR 8 March 2016 No. S 15/03651 W).

In another case, a confiscation order from the United States of America (a decision from the United States District Court, Southern District of New York d.d. 2 March 2018) was transposed into a Dutch confiscation decision in an investigation with regard to money laundering and conspiracy in an investment fraud case. The criminal profits were partly invested in real estate in the Netherlands. The three-judge section of the North Holland Court ordered the confiscation of the property in the Netherlands on the 10th of May 2019 (reference number 15/009738-18). This decision has become final. After the sale of the property, the profits will be transferred to the USA to compensate the victims.

(b) Observations on the implementation of the article

The Netherlands distinguishes between foreign confiscation orders issued by European Union member States and non-member States. The Financial Penalties and Confiscation Orders (Mutual Recognition and Enforcement) Act is applicable to the enforcement of confiscation orders from States members of the European Union where a confiscation order would be recognized and enforced under national law (arts. 4, 22 and 35). The convicted person and interested parties may appeal against the recognition and enforcement of a confiscation order to the Northern Netherlands District Court (arts. 27 and 39). With regard to the enforcement of a foreign confiscation order from a non-member State of the European Union, the order would be transposed into a domestic confiscation judgment and enforced in the Netherlands (arts. 14–16, 18–28 and 30–33 of the Enforcement of Criminal Judgments (Transfer) Act). A public hearing should be held for that purpose, and the court should hear the opinions of the public prosecutor and the defendant (arts. 28 (2) and 31a). There is also a possibility to appeal against the decision of the court (art. 32).

The reviewing experts therefore recommended that the Netherlands take the necessary measures to ensure that the direct enforcement of foreign confiscation orders issued in States parties that are not members of the European Union is timely and streamlined (art. 54, para. 1 (a)).

Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Irrevocable decisions which are taken by courts in foreign countries for confiscation and which relate to the crime of money laundering may also be transferred to the Netherlands for enforcement in the way described previously under Article 54(1)(a).

If it has jurisdiction, the Public Prosecution Service is also able to initiate criminal proceedings for money laundering offences in the Netherlands. In this case, it makes no difference that the predicate offences were committed abroad or elsewhere. Under Dutch law, knowledge of the predicate offence through which the object was obtained is not necessary for a conviction in money laundering proceedings. Proof that the object originates from any offence is sufficient under Dutch law (article 420bis of the Criminal Code). If a conviction does take place for money laundering offences or any other criminal offence, the confiscation of objects may be ordered (article 33(1) of the Criminal Code). Objects which have been obtained by means of criminal offences or in relation to which the offence has been committed will be subject to confiscation (article 33a of the Criminal Code (object confiscation)).

Moreover, in the Netherlands, money laundering is considered as an ongoing offence for as long as the suspect is in possession of the goods. As long as this offence is ongoing, new money laundering proceedings could be initiated in principle.

Criminal Code

Article 31

1. When deprivation of rights is pronounced, the judge determines the duration as follows:

1°. if sentenced to life imprisonment, for life;

2°. in the event of a sentence of temporary imprisonment or detention for a period exceeding the duration of the principal sentence by at least two and at most five years;

3°. upon conviction to a fine, for a period of at least two and at most five years;

4°. upon separate imposition, for a period of at least two and at most five years.

Article 33a

1. The following are liable to confiscation:

a. objects belonging to the convicted person or which he can use wholly or partly for his own benefit and which were obtained wholly or largely by means of or from the proceeds of the criminal offence;

b. objects in relation to which the act was committed;

c. objects with the help of which the act was committed or prepared;

d. objects used to hinder the investigation of the crime;

e. objects manufactured or intended for the commission of the offence;

f. property rights or personal rights in respect of the objects referred to under a to e .

2. Objects referred to in the first paragraph under a to e that do not belong to the convicted person may only be declared forfeit if:

a. the person to whom they belong was aware of their acquisition by means of the criminal offence or of their use or destination in connection therewith, or could reasonably have suspected such acquisition, use or destination, or

b. it has not been possible to determine to whom they belong.

3. Rights as referred to in the first paragraph, under f , which do not belong to the convicted person may only be declared forfeit if the person to whom they belong was aware of the acquisition of the objects on or in respect of which these rights exist, by means of the criminal offence or of the use or destination in connection therewith, or could reasonably have suspected such acquisition, use or destination.

4. Objects are understood to mean all things and all property rights.

Article 36e

1. At the request of the Public Prosecution Service, a person convicted of a criminal offence may be ordered by a separate judicial decision to pay a sum of money to the State for the purpose of confiscating illegally obtained profits.

2. The obligation may be imposed on the person referred to in the first paragraph who has obtained a benefit by means of or from the proceeds of the act referred to therein or other criminal acts for which there are sufficient indications that they were committed by the convicted person.

3. At the request of the Public Prosecution Service, a person convicted of an offence punishable by a category 5 fine under the law may be ordered by a separate judicial decision to pay a sum of money to the State for the purpose of confiscating illegally obtained benefits, if it is plausible that either the offence or other criminal offences in any way resulted in the convicted person obtaining illegal benefits. In that case, it may also be presumed that:

a. expenses incurred by the convicted person in a period of six years prior to the commission of that offence constitute unlawfully obtained profits, unless it is plausible that these expenses were incurred from a legal source of income, or;

b. objects which have come to belong to the convicted person in a period of six years prior to the commission of that offence constitute an advantage as referred to in the first paragraph, unless it is plausible that the acquisition of those objects was based on a legal source of origin.

4. The judge may, ex officio, at the request of the public prosecutor or at the request of the convicted person, deviate from the period of six years referred to in the third paragraph and take into account a shorter period.

5. The judge determines the amount on which the unlawfully obtained benefit is estimated. Benefit includes the saving of costs. The value of objects that the judge considers to be part of the unlawfully obtained benefit can be estimated at the market value at the time of the decision or by reference to the proceeds to be obtained from a public sale, if recovery must be taken. The judge can determine the amount to be paid to be lower than the estimated benefit. At the reasoned request of the suspect or convicted person, the judge can take this into account when determining the amount to be paid, if the current and reasonably expected future financial capacity of the suspect or convicted person will not be sufficient to pay the amount to be paid. In the absence of such a request, the judge can exercise this power ex officio or at the request of the public prosecutor.

6. Objects are understood to mean all things and all property rights.

7. When determining the amount of the unlawfully obtained benefit pursuant to the first and second paragraphs in respect of criminal offences committed by two or more persons, the court may determine that they are jointly and severally liable for the joint payment obligation or for a share to be determined by the court.

8. When determining the amount of the benefit, the court may deduct costs that are directly related to the commission of criminal offences referred to in the first to third paragraphs and that reasonably qualify for deduction.

9. When determining the amount at which the unlawfully obtained profit is estimated, claims awarded to injured third parties in court and the obligation to pay the State a sum of money for the benefit of the victim as referred to in Article 36f, to the extent that these have been paid, shall be deducted.

10. When imposing the measure, account shall be taken of obligations imposed under previous decisions to pay a sum of money for the purpose of confiscating unlawfully obtained benefits.

11. When imposing the measure, the judge shall determine the maximum duration of the detention that may be claimed pursuant to Article 6:6:25 of the Code of Criminal Procedure . When determining the duration, no more than one day shall be counted for each full €25 of the amount imposed. The duration shall not exceed three years.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There are many cases related to money laundering and confiscation with regard to assets of foreign origin. For example, in the investigation Viviane the wife of a convicted drug dealer was convicted for money laundering with regard to real estate and bank accounts in Spain and other assets. In a separate procedure concerning the deprivation of illegally obtained assets she was convicted to pay the amount to the Dutch state of € 325.590. The court ordered that this amount can be increased if the real estate in Spain has increased in value at the time of execution.

(b) Observations on the implementation of the article

Confiscation of the proceeds and instrumentalities of money-laundering and other criminal offences is envisaged under the Criminal Code (arts. 33(1), 33a and 36e).

Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

In the Netherlands, criminal confiscation is predicated on the conviction for a criminal offence. Without a conviction, objects cannot be confiscated within the confines of criminal law (Section 33(1) of the Criminal Code and Section 36(1) of the Criminal Code). In rem proceedings do not exist in the Netherlands.

It is nevertheless possible to arrive at a conviction and a confiscation decision in the case of flight or absence. Under Dutch criminal law, defendants may be convicted in absentia. Defendants may also grant their lawyer a certain power of attorney to carry out the defence and to submit legal remedies on their behalf.

Neither prosecution or sentencing are possible in the case of death. In the case of death, prosecution of those parties who may be entitled to the criminal assets may be an option; for example, through inheritance rights, given that they are guilty of money laundering by inheritance. In practice, such a situation will often result in waiving the rights to the criminal assets in favour of the Dutch State, which achieves the same effect as a confiscation decision.

On 20 November 2020, Parliament was informed by letter that a bill for non-conviction-based-confiscation (NCBC) is to be taken in preparation. The content for this draft will be discussed with the Prosecution Service and Judiciary first. We aim to have a draft for a Bill on NCBC ready this Spring. The following step would be the necessary “consultation procedure” during which stakeholders and members of the public will have the opportunity to respond to the draft bill.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

In the Netherlands, a dedicated team (cooperation between the tax authority, the fiscal intelligence and investigation authority (FIOD), the police and the public prosecution service) focuses on criminal heritages. If possible family members of deceased criminals will be prosecuted for money laundering with regard to the criminal assets that the criminal gained in the past.

An example of a case: After a high profile criminal was liquidated in 2005, his former wife was suspected of money laundering. After assets (bank accounts of several foreign companies and real estate) were seized in foreign countries such as Belgium and Liechtenstein and in the Netherlands, an out of court settlement was reached in which she waived the rights to the criminal assets. Because of the settlement she was not prosecuted.

(b) Observations on the implementation of the article

National law does not provide for non-conviction-based confiscation, although lawmakers were reviewing the possibility of introducing such a procedure at the time of the country visit. However, it was reported that foreign non-conviction-based confiscation orders could be enforced in the Netherlands, as the Financial Penalties and Confiscation Orders (Mutual Recognition and Enforcement) Act and the Enforcement of Criminal Judgments (Transfer) Act do not distinguish between confiscation orders in that regard.

Although the Netherlands is able to enforce non-conviction-based confiscation orders issued by foreign authorities, in order to provide mutual legal assistance, the reviewing experts therefore recommended that the Netherlands consider taking the necessary measures to allow confiscation of property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence (art. 54, para. 1 (c)).

Subparagraph 2 (a) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze orseize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Pursuant to Section 13a of the WOTS, insofar as provided for by a treaty, objects (including material and immovable goods and property rights) may be seized at the request of a foreign State for which a sanction relating to confiscation (both value and object confiscation) may be imposed under the law of the foreign State. With regard to seizure, it is sufficient that the seizure has been ordered by an authority that is competent to issue such an order in the requesting State.

The seizure must also be permitted under Dutch law. In addition, seizure is only possible if it would also have been possible should the offence or the offences giving rise to the petition for seizure would have been committed in the Netherlands. Finally, there should be reasonable grounds for the expectation that a request for the enforcement of a confiscation decision will ultimately be made by the requesting state.

The Enforcement of Criminal Judgments (Transfer) Act

Article 13a

1. Insofar as a Treaty so provides, objects may be liable to seizure at the request of a foreign state:

a. in respect of which a sanction regarding confiscation can be imposed based on the law of the foreign state,

b. in maintaining the right to recourse for a confiscation of wrongfully obtained advantage regarding an obligation to pay a sum of money which can be imposed based on the law of the foreign state, or

c. which can serve to prove wrongfully obtained advantage.

2. Seizure, as meant in the first paragraph under a and b can only take place if, according to the information supplied in the request by the foreign state, an order for seizure is given by the competent authorities of that foreign state or would have been given if the particular objects would be located within his jurisdiction, and seizure is permitted by Dutch law.

3. For the application of the second paragraph seizure by Dutch law is permitted, if such would also have been possible if the offence or the offences for which the seizure by the foreign state is requested would be or would have been committed in the Netherlands.

4. Seizure of objects, as meant in the first paragraph under a and b can further only take place if there are well-founded reasons expected that in this respect the requesting foreign state will make a request for the enforcement of a sanction regarding a forfeiture or of a confiscation of wrongfully obtained advantage.

The Code of Criminal Procedure

Article 5.5.1

1. This section shall apply to an order as referred to in paragraph 3 issued by a competent judicial authority of another Member State of the European Union that is not bound by Regulation (EU) No 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ 2018, L 303/1).

2. Orders as referred to in the third paragraph, issued by a competent judicial authority of another Member State of the European Union, may be recognised and executed in the Netherlands.

3. Susceptible to recognition and enforcement are orders for the seizure of objects located on Dutch territory which under the law of the issuing Member State:

a. may serve to expose the truth or prove unlawfully obtained advantage;

b. may be confiscated or withdrawn from circulation;

c. may serve to preserve the right of recourse for a penalty aimed at the deprivation of illegally obtained benefits.

Article 5.5.2

1. An order issued by the authorities of the issuing Member State shall be accompanied by a completed certificate drawn up in accordance with the model established for that purpose by general administrative measure.

2. The order shall also be accompanied by a request for legal assistance aimed at:

a. surrendering the object to which the seizure order relates to the authorities of the issuing Member State, insofar as the seizure has been ordered with a view to establishing the truth;

b. confiscation or removal from circulation of the object to which the seizure order relates;

c. deprivation of unlawfully obtained benefits in connection with which the seizure order was issued.

3. By way of derogation from the second paragraph, the authorities of the issuing Member State may indicate in the certificate that the seized objects will remain in custody in the Netherlands

pending a request as referred to in the second paragraph, stating the expected time at which the request will be submitted.

4. If the certificate has not been produced, is incomplete or is manifestly not in accordance with the order, the public prosecutor shall give the authorities of the issuing Member State the opportunity to produce, supplement or correct the certificate within a reasonable period to be set by him. The public prosecutor may order that the certificate be replaced by an equivalent document. If the information necessary for the execution of the order has been obtained in another way, the public prosecutor may order that the certificate no longer be produced.

5. The order and the documents relating to it, if not sent to a public prosecutor, shall be forwarded by the addressee to the public prosecutor without delay. The addressee shall inform the competent authorities of the issuing Member State of the forwarding.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

For example, after the receipt of a mutual legal assistance request from Switzerland, an expensive vessel was seized in the Netherlands the same day. It was a case of urgency since the vessel was heading for open sea. In the request it was mentioned that the vessel was owned by the Vice President of an African country. It was believed that the vessel was bought by this government official for € 100.000.000. A refit was done to the vessel in the Netherlands. By the use of a multi-disciplinary confiscation team, swift action and a good coordination by the national public prosecution service for serious fraud, environmental crime and asset confiscation (het Functioneel Parket), the vessel could be seized just before it approached the last lock gate before entering the open sea. After the seizure of the vessel the national asset management office (LBA) of the national public prosecution service for serious fraud, environmental crime and asset confiscation took care of the management of the seized vessel. The Dutch authorities contacted the Swiss authorities with regard to the exceptional management costs that were related to the seizure of the vessel. After communication with the Swiss authorities, the civil law experts of the confiscation team explored the possibilities to sell the vessel before judgment. Next the Dutch public prosecutors in charge handled a complaint against the seizure in which it was stated that the seizure was illegal because of claimed diplomatic immunity of the vessel. The Court decided that the complaint was baseless. In the end, after an out of court settlement was reached in Switzerland, the seizure was ended. See http://ge.ch/justice/classement-de-la-procedure-contre-t-obiang-les-vehicules-sont-confisques-et-le-navire-libere

Another example: on the basis of a mutual legal assistance request from the authorities of the USA, a claim that was due on demand worth approximately € x million was seized within the frame work of an IN REM procedure (civil forfeiture). The suspect, a company based in Cyprus had this claim on a company in the Netherland after the Dutch company bought shares from this company. Before the request was sent, the case was communicated between the Dutch and the American representatives of the CARIN network. Because of this communication the request reached the right officials quickly. In this case approximately xxx million dollars were stolen from the tax authority in a third state. The monies were then transferred to other countries via several foreign (shell) companies It is believed that the theft was an inside job.

The seizure was a complicated judicial puzzle, because it was unclear whether a payment or a claim could be seized, how, where and when. The seizure was successful because of a close cooperation between confiscation experts with different expertise (an international law expert, a civil law expert, an asset tracer and a specialized public prosecutor) at the national public prosecution service

for serious fraud, environmental crime and asset confiscation. It was a case of urgency, since the claim could be recovered by the Dutch company at any moment.

The procedure in the United States ended with an out of court settlement.

MLAT Request from the US authorities. On the request of the US authorities the Public Prosecution Service for Serious Fraud environmental crime and asset confiscation seized a civil claim worth over x million USD. This was done within the framework of a NCBC procedure in the USA. A suspected company in Cyprus had this claim (that was linked to a purchase of shares) on a company in the Netherlands that was not suspected. Prior to the receipt of this request, the case was discussed between the Dutch and the American CARIN representative. Because of this direct contact, the Dutch colleagues were able to bring the right experts into action.

In this case approximately xxx Million USD was stolen from the tax authority in *Country X*. The money was then transferred via Cyprus to foreign companies. It is suspected that the suspects were assisted by corrupted officials.

The case was a difficult legal puzzle that had to be solved first. By way of close co-operation in a multi-disciplinary team consisting of a civil law advisor, an asset tracer, an international law advisors, a public prosecutor specialized in confiscation, the office was able to act quickly, because the claim could be paid by the Dutch company at any moment.

In the end, an out of court settlement was reached in the USA in the IN REM procedure.
There is no definition in Dutch law of ‘seizure’ and ‘ freezing’. There are different kinds of seizure possible under Dutch law. Art. 94 and 94a of the Dutch Code of Criminal Procedure explain what kind of seizure is possible, but no definition is given. Art. 94 concerns seizure for purpose of evidence or for object confiscation (the seizure of the profits or instrumentalities of crime) or withdrawal from circulation. Art. 94a concerns ‘prejudgment seizure’ for the purpose of recovery in respect of a fine, value confiscation or victim compensation if this can be imposed later on by the court. Art. 94a also entails the possibility to seize assets of persons other than the suspect, if there are sufficient indications that these assets have become, in whole or in part, the property of this other person with the evident aim of hindering or preventing the seizure of these objects, and this person knew or could reasonably suspect this to be the case.

The ‘freezing’ of assets is not a competence that is known under Dutch law. For example, in the UK the seizure of a bank account is called a ‘freezing order’ (in contrast to the term "seizure" of objects that can actually be taken away). In the Netherlands, the seizure of all objects, including bank accounts, immovable goods, etc., is called seizure. The only difference the Dutch law makes is in the purpose of the seizure: the for mentioned ‘normal’ seizure (94) or a prejudgment seizure (94a).

The Dutch written laws do not stipulate a period/term or do not impose restrictions time-wise on the competence of the PPS to seize objects. Of course, when the reason for which the object was seized ends, without a reason to collect the object, the PPS is obliged to end the seizure and to return the object. The suspect or another interested party can file a complaint against the seizure on the basis of art. 552a of the Dutch Code of Criminal Procedure. In that case, the court can decide that the seizure has to be lifted.

(b) Observations on the implementation of the article

Similarly to the enforcement of foreign confiscation orders, the Netherlands also distinguishes between requests for seizure from European Union member States and non-member States. Seizure within the European Union is governed by articles 5.5.1. to 5.5.19 of the Code of Criminal Procedure, in which the mutual recognition and enforcement of European Union freezing orders is regulated. With regard to requests from non-member States of the European Union, insofar as it is provided by a treaty, including the Convention, property that would be confiscated under the law of the foreign State may be seized and preserved at the request of that foreign State (art. 13a WOTS). Such requests could either entail a foreign seizure order or demonstrate that such an order would have been issued if the relevant property had been in the territory of the foreign State.

Subparagraph 2 (b) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Based on a request for legal assistance from the competent authorities of a Member State, objects may be seized with a view to their ultimate confiscation under the conditions as outlined above under Article 54(2)(a).

If an order for seizure has not been issued in the requesting State, the objects may nevertheless be seized at the request of the competent authorities of this State, in the event that such an order would have been issued if the objects had been located within the territory of the requesting State (Section 13a(2) of the WOTS).

The Enforcement of Criminal Judgments (Transfer) Act (WOTS)

Article 13a

1. Insofar as a Treaty so provides, objects may be liable to seizure at the request of a foreign state:

a. in respect of which a sanction regarding confiscation can be imposed based on the law of the foreign state,

b. in maintaining the right to recourse for a confiscation of wrongfully obtained advantage regarding an obligation to pay a sum of money which can be imposed based on the law of the foreign state, or

c. which can serve to prove wrongfully obtained advantage.

2. Seizure, as meant in the first paragraph under a and b can only take place if, according to the information supplied in the request by the foreign state, an order for seizure is given by the

competent authorities of that foreign state or would have been given if the particular objects would be located within his jurisdiction, and seizure is permitted by Dutch law.

3. For the application of the second paragraph seizure by Dutch law is permitted, if such would also have been possible if the offence or the offences for which the seizure by the foreign state is requested would be or would have been committed in the Netherlands.

4. Seizure of objects, as meant in the first paragraph under a and b can further only take place if there are well-founded reasons expected that in this respect the requesting foreign state will make a request for the enforcement of a sanction regarding a forfeiture or of a confiscation of wrongfully obtained advantage.

The Code of Criminal Procedure

Article 5.5.1

1. This section shall apply to an order as referred to in paragraph 3 issued by a competent judicial authority of another Member State of the European Union that is not bound by Regulation (EU) No 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ 2018, L 303/1).

2. Orders as referred to in the third paragraph, issued by a competent judicial authority of another Member State of the European Union, may be recognised and executed in the Netherlands.

3. Susceptible to recognition and enforcement are orders for the seizure of objects located on Dutch territory which under the law of the issuing Member State:

a. may serve to expose the truth or prove unlawfully obtained advantage;

b. may be confiscated or withdrawn from circulation;

c. may serve to preserve the right of recourse for a penalty aimed at the deprivation of illegally obtained benefits.

Article 5.5.2

1. An order issued by the authorities of the issuing Member State shall be accompanied by a completed certificate drawn up in accordance with the model established for that purpose by general administrative measure.

2. The order shall also be accompanied by a request for legal assistance aimed at:

a. surrendering the object to which the seizure order relates to the authorities of the issuing Member State, insofar as the seizure has been ordered with a view to establishing the truth;

b. confiscation or removal from circulation of the object to which the seizure order relates;

c. deprivation of unlawfully obtained benefits in connection with which the seizure order was issued.

3. By way of derogation from the second paragraph, the authorities of the issuing Member State may indicate in the certificate that the seized objects will remain in custody in the Netherlands pending a request as referred to in the second paragraph, stating the expected time at which the request will be submitted.

4. If the certificate has not been produced, is incomplete or is manifestly not in accordance with the order, the public prosecutor shall give the authorities of the issuing Member State the opportunity to produce, supplement or correct the certificate within a reasonable period to be set by him. The public prosecutor may order that the certificate be replaced by an equivalent document. If the information necessary for the execution of the order has been obtained in another way, the public prosecutor may order that the certificate no longer be produced.

5. The order and the documents relating to it, if not sent to a public prosecutor, shall be forwarded by the addressee to the public prosecutor without delay. The addressee shall inform the competent authorities of the issuing Member State of the forwarding.

See Article 13a, paragraph 2, of the Act on the Transfer of Sentences. On the basis of a treaty and on the request of a foreign authority, assets can be seized if according to the information provided in the request, the competent authority issued a freezing order or could have issued such an order if the assets would have been in the territory of the requesting member state and the seizure is possible according to Dutch law.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See above.

(b) Observations on the implementation of the article

Similarly to the enforcement of foreign confiscation orders, the Netherlands also distinguishes between requests for seizure from European Union member States and non-member States. Seizure within the European Union is governed by articles 5.5.1. to 5.5.19 of the Code of Criminal Procedure, in which the mutual recognition and enforcement of European Union freezing orders is regulated. With regard to requests from non-member States of the European Union, insofar as it is provided by a treaty, including the Convention, property that would be confiscated under the law of the foreign State may be seized and preserved at the request of that foreign State (art. 13a of the Enforcement of Criminal Judgments (Transfer) Act). Such requests could either entail a foreign seizure order or demonstrate that such an order would have been issued if the relevant property had been in the territory of the foreign State.

Subparagraph 2 (c) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Under Section 13 of the WOTS, a criminal and financial investigation (CFI) may be initiated in the Netherlands following a request from a foreign State based on a treaty (in other words, even if the foreign authority has not explicitly requested this investigation). If the examining magistrate in the Netherlands has authorised the initiation of such an investigation, the Public Prosecution Service will be authorised to seize all objects which belong to the suspect as well as any objects which may

be used to demonstrate the unlawfully obtained assets. In addition, within the framework of such a CFI, investigative powers may be applied (such as requesting data, conducting property searches, interviewing witnesses, conducting observations, and so on) which allow the assets of the suspects to be traced.

Proceedings may also be initiated in Netherlands which are aimed at the confiscation of the unlawfully obtained assets (value confiscation) as a result of a conviction or prosecution abroad. Pursuant to Section 5.3.1 (6) of the Code of Criminal Procedure, a Member State may ask the Netherlands to initiate separate criminal confiscation proceedings based on a conviction or prosecution in the requesting Member State. A request to the court by the Public Prosecution Service to initiate proceedings in order to confiscate unlawfully obtained assets (value confiscation proceedings) may take place at the request of the authority abroad up to two years after the judgment (within the originating State) in first instance. A CFI may be opened in the context of the proceedings relating to the confiscation of the unlawfully obtained assets, based on which investigative powers may be used in order to detect the assets of the suspect/convicted person in the Netherlands, to identify the unlawfully obtained assets and to seize objects pending the confiscation thereof.

The Seized Objects (Safekeeping) Decree

Article 1

The following are designated as custodians, as referred to in the first paragraph of Article 118 of the Code of Criminal Procedure :

a. the person who has been appointed as cash manager pursuant to Article 3, paragraph 1, of the Cash Management Decree 2012 in conjunction with Article 1, paragraph 3, under a, of the Cash Management Regulations 2012 at the Public Prosecution Service, for the safekeeping of money, insofar as the seizure does not serve to reveal the truth or must be kept in another manner by order of the public prosecutor for a special reason;

[…]

The Movable Goods State Property Service (DRZ), a directorate of the Ministry of Finance, is statutorily charged with the safekeeping of a large part attached goods, as has been laid down in the Seized Objects (Safekeeping) Decree. In addition, the DRZ is charged by law with the processing of superfluous State property. When the National Police or a special investigation service (BOD) seizes an object, the object is first temporarily stored in a regional and ends up in the chain seizure house. Each police region has a chain seizure house. The seizure is registered in the so-called seizure portal. This is a registration system that is used by all chain park partners (National Police / BODs, PPS, Custodians) and in which all seized objects are registered. The Public Prosecution Service makes a (temporary) decision based on this registration. Typically, the item is then transported to a DRZ central storage location. There the object is valued. The PPS decides whether the object is to be sold, destroyed, or kept. The DRZ either returns the objects to the owner, sells them via an online auction, or destroys them. Within this processing chain, the PPS is responsible for ensuring that attachment of objects aids in effectively combating crime and in discouraging making a living through crime. The DRZ takes care of the transportation, the valuation, the storage, and the processing (return, selling or destruction) of the goods attached. The working arrangements concluded between the PPS and the DRZ governing the performance of these tasks have been laid down in a multi-year agreement.

The National Seizure Authority (LBA), which is part of the PPS (FP), has been charged with the hierarchic, centralised control of the attachment chain since 2013, providing direction to both the partners in the chain and to the PPS. It in this connection cooperates closely with the Police, the special investigative services, the DRZ and the Police's repositories for seized goods. Functional control over the attachment process is vested in the Seizure Director of the PPS.

The Public Prosecution Service decides what should happen to goods that are seized or confiscated: return, retain (deposit), sell or destroy them. The depositary, usually the Movable State Property Service (DRZ), implements the decision of the Public Prosecution Service. The Movable Goods State Property Service is the statutory depositary of goods seized. It's a department of the Ministry of Finance and represents the State as owner of movable goods. If the Public Prosecution Service decides that goods may be sold, the Movable Goods State Property Service will also organise the sale of these goods. The working area of the Movable Goods State Property Service is the Netherlands as a whole. It has a central location in Apeldoorn, a sales location in Soesterberg and three storage locations.

Goods that quickly reduce in value, such as vehicles and vessels, are often directly offered for sale through the Movable Goods State Property Service on the instructions of the Public Prosecution Service.

The proper registration of seizure has become increasingly important. The proper registration of seizure has a major influence on the proper settlement of a case, as well as the final execution results. Since 2012, the National Seizure Authority of the Public Prosecution Service [Landelijke Beslag Autoriteit, LBA] in Leeuwarden has fulfilled a coordinating and specialist role in this area.

In Council Resolution 2007/845/JBZ, it was decided that the EU countries set up special contact points for the confiscation of assets for the purpose of a more effective exchange of police information and best practices. The Asset Recovery Office (ARO) was set up for the implementation. The police can submit mutual legal assistance requests to the ARO and advice can be obtained from the ARO about the international aspects of a case. The ARO also executes incoming mutual legal assistance requests concerning confiscation.

International and foreign assets are managed by a department of the LBA: the Asset Management Office (AMO). International seizure concerns seizure that has been levied in the Netherlands at the request of a foreign authority via an incoming request for legal assistance or a freezing order. Foreign attachment concerns attachment that has been levied abroad at the request of the Netherlands via an outgoing request for mutual legal assistance or a freezing order.

After a public prosecutor's office has registered an attachment of value and has provided the LBA/AMO with relevant documents, the attachment is managed by the LBA (national attachment) or AMO (international and foreign attachment). The starting point is that the yield from the seizure must be maximum at minimal costs. The attachment managers working at the LBA/AMO advise on the management of the attachment and decide (in consultation with and on behalf of the public prosecutor) on the sale, security, lifting and / or return of the attachment. In the event of sale or security, the attachment remains on the proceeds of the sale or security. In case of international seizure and foreign seizure, the

seizure administrator will contact the foreign authorities about this. In case of foreign attachment, the AMO is partly dependent on the legislation and possibilities of the relevant foreign country.

In the event of an international attachment, the requesting country will eventually transfer the execution of the underlying case to the Netherlands, after which the attachment can be enforced. The implementation of this takes place at the CJIB. In this execution phase, the Minister of Justice and Security can make agreements about asset sharing of the seizure after enforcement.
In the case of international and foreign seizure, the starting point is that the seizure (or the proceeds thereof) remains in the country where the seizure was imposed until the case in the Netherlands is final and the execution can be (partially) transferred to the country where the seizure was made. lies. This execution is also vested in the CJIB.

Thus the Public Prosecution Service decides what should happen to goods that are seized or confiscated: return, retain (deposit), sell or destroy them. The depositary, usually the Movable State Property Service (DRZ), implements the decision of the Public Prosecution Service. The Movable Goods State Property Service is the statutory depositary of goods seized. It's a department of the Ministry of Finance and represents the State as owner of movable goods. If the OM decides that goods may be sold, the Movable Goods State Property Service will also organise the sale of these goods. The working area of the Movable Goods State Property Service is the Netherlands as a whole. It has a central location in Apeldoorn, a sales location in Soesterberg and three storage locations.

Goods that quickly reduce in value, such as vehicles and vessels, are often directly offered for sale through the Movable Goods State Property Service on the instructions of the OM.

It is possible according to Dutch law to seize objects with the aim of confiscation on the basis of a foreign arrest or criminal charge. Depending on the circumstances in the Netherlands the foreign arrest or charge could in general lead to a Dutch suspicion of money laundering. According to the Dutch law, money laundering is an ongoing offence. According to Dutch law for money laundering it is not necessary to have a conviction for the predicate offence. In the criminal investigation with regard to money laundering the objects can be seized.

Article 420bis of the Dutch Criminal Code:

1. Any person who:
a. hides or conceals the real nature, the source, the location, the transfer or the moving of an object, or hides or conceals the identity of the person entitled to an object or has it in his possession, while he knows that the object derives - directly or indirectly - from any serious offence;
b. obtains an object, has an object in his possession, transfers or converts an object or makes use of an object, while he knows that the object derives - directly or indirectly - from a serious offence;
shall be guilty of laundering and shall be liable to a term of imprisonment not exceeding four years or a fine of the fifth category.
2. Objects shall mean all property of any description, whether corporeal or incorporeal

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

On the basis of a request from the United Kingdom with regard to money laundering and drug smuggling (investigation Adulate) real estate properties and bank accounts were seized in the Netherlands. On the basis of the MLAT request a criminal financial investigation was opened in the Netherlands with the aim to find other assets and to collect evidence. During the CFI witnesses were heard and other investigation measures were used. Recently the real estate in the Netherlands were confiscated after the UK confiscation order was transferred to the Netherlands.

Another example:

On the request of the Belgian authorities with regard to tax evasion and money laundering (it was believed that approximately € 180 million was gained with this illegal activity) an expensive painting of Rembrandt was seized. On the basis of a request for mutual legal assistance from the Belgian authorities an criminal financial investigation (CFI) was opened in the Netherlands to find other assets from the suspect. During the CFI other oil paintings from Dutch master from the 17th century were discovered and seized. In the end the seizures were ended after an out of court settlement was reached in Belgium.

(b) Observations on the implementation of the article

The Netherlands reported that it may initiate its own investigation on the basis of a foreign arrest or criminal charge that involved a substantial suspicion of criminal offences without asking for a foreign request. The administration of assets is governed by the Seized Objects (Safekeeping) Decree, under the responsibility of the Asset Management Office and other relevant agencies.

Article 55. International cooperation for purposes of confiscation

Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Please see the comments for Article 54(1)(a).

The Enforcement of Criminal Judgments (Transfer) Act

Article 13

1. Following a request based on a treaty from a foreign state, a criminal financial investigation may be initiated in the Netherlands, in accordance with the provisions of the ninth section of Title IV of Book I of the Code of Criminal Procedure , aimed at determining any unlawfully obtained benefit present or acquired in this country by a person who is subject to criminal investigation in the requesting state.

2. The criminal financial investigation may only be initiated if this would also have been possible if the act or acts of which the person is suspected in the requesting State had been committed in T the Netherlands.

3. During the criminal financial investigation, seizure of objects in accordance with Article 94, paragraph 2 , and Article 94a , paragraph 2, of the Code of Criminal Procedure may only take place if there are sound reasons to expect that a request for enforcement of a forfeiture or a sanction aimed at confiscating unlawfully obtained assets will be made in this regard by the requesting foreign state.

4. The public prosecutor shall immediately send a copy of his decision to close a criminal financial investigation to Our Minister. In doing so, he shall also communicate all information useful to the requesting foreign state.

For international cooperation in matters of asset recovery, the Netherlands has established both a police and a judicial Asset Recovery Office (ARO). EU law (2007/845/JHA) requires all EU Member States to have a central contact point for exchanging information on the existence of criminal assets and exchanging best practices and providing assistance. The existence of these AROs has significantly improved cooperation within the EU.

The AROs serve to locate and identify assets that are proceeds of illegal activity which can be frozen, seized or confiscated in a criminal procedure. Both AROs are the expertise centres for international cooperation in asset recovery in all phases: asset tracing, freezing and seizing, prosecution and execution. The judicial ARO forms part of the IRC FP and the police ARO is connected to the regional IRC in the Hague.

The judicial ARO is part of the IRC network and is specialized in international confiscation procedures. It consists of five International Advisers, an international asset-tracer and a prosecutor. It forms part of the IRC FP but serves the country as a whole with its expertise, and works closely with all the IRCs. Prosecutors and LEAs can also contact the judicial ARO directly for any question or support request in asset recovery cases. The judicial ARO can call upon the expertise of accountants, asset tracers, civil law advisers and the Asset Management Office (AMO) as well as specialized prosecutors and assistants to the prosecutor.

All IRCs are capable of handling incoming and outgoing requests for asset freezing or confiscation. However, complicated, urgent or (politically) sensitive requests, requests that involve large sums of money or requests from non-treaty countries will be handled by the judicial ARO. Furthermore, the judicial ARO focuses on new developments like crypto-

currencies. Together with other stakeholders like Europol, FIOD and the Dutch police, it has developed expertise in this field. The ARO focuses on freezing and seizing of different cryptocurrencies, while other stakeholders focus on the exchange of information. The judicial and police ARO are working on a standardised method with regard to requesting information from crypto-currencies exchanges and the freezing and confiscation of crypto-currencies.

Just like the IRCs, the judicial AROs have an external and internal role. Internally, the AROs advise and support ongoing investigations on the possibilities of cross-border asset recovery. Externally, they serve as a first point of contact and have close ties to different international organisations. AROs are active participants in the EU ARO Platform. The platform is used to keep everybody informed about the latest developments, to connect all the members and to share best practices.

The AROs are also connected to the CARIN-network. The Netherlands is a co-founder of and participant in the CARIN-network of confiscation agencies. CARIN is an international informal network of asset recovery practitioners, aiming to increase the effectiveness of its members' efforts in depriving criminals of their illicit profits. Its members can use the network to quickly exchange or obtain information in an informal way. The judicial ARO for instance has used its contacts within the CARIN network to request information about procedures and execution, or about bitcoin exchange. This is done in parallel with the official process of the request for mutual legal assistance.

The conditions under which the police ARO can exchange information are laid down in Council Framework Decision 2006/960/JBZ. In essence, LEAs of EU member states can request and exchange any information that is available to them through their own police registers or any other registers which they can access, such as the land registry or the chamber of commerce. By ways of a standardised form, the request can be sent directly to the police ARO. The exchange of data takes place through the Secure Information Exchange Network Application (SIENA). The information cannot be used as evidence in court. Requests are registered in the National Uniform Registration System for International Legal Assistance in Criminal Matters (LURIS). Different time frames are set for the execution of the request: 8 hours for urgent requests, 1 week for non-urgent requests if the requested information is held in a database directly accessible by the LEA and in case the crime is mentioned on the list of Council Framework Decision 2006/960/JBZ, and 14 days for all other cases. All requests concerning information about the identification and location of assets that fall within the scope of the framework decision, is executed by the police ARO. All other requests are forwarded to the IRC.

Police and judicial ARO keep in close contact, and also have regular meetings with the AMO. The numbers of the police ARO show a stark contrast compared to the regular MLA requests: where IRCs receive more requests than they send out, the police ARO sends out more requests than they receive. The numbers show overall an increase in both incoming and outgoing requests.

In the Netherlands, the administrative handling of all incoming and outgoing requests for mutual legal assistance, both for judicial and police assistance, has been organized in 10 regional Centers for International Legal Assistance (IRCs), one National Centre for International Legal Assistance (LIRC), and a Centre for International Legal Assistance at the Public Prosecution Service for serious Fraud, Environmental crime and asset confiscation

(IRC FP) and the IRC LE (Landelijke Eenheid) also forms part of this national network. An IRC is a joint venture between the public prosecution service and the police. The judicial ARO co-operates close with the police ARO and the IRC/FP

Moreover, an EJN Contact Point for the judges can be contacted to advise about questions in penal matters of judges within the EU member states, who are also connected to this network. The Ministry of Security and Justice is also a Contact Point to be contacted for information on foreign law, policy matters or questionnaires that do not affect operational matters. All the EJN Contact Points in the Netherlands are in close contact with each other. In case a question by any EJN Contact Point of another EU member state is not addressed to the right Contact Point for the Netherlands, the question will be forwarded to the right Contact Point and the requesting authority will be notified about the transfer.

An IRC is a cooperation between the Public Prosecution Service and the LEA and consists of prosecutors, assistants to the prosecutor, administrative staff and police officers. They work together on international MLA requests, both police and judicial MLAs. This set-up was organised to enhance efficiency of cooperation in international affairs and guarantees a high quality of responses and swift execution. All incoming and outgoing requests go through one of the IRCs and are assessed on the bases of their content.

All incoming requests are handled and executed by or through the IRCs. Most cases are executed by the IRCs themselves. This can be different when the execution calls for more capacity than the IRC has available, or when the request has links with an (ongoing) Dutch investigation. In that case it can be decided to let the LEAs and prosecutor responsible for the investigation handle the execution. In those cases, the IRC will coordinate the handling of the request and send the end result to the requesting country.

The IRCs are also the point of contact for foreign authorities for either questions they have, or to address their MLA requests to. Every IRC provides contact details of its contact points on the website of the European Judicial Network (EJN), making it easy for countries which are part of the network to find them.

Structurally, IRCs are part of the public prosecutor’s office, even though IRC staff consists of both police officers and public prosecutors. This cooperation enables a swift execution of both police and judicial MLA requests. Another advantage of specialised staff, is the fact that they are fully devoted to the provision of MLA. This stimulates the development of expertise in the field of international legal cooperation. It also guarantees that the execution of the MLAs is the number one priority of the staff and not influenced by the demands of day-to-day police and prosecutorial work.

As for the outgoing requests: the IRCs do not only play a formal role because of the obligation to register the MLA request at the IRC, but they also play an important part in maintaining a high level of quality. The IRCs are the first point of contact for Dutch LEAs and the OM for any questions on international cooperation and they will advise and support them on a practical and substantive level. IRCs provide formal as well as more informal information: from contact data of authorities abroad to specific questions like whether the requested country will accept a verbal European Investigation Order (EIO) in case of urgency. Furthermore, outgoing MLAs can be looked at by the IRCs textually and content-wise before they are sent abroad, which leads to a better quality of MLAs and prevents any unnecessary delays because of errors in the request. In the situation in which a case can profit

from using a different international channel like Eurojust, the IRCs will give their advice on this.

There are in total twelve IRCs. Of those IRCs, ten have regional competence, the IRC FP (IRC Functioneel Parket) is specialised in serious fraud and complicated asset recovery and the LIRC is national/coordinating. The LIRC has several specific duties. The police department of the LIRC is responsible for maintaining the so-called 5 channels (Europol, Interpol, SIRENE, Foreign Liaison Officers (LOs) in the Netherlands and Dutch LOs abroad). The judicial side of the LIRC has amongst its responsibilities the coordination of joint investigation teams (JITs), execution of the Prüm Treaty and all cross-border surveillance. Furthermore, the LIRC coordinates all incoming MLAs that are not sent directly to the corresponding IRCs. Finally, the LIRC usually provides national input for upcoming treaties and international or EU-legislation if so requested.

The IRC FP is part of the Public Prosecution Service for Serious Fraud, Environmental Crime and Asset Confiscation. The IRC FP cooperates with the Fiscal Intelligence and Investigation Service (Fiscale Inlichtingen en Opsporingsdienst: FIOD), which also has a centralised, dedicated team for international cooperation. The FIOD is part of the Ministry of Finance. Together they handle all incoming MLA requests concerning tax fraud investigation, as well as larger investigations into investment fraud, corruption and cybercrime amongst other things. They are also responsible for all terrorism financing (TF) requests and the more elaborate or complicated cases of money laundering (ML). These are defined as the cases in which for instance there is extensive cash flow, where legal structures such as trust offices or Dutch legal entities are being used, where national or international PEPs (Politically Exposed Person) are involved, or where alternative payment platforms are being used. This has led to the development of extensive expertise in the field of international cooperation in combination with TF/ML, so that the judicial MLAs as well as the MLAs at police level can be executed swiftly and efficiently.

All IRCs are in close contact with each other. There is a standing consultation structure in which the IRCs, AIRS, and other stakeholders meet to discuss operational problems and exchange expertise and experience. These meetings are chaired by the LIRC and take place around 5 times a year. Topics for discussion vary and can be introduced by either the LIRC or one of the participants of the meeting: for instance upcoming legislation, manuals for drafting or evaluating EIOs, practical arrangements made with neighbouring countries, or the need to distribute some of the pending requests in times of increased workload. This contributes to a uniform way of working within the IRCs.

The investigative powers and coercive measures concern the gathering of evidence or the tracing of illegally obtained assets. This provision doesn't provide for the possibility to seize (valuable) goods with the aim of confiscation.

However, within the EU the seizure of (valuable) goods with the aim of confiscation (based on the principle of mutual recognition), based on an EU freezing order is covered by the Dutch Code on Criminal Procedure in article 5.5.14 – 5.5.18 or article 5.5.1 – 5.5.8

For the seizure of assets on the request of a foreign country outside the EU, the Transfer Act applies.

In article 552k of the Dutch Code of Criminal Procedure (predating 2018) it is mentioned that if a foreign request is based on a treaty, the request will be executed to the widest possible extent. In paragraph b) it is mentioned that if a reasonable request is not based on a treaty, or in case the treaty doesn't force to comply with the request, the request will be complied with, unless this is contrary with the law or a direction of the Minister of Justice and Security.

However, on the basis of the WOTS, assets can only be seized on the request of a foreign authority on the basis of a request. The transfer of a foreign confiscation order into a Dutch confiscation order can only be done on the basis of a treaty. The UNCAC can be used as such a basis for both procedures.

In practice communication between the requested authority and the requesting authority will solve this problem. In general, the requesting authority agrees that the asset will not be seized or seizure will be ended if the value of the asset is low.

If the requesting authority still insists that the seizure will be conducted or continued, the Public prosecutor will do so. We had some situations like this in which there were victims involved.

Within the EU police information can be exchanged without obstacles. For example, the ARO in Belgium checked in several occasions whether there was legal ground in the Netherlands for the seizure and confiscation of assets that Belgium had to release or return. This check also included whether there was a claim of the tax authority in the Netherlands or a fine that had to be paid.

In the Netherlands there are five official channels for the general exchange of information:
- Europol;
- Interpol;
- Dutch Liaison officers abroad;
- Foreign liaison officers in the Netherlands;
- SIRENE (the Schengen Information System).

FIU-NL is authorised to disseminate information to national law enforcement agencies and intelligence and security services for further investigations, both spontaneously and upon request. This authorisation is laid down in Article 13(b), (d), (e) and (f) of the Prevention of Money Laundering and Terrorist Financing Act (Wwft). Suspicious transactions are also included as a standard in iCOV and in the AMLC Suite. The transactions declared suspicious by the Head of FIU-NL fall under the regime of the Police Data Act as soon as they have been provided to the LEAs.

FIU-NL focuses on both wide and targeted dissemination of FIU-NL information. Wide dissemination takes place through the police-wide application, 'Blueview,', a secured database containing Police records, which all LEAs and intelligence and security services have access to. FIU-NL disseminates suspicious transactions in
a targeted manner by making agreements with specific authorized recipients of the information.

Under article 13, 13a and 16(2) of the Prevention of Money Laundering and Terrorist Financing Act t the FIU-NL is competent to exchange information, spontaneously or upon request, with another FIU, information directly or indirectly obtained by the FIU-NL. To do

so, FIU-NL shall make use of all its powers on the basis of the of the Prevention of Money Laundering and Terrorist Financing Act to gather the requested information, which it will report promptly to the requesting FIU, according to Article 13a(2) and Article 13a(5) of the Prevention of Money Laundering and Terrorist Financing Act. This includes powers relating to the access of indirect sources, as stipulated in Rec. 29.3.

The FIU-NL (actually its predecessor: MOT) joined in the Egmont initiative in 1995 and can therefore be regarded as one of the founding fathers of the Egmont Group. The FIU-NL continues to participate as a member of the Egmont Group to date. It actively participates in several working groups and has, in the past, fulfilled the task of secretariat of the Egmont Group. The head of the FIU-NL was the Chair of the Egmont Group from July 2017 until July 2019. From July 2020 until July 2022 she will again be the Chair of the Egmont Group, after being interim chair from January 2020 until the election in July.

The FIU-NL has been an Egmont Committee member and chair of the various working groups, on IT, for example.

The Code of Criminal Procedure in Article 5.1.6 prescribes that the Public Prosecutor ensures swift execution of the MLA request. Directive (EU) 2015/849 establishes rules for prioritizing and timely responses to requests of international cooperation, which the Netherlands has implemented accordingly, see Article 53 Directive (EU) 2015/849.
Specifically, Article 13a(5) of the of the Prevention of Money Laundering and Terrorist Financing Act states that an FIU shall provide information 'promptly', making use of all its powers under the of the Prevention of Money Laundering and Terrorist Financing Act, to foreign counterparts. An international request is not of minor importance than a national request, rather they are placed at similar foot.

In case of urgency, Articles 8(c) and 9(e) of the IOSCO MMOU allows requests for assistance to be effected by telephone, email or facsimile, provided such communication is confirmed through an original, signed document. Internal processes at the Authority for the Financial Markets (AFM) stipulate that incoming requests for information are handled on the same day in general, while urgent outgoing requests should be preceded by an e-mail. Similarly, Article 4(2) of the ESMA MMOU stipulates that urgent requests may first be made verbally but must be followed up in writing.

Agreements

- Agreement between the Kingdom of the Netherlands and the Republic of Suriname concerning extradition and legal assistance in criminal matters (The Hague, 27 August 1976)
- Convention on mutual assistance in criminal matters between the Kingdom of the Netherlands and the Kingdom of Morocco (Rabat, 20 September 2010)
- Treaty between the Kingdom of the Netherlands and the United States of America on mutual legal assistance in criminal matters (The Hague, 15 September 1983)
- Treaty between the Kingdom of the Netherlands and Australia on mutual assistance in criminal matters (Canberra, 1 June 1991)
- Treaty between the Kingdom of the Netherlands and Canada on mutual legal assistance in criminal matters (The Hague, 1 May 1991)
- Agreement between the Government of the Kingdom of the Netherlands and the Government of the Hong Kong Special Administrative Region of the People’s

Republic of China concerning mutual legal assistance in criminal matters (Hong Kong, 26 August 2002)
- Agreement between the European Union and Japan on mutual legal assistance in criminal matters (Brussels, 30 November 2009)
- Agreement between the European Union and the United States of America on mutual legal assistance (Washington D.C., 25 June 2003)
- Extradition Treaty between the Kingdom of the Netherlands and Mexico (Mexico-City, 16 December 1907)
- Extradition Treaty between the Kingdom of the Netherlands and Argentina (Buenos Aires, 7 September 1893)
- Agreement between the Kingdom of the Netherlands and the Kingdom of Morocco concerning the transfer of sentenced persons (Rabat, 30 November 1999)
- Agreement between the Kingdom of the Netherlands and the Republic of Venezuela on the transfer of sentenced persons (Caracas, 8 October 1996)
- Convention on the transfer of sentenced persons between the Kingdom of the Netherlands and the Dominican Republic (Santo Domingo, 25 July 2016)
- Convention on the transfer of sentenced persons between the Kingdom of the Netherlands and the Republic of Cuba (Havana, 5 July 2013)
- Treaty on the transfer of sentenced persons between the Kingdom of the Netherlands and the Republic of Peru (The Hague, 12 May 2011)
- Treaty on the transfer of sentenced persons between the Kingdom of the Netherlands and the Federal Republic of Brazil (The Hague, 23 January 2009)
- Agreement on the transfer of sentenced persons between the Government of the Kingdom of the Netherlands and the Government of the Republic of Zambia (Lusaka, 20 November 2011)
- Treaty between the Kingdom of the Netherlands and the Kingdom of Thailand on the transfer of offenders and on co-operation in the enforcement of penal sentences (The Hague, 23 August 2004)

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

The Netherlands has received and executed foreign requests for confiscation of property before. In addition, a domestic criminal and financial investigation into gains unlawfully obtained by a person under investigation in a foreign State may be initiated in the Netherlands following a request from that State made on the basis of the Convention (art. 13 of the Enforcement of Criminal Judgments (Transfer) Act). Investigative powers, including asset tracing and seizure, can be applied as part of criminal and financial investigations.

Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Please see the comments for Article 54(2)(c) explaining that a CFI can be initiated in the Netherlands pursuant to article 12 of the WOTS following a request from a foreign State based on a treaty.

In addition, the Code of Criminal Procedure (Wetboek van Strafvordering) was recently revised, which involved an expansion of the possibilities for the provision of international legal assistance in criminal matters as of 1 July 2018.

As of 1 July 2018, the definition of a request for legal assistance has been broadened, for instance. In short, pursuant to the Code of Criminal Procedure, requests to determine the presence of unlawfully obtained assets have also fallen under this definition since the aforementioned date (article 5.1.1 of the Code of Criminal Procedure).

With regard to the detection of criminal assets at the request of a foreign authority, it is therefore no longer strictly necessary to open a CFI pursuant to article 13 of the WOTS as outlined above if investigative activities are required in order to detect assets.

Investigative powers can also be applied as of 1 July 2018 pursuant to a corresponding request for legal assistance from a foreign State, insofar as such powers could be applied in a Dutch investigation into the same offences based on this Code as well. In such cases, where the request is based on a treaty, requirements in terms of proportionality as well as an assessment of the value of the investigation will be excluded (article 5.1.8(1) of the Code of Criminal Procedure).

As of 1 July 2018, it has become easier to execute a request for legal assistance based on the Dutch Code of Criminal Procedure in which foreign authorities request specific investigative activities to detect criminal assets.

The following are considered to be requests for legal assistance: requests from competent authorities of a State to the competent authorities of another State to carry out investigative activities either jointly or independently or to cooperate with such acts, or requests to determine the presence of unlawfully obtained assets, furnish documents, dossiers or files, or provide information or serve and provide documents or submit appeals or notices to third parties.

Since 1 July 2018, all investigative powers will generally be used in case of a request for international legal assistance which would also be applied in a Dutch investigation.

As regards practical implementation, the Netherlands has a nationwide network of regional IRCs to which requests for legal assistance are referred by the central authority for implementation. The judicial ARO is part of that network and is able to handle request for legal assistance which are

complicated or very urgent as an IRC specialised in international confiscation proceedings. In addition, the judicial ARO is a point of contact and a centre of expertise for the other IRCs as well as other chain partners.

Furthermore, the judicial ARO is linked to five offices in the Netherlands where various confiscation experts have been brought together, such as asset trackers, forensic accountants, civil-law consultants, international criminal law consultants and public prosecutors who specialise in confiscation proceedings. The asset trackers are able to seize bank accounts and other objects quickly, while they are also able to provide support in detecting assets. If necessary, a multidisciplinary team can quickly be assembled in order to execute complex requests for legal assistance in the field of asset tracking, seizure and confiscation.

This multidisciplinary cooperation has already yielded a great deal of success in processing various requests for international legal assistance.

The Enforcement of Criminal Judgments (Transfer) Act - (WOTS)

Article 13a

1. Insofar as a Treaty so provides, objects may be liable to seizure at the request of a foreign state:

a. in respect of which a sanction regarding confiscation can be imposed based on the law of the foreign state,

b. in maintaining the right to recourse for a confiscation of wrongfully obtained advantage regarding an obligation to pay a sum of money which can be imposed based on the law of the foreign state, or

c. which can serve to prove wrongfully obtained advantage.

2. Seizure, as meant in the first paragraph under a and b can only take place if, according to the information supplied in the request by the foreign state, an order for seizure is given by the competent authorities of that foreign state or would have been given if the particular objects would be located within his jurisdiction, and seizure is permitted by Dutch law.

3. For the application of the second paragraph seizure by Dutch law is permitted, if such would also have been possible if the offence or the offences for which the seizure by the foreign state is requested would be or would have been committed in the Netherlands.

4. Seizure of objects, as meant in the first paragraph under a and b can further only take place if there are well-founded reasons expected that in this respect the requesting foreign state will make a request for the enforcement of a sanction regarding a forfeiture or of a confiscation of wrongfully obtained advantage.

The Code of Criminal Procedure

Article 5.5.1

1. This section shall apply to an order as referred to in paragraph 3 issued by a competent judicial authority of another Member State of the European Union that is not bound by Regulation (EU) No 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ 2018, L 303/1).

2. Orders as referred to in the third paragraph, issued by a competent judicial authority of another Member State of the European Union, may be recognised and executed in the Netherlands.

3. Susceptible to recognition and enforcement are orders for the seizure of objects located on Dutch territory which under the law of the issuing Member State:

a. may serve to expose the truth or prove unlawfully obtained advantage;

b. may be confiscated or withdrawn from circulation;

c. may serve to preserve the right of recourse for a penalty aimed at the deprivation of illegally obtained benefits.

Article 5.5.2
1. An order issued by the authorities of the issuing Member State shall be accompanied by a completed certificate drawn up in accordance with the model established for that purpose by general administrative measure.

2. The order shall also be accompanied by a request for legal assistance aimed at:

a. surrendering the object to which the seizure order relates to the authorities of the issuing Member State, insofar as the seizure has been ordered with a view to establishing the truth;

b. confiscation or removal from circulation of the object to which the seizure order relates;

c. deprivation of unlawfully obtained benefits in connection with which the seizure order was issued.

3. By way of derogation from the second paragraph, the authorities of the issuing Member State may indicate in the certificate that the seized objects will remain in custody in the Netherlands pending a request as referred to in the second paragraph, stating the expected time at which the request will be submitted.

4. If the certificate has not been produced, is incomplete or is manifestly not in accordance with the order, the public prosecutor shall give the authorities of the issuing Member State the opportunity to produce, supplement or correct the certificate within a reasonable period to be set by him. The public prosecutor may order that the certificate be replaced by an equivalent document. If the information necessary for the execution of the order has been obtained in another way, the public prosecutor may order that the certificate no longer be produced.

5. The order and the documents relating to it, if not sent to a public prosecutor, shall be forwarded by the addressee to the public prosecutor without delay. The addressee shall inform the competent authorities of the issuing Member State of the forwarding.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

((b) Observations on the implementation of the article

Similarly to the enforcement of foreign confiscation orders, the Netherlands also distinguishes between requests for seizure from European Union member States and non-member States. Seizure within the European Union is governed by articles 5.5.1. to 5.5.19 of the Code of Criminal Procedure, in which the mutual recognition and enforcement of European Union freezing orders is regulated. With regard to requests from non-member States of the European Union, insofar as it is provided by a treaty, including the Convention, property that would be confiscated under the law of the foreign State may be seized and preserved at the request of that foreign State (art. 13a of the Enforcement of Criminal Judgments (Transfer) Act). Such requests could either entail a foreign seizure order or demonstrate that such an order would have been issued if the relevant property had been in the territory of the foreign State.

Paragraph 3 of article 55

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Requests for legal assistance generally contain the requested information as referred to in this Article. The requests that are submitted to other Member States are usually verified by AIRS of the Ministry of Justice and Security as the central authority. If any necessary information is missing or documents have not been attached, the request is not sent abroad and the Public Prosecution Service is requested to furnish the missing information or documents first.

A quality check also takes place at the relevant IRCs which register the request for legal assistance and which refer it abroad to the AIRS central authority. If necessary, these IRCs can enlist the assistance of the ARO, which specialises in international legal assistance relating to confiscation proceedings.

In the event that an international request for legal assistance is received in the Netherlands, a similar check is conducted by the institutions referred to above. If necessary, the requesting authorities will be asked to furnish any additional information or documentation first before the request for legal assistance can be executed.

In addition, the judicial ARO has various networks (the ARO network, the Carin network, and so on) which can be used for an initial assessment of a draft request for legal assistance from abroad. The judicial ARO also has specific knowledge in the field of confiscation in terms of the statutory arrangements in other countries. This knowledge and experience can be used to ensure that the drafting of the request for legal assistance actually allows the authorities in the relevant requested State to execute the request for legal assistance.

Please provide examples of the implementation of those measures, including related court or

other cases, statistics etc.

See second example mentioned under Article 54, subparagraph 2 (a) (the use of the Carin network).

Another example: In an ongoing investigation with regard to money laundering and investment fraud the investigation team managed to seize over 15 million USD in several EU countries within two days by using the ARO network. The ARO's in the other EU member states were connected to their Financial Intelligence Unit (FIU) and could provide information with regard to bank accounts connected to suspected companies in the Dutch investigation. Next to that their FIU's could at the same moment use a temporary freezing possibility. By using this temporary freezing measure, the Dutch authorities were given the possibility to produce and translate EU freezing orders and to send them to the competent foreign authorities. After the receipt of these EU freezing orders the bank accounts were frozen on the basis of the foreign criminal procedure code. (the use of the ARO network).

(b) Observations on the implementation of the article

The Central Authority for Mutual Legal Assistance in Criminal Matters within the Ministry of Justice and Security is the central authority for all forms of judicial mutual legal assistance with regard to non-member States of the European Union, while the Asset Recovery Office acts as the national point of contact for the confiscation and recovery of assets. A bank data retrieval portal serving as the central bank register was created by the Bank Data Retrieval Portal Act.

Paragraph 4 of article 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

As previously stated, the Netherlands is able to provide legal assistance for in rem proceedings (which do not exist in the Netherlands), such as for the detection of assets and the seizure thereof. A prerequisite is that the in rem proceedings taking place in a foreign court are the result of a criminal offence that would result in a concrete suspicion of a criminal offence under Dutch law which would provide the impetus to offer the desired legal assistance under Dutch law.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See example mentioned under Article 54, subparagraph 1 (a) and Article 54, subparagraph 2 (a).

(b) Observations on the implementation of the article

No specific observations made.

Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Please provide a reference to the date these documents were transmitted, as well as a description of any documents not yet transmitted.

No comments.

(b) Observations on the implementation of the article

Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The Netherlands considers this Convention to be the basis on which investigative powers and coercive measures, such as seizure, can be applied at the request of another Member State.

Outside of the EU, the Netherlands can only confirm confiscation decisions for subsequent enforcement based on a convention or treaty (please see Article 2 of the WOTS). When confirming the enforcement of a foreign confiscation decision, the provisions of the convention or treaty are decisive. The ratification of this Convention by the Netherlands has turned this Convention into the basis for the confirmation of foreign confiscation decisions.

The Enforcement of Criminal Judgments (Transfer) Act

Article 13

1. Following a request based on a treaty from a foreign state, a criminal financial investigation may be initiated in the Netherlands, in accordance with the provisions of the ninth section of Title IV of Book I of the Code of Criminal Procedure, aimed at determining any unlawfully obtained benefit present or acquired in this country by a person who is subject to criminal investigation in the requesting state.

2. The criminal financial investigation may only be initiated if this would also have been possible if the act or acts of which the person is suspected in the requesting State had been committed in the Netherlands.

3. During the criminal financial investigation, seizure of objects in accordance with Article 94, paragraph 2, and Article 94a, paragraph 2, of the Code of Criminal Procedure may only take place if there are sound reasons to expect that a request for enforcement of a forfeiture or a sanction aimed at confiscating unlawfully obtained assets will be made in this regard by the requesting foreign state.

4. The public prosecutor shall immediately send a copy of his decision to close a criminal financial investigation to Our Minister. In doing so, he shall also communicate all information useful to the requesting foreign state.

Article 13a

1. Insofar as a Treaty so provides, objects may be liable to seizure at the request of a foreign state:

a. in respect of which a sanction regarding confiscation can be imposed based on the law of the foreign state,

b. in maintaining the right to recourse for a confiscation of wrongfully obtained advantage regarding an obligation to pay a sum of money which can be imposed based on the law of the foreign state, or

c. which can serve to prove wrongfully obtained advantage.

2. Seizure, as meant in the first paragraph under a and b can only take place if, according to the information supplied in the request by the foreign state, an order for seizure is given by the competent authorities of that foreign state or would have been given if the particular objects would be located within his jurisdiction, and seizure is permitted by Dutch law.

3. For the application of the second paragraph seizure by Dutch law is permitted, if such would also have been possible if the offence or the offences for which the seizure by the foreign state is requested would be or would have been committed in the Netherlands.

4. Seizure of objects, as meant in the first paragraph under a and b can further only take place if there are well-founded reasons expected that in this respect the requesting foreign state will make a request for the enforcement of a sanction regarding a forfeiture or of a confiscation of wrongfully obtained advantage.

The Code of Criminal Procedure

Article 5.5.1

1. This section shall apply to an order as referred to in paragraph 3 issued by a competent judicial authority of another Member State of the European Union that is not bound by Regulation (EU) No 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ 2018, L 303/1).

2. Orders as referred to in the third paragraph, issued by a competent judicial authority of another Member State of the European Union, may be recognised and executed in the Netherlands.

3. Susceptible to recognition and enforcement are orders for the seizure of objects located on Dutch territory which under the law of the issuing Member State:

a. may serve to expose the truth or prove unlawfully obtained advantage;

b. may be confiscated or withdrawn from circulation;

c. may serve to preserve the right of recourse for a penalty aimed at the deprivation of illegally obtained benefits.

Article 5.5.2
1. An order issued by the authorities of the issuing Member State shall be accompanied by a completed certificate drawn up in accordance with the model established for that purpose by general administrative measure.

2. The order shall also be accompanied by a request for legal assistance aimed at:

a. surrendering the object to which the seizure order relates to the authorities of the issuing Member State, insofar as the seizure has been ordered with a view to establishing the truth;

b. confiscation or removal from circulation of the object to which the seizure order relates;

c. deprivation of unlawfully obtained benefits in connection with which the seizure order was issued.

3. By way of derogation from the second paragraph, the authorities of the issuing Member State may indicate in the certificate that the seized objects will remain in custody in the Netherlands pending a request as referred to in the second paragraph, stating the expected time at which the request will be submitted.

4. If the certificate has not been produced, is incomplete or is manifestly not in accordance with the order, the public prosecutor shall give the authorities of the issuing Member State the opportunity to produce, supplement or correct the certificate within a reasonable period to be set by him. The public prosecutor may order that the certificate be replaced by an equivalent document. If the information necessary for the execution of the order has been obtained in another way, the public prosecutor may order that the certificate no longer be produced.

5. The order and the documents relating to it, if not sent to a public prosecutor, shall be forwarded by the addressee to the public prosecutor without delay. The addressee shall inform the competent authorities of the issuing Member State of the forwarding.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

Seizure within the European Union is governed by articles 5.5.1. to 5.5.19 of the Code of Criminal Procedure, in which the mutual recognition and enforcement of European Union freezing orders is regulated. With regard to requests from non-member States of the European Union, insofar as it is provided by a treaty, including the Convention, property that would be confiscated under the law of the foreign State may be seized and preserved at the request of that foreign State (art. 13a of the Enforcement of Criminal Judgments (Transfer) Act).

The Netherlands has received and executed foreign requests for confiscation of property before. In addition, a domestic criminal and financial investigation into gains unlawfully obtained by a person under investigation in a foreign State may be initiated in the Netherlands following a request from that State made on the basis of the Convention (art. 13 of the Enforcement of Criminal Judgments (Transfer) Act).

Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

If value assets have been seized at the request of a foreign country, this process must take place pursuant to an order of the Public Prosecution Service, whether or not following authorisation from the examining magistrate (in the case of a preservation order to deprive any unlawfully obtained assets (value confiscation)). The seizure is not bound by a time limit and will in principle continue for as long as the criminal investigation in the foreign country requires. However, any interested party may submit a written complaint against the continuation of the seizure at any time. The Public Prosecution Service is also authorised to terminate the seizure at any time; for example, if information requested from the investigation is not provided. In practice, extensive discussions on this issue will take place with the colleagues abroad beforehand.

A cost-benefit analysis will always be carried out for the seizure. If the object that must be seized is of minimal value (for example, a low balance on a bank account), there will be communication with the foreign authorities in practice on this issue. In such a case, there will be decided in practice against seizure in mutual consultation.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None

(b) Observations on the implementation of the article

No specific observations made.

Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Please see the comments for Article 55(7) above. Communication with the foreign authorities will generally take place prior to this type of decision being taken. If possible, this process will involve direct communication or mediation by the liaison officer in the foreign country or one of the networks (ARO, Carin, Eurojust, and so on). In addition, The Netherlands has an Asset

Management Office (AMO), which is able to communicate with counterparts abroad; for example, on the continuation or termination of seizure measures that have been implemented. The AMO will usually do so in consultation with the judicial authorities in the Netherlands.

The Code of Criminal Procedure

Article 5.1.4

1. Unless Our Minister of Security and Justice immediately decides that the request for legal assistance from a foreign state cannot be granted, he shall place the request and the accompanying documents in the hands of the public prosecutor.

2. To the extent that the request for legal assistance from a foreign state is based on a treaty, the requested action shall be taken as far as possible.

3. In cases where the request is not based on a treaty, as well as in cases where the applicable treaty does not impose an obligation to grant it, a request for legal assistance from a competent authority of a foreign State may be granted if granting it is not contrary to a statutory provision or should be refused in the public interest.

4. Where a treaty provides for direct transmission of requests to judicial authorities, the public prosecutor in the district in which the act requested in the request is to be performed, or a public prosecutor at the national public prosecutor's office or at the functional public prosecutor's office, is independently authorised to grant the request, unless granting it requires a decision by Our Minister of Security and Justice on the basis of Article 5.1.5 . If the request is not addressed to that public prosecutor, it shall be forwarded to him by the addressee without delay.

5. If the request cannot be granted, the authorities of the requesting State shall be informed thereof as soon as possible. If the request cannot be granted because it is incomplete, the authorities of the requesting State shall first be given the opportunity to supplement the request.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

The Netherlands reported that it could communicate directly with foreign authorities prior to refusing a request or lifting a provisional measure (art. 5.1.4 (5) of the Code of Criminal Procedure).

Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

If objects have been seized (for example, at the request of a foreign country), any interested party may submit a complaint against this seizure at any time. They can do so by submitting a complaint

to the registrar of the court in the relevant district. Subsequently, the court will consider the complaint in closed session. The decision of the court may be appealed on a point of law (article 552a of the Code of Criminal Procedure).

The Code of Criminal Procedure

Article 552a (predating 2018)

1. The interested parties may file a written complaint about the seizure, about the use of the objects seized, about the failure to issue an order to return the objects, about the exercise or non-exercise of the entitlement laid down in section 116(4), about the request of data, about the request to assist in the decryption of data, about the inspection or the use of data, recorded during a search or provided on request, about the inspection or the use of data, stored, processed or transferred by means of a computerised device or system and recorded during a search in such device or system, about the inspection or the use of data as referred to in sections 100, 101 and 114, about the request to store and keep data available, and about the disablement of data, found in a computerised device or system as referred to in section 125o, the revocation of the measures concerned or the failure to issue such revocation order.

2. The interested parties may request in writing destruction of data, recorded during a search or provided on request.

3. The written complaint or the request shall be filed at the registry of the court determining questions of fact, before which the case is being prosecuted or was last prosecuted, as soon as possible after the seizure of the objects or the inspection or disablement of the data. The written complaint or the application shall be inadmissible if it is submitted three months after the date on which the prosecuted case was concluded.

4. If prosecution has not been, or not yet been, instituted, the written complaint or the application shall be filed, as soon as possible, but not later than within two years after the seizure, inspection or disablement, at the registry of the District Court, in whose district the seizure, inspection or disablement took place. The District Court may deal with the written complaint or the application, unless the prosecution was started before the court could commence with the hearing of the written complaint or the application. In that case the clerk to the court shall send the written complaint or the application to the court, referred to in the preceding paragraph, in order to be dealt with by that court.

5. The clerk to the court, which is competent to deal with said written complaint or application, shall promptly send a copy of the written complaint to the person from whom the object was seized, if he is not the complainant or has not relinquished his ownership of the object either and his address is known, and shall inform him that he may file a written complaint. By order of the presiding judge of the court, the clerk to the court shall also notify other interested parties of the written complaint, offer them the opportunity to either file a written complaint, relating to the same object or the same data, within a time limit to be stated in the notification, or to be heard during the hearing of the written complaint. In the latter case the notification shall be deemed to be notice to appear.

6. The written complaint of the interested parties, other than the suspect, former suspect or convicted offender, may be transmitted by electronic means using an electronic device or other electronic facility designated by Governmental Decree.

7. The court in chambers shall hear the written complaint or the application at a public court session.

8. If the written complaint has been filed by a person with the right to assert privilege as referred to in article 218, the court shall decide within thirty days after receipt of the written complaint.

9. If the court finds the complaint or the application well-founded, then it shall issue an order in accordance therewith.

Article 552b

1. Interested parties, other than the suspect or convicted person, may complain in writing about the confiscation of their belongings or about the removal of such objects from circulation. No complaint shall be open if the amount at which the confiscated objects were estimated in the judgment has been paid or collected, or if a substitute prison sentence has been imposed.

2. The complaint shall be filed with the registry of the court that took the decision at the highest instance within three months after the decision has become enforceable. The complaint may be transmitted electronically using an electronic facility designated by or pursuant to a general administrative measure.

3. The hearing of the complaint by the council chamber takes place in public.

4. If the court finds the complaint to be well-founded, it shall revoke the confiscation or removal from circulation and issue an order as referred to in Article 353, paragraph 2, sub a or b .

5. In the event of the revocation of a forfeiture, the court may declare the objects withdrawn from circulation if they are susceptible to this. Articles 33b, 33c and 35, paragraph 2, of the Criminal Code shall apply accordingly.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

The interests of bona fide third parties are protected under article 552a and 552b of the Code.

(c) Successes and good practices

The reviewing experts highlighted the multidisciplinary approach taken by the Public Prosecution Service in confiscation cases, including the use of specialized teams, as a good practice.

Article 56. Special cooperation

> *Article 56*
>
> *Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Pursuant to Section 5.3.1 of the Code of Criminal Procedure, the Public Prosecution Service may request that the Minister of Justice and Security should provoke criminal proceedings in another Member State when submitting the criminal record or documents, if it considers this action to be necessary in the context of the proper administration of justice.

If the convention or treaty expressly provides for the direct transmission of requests for criminal prosecution by judicial authorities, the Public Prosecution Service is authorised to submit a request for criminal prosecution directly to the foreign judicial authorities. Please see Article 5.3.5 of the Code of Criminal Procedure.

Such a request may also be limited to provoking criminal proceedings in the foreign State for the purpose of imposing a sanction that seeks to confiscate any unlawfully obtained assets (value confiscation). Please see Article 5.3.1(6) of the Code of Criminal Procedure.

FIU-Netherlands is also affiliated with the Egmont Group, through which information on such matters as suspicious transactions can be exchanged spontaneously with FIUs in other States that are affiliated with this network.

In addition, information can be exchanged between the AROs spontaneously within the EU. This network was created by Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (Council Decision on contact points).

Finally, information can also be spontaneously exchanged via the Interpol and Europol channel as well as via the network of liaison officers who are stationed abroad, among other things.

If a foreign state has a claim on the assets as a victim or if the assets have to be returned to victims in the requesting state, the easiest way is to transfer the assets to the requesting state after confiscation.

This will be done between the central authorities mentioned in the treaty or EU regulation. For the Netherlands, asset share agreements will be closed by the Minister of Justice and Security (as central authority).

If there are victims involved, the Netherlands can ‘share’ the assets 100% to 0%. In practice, there is an international well respected principle that the compensation of victims prevails before confiscation. In many cases we have transferred 100% of the assets after confiscation to the requesting member state in order to compensate victims. We have also asked for 100% to foreign countries of the assets after confiscation. This has never been refused.

In some treaties the restitution of confiscated assets is regulated. In the new EU Confiscation regulation the restitution is regulated. If a member state transfers a confiscation order to another member state it can order the restitution. This can even be done after the seizure of assets (and before confiscation) if the national law in the requesting state provides for this possibility.

The bilateral MLA treaty between the Netherlands and Morocco (Rabbat 20-09-2010)
Article 23. Confiscation of the proceeds of crime. 2: De requested party considers the possibility to return confiscated assets that are the proceeds from crime to the requesting

party in accordance with domestic law and with respect of the rights of third parties that acted in good faith.

The bilateral agreement between the Netherlands and the USA with regard to the confiscation and the sharing of assets (Washington 20-11-1992): Overeenkomst tussen het Koninkrijk der Nederlanden en de Verenigde Staten van Amerika inzake wederzijdse samenwerking bij de opsporing, inbeslagneming en confiscatie van opbrengsten van en hulpmiddelen bij het plegen van misdrijven en de verdeling van geconfisqueerde voorwerpen.

Article 7. The sharing of assets
1. Wanneer de ene Partij („Rechtshulpverlenende Partij") de andere Partij („Rechtshulpontvangende Partij") al dan niet rechtstreeks rechtshulp heeft verleend bij onderzoeken of procedures die leiden tot de confiscatie van opbrengsten van of hulpmiddelen bij het plegen van misdrijven, kan de Rechtshulpontvangende Partij, overeenkomstig haar nationale wetgeving, aanbieden de geconfisqueerde voorwerpen of de opbrengsten van de verkoop daarvan geheel of gedeeltelijk over te dragen aan de Rechtshulpverlenende Partij.
2. De Rechtshulpverlenende Partij kan het feit dat haar medewerking heeft geleid of naar verwachting zal leiden tot de confiscatie van opbrengsten van of hulpmiddelen bij het plegen van misdrijven, onder de aandacht van de Rechtshulpontvangende Partij brengen.
3. Het aandeel van de opbrengsten dat krachtens dit artikel wordt overgedragen, weerspiegelt gewoonlijk de relatieve bijdrage van de Rechtshulpverlenende Partij aan de totale inspanningen ten behoeve van de confiscatie.
4. De overdracht van opbrengsten kan pas plaatsvinden nadat de rechtsmiddelen van personen die eigenaar zijn van of aanspraak maken op de desbetreffende voorwerpen, zijn uitgeput.
5. Bij de overdracht staat de Rechtshulpontvangende Partij alle rechten en aanspraken op en belangen bij de desbetreffende opbrengsten af aan de Rechtshulpverlenende Partij.
6. Voor de toepassing van de bepalingen van dit artikel onderhouden de Partijen contacten hetzij langs diplomatieke weg hetzij door tussenkomst van de Bevoegde Autoriteiten.
7. Onverminderd hun nationale wetgeving verbinden de Partijen zich tot het in acht nemen van vertrouwelijkheid voorafgaand aan de overdracht van de opbrengsten.

Agreement between the Government of the Netherlands and the Government of the Hong Kong Special Administrative Region of the People's Republic of China concerning mutual legal assistance in criminal matters (Hong Kong, 26-08-2002). Article 16. Confiscation: 6 Proceeds of crime confiscated pursuant to this Article shall be retained by the Requested Party. However, a Party may, to the extent permitted by its law, offer to transfer the proceeds of crime, or part thereof, to the other Party upon such terms as may be agreed.

Treaty between the Netherlands and Canada concerning the mutual legal assistance in criminal matters (The Hague, 01-05-1991): Article 16. Confiscation and fines. 6 Confiscated or forfeited objects (…) will be kept by the requested state, unless in specific cases agreed differently.

Treaty between the Netherlands and Australia concerning the mutual legal assistance in criminal matters (Canberra, 26-10-1988). Article 18. Proceeds of crime. 4 Objects that have been confiscated on the basis of this Treaty will remain in the requested State, unless in specific cases agreed differently.

On the basis of Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (Still applicable for Denmark and Ireland; for other MS replaced by Regulation 2018/1805). After confiscation in general there will be a 50/50 share between states if the proceeds are more than € 10.000. The executing state and the issuing state can agree otherwise (see article 16 of the framework decision).

The same applies for the Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing and confiscation orders that replaced the mentioned framework decision since 19 December 2020 (except for Denmark and Ireland).

The EU Regulation provides explicitly for the possibility of restitution. If a member state transfers a confiscation order to another member state it can order the restitution. This can even be done after the seizure of assets (and before confiscation) if the national law in the requesting state provides for this possibility (see article 30 of the Regulation).

In national cases reasonable expenses will not be deducted for the recovery of assets. In case of object confiscation, it is not relevant what the objects will be worth. In case of value based confiscation it is for the benefit of the convicted that the seized objects will be worth as much as possible after confiscation, therefore the Dutch state is obligated to manage the assets as good as possible.

In case of a value based confiscation procedure, the public prosecutor should always act with good salesmanship. The aim is always the lowest costs and the highest revenues. The asset management office has specialized personnel to bring this into effect.

According to the Dutch law (article 117 of the Code of Criminal Procedure) seized goods can be sold after seizure if there is a discrepancy between the management costs and the value of the seized goods.

With regard to international mutual legal assistance:

In general, the ordinary costs of complying with a request shall be borne by the requested Party. Only if the costs are of a substantial or ordinary nature the requesting authority will be consulted.

The Netherlands has done so in the mentioned case in the desk review with regard to Subparagraph 2 (a) of article 54 (the seizure of the vessel). We consulted the requesting state that paid the costs. That was done on the basis of Article 34 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 8-11-1990): The ordinary costs of complying with a request shall be borne by the requested Party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the Parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

ARO's exchange information with regard to the existence of (criminal) assets on a daily basis. They can choose to provide the information to third EU member states if the information might be useful for those member states. It is also possible to provide the information to Europol as well. Europol can then do a cross check to investigate whether other countries are possibly interested in the information as well.

(b) Observations on the implementation of the article

Information can be shared spontaneously by the Financial Intelligence Unit with its foreign counterparts and through its membership of the Egmont Group of Financial Intelligence Units, or by other authorities through different networks, such as the International Criminal Police Organization (INTERPOL), the European Union Agency for Law Enforcement Cooperation and the European Union platform of asset recovery offices.

Article 57. Return and disposal of assets

Paragraph 1 of article 57

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

In criminal proceedings, the criminal court may grant an application of an injured party (article 51f of the Code of Criminal Procedure). The party that has suffered direct harm from a criminal offence may join the criminal proceedings as an injured party in their claim for compensation.

In addition, the court may impose a compensation measure on the convicted person (article 36f of the Code of Criminal Procedure).

Furthermore, there is a possibility for an injured third party to make a reasoned and written application to the court for paying the amount previously paid or retrieved to this party following the enforcement of a measure to confiscate any unlawfully obtained assets (value confiscation) (article 577b of the Code of Criminal Procedure – predating 2020).

The bilateral MLA treaty between the Netherland and Morocco (Rabbat 20-09-2010)
Article 23. Confiscation of the proceeds of crime. 2: De requested party considers the possibility to return confiscated assets that are the proceeds from crime to the requesting party in accordance with domestic law and with respect of the rights of third parties that acted in good faith.

The bilateral agreement between the Kingdom of the Netherlands and the USA with regard to the confiscation and the sharing of assets (Washington 20-11-1992): Overeenkomst tussen het Koninkrijk der Nederlanden en de Verenigde Staten van Amerika inzake wederzijdse

samenwerking bij de opsporing, inbeslagneming en confiscatie van opbrengsten van en hulpmiddelen bij het plegen van misdrijven en de verdeling van geconfisqueerde voorwerpen

Article 7. The sharing of assets

1. Wanneer de ene Partij („Rechtshulpverlenende Partij") de andere Partij („Rechtshulpontvangende Partij") al dan niet rechtstreeks rechtshulp heeft verleend bij onderzoeken of procedures die leiden tot de confiscatie van opbrengsten van of hulpmiddelen bij het plegen van misdrijven, kan de Rechtshulpontvangende Partij, overeenkomstig haar nationale wetgeving, aanbieden de geconfisqueerde voorwerpen of de opbrengsten van de verkoop daarvan geheel of gedeeltelijk over te dragen aan de Rechtshulpverlenende Partij.
2. De Rechtshulpverlenende Partij kan het feit dat haar medewerking heeft geleid of naar verwachting zal leiden tot de confiscatie van opbrengsten van of hulpmiddelen bij het plegen van misdrijven, onder de aandacht van de Rechtshulpontvangende Partij brengen.
3. Het aandeel van de opbrengsten dat krachtens dit artikel wordt overgedragen, weerspiegelt gewoonlijk de relatieve bijdrage van de Rechtshulpverlenende Partij aan de totale inspanningen ten behoeve van de confiscatie.
4. De overdracht van opbrengsten kan pas plaatsvinden nadat de rechtsmiddelen van personen die eigenaar zijn van of aanspraak maken op de desbetreffende voorwerpen, zijn uitgeput.
5. Bij de overdracht staat de Rechtshulpontvangende Partij alle rechten en aanspraken op en belangen bij de desbetreffende opbrengsten af aan de Rechtshulpverlenende Partij.
6. Voor de toepassing van de bepalingen van dit artikel onderhouden de Partijen contacten hetzij langs diplomatieke weg hetzij door tussenkomst van de Bevoegde Autoriteiten.
7. Onverminderd hun nationale wetgeving verbinden de Partijen zich tot het in acht nemen van vertrouwelijkheid voorafgaand aan de overdracht van de opbrengsten.

Agreement between the Government of the Kingdom of the Netherlands and the Government of the Hong Kong Special Administrative Region of the People's Republic of China concerning mutual legal assistance in criminal matters (Hong Kong, 26-08-2002) Article 16. Confiscation: 6 Proceeds of crime confiscated pursuant to this Article shall be retained by the Requested Party. However, a Party may, to the extent permitted by its law, offer to transfer the proceeds of crime, or part thereof, to the other Party upon such terms as may be agreed.

Treaty between the Kingdom of the Netherlands and Canada concerning the mutual legal assistance in criminal matters (The Hague, 01-05-1991): Article 16. Confiscation and fines. 6 Confiscated or forfeited objects (…) will be kept by the requested state, unless in specific cases agreed differently.

Treaty between the Kingdom of the Netherlands and Australia concerning the mutual legal assistance in criminal matters (Canberra, 26-10-1988). Article 18. Proceeds of crime. 4 Objects that have been confiscated on the basis of this Treaty will remain in the requested State, unless in specific cases agreed differently.

For the Netherlands, asset share agreements will be closed by the Minister of Justice and Security (as central authority). Therefore, in the execution phase, the Minister of Justice and Security can make agreements about asset sharing of the seizure after enforcement. In the case of international and foreign seizure, the starting point is that the seizure (or the proceeds thereof) remains in the country where the seizure was imposed until the case in the

Netherlands is final and the execution can be (partially) transferred to the country where the seizure was made lies. This execution is vested in the CJIB.

In some treaties, the restitution of confiscated assets is regulated. In the new EU Confiscation regulation the restitution is regulated. If a member state transfers a confiscation order to another member state it can order the restitution. This can even be done after the seizure of assets (and before confiscation) if the national law in the requesting state provides for this possibility.

If a foreign state has a claim on the assets, the easiest way is to transfer the assets to the requesting state **after** confiscation. This will be done between the central authorities mentioned in the treaty or EU regulation. If there are victims involved, the Netherlands can 'share' the assets 100 % to 0%. In practice there is an international well respected principle that the compensation of victims prevails before confiscation. In many cases, the Netherlands has transferred 100% of the assets after confiscation (and e.g. in this case the sale of the immovable property) to the requesting member state in order to compensate victims. The Netherlands has also asked for 100% to foreign countries of the assets after confiscation. This has never been refused.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

There is no domestic legislation governing the return and disposal of assets. Return of property to a requesting State, including the deduction of reasonable expenses, is conducted pursuant to bilateral mutual legal assistance agreements or on a case-by-case basis.

The reviewing experts therefore recommended that the Netherlands adopt legislative or other measures to ensure that confiscated assets be disposed of pursuant to the requirements of the Convention, including by returning property to its prior legitimate owners or compensating the victims of the offences, and consider concluding agreements for the final disposal of confiscated property (art. 57, paras. 1, 3 and 5).

Paragraph 2 of article 57

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

As the central authority, the Minister of Justice and Security is authorised to conclude agreements with the competent authority of the requesting State on the distribution of the confiscated proceeds on the basis of this Convention. Such agreements may entail the transfer of the proceeds or confiscated goods to the foreign country either wholly or in part with a view to compensating injured parties, or the return of the goods to the entitled parties.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

In many occasions, assets have been shared after confiscation with Belgium, Luxemburg, Liechtenstein, Switzerland and other countries. The assets are shared on a case-by-case basis. Within the EU the sharing of assets has become a standard procedure

(b) Observations on the implementation of the article

There is no domestic legislation governing the return and disposal of assets. Return of property to a requesting State, including the deduction of reasonable expenses, is conducted pursuant to bilateral mutual legal assistance agreements or on a case-by-case basis. According to several mutual legal assistance agreements, confiscated assets would be kept by the requested State; however, the possibility would exist for those assets to be returned or shared, with due consideration for the interests of bona fide third parties.

Subparagraph 3 (a) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Please see the comments above for Article 54(1a).

'(…) however, if the confiscation judgment of the foreign court includes victim compensation or if the requesting Member State indicates that the proceeds of the confiscation should be used as victim compensation, the Minister of Justice and Security (as the central authority to the Convention) may decide that the proceeds following confiscation may be transferred to the requesting State either wholly or in part with a view to victim compensation in the context of asset sharing.'

As set out, the Minister of Justice and Security is authorised as the central authority to the Convention to conclude agreements in relation to the distribution of confiscated proceeds with the requesting State (asset sharing). In other words, the Minister may also decide to transfer the

confiscated proceeds to the requesting State either wholly or in part if the requesting State itself is an injured party (for example, because public funds have been embezzled), if the requesting State makes such an application.

Also see the comment under Article 57(1):

'Furthermore, there is a possibility for an injured third party to make a reasoned and written application to the court for paying the amount previously paid or retrieved to this party following the enforcement of a measure to confiscate any unlawfully obtained assets (value confiscation) (article 577b of the Code of Criminal Procedure – predating 2020).'

In addition to the possibility of asset sharing, there is also the theoretical possibility that the requesting State could apply to the court as an injured third party for the amount already retrieved or paid out to be returned or paid out to it following confiscation pursuant to article 577b of the Code of Criminal Procedure – predating 2020.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

There is no domestic legislation governing the return and disposal of assets. Return of property to a requesting State, including the deduction of reasonable expenses, is conducted pursuant to bilateral mutual legal assistance agreements or on a case-by-case basis. According to several mutual legal assistance agreements, confiscated assets would be kept by the requested State; however, the possibility would exist for those assets to be returned or shared, with due consideration for the interests of bona fide third parties.

The reviewing experts therefore recommended that the Netherlands adopt legislative or other measures to ensure that confiscated assets be disposed of pursuant to the requirements of the Convention, including by returning property to its prior legitimate owners or compensating the victims of the offences, and consider concluding agreements for the final disposal of confiscated property (art. 57, paras. 1, 3 and 5).

Subparagraph 3 (b) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Please see the comments above for Article 57(3)(a). In these cases, the Minister of Justice and Security will also be able to reach an agreement with the requesting State for transferring the confiscated proceeds to the requesting State either wholly or in part.

Also see the comment under Article 57(1), which states that an injured party may claim compensation after having joined criminal proceedings and which refers to the possibility of an injured third party making an application to the court for paying the amount previously paid or retrieved to this party following the enforcement of a measure to confiscate any unlawfully obtained assets.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

There is no domestic legislation governing the return and disposal of assets. Return of property to a requesting State, including the deduction of reasonable expenses, is conducted pursuant to bilateral mutual legal assistance agreements or on a case-by-case basis. According to several mutual legal assistance agreements, confiscated assets would be kept by the requested State; however, the possibility would exist for those assets to be returned or shared, with due consideration for the interests of bona fide third parties.

The reviewing experts therefore recommended that the Netherlands adopt legislative or other measures to ensure that confiscated assets be disposed of pursuant to the requirements of the Convention, including by returning property to its prior legitimate owners or compensating the victims of the offences, and consider concluding agreements for the final disposal of confiscated property (art. 57, paras. 1, 3 and 5).

Subparagraph 3 (c) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Please see the comments above under Article 57(1) and Article 57(3)(a–b).

Under article 116 of the Code of Criminal Procedure, the Public Prosecution Service may also decide that goods which have been seized as proceeds or instruments of a crime or for the purposes of uncovering the truth can be returned to the party that can reasonably be designated as the entitled party. In doing so, the rights of third parties in respect of the object must be respected. The Public Prosecution Service may make such a decision immediately after seizure, without the court having ruled on the confiscation of the object. If the garnishee does not agree with the decision, it may submit a complaint to the court within two weeks. The court will subsequently consider the validity of the complaint in closed session.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

There is no domestic legislation governing the return and disposal of assets. Return of property to a requesting State, including the deduction of reasonable expenses, is conducted pursuant to bilateral mutual legal assistance agreements or on a case-by-case basis. According to several mutual legal assistance agreements, confiscated assets would be kept by the requested State; however, the possibility would exist for those assets to be returned or shared, with due consideration for the interests of bona fide third parties.

The reviewing experts therefore recommended that the Netherlands adopt legislative or other measures to ensure that confiscated assets be disposed of pursuant to the requirements of the Convention, including by returning property to its prior legitimate owners or compensating the victims of the offences, and consider concluding agreements for the final disposal of confiscated property (art. 57, paras. 1, 3 and 5).

Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Please see the answers to the previous questions.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See first example mentioned under Article 54, subparagraph 2 (a)

(b) Observations on the implementation of the article

There is no domestic legislation governing the return and disposal of assets. Return of property to a requesting State, including the deduction of reasonable expenses, is conducted pursuant to bilateral mutual legal assistance agreements or on a case-by-case basis.

Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Despite the existence of a convention on the basis of which the proceeds of confiscation can be shared with foreign countries or transferred to foreign countries, these States require in some cases that an agreement is concluded between the States on the specific case, recording the nature of the distribution. Such an agreement is not required for the Netherlands. If it is required for a foreign country, however, such an agreement will generally be signed by the Minister of Justice and Security.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

None.

(b) Observations on the implementation of the article

The Ministry of Justice and Security is authorized to conclude agreements with the competent authority of the requesting State on the disposal of confiscated assets pursuant to the Convention. Such agreements may entail the full or partial transfer of assets to the foreign requesting State with a view to compensating injured parties or returning the assets to the entitled parties. In this regard, the Netherlands reported several cases involving the full return of assets.

The reviewing experts therefore recommended that the Netherlands adopt legislative or other measures to ensure that confiscated assets be disposed of pursuant to the requirements of the Convention, including by returning property to its prior legitimate owners or compensating the victims of the offences, and consider concluding agreements for the final disposal of confiscated property (art. 57, paras. 1, 3 and 5).

Article 58. Financial intelligence unit

> *Article 58*
>
> *States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.*

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

Under the Anti-Money Laundering and Anti-Terrorist Financing (Prevention)_Act (Wwft), FIU-Netherlands is the organisation where various institutions subject to a reporting obligation must report any unusual transactions. With its analyses of unusual transactions that have been reported, FIU-Netherlands exposes transactions and money flows that can be related to money laundering, the financing of terrorism or underlying crimes. After transactions have been declared suspicious by the head of FIU-Netherlands, they will be made available to the various enforcement and investigation services.

Only the head of FIU-Netherlands is authorised to declare unusual transactions suspicious. Designating a transaction as suspicious can be done after:

1. matching with police data;

2. independent investigation by FIU-Netherlands;

3. targeted information requests from investigation services;

4. requests from foreign FIUs.

The suspicious transactions will be reported and registered in 'Blueview', a police information system to which all the investigation services have access.

Transactions declared suspicious by FIU-Netherlands will be made available to special investigation services as well as enforcement, security and intelligence services. These various partners maintain close contact with one another about the submission of information requests, the matching of data and the use of suspicious transaction information within investigations. FIU publishes its annual report Annual reviews - FIU-Nederland

The Money-Laundering and Terrorist Financing (Prevention) Act

Article 13

With a view to preventing and detecting money laundering and underlying predicate offences, as well as terrorist financing, the Financial Intelligence Unit has the following tasks:

[…]

h. maintaining contacts with foreign government-designated bodies that have a similar task as the Financial Intelligence Unit;

[…].

Article 16

1. An institution shall report a completed or intended unusual transaction to the Financial Intelligence Unit without delay after the unusual nature of the transaction has become known.

2. In the event of a notification as referred to in the first paragraph, the institution shall provide the following information:

a. the identity of the client, the identity of the ultimate beneficial owners and, to the extent possible, the identity of the person on whose behalf the transaction is carried out;

b. the nature and number of the identity document of the client and, to the extent possible, of the other persons referred to in subparagraph (a);

c. the nature, time and place of the transaction;

d. the amount and destination and origin of the funds, securities, precious metals or other values involved in the transaction;

e. the circumstances under which the transaction is considered unusual;

f. a description of the relevant items of significant value in the case of a transaction exceeding €10,000;

g. additional data to be designated by general administrative measure.

3. By way of derogation from the second paragraph, an institution referred to in Article 1a, paragraph 4, subparagraph m , shall provide the data referred to in the second paragraph to the extent that it has them, as well as a description of the relevant immovable property and rights to which immovable property is subject.

4. The reporting obligation referred to in the first paragraph applies accordingly if:

a. a customer due diligence as referred to in Article 3, paragraph 1, does not lead to the result referred to in Article 5, paragraph 1, point (b), or to the implementation of the measures referred to in Article 3, paragraph 14, point (a), and there are also indications that the customer in question is involved in money laundering or terrorist financing;

b. a business relationship is terminated pursuant to Article 5, paragraph 3, and there are also indications that the client in question is involved in money laundering or terrorist financing.

5. When making a notification pursuant to the fourth paragraph, an institution shall, in addition to the information referred to in the second paragraph, provide a description of the reasons why the fourth paragraph applies.

Article 17

1. The Financial Intelligence Unit may, for the purpose of carrying out its task referred to in Article 13, opening words and parts a and b , request data or information from an institution that has made a report or from an institution that, in the opinion of the Financial Intelligence Unit, has data or information that is relevant to the analysis by the Financial Intelligence Unit of a transaction or proposed transaction or of a business relationship.

2. The institution from which such data or information has been requested in accordance with the first paragraph shall provide it without delay to the Financial Intelligence Unit in writing, and in urgent cases orally.

3. If, in the opinion of the Financial Intelligence Unit, an institution established in another Member State has data or information as referred to in the first paragraph, the Financial Intelligence Unit

may, in accordance with Article 13b , request the Financial Intelligence Unit of the Member State where the institution is established to provide such data or information.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Please refer to the FIU annual report for statistics (English reports).

Source	Type of data	Basis/bases for questioning source	Direct/Indirect
Internet	open source information	open source	Direct
Land Registry	immovable property	open source	Direct
CIR	insolvency register	open source	Direct
CBR	guardianship and administration register	open source	Direct
HGR	marital property register	open source	Direct
RDW	vehicle and driving licence registration data	Article 43(1) of the Road Traffic Act in conjunction with Section 1:1 of the General Administrative Law Act (Awb) and Article 4(1), opening words and under d, of the Regulations on Data Provision from the Driving Licence Register	Direct
Chamber of Commerce	commercial register data	Article 28(1) of the Commercial Register Act in conjunction with Section 1:1 of the Awb	Direct
BRP	personal records database	Article 3.2 of the Personal Records Database Act	Direct
Bank Data Referral Portal (Verwijzingsportaal Bankgegevens, VB)	Identification data	Article 17 Wwft and the BDRP legislation (entered into law but in anticipation of material refinement)	Direct
Obliged entities pursuant to the Wwft	data relevant for analysing a transaction or relationship	Article 17 of the Wwft	Direct
Tax and Customs Administration	fiscal data	Article 67(2), opening words and under b, of the State Taxes Act and Article 67(2), opening words and under d, of the Collection of State Taxes Act 1990 in conjunction with Article 43c(1), opening words and under e, under 1°, of the Implementing Regulations to the State Taxes Act. Also through Article 4 of the iCOV Agreement 2018 and/or Article 3 of the FEC Agreement 2014	Direct
Customs	cash declarations	EU Regulation 1889/2005 in conjunction with Article 3.1 of the Agreement between the Tax and Customs Administration and FIU-NL	Indirect
National Police	police data	Articles 8, 9, 10, 13 and 18 of the Police Data Act in conjunction with Article 4:3(1), opening words and under a, under 5, of the Police Data Decree; Articles 8, 9, 10, 13 and 23(2) of the Police Data Act in conjunction with Article 4:6(1), opening words and under c, of the Police Data Decree	Direct
Justid	judicial records	Article 9(1) of the Judicial Data and Criminal Records Act in conjunction with Article 21, opening words and under d, of the Judicial Data and Criminal Records Decree	Direct
Foreign FIUs	financial intelligence	Article 13b of the Wwft + any MoUs	Direct
Public Prosecution Service	criminal records	Article 39f(1), opening words and under a, of the Judicial Data and Criminal Records Act / Article 3 of the FEC Agreement 2014	Indirect
TRACK	network data and risk notifications	Article 5(1) of the Legal Entities (Supervision) Act in conjunction with Article 5a, opening words and under i, of the Legal Entities (Supervision) Decree, and	Direct

		Article 5(3) of the Legal Entities (Supervision) Act in conjunction with Article 6(e) of the Legal Entities (Supervision) Decree respectively	
Authority for the Financial Markets (AFM)	supervisory information	Article 25 of the Wwft; Article 4 of the iCOV Agreement 2018 and/or Article 3 of the FEC Agreement 2014	Direct
DNB	supervisory information	Article 25 of the Wwft; Article 4 of the iCOV Agreement 2018 and/or Article 3 of the FEC Agreement 2014	Direct
Wwft Supervision Office	supervisory information	Article 25 of the Wwft	Direct
Financial Supervision Office	supervisory information	Article 25 of the Wwft	Direct
Netherlands Bar Association (NOvA)	supervisory information	Article 25 of the Wwft	Direct
Netherlands Gambling Authority	supervisory information	Article 25 of the Wwft	Direct
Central Fine Collection Agency (CJIB)	admin. handling of e.g. fines	Article 4 of the iCOV Agreement 2018	Indirect
Fiscal Intelligence and Investigation Service (FIOD)	special investigation data	Article 10 and 46 of the Police Data Act in conjunction with Article 2 of the Special Investigative Services Act; Article 4 of the iCOV Agreement 2018 and/or Article 3 of the FEC Agreement 2014	Indirect
Intelligence and Investigative Service of the Netherlands Food and Consumer Product Safety Authority (NVWA-IOD)	special investigation data	Article 10 and 46 of the Police Data Act in conjunction with Article 2 of the Special Investigative Services Act; Article 4 of the iCOV Agreement 2018 and/or Article 3 of the FEC Agreement 2014	Indirect
Intelligence and Investigative Service of the Inspectorate SZW (ISZW-IOD)	special investigation data	Article 10 and 46 of the Police Data Act in conjunction with Article 2 of the Special Investigative Services Act; Article 4 of the iCOV Agreement 2018 and/or Article 3 of the FEC Agreement 2014	Indirect
Intelligence and Investigative Service of the Human Environment and Transport Inspectorate (ILT-IOD)	special investigation data	Article 10 and 46 of the Police Data Act in conjunction with Article 2 of the Special Investigative Services Act; Article 4 of the iCOV Agreement 2018 and/or Article 3 of the FEC Agreement 2014	Indirect
Bank Data Retrieval Portal (BDRP)	identification data	article 17 Wwft and BDRP legislation (Staatsblad, nr. 151 d.d. 25-05-2020) not yet entered into force awaiting publication by Royal Degree (6/9/2020)	
UBO register	gegevens m.b.t. de UBO	Article 15a en 28 Handelsregisterwet 2007 (wetsvoorstel akkoord in parlement, maar nog niet in Staatsblad gelubliceerd en dus nog niet in werking getreden op 6/9/2020)	

(b) Observations on the implementation of the article

The Financial Intelligence Unit is responsible for receiving, analysing and disseminating unusual transaction reports to the competent authorities (art. 16 of the Money-Laundering and Terrorist Financing (Prevention) Act). The Unit may also request further data or information from reporting entities if it deems it necessary (art. 17 of the Act). It cooperates with national

authorities and foreign financial intelligence units pursuant to article 13 of the Act and is a member of the Egmont Group. A draft bill authorizing the Unit to temporarily suspend unusual financial transactions was under consultation at the time of the country visit.

The reviewing experts therefore recommended that the Netherlands consider allowing the Financial Intelligence Unit to administratively freeze or suspend suspicious transactions (art. 58).

Article 59. Bilateral and multilateral agreements and arrangements

> *Article 59*
>
> *States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

The Netherlands indicated that it has implemented the provision under review and provided the following information.

The Netherlands is party to various multilateral conventions that govern cooperation in confiscation proceedings for criminal offences, including corruption, such as:

- The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw, 16 May 2005);

- The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 8 November 1990);

- The United Nations Convention against Transnational Organized Crime (New York, 1 November 2000).

In addition, the Netherlands has concluded bilateral conventions that govern cooperation in confiscation proceedings for criminal offences, including corruption, with various countries such as:

- Morocco;

- Canada;

- Australia;

- The United Kingdom;

- The United States;

- Hong Kong (as a Special Administrative Region of the People's Republic of China).

Please provide examples of the implementation of those measures, including related court or

other cases, statistics etc.

See answers above.

(b) Observations on the implementation of the article

The Netherlands has concluded several multilateral and bilateral agreements and has joined the Camden Asset Recovery Inter-Agency Network and other networks for international cooperation in asset recovery.