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2022 Rule of Law Report Country Chapter on the rule of law situation in the Netherlands

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2022 Rule of Law Report The rule of law situation in the European Union

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ABSTRACT

The justice system of the Netherlands continues to be characterised by a high level of perceived judicial independence, and reforms to further strengthen judicial independence are expected to move forward, including as regards the appointment procedures of members of the Supreme Court and of the Council for the Judiciary. As regards quality of justice, efforts to improve the level of digitalisation of the justice system continue and more jurisprudence is to be published online. Additional funds are being allocated to the system for legal aid, and the Government has announced the reduction of court fees for citizens and SMEs. The efficiency of the justice system remains high overall but has somewhat declined for first-instance administrative cases. Backlogs in criminal cases due to the COVID-19 pandemic have been reduced significantly, while some concerns remain regarding elements of the approach.

The Netherlands continues to be perceived as one of the least corrupt countries in the EU and the world. Multiple networks ensure coordination of the anti-corruption policy across the Government. Combating the infiltration of public institutions through corruption remains a strategic priority for the authorities as part of their programme on combatting subversive organised crime. Investigation and prosecution of corruption cases are effective, although some obstacles are reported when handling foreign bribery cases. Legislation on the screening of police officers and external consultants hired by the police during their career has not yet entered into force, as implementing legislation remains pending. Developments are ongoing in relation to the integrity framework of the police, with new structures being set up. Changes to the integrity framework for local administrations are pending. The development of an overall code of conduct for ministers and state secretaries is planned, as well as a legal revision aimed to introduce stricter rules on revolving doors for these positions. The scope of the lobbying ban for former Government members was extended to include additional areas of responsibility, while the revision of political party financing legislation remains pending.

Constitutional and legislative safeguards continue to underpin a high level of media freedom in the Netherlands, including through a functionally independent media regulator and a high level of independence of public service media governance and funding. The Open Government Act extends the scope of the right of access to information to constitutional bodies and broadens the type of public documents which should be proactively disclosed, while providing for shorter deadlines for responding to requests. The challenges previously identified with regard to transparency of media ownership and market concentration persist. The safety of individual journalists is an issue of concern, which the Government has continued to address in a determined manner. The Government continued to provide subsidies to mitigate the impact of the COVID-19 pandemic on the media until December 2021 and the pandemic has not had a significant adverse impact on the media market.

All three state powers are engaged in the follow-up to the childcare allowances affair, and measures are envisaged to provide compensation and prevent similar situations from emerging in the future. A State Commission on the functioning of the rule of law is being established, and amendments to strengthen the rule of law in the Constitution were recently adopted. Legislation is being prepared to introduce a permanent legal basis for adopting crisis measures. The landscape for civil society organisations continues to be open, although some concerns remain regarding new legislation applicable to them.

RECOMMENDATIONS

It is recommended to the Netherlands to:

- Continue efforts to improve the level of digitalisation of the justice system, in particular as regards publication of judgments and digital solutions for court proceedings.
- Complete the revision of rules on revolving doors involving former ministers and state secretaries, including a two-year cooling-off period and restrictions on paid activities.
- Adopt a Code of Conduct for ministers and state secretaries including rules on gifts, secondary activities and lobbying, as well as effective monitoring and sanctioning.
- Continue efforts to ensure a comprehensive follow-up to the childcare allowances affair to address the potential structural issues, involving all relevant state authorities.

I. JUSTICE SYSTEM

The justice system is based on a court system composed of 11 district courts, 4 general courts of appeal, 2 specialised courts¹, the Administrative Jurisdiction Division of the Council of State² and a Supreme Court. An independent Council for the Judiciary plays a key role in safeguarding the independence of the judiciary and is tasked with fostering the quality of the justice system, including allocating financial resources to courts³. Candidate judges are selected by the National Selection Committee for Judges⁴ and subsequently appointed for life by the executive⁵ on the proposal of the Minister of Justice⁶. The prosecution service is separate from the Ministry of Justice and Security but falls under the political responsibility of the Minister of Justice. The Netherlands Bar is established by law. It is independent from the Government and financed exclusively through lawyers' annual contributions⁷. The Netherlands participates in the European Public Prosecutor's Office (EPPO).

Independence

The level of perceived judicial independence in the Netherlands continues to be very high among the general public but has decreased from very high to high among companies.

Overall, 77% of the general population and 72% of businesses perceive the level of independence of courts and judges to be 'fairly or very good' in 2022⁸. According to data in the 2022 EU Justice Scoreboard, the level has remained consistently high for the general public since 2016, but has decreased somewhat for companies, inverting a previously positive trend. The perceived judicial independence among the general public remains at the same level as in 2021. Among businesses, the perceived judicial independence is lower compared to 2021 (82%) and 2016 (75%).

Several reforms to further bolster judicial independence are expected to move forward⁹.

After the previous Government had sent a draft text to the Council of State for advice in December 2020, the new Government committed itself in its coalition agreement to take forward the proposed constitutional revision to amend the appointment procedure of Supreme Court judges. Following the advice of the Council of State¹⁰, the Government is reflecting on

¹ The Central Appeal Tribunal and the Trade and Industry Appeals Tribunal.

² The Council also has an advisory branch, which renders opinions on draft legislation.

³ This applies to 11 district courts, the 4 general courts of appeal and the 2 specialised courts. Law on Judicial Organisation. The Council for the Judiciary also gives advisory opinions on draft legislation.

⁴ The National Selection Committee for Judges is composed of six judges and six non-judge members, among which at least one public prosecutor and one attorney.

⁵ The appointment decision is adopted by Royal Decree, which is signed by the King and countersigned by the Minister of Justice and Security. The Minister solely verifies if the applicant fulfils the legal requirements to be appointed, and the Minister has in all cases followed the recommendation by the Council for the Judiciary.

⁶ This procedure applies to candidate judges for the eleven district courts, the four general courts of appeal and the two specialised courts. Law on the Legal Status of the Judiciary. The Council for the Judiciary has delegated this to the National Selection Committee for Judges. The Minister of Justice and Security has in all cases followed the recommendation by the Council for the Judiciary.

⁷ Law on Lawyers.

⁸ Figures 50 and 52, 2022 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

⁹ See 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 2.

¹⁰ The advice of the Council of State was issued in April 2021, and has recently been made public.

the final form of the draft text¹¹. The objective of the envisaged reform is to further limit the role of the legislative power in the appointment of Supreme Court judges¹², which is consistent with Council of Europe recommendations¹³. In addition, the Government intends to send a legislative proposal on the integrity and independence of the judiciary to the Council of State for advice, following an online stakeholder consultation on the draft text. The proposal aims to abolish the possibility for judges to be members of the national or European Parliament, as recommended by the Group of States against Corruption (GRECO)¹⁴, and to introduce additional rules regulating the holding and disclosure of financial interests by judges and the implementation of an integrity policy by court management boards¹⁵. Lastly, draft legislation submitted by a Member of Parliament aims to abolish the power of the Minister of Justice to instruct the prosecution service to investigate or to prosecute in an individual criminal case¹⁶. The objective of further reinforcing the independence of the prosecution service is consistent with Council of Europe recommendations¹⁷. The draft bill is currently pending in Parliament.

Amendments are being taken forward to further increase the role of the judiciary on the appointment of court management boards and to strengthen the independence of the Council for the Judiciary. The new appointment procedure for members of court management boards, which aims to increase the role of judges and court staff¹⁸, is being evaluated by the Council for the Judiciary in wide consultation with other stakeholders. The temporary agreement that established the new appointment procedure runs until the end of 2022, and the evaluation will lead up to a new agreement on a procedure for future appointments. Moreover, a fifth member will be appointed to the Council for the Judiciary¹⁹. Whereas currently two out of four members of the Council are judges, the intention is to reach a majority of judges on the Council for the Judiciary by increasing the number of Council members to five, with three judges. Discussions are also being held on a revision of the appointment procedure, with the intention of increasing the transparency of the procedure and limiting the involvement of the Minister of Justice in the process²⁰. The objective of these planned changes is to further limit

¹¹ For a detailed description of the recommendations of the independent State Commission in this regard, see 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 3. The Government may then decide to submit a draft law to Parliament, where it has to be approved by both Chambers.

¹² State Commission on the Parliamentary System in the Netherlands (2018), Democracy and the rule of law in equilibrium – final report of the State Commission on the Parliamentary System in the Netherlands. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 2-3 and 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 3.

¹³ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 47.

¹⁴ GRECO recommended that a restriction on the simultaneous holding of the office of judge and that of member of either Chamber of Parliament be laid down in law, see GRECO, Fourth Evaluation Round – Second Addendum to the Second Compliance Report, The Netherlands (2021), paras. 29-33.

¹⁵ Article 84(2) of the Law on Judicial Organisation provides that the Council for the Judiciary consists of at least three and at most five members.

¹⁶ This power of the Minister of Justice to issue specific instructions to the prosecution service is accompanied by safeguards and not used in practice, see 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 4-5.

¹⁷ See in particular Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe.

¹⁸ See 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 3-4, and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 3.

¹⁹ The objective of these proposed rules is to further strengthen guarantees for the independence, impartiality, and integrity of the judiciary.

²⁰ For a detailed description of the current appointment procedure, see 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 3-4.

the influence of the executive and legislative powers on the Council for the Judiciary, which is consistent with Council of Europe recommendations²¹.

Increased efforts are made to ensure the safety of legal professionals. Following attacks on lawyers in recent years²² and a growing perception of lack of safety among members of the legal profession due to threats²³, the Netherlands Bar has further increased its efforts to support lawyers in ensuring their safety. In coordination with the judiciary, prosecutors, and journalists, the Netherlands Bar offers resilience trainings²⁴ for lawyers as well as free safety scans of lawyers' office premises. An emergency notification system has also been established for lawyers, prosecutors, and judges to notify the police in case of threats; the possibility of setting up a refuge for professionals who have been threatened in their professional practice is being considered²⁵. These initiatives should be developed further over the course of 2022 and could serve as best practices for ensuring the independent functioning of lawyers against a background of increasing threats to the legal profession. As regards respect for legal professional privilege, a recent judgment in interlocutory proceedings found that in a situation in which large amounts of emails are ordered from service providers, a real danger exists that the right of non-disclosure could be breached by the State in criminal investigations²⁶. The Netherlands Bar will be involved in the development of a new manual on how to deal with the disclosure of sensitive information.

Quality

Efforts continue to improve the level of digitalisation of the justice system, including by increasing the online publication rate of judgments. There remains room to improve the level of digitalisation of the justice system, in particular regarding digital solutions to initiate, conduct, and follow proceedings²⁷. Currently, less than 30% of all court proceedings are initiated digitally, and while over 90% of criminal cases are processed digitally, this is currently the case for less than 10% of civil and administrative cases. Various initiatives are implemented to improve the level of digitalisation in civil, administrative, and criminal cases, on the basis of pilot projects²⁸. In particular, projects are ongoing to improve the case filing system for criminal cases within the four courts of appeal and regarding the digitalisation of seizure requests, as well as regarding cases concerning insolvency. While the rate of online publication of court judgments also remains relatively low²⁹, there are plans to increase this rate to 75% of all judgments over the next 10 years³⁰. At the Supreme Court, litigants can initiate proceedings digitally before all chambers and, consult their files electronically.

Steps have been announced to further improve various aspects of the justice system, including access to justice. The Government coalition agreement announced the intention to

²¹ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para 27.

²² See 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 15.

²³ Contribution from the Netherlands Bar for the 2022 Rule of Law Report and information received from the Netherlands Bar in the context of the country visit to the Netherlands.

²⁴ In which a high number of lawyers has already participated.

²⁵ If set up, this 'Wijkplaats' would provide a quiet shelter to share negative experiences with violence and threats.

²⁶ East Brabant District Court, judgment of 22 March 2022.

²⁷ Figures 46 to 48, 2022 EU Justice Scoreboard.

²⁸ Input from the Netherlands for the 2022 Rule of Law Report. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 3-4.

²⁹ The current publication rate is around 4%. Input from the Netherlands for the 2022 Rule of Law Report.

³⁰ Input from the Netherlands for the 2022 Rule of Law Report, p. 4.

strengthen the entire justice system and improve access to justice, including through additional funding for criminal justice. Stakeholders have reported certain challenges regarding sufficient human resources for the justice system³¹. As regards access to justice, the coalition agreement foresees that justice will be made more accessible to individuals and SMEs by reducing court fees by 25%. While concrete plans to achieve this are yet to be announced, an earlier law reduced court fees for relatively small claims from 1 January 2022 onward³². On the other hand, court fees for claims of over EUR 12 500 were increased. The coalition agreement also announced the strengthening of the legal aid system, and an additional EUR 154 million is allocated for this purpose for the year 2022³³. This may help address some concerns reported over the past years regarding the available funding for the legal aid system³⁴. Reflections on the reform of the system envisaged to be completed by 2025 continue on the basis of a number of pilot projects³⁵.

Pilot projects on innovative ways of administering justice continue on the basis of the Law on Experiments in the Administration of Justice³⁶. This law allows for temporary deviations from legal provisions applicable to the organisation of court proceedings, facilitating pilot projects that aim to develop innovative ways of administering justice to facilitate access to justice for citizens³⁷. One example of such a pilot project is the so-called ‘proximity judge’, which aims to provide citizens with simple access to court by omitting certain formal requirements. Rules are under preparation by the Government together with the Council for the Judiciary for this initiative to be carried out on a larger scale.

Efficiency

The justice system continues to perform efficiently overall at first instance while efficiency has somewhat declined for administrative cases. The duration of proceedings for first instance civil and commercial cases is short³⁸, and the clearance rate remains effective³⁹. Proceedings remain lengthy at third instance, although the average duration has decreased somewhat in 2020⁴⁰. The efficiency of administrative justice has declined at first instance, remained about equal at second instance, and improved at third instance. The rate of resolving administrative cases at first instance gradually lowered to 86,3% in 2020⁴¹, creating some risks of backlogs.

³¹ Information received in the context of the country visit to the Netherlands. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 7 and Council for Public Administration, A stronger rule of law – connecting and protecting in a pluralistic society, 15 April 2020, as regards the work pressure to which the judiciary is subject.

³² The court fees due by legal entities for claims ranging between EUR 500 and EUR 5 000 were decreased, as well as the court fees due by natural persons for claims ranging between EUR 500 and EUR 1 500.

³³ Input from the Netherlands for the 2022 Rule of Law Report, p. 3.

³⁴ See 2020 Rule of Law Report 2020, Country Chapter on the rule of law situation in the Netherlands, p. 4 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 3.

³⁵ See 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 4 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 3.

³⁶ *Experimentenwet rechtspleging*.

³⁷ However, stakeholders stress that this should not lead to circumvention of the regular process for enacting laws on the organisation of the justice system.

³⁸ Figure 7, 2022 EU Justice Scoreboard.

³⁹ Respectively, 304, 465, and 344 days on average.

⁴⁰ Although it decreased somewhat in 2020, to 427 on average.

⁴¹ Figure 13, 2022 EU Justice Scoreboard.

The backlog of criminal cases due to the COVID-19 pandemic is being reduced significantly, while some concerns remain regarding certain elements of the approach. The COVID-19 pandemic caused backlogs, in particular for criminal cases⁴². A number of specific measures were taken to resolve these backlogs⁴³. The total backlog of criminal cases (at first instance) scheduled for trial on 31 December 2021 was 3% above the target level of 17 March 2020. At the end of 2021, the backlog to be scheduled for hearing at the courts (at second instance) decreased overall to 25% below the target level of 17 March 2020. At the same time, some concerns remain as to the use of the prosecution service's power to render a decision itself in certain criminal cases⁴⁴. As pointed out by the National Ombudsman⁴⁵, citizens should be adequately informed in such cases of their right to judicial review and of the consequences of such a decision by the prosecution service⁴⁶. In that regard, it is not yet the case that all defendants can get a free consultation with a lawyer⁴⁷.

II. ANTI-CORRUPTION FRAMEWORK

Institutions active in the fight against corruption are in place in the Netherlands. The competence to investigate and prosecute corruption is shared between several authorities, including the National Internal Investigations Department⁴⁸ (NIID) (focusing on investigation of bribery of public officials), the Fiscal Intelligence and Investigation Service (FIOD) (responsible for the investigation of financial crimes, including foreign and commercial bribery), the National Prosecution Service (focusing on the prosecution of bribery of public officials), and the prosecution service for Serious Fraud, Environmental Crime and Asset Confiscation (responsible for the prosecution of commercial and foreign bribery). The cooperation between specialised anti-corruption and intelligence teams within law enforcement bodies continues.

The perception among experts and business executives is that the Netherlands is one of the least corrupt countries in the EU and the world. In the 2021 Corruption Perception Index by Transparency International, the Netherlands scores 82/100 and ranks 3rd in the

⁴² Given that many physical hearings could not be organised between 17 March and 11 May 2020, around 16,000 criminal cases had to be postponed.

⁴³ For a detailed description, see 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 4-5.

⁴⁴ Such decisions cannot impose a prison sentence and may be challenged before a court, see also 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 6.

⁴⁵ National Ombudsman, Proper Provision of Information is the Basis of Access to Justice – Bottlenecks in the Provision of Information about Penalties and Dismissal Decisions, see also 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 6.

⁴⁶ In particular, the fact that such a decision by the prosecution service can lead to a criminal record preventing the citizen to obtain a 'declaration of good conduct', which he or she may require to obtain work in certain sectors. In December 2021, the Ombudsman also addressed a letter to the Minister of Justice and Security and the Minister for Legal Protection on the negative consequences for the victims of crimes that are handled in this manner.

⁴⁷ Information received from the National Ombudsman in the context of the country visit to the Netherlands. Following concerns expressed by the Netherlands Bar and Members of Parliament, the former Minister for Legal Protection had announced that suspects would be granted a fee consultation with a lawyer. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 4-5.

⁴⁸ As an investigation service, the *Rijksrecherche* is under the authority and management of the Board of Prosecutors General of the Netherlands Public Prosecution Service.

European Union and 8th globally⁴⁹. This perception has been relatively stable⁵⁰ over the past 5 years. The 2022 Special Eurobarometer on Corruption shows that 50% of respondents consider corruption widespread in their country (EU average 68%) and 8% of respondents feel personally affected by corruption in their daily lives (EU average 24%)⁵¹. As regards businesses, 52% of companies consider that corruption is widespread (EU average 63%) and 12% consider that that corruption is a problem when doing business (EU average 34%)⁵². Furthermore, 48% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)⁵³, while 40% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)⁵⁴.

No overarching anti-corruption strategy is in place, but the Government aims to ensure overall coordination of anti-corruption policy through various platforms. The Platform on Fighting Corruption promotes cooperation and information sharing between anti-corruption practitioners within the Government. However, it has not met for the past two and a half years, due to the COVID-19 pandemic⁵⁵. The platform could play a role in developing a broader strategic vision on anti-corruption in the future⁵⁶, given that currently no overall anti-corruption strategy is in place. The Network of Resilient Governance⁵⁷ focuses on resilience and provides support and advice in countering subversive elements, for example in cases of threats against municipal officials. Finally, the Platform for Integrity Management ensures the cross-Government management of integrity of civil servants of the central Government⁵⁸.

Preventing infiltration of organised crime groups in the civil service and police through corruption continues to be a strategic priority. The extensive programme focusing on combating subversive organised crime, which is defined as a crime that undermines the Dutch system and institutions, including by corruption of law enforcement and civil servants, was launched in 2020 and continues to be developed⁵⁹. The increased focus on fighting subversive organised crime has also led to additional funding for institutions fighting corruption, including

⁴⁹ Transparency International (2022), Corruption Perceptions Index 2021, pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

⁵⁰ In 2017, the score was 82 while in 2021, the score is 82. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last 5 years.

⁵¹ Special Eurobarometer 523 (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

⁵² Flash Eurobarometer 507 (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

⁵³ Special Eurobarometer 523 (2022).

⁵⁴ Flash Eurobarometer 507 (2022).

⁵⁵ 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 8 and Information received from the Ministry of Justice and Security and the Ministry of the Interior in the context of the country visit to the Netherlands.

⁵⁶ Information received from the Ministry of Justice and Security and the Ministry of the Interior in the context of the country visit to the Netherlands.

⁵⁷ The Network Resilient Governance is a cooperation mechanism between the Ministry of Interior, the Ministry of Justice, various professional and representative associations and political parties as well as various experts to protect public office holders and make them more resilient to outside influences.

⁵⁸ Information received from the Ministry of Justice and Security and the Ministry of the Interior in the context of the country visit to the Netherlands.

⁵⁹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 8-9 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 6-7.

the National Internal Investigations Department⁶⁰. The new Government, which took power at the start of 2022, intends to allocate additional resources, to focus on fraud and financial flows of criminal organisations, and to research whether legal and operational changes modelled on Italy's anti-mafia approach would contribute to the Dutch approach on organised crime⁶¹.

The legal framework on the prevention of, and fight against, corruption remains solid, with some changes introduced in 2021. The law on strengthening the effectiveness of the fight against subversive crime, adopted in November 2021, increases the maximum penalty in the Criminal Code for issuing threats from 2 to 3 years; and up to 4 years if the threat is against public officials, judges, public prosecutors, lawyers, special investigative police officers, and journalists or publicists in the context of their journalistic activities⁶². Although encouraged by the UN Convention against Corruption (UNCAC)⁶³, there are no provisions that criminalise trading in influence. While the Government has argued that the existing criminalisation of bribery is broad enough in scope to cover trading in influence, independent evaluations point to the necessity of a legal revision⁶⁴.

The investigation and prosecution of corruption and corruption-related crimes is effective, with particular attention being paid to the role of organised crime groups in targeting certain public officials. The investigation and prosecution of corruption-related offences continues to function properly, including in high-level cases, with no immediate obstacles signalled by the investigators and prosecutors⁶⁵. The setting up of a multidisciplinary intervention team in the fight against subversive organised crime (NSOC) is progressing and is expected to be operational from the second half of 2022⁶⁶. Initial operating processes are being tested⁶⁷. Existing projects, including the 'Combiteam Ports'⁶⁸ and the project 'Strong

⁶⁰ The NIID has received a structural investment of EUR 3.3 million per year and additional recruitment, with 15 FTE having been recruited by the end of 2021 and 8 additional FTE being planned for recruitment in 2022. See 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 6-7; Information received from the Ministry of Justice and Interior and the NIID in the context of the country visit to the Netherlands and Input from the Netherlands for the 2022 Rule of Law Report, pp. 6-7.

⁶¹ Dutch Government (2022), Coalition Agreement, Chapter 3 – Security and Resilient Society and written contribution received from the Netherlands in the context of the country visit to the Netherlands. According to the Ministry of Justice and Security and the Ministry of the Interior, preparatory work on such steps is already ongoing.

⁶² Law of 4 November 2021 and Input from the Netherlands for the 2022 Rule of Law Report, pp. 7-8.

⁶³ UN Convention Against Corruption, article 18.

⁶⁴ Contribution from the Helsinki Committee for the 2022 Rule of law Report; UNCAC (2014), Implementation Review, Executive Summary Netherlands, p. 4 and Information received from Transparency International in the context of the country visit to the Netherlands.

⁶⁵ Information received from police, prosecution service and NIID in the context of the country visit to the Netherlands. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 8 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 6-7.

⁶⁶ Written contribution received from the Netherlands in the context of the country visit to the Netherlands.

⁶⁷ Information received from the National Police Internal Investigations Department in the context of the country visit to the Netherlands and Ministry of Foreign Affairs, Appreciation of the Cabinet of the European Commission 2021 Rule of Law Report, p. 11 and Input from the Netherlands for the 2022 Rule of Law Report, pp. 6-7.

⁶⁸ The Combiteam ports is active in the Ports of Rotterdam and Vlissingen.

Airport’ at Schiphol, focus on both combating organised crime (often drugs-related) and its links to corruption of public officials⁶⁹.

While work on instruments to tackle foreign bribery cases continues, the investigation and prosecution of such complex cases faces some difficulties. The authorities have continued the implementation of two administrative instructions issued in 2020, following recommendations by the OECD Working Group on Bribery⁷⁰. One instruction indicates that it is possible to prosecute small facilitation payments in foreign bribery cases (in contrast to the previous instruction that, until 1 October 2020, explicitly stated that facilitation payments would not be prosecuted)⁷¹. The other provides for sending large out-of-court settlements to an independent commission instead of to the Minister of Justice for final approval⁷². While a final arrangement for these out-of-court-settlements remains pending (as a legislative revision is needed), this interim change is assessed positively overall by stakeholders. It increases transparency and allows for a swifter resolution of foreign bribery cases in some instances, while maintaining post-settlement monitoring possibilities⁷³. A study is ongoing in relation to self-reporting of foreign bribery cases, which should inform future work on guidelines for cases that include self-reporting, including a possible reduction in the fine for the responsible company (in line with a recommendation by the OECD)⁷⁴. Difficulties in using large datasets impact the duration of some foreign bribery investigations⁷⁵. Certain challenges are also posed by the usual difficulties in foreign bribery cases, such as contacts with third countries to execute mutual legal assistance requests and complex and time-consuming investigations⁷⁶.

Integrity within the police services continues to receive particular attention, while new integrity provisions for local authorities were delayed. This follows the developments in relation to the *Encrochat* case, which saw several police officers and civil servants implicated in corruption cases, as noted in the 2021 Rule of Law Report⁷⁷. Individual police, tax and customs officers remain a target of organised crime, in particular with the objective of obtaining

⁶⁹ Input from the Netherlands for the 2022 Rule of Law Report, pp. 6-8 and p. 13 and Information received from the Ministry of Justice and Security and the Ministry of the Interior in the context of the country visit to the Netherlands.

⁷⁰ OECD (2020), Implementing the OECD Anti-Bribery Convention Phase 4 Report: Netherlands and OECD (2021), Implementing the OECD Anti-Bribery Convention Phase 4 One Year Follow-up Report: The Netherlands and Input from the Netherlands for the 2022 Rule of Law Report, pp. 18-19.

⁷¹ A facilitation payment is a form of bribery in aimed at speeding up a business deal or facilitating a certain transaction or investment. Written contribution received from the Netherlands in the context of the country visit to the Netherlands.

⁷² Information received from the FIOD and prosecution service in the context of the country visit to the Netherlands and Input from the Netherlands for the 2022 Rule of Law Report, pp. 18-19. So far, 4 settlements (out of which 2 relate to foreign bribery) were approved by this commission. See <https://www.om.nl/onderwerpen/hoge-transacties>.

⁷³ Information received from the Ministry of Justice, Ministry of Interior, prosecution service and FIOD in the context of the country visit to the Netherlands.

⁷⁴ OECD (2021), Implementing the OECD Anti-Bribery Convention Phase 4 One Year Follow-up Report: The Netherlands and Information received from the FIOD and Prosecution service in the context of the country visit to the Netherlands. In addition, the Parliamentary Motion ‘Van Nispen’ of 6 July 2021 has further called for such guidelines <https://www.tweedekamer.nl/kamerstukken/detail?id=2021Z12872&did=2021D27647>.

⁷⁵ Input from the Netherlands for the 2022 Rule of Law Report, p. 18-19 and Information received from the FIOD and prosecution service in the context of the country visit to the Netherlands. This also relates to the topic of legal professional privilege, see Section I.

⁷⁶ Information received from the FIOD in the context of the country visit to the Netherlands.

⁷⁷ 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 6-7.

information⁷⁸. Implementation of new legislation on the improved screening of police officers and external consultants hired by the police was delayed, as drafting of implementing legislation is ongoing and foreseen to be adopted by July 2023⁷⁹. A special manager for integrity was appointed and leads a new unit focused on mainstreaming integrity and addressing corruption within the entire police force. The manager will also lead a new central team to facilitate complex internal investigations, in line with the recommendations of a recent audit⁸⁰. A legislative proposal to strengthen the integrity of local and regional Governments⁸¹ remains pending in Parliament⁸². As the initial deadline of 1 April 2022 was not reached – preventing the new rules from applying to the newly elected local authorities – the Minister of the Interior asked local authorities to already apply the new rules, such as the new declaration requirements or a risk analysis, on a voluntary basis, prior to their adoption⁸³.

While some reforms have been initiated in relation to the integrity framework for top executive functions in the public sector, some concerns remain. As noted in the 2020 and 2021 Rule of Law Reports, the non-binding character of the rules for top executive functions is a matter of concern⁸⁴. In its compliance report of July 2021, the Group of States against Corruption (GRECO) regretted the lack of progress in implementing its recommendations⁸⁵. Since the publication of that report, the Government has launched a number of new measures. In particular, before the new Government was appointed in January 2022, candidates for ministers and state secretaries had to use a ‘self-assessment risk analysis’ for the first time⁸⁶. The candidates for ministerial and state secretarial posts had to clearly indicate how they have distanced themselves from business interests, and – as a novelty – will have to report on any circumstances during their mandate giving rise to business or financial interests that could cause a conflict of interest⁸⁷. This new measure is however only instituted through a letter of

⁷⁸ Information received from the Police, NIID and Prosecution in the context of the country visit to the Netherlands.

⁷⁹ Input from the Netherlands for the 2022 Rule of Law Report, p. 15 and Information received from the police and the Ministry of Justice and Security and the Ministry of the Interior in the context of the country visit to the Netherlands.

⁸⁰ Input from the Netherlands for the 2022 Rule of Law Report, p. 15, Information received from the police in the context of the country visit to the Netherlands and Written contribution by the police received in the context of the country visit to the Netherlands.

⁸¹ 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 7-8.

⁸² House of Representatives, Legislative Proposal – law to promote integrity and functioning of decentralised Governments.

⁸³ Letter of the Minister of the Interior to the mayors (2022), Governmental integrity: role of the mayor in screening candidate aldermen and Dutch Association for Counsellors (2022), Minister: watch the voluntary declaration of good conduct of new candidate-aldermen.

⁸⁴ 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 10 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 8.

⁸⁵ GRECO Fifth Evaluation Round - Compliance Report, para. 68.

⁸⁶ Ministry of the Interior, Self-assessment risk analysis integrity candidate members of Government and Ministry of Foreign Affairs, Appreciation of the Cabinet of the European Commission 2021 Rule of Law Report, p. 12 and 2021 Rule of Law Report and Information received from the Ministry of Justice and Ministry of Interior in the context of the country visit to the Netherlands. See also Letter of the Minister President to Parliament, State of play of the budget of the Ministry of General Affairs, the budget of the Cabinet of the King and the budget of the Committee of Supervision of the Intelligence and Security Services for the year 2022, p.1-2.

⁸⁷ Letter of the Minister President to Parliament (2021), State of play of the budget of the Ministry of General Affairs, the budget of the Cabinet of the King and the budget of the Committee of Supervision of the Intelligence and Security Services for the year 2022, pp. 1-3 and Letter of the Minister President to the Parliament (2022), Interests of Government officials.

the Prime Minister⁸⁸ and does not provide for checks or sanctions⁸⁹. Overall, disclosure of assets and interests remains largely a responsibility of the individual in line for a ministerial-level post and no regular declaration obligations are enshrined into law⁹⁰.

The Government is developing a new code of conduct for Ministers and State Secretaries.

The aim is to inform Parliament on this by the summer of 2022⁹¹. It is envisaged that the code of conduct would include rules on gifts, extra-parliamentary activities and contacts with third parties such as lobbyists⁹², although its ultimate scope remains to be confirmed. Another important aspect will be whether the code would include independent oversight and a sanctioning mechanism. There are no plans for an overall strategy on integrity, which has been criticised by stakeholders⁹³. Regarding integrity for Members of Parliament, the newly established College of Investigation of Integrity (to treat complaints on the Code of Conduct for Members of Parliament⁹⁴) received 108 complaints since the start of its functioning in April 2021 until March 2022. Only two complaints out of 108, however, fell within the competences of the College and were followed up with an analysis and reporting to the Presidium of the Parliament, which decides on potential sanctions. One case involved the non-reporting of extra-parliamentary functions⁹⁵.

Reforms of post-employment rules were announced, and need to be set out in legislative proposals.

By letter of the Minister of the Interior to the Parliament, a number of new measures were announced in relation to ‘revolving doors’, specifying that no paid commercial activities can be assigned by a ministry to a (company of a) former Minister or State Secretary. A two-year cooling-off period in which former ministers and state secretaries have to request a recommendation from an advisory committee before moving to the private sector was also announced. These measures still need to be enacted into law⁹⁶. The new Government has committed to introducing these legislative proposals in Parliament by the end of 2022⁹⁷, although this is not specified in the coalition programme.

A lobbying prohibition for former Ministers was extended, while further lobbying rules are under consideration for Members of the Government.

The Netherlands has a voluntary

⁸⁸ A letter from a minister in the Dutch system is a form of ‘soft law’ aiming at introducing certain guidelines or measures; in this case some measures applicable to ministers and state secretaries.

⁸⁹ Written contribution from Transparency International received in the context of the country visit to the Netherlands.

⁹⁰ GRECO Fifth Evaluation Round - Evaluation Report, paras. 97-100.

⁹¹ Information from the Ministry of Justice and Security and the Ministry of the Interior received in the context of the country visit to the Netherlands and Ministry of Foreign Affairs, Appreciation of the Cabinet of the European Commission 2021 Rule of Law Report, p. 12 and GRECO Fifth Evaluation Round - Evaluation report, paras. 66-70. A recent motion by some members of Parliament to immediately institute such a code of conduct for ministers and state secretaries was rejected in the House of Representatives. See House of Representatives (2022), Motion of members Omtzigt and Dassen.

⁹² Input from the Netherlands for the 2022 Rule of Law Report, pp. 9-10.

⁹³ Information received in the context of the country visit to the Netherlands and written contribution received in the context of the country visit to the Netherlands.

⁹⁴ 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 8.

⁹⁵ Written contribution received from the College of Investigation of Integrity in the context of the country visit to the Netherlands. See also College of Investigation of Integrity, Annual Report 2021-2022.

⁹⁶ Letter of the Minister of the Interior to the Parliament (2021), Integrity policy for former Government officials, pp. 6-8 and Input from the Netherlands for the 2022 Rule of Law Report, pp. 9-10.

⁹⁷ Information received from the Ministry of Justice and Security and the Ministry of the Interior in the context of the country visit to the Netherlands.

and publicly available lobbying register for the House of Representatives in place since 2012⁹⁸. There are plans to introduce lobbying rules for Governmental positions in a new code of conduct for the Government, while the scope of the already existing two-year lobbying prohibition for former Ministers and State Secretaries to approach their own former Ministry has been extended by ministerial letter to include adjacent policy areas in which the former minister or state secretary was actively involved during his or her office. As with the abovementioned conflict of interest measures, these provisions remain only instituted via a letter of the Minister of the Interior and are not stipulated by law⁹⁹. A parliamentary motion has called upon the Government to enshrine both the revolving doors and lobbying rules into law¹⁰⁰.

The revision of the legal framework on political party financing remains under discussion in Parliament. As noted in the 2021 Rule of Law Report¹⁰¹, the revised Political Party Financing law aims to introduce clearer rules on foreign donations as well as transparency and reporting obligations of gifts to political parties¹⁰². The proposal was adopted by the House of Representatives in April 2022, but the procedure in the Senate remains ongoing¹⁰³, with no clear timeline for final adoption of the changes. A proposal for revision of the separate law on political parties is envisaged to be presented by the Minister by the end of 2022¹⁰⁴.

The revision of the legal framework regarding whistleblowing is ongoing. The legislative proposal aiming at the transposition of the EU Whistleblower Directive was brought before the Parliament by the government on 1 June 2021. The Government's ambition to have the draft law rapidly approved was met with criticism by Parliament, which asked for additional time to examine it in detail¹⁰⁵. Concerns were raised over the draft law's complexity and the speed of the planned adoption process¹⁰⁶, while the Council of State voiced its criticism, particularly in relation to the complexity of the proposed reporting channels¹⁰⁷. Stakeholders describe existing whistleblower procedures as cumbersome and fragmented, as they depend on the institution that is facing the complaint. The Whistleblowers Authority is not a complete 'one-stop-shop', and as a result, whistleblowers are faced with complex and lengthy referral and reporting procedures¹⁰⁸.

Corruption risks related to the COVID-19 pandemic remain present, although not many such cases have been detected in practice. An *ad hoc* group consisting of the police, the

⁹⁸ 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 10 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 8.

⁹⁹ Letter of the Minister of the Interior to the Parliament (2021), Integrity policy for former Government officials, pp. 6-8.

¹⁰⁰ Parlement.com, House of Representatives adopts motions about integrity rules for former ministers and state secretaries.

¹⁰¹ 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 9.

¹⁰² Input from the Netherlands for the 2022 Rule of Law Report, p. 11.

¹⁰³ House of Representatives (2022), Amendment of the law on financing of political parties and Senate (2022), Evaluation law on financing of political parties.

¹⁰⁴ House of Representatives (2022), Continuation of the discussion on the evaluation of law on political party financing.

¹⁰⁵ Input from the Netherlands for the 2022 Rule of Law Report, pp. 11-12.

¹⁰⁶ Contribution from the Helsinki Committee for the 2022 Rule of Law Report, p. 9 and Information received in the context of the country visit to the Netherlands.

¹⁰⁷ Council of State (2021), Summary of the Advice on the Law on Protection of Whistleblowers.

¹⁰⁸ Information received in the context of the country visit to the Netherlands. The Whistleblowers Authority is expected to provide advice to whistleblowers and to conduct independent investigations in some cases, see also 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 9.

prosecution service, the NIID and the FIOD identified corruption-related risks in relation to the COVID-19 pandemic but did not note many corruption cases actually materialising¹⁰⁹. The Netherlands Enterprise Agency reported that EUR 125.6 million were wrongly paid out (out of EUR 7.2 billion, corresponding to 1.74% of the total payments) as part of the short-term fixed costs reimbursement scheme instituted during the pandemic¹¹⁰. As noted last year, the international character of foreign bribery investigations was limited due to COVID-19 restrictions (such as travel restrictions)¹¹¹.

III. MEDIA PLURALISM AND MEDIA FREEDOM

Constitutional and legislative safeguards continue to underpin a high level of media freedom in the Netherlands, including through a functionally independent media regulator and a high level of independence in public service media governance and funding. The scope of access to information has been broadened. Local media outlets continued to benefit from subsidies granted to cushion the impact of the COVID-19 pandemic until December 2021¹¹².

The Dutch Media Authority has seen its overall transparency enhanced. While the functional independence of the media authority has not been in doubt and finances are considered to be adequate for the accomplishment of its tasks, the precise rules governing the duties of the members of the collegiate bodies of the authority have been amended with a view to enhancing the overall transparency¹¹³.

The challenges previously identified with regard to transparency of media ownership and market concentration persist. While the issue of transparency of media ownership has been raised by a Member of Parliament and flagged by several stakeholders¹¹⁴ there have been no concrete legislative steps to address the matter. The news media sector continues to be characterised by high market concentration described as ‘consistently at high risk level’ by the Media Pluralism Monitor¹¹⁵. The approval of a merger between RTL and Talpa, currently still under investigation, could lead to a media landscape dominated by three big players¹¹⁶.

The independence of public service media governance and funding is guaranteed. The Dutch Foundation for Public Broadcasting is the governing entity of the 13 public broadcasters in the Netherlands and is tasked with the distribution and financing of airtime. The Media Act provides for fair and transparent appointment procedures for management and board functions of the Dutch Foundation for Public Broadcasting. There is consensus that this framework

¹⁰⁹ Information received from the FIOD and prosecution service in the context of the country visit to the Netherlands.

¹¹⁰ Input from the Netherlands for the 2022 Rule of Law Report, pp.13-14.

¹¹¹ Information received from the FIOD and prosecution service in the context of the country visit to the Netherlands and 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 9.

¹¹² The Netherlands ranks 28th in the 2022 Reporters without Borders World Press Freedom Index compared to 6th in the previous year.

¹¹³ Amendment of the Media Act 2008.

¹¹⁴ 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 11; as confirmed by information received in the context of the country visit from NVJ.

¹¹⁵ 2022 Media Pluralism Monitor, country report for the Netherlands, p.13.

¹¹⁶ Noteworthy is that RTL and Talpa are the only two commercial TV stations that broadcast news. The merger will thus impact on the concentration of the news market. There is a broader variety of commercial broadcasting activities in the Netherlands, with a number of new stations which operate on the Dutch market, but none of them broadcast news.

guarantees independence from the Government or other political influence, as also confirmed by the Media Pluralism Monitor, which reiterates that there is no evidence of political influence in the appointment of board members¹¹⁷. The Media Act prescribes transparent and fair procedures geared at ensuring adequate funding of public service media, also specifically stipulating that such funding shall adequately cater for the online public service missions of the public service media without distorting competition. While falling under the Media Act, the Dutch Foundation for Public Broadcasting is not mandated to concern itself with media content given that the public broadcasters are endowed with editorial autonomy.

Legislation geared at improving access to information entered into force. The Open Government Act replaces the former Openness of Government Act, extending its scope by covering not only administrative bodies but also constitutional ones, such as both houses of Parliament, and broadening the extent of public documents which should be proactively disclosed. Furthermore, the Act establishes a permanent independent advisory committee whose role is to provide advice on the correct implementation of the rules by state bodies. The new Act also introduces shortened deadlines for responding to information requests, and the introduction of a reinforced obligation to actively make certain types of Government information available to the public¹¹⁸. While awaiting the entry into force of the Act, the Media Pluralism Monitor and civil society organisations reiterated the concerns raised in previous reports with regard to delays in granting access to information, as well as incomplete answers, including with regard to access requests relating to the COVID-19 pandemic¹¹⁹.

Threats and physical violence against journalists remain an issue of concern, in spite of the Government's continued efforts to counter this phenomenon. The Council of Europe Platform to promote the protection of journalism and safety of journalists published three alerts for the Netherlands. Two alerts concern physical violence against journalists perpetrated by individuals, one of which entailed an attack on the home of a journalist. The third alert concerns the arrest of a journalist while he was covering an environmental protest¹²⁰. Several other attacks and cases of intimidations were reported on the Mapping Media Freedom platform, including the murder of investigative journalist Peter R. de Vries on 6 July 2021¹²¹. The trial in this case is currently ongoing¹²². To address this phenomenon of violence against journalists, the Government has continued to enhance, fund and develop the 'PersVeilig' platform aimed at reducing threats, violence and aggression against journalists, which has continued to see close cooperation between prosecutors, the police, the Society of Editors-in-Chief and the Association of Journalists¹²³. An initiative which will benefit freelance journalists launched in 2021, will continue to receive Government support and funds¹²⁴. While the authorities point out that journalists benefit from additional guarantees under the relevant legislation¹²⁵ with a

¹¹⁷ 2022 Media Pluralism Monitor, country report for the Netherlands, p.16.

¹¹⁸ However, this part of the legislation will only enter into force at a later date.

¹¹⁹ 2022 Media Pluralism Monitor, country report for the Netherlands, p.10-11.

¹²⁰ Council of Europe Platform to promote the protection of journalism and safety of journalists – the Netherlands.

¹²¹ Mapping Media Freedom - the Netherlands; 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 12.

¹²² NOS (2022), 'Public Prosecution Service: murderer Peter R. de Vries confirmed deed to client', <https://nos.nl/artikel/2419634-openbaar-ministerie-moordenaar-peter-r-de-vries-bevestigde-daad-aan-opdrachtgever>. The verdict in the ongoing criminal proceedings is scheduled for 7 July 2022.

¹²³ The platform has brought to light that in 2021, 82% of Dutch journalists experienced a form of aggression or threat while at work, compared to 61% in 2017; that 29% of journalists are a victim of such incidents on a monthly basis and that 93% consider such threats to be a serious threat for freedom of the press.

¹²⁴ Input from the Netherlands for the 2022 Rule of Law Report.

¹²⁵ The Intelligence and Security Agencies Act.

view to protecting their sources¹²⁶, concerns persist¹²⁷ in relation to the work of the intelligence agencies: monitoring and tapping of digital activities in a certain neighbourhood might reveal journalistic sources.

The Government continued to provide financial support to local media outlets in response to the COVID-19 pandemic. While the overall economic impact of the pandemic on the media sector appears to have been limited with radio, public service media and online outlets all seeing their advertising revenues increase, regional and local newspapers faced greater challenges. The Government continued to subsidise local media outlets until December 2021.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

The Netherlands has a bicameral parliamentary democracy which provides for an ex-ante constitutional review of draft legislation¹²⁸. The Parliament is composed of the House of Representatives and the Senate. Legislative proposals can originate from the Government and from members of the House of Representatives. The Council of State gives advisory opinions on draft legislation. Independent authorities and civil society play an important role in the checks and balances system.

All state powers are engaged in drawing lessons from the childcare allowances affair. Following the Parliamentary investigation report and the subsequent resignation of the previous Government¹²⁹, different initiatives and reforms are ongoing to remedy the situation and to prevent similar situations from occurring in the future. The Government has recently issued its reaction to the Opinion issued by the Venice Commission on request of Parliament, which issued a number of recommendations regarding the executive, legislative, and judicial branch¹³⁰. In addition, the Government is conducting a comprehensive mapping of areas in which legislation may cause undue results for citizens, including through a wide citizen consultation, following a Parliamentary motion in that regard¹³¹. Given the criticism of not providing adequate information to Parliament and to the public, the Government now publishes

¹²⁶ Input from the Netherlands for the 2022 Rule of Law Report.

¹²⁷ 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 11 as confirmed by the Dutch ministry during the country visit.

¹²⁸ Ordinary courts can carry out a decentralised form of ‘constitutional’ review in the absence of a centralised constitutional court. This does not include the constitutionality of Acts of Parliament and treaties, pursuant to Article 120 of the Constitution.

¹²⁹ See 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 13-14. The Parliamentary investigation report concluded that principles of the rule of law had not been respected in the implementation of the childcare allowances system. The report found that the implementation of a system of subsidies for childcare had led to a large number of citizens being required to repay in full the subsidies they had received due to alleged irregularities.

¹³⁰ The Venice Commission found that ‘In general, the Netherlands is a well-functioning state with strong democratic institutions and safeguards for the rule of law’, and that ‘While the shortcomings in individual rights protection uncovered in the Childcare Allowance Case are indeed serious and systemic and involve all branches of [G]overnment, it appears that eventually the rule of law mechanisms in the Netherlands did work.’. Venice Commission advisory opinion (W13.22.0014/III). In its reaction, the Government indicates a variety of initiatives and reflection processes that are ongoing in relation to the topics subject to recommendations by the Venice Commission. Letter of the Minister of the Interior and the Minister for Legal Protection to Parliament (2022), Government reaction to the Venice Commission Opinion: ‘The Netherlands – Opinion on the Legal Protection of Citizens’.

¹³¹ Input from the Netherlands for the 2022 Rule of Law Report.

additional information when sending relevant documents to Parliament¹³². While efforts are ongoing to provide financial compensation¹³³, the National Ombudsman concluded in October 2021 that many citizens affected by the childcare allowances affair still face uncertainty due to delays in the treatment of their cases¹³⁴. The Council for the Judiciary has also issued an advice on draft legislation regarding this compensation, in which it requests the Government to further clarify a number of issues. Reflections are also ongoing on structural reforms¹³⁵ following additional investigations indicating that the tax authorities had not respected the principle of equal treatment and non-discrimination in their approach to combat fraud. A full parliamentary inquiry¹³⁶ will further investigate the affair, with hearings planned in early 2023 and conclusions of the inquiry planned later that year. Also the judiciary is engaged in drawing lessons from the childcare allowances affair, within the remit of its competences. The different initiatives demonstrate the functioning of the system of checks and balances.

Initiatives from the side of the judiciary contribute to a follow-up to the childcare allowances affair. Following a thorough ‘self-reflection process’¹³⁷, the Administrative Jurisdiction Division of the Council of State concluded that affected citizens did not always receive the legal protection they deserved in the childcare allowances affair and drew a number of lessons to prevent similar situations from emerging in the future¹³⁸. In that regard, a new approach in the case law of the Administrative Jurisdiction Division of the Council of State involves a closer scrutiny of the proportionality of administrative measures¹³⁹. To ensure that bottlenecks in the application of legislation by the judiciary are signalled effectively to the other state powers, the Council for the Judiciary called for a permanent dialogue between the different state powers¹⁴⁰. In that regard, the Supreme Court and the Council for the Judiciary already use their annual reports to flag potentially problematic rules, and the Council of State judicial branch has announced its intention to increase signalisation of such legislation. A reflection report prepared by a working group of administrative judges also recommended to stimulate possibilities for identifying problematic cases between administrative judges and

¹³² This concerns notably internal documents of the relevant ministries on which the Government’s decisions communicated to Parliament are based. Input from the Netherlands for the 2022 Rule of Law Report.

¹³³ Affected citizens are also being granted legal aid through a specifically created regime.

¹³⁴ National Ombudsman, Report – Complaint well-founded, but no solution, 11 October 2021.

¹³⁵ The Government intends to fundamentally review, simplify, or abolish elements of the various systems for financial allocations to citizens. Input from the Netherlands for the 2022 Rule of Law Report.

¹³⁶ *Parlementaire enquête*, which is the Parliament’s most far-reaching instrument to control Government action.

¹³⁷ This included conversations with many other involved parties, such as affected citizens, the tax authorities, other administrative authorities and other judicial bodies. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 13.

¹³⁸ The Council for the Judiciary is consulted on new laws in relation to the administration of justice, and its opinions are adopted after consulting with the courts. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 14.

¹³⁹ See Council of State judicial branch, ECLI:NL:RVS:2022:285, ruling of 2 February 2022. More generally, the Council of State concludes that its judicial branch should apply a stricter scrutiny of correctness of information provided by administrative authorities, in particular in cases where an imbalance of power exists between parties. The Council of State will also further stimulate the expression of contradictory views both internally and externally, including through cooperation with other judicial and non-judicial bodies, and will adopt a more ‘case-by-case’ approach when needed to ensure the legal protection of citizens. Council of State, Lessons from the childcare allowances cases, November 2021.

¹⁴⁰ In that regard, the Venice Commission recommended that ‘Channels could be established for the judiciary to draw the other branches’ attention to legislation which is giving rise to systemic problems in practice’, Venice Commission, The Netherlands – Opinion on the Legal Protection of Citizens, 18 October 2021.

courts at lower instances¹⁴¹. These initiatives demonstrate the active role taken by the judiciary in providing an adequate follow-up to the findings related to the childcare allowances affaire, within the remit of its competences.

A State Commission on the functioning of the rule of law is being established, and constitutional amendments have recently been adopted. Following a parliamentary motion, the Government is in the process of establishing a State Commission that will analyse the functioning of the rule of law in the Netherlands. On 3 December 2021, a proposal for the assignment of the State Commission was sent to Parliament, having been drafted in consultation with representatives of the judiciary¹⁴². The draft assignment includes examining potential improvements to the information exchange between the state powers and to their accessibility, as well as the development of a rule of law agenda, as recommended by the Council for Public Administration in April 2020¹⁴³. The draft assignment also requests the State Commission to take into account the recommendations of the Venice Commission in its Opinion on the childcare allowances affair. Furthermore, on 5 July 2022, the Senate approved in second reading constitutional amendments to explicitly enshrine fundamental rights, the rule of law and the right to a fair trial in the Constitution¹⁴⁴. The Government Coalition Agreement of December 2021 announced the intention to further strengthen the democratic rule of law, and also mentioned the possible introduction of a system of constitutional review¹⁴⁵ in line with an earlier advice of an independent State Commission¹⁴⁶, stating that it is to be assessed how this would best fit within the Dutch legal system.

Legislation is being prepared to introduce a permanent legal basis for adopting crisis measures. Stakeholders and the general public are being consulted online on a draft text. Following the adoption of the Temporary Act on COVID-19 measures¹⁴⁷, Parliament approved the prolongation of the duration of the Act several times on the proposal of the Government¹⁴⁸. The Senate rejected the fifth prolongation, and thus the Temporary Act expired on 20 May 2022. The Government has announced an amendment of the Public Health Act to provide for a permanent legal basis for measures to address crisis situations¹⁴⁹. As regards the way in which the Government managed the COVID-19 pandemic in the period from its start until September

¹⁴¹ Report Working Group Reflection Childcare Allowances Affair Courts – Finding Justice in Court, 8 October 2021.

¹⁴² Input from the Netherlands for the 2022 Rule of Law Report.

¹⁴³ Council for Public Administration, A stronger rule of law – connecting and protecting in a pluralistic society, 15 April 2020. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 15.

¹⁴⁴ The proposed amendments had been approved by the House of Representatives in second reading on 5 April 2022, and are now adopted.

¹⁴⁵ In line with an earlier advice of the State Commission on the Parliamentary System in the Netherlands, which had advised to introduce the possibility of constitutional review *ex post* by a Constitutional Court, See above, ordinary courts can carry out a decentralised form of ‘constitutional’ review in the absence of a centralised constitutional court, and respect for fundamental and constitutional rights is ensured in several other manners. See 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 14.

¹⁴⁶ The State Commission on the Parliamentary System in the Netherlands had advised to introduce the possibility of constitutional review *ex post* by a Constitutional Court.

¹⁴⁷ See 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 12.

¹⁴⁸ The draft decision to prolong the Temporary Act is submitted to Parliament before entering into force; Parliament can decide to reject the prolongation. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 13-14.

¹⁴⁹ See in that regard also Advisory Opinions W13.22.0014/III and W13.22.0059/III of the Council of State of 22 February 2022 and 20 April 2022, respectively, which emphasised the importance of amending the Public Health Act as soon as possible, in order to combat future pandemic situations.

2020, the Dutch Safety Board has made a number of recommendations for improving the approach to addressing future pandemic situations¹⁵⁰. A full parliamentary inquiry will further examine the Government's handling of the COVID-19 pandemic. The continued functioning of Parliament was enabled by exceptions in the Temporary Act on COVID-19 measures. The courts remained active in their scrutiny of specific COVID-19 measures¹⁵¹. In a high-profile case regarding the legality of the temporary curfew measure adopted in January 2021, the Supreme Court held that this measure had a sufficient basis in emergency law¹⁵².

A number of key independent institutions are being reinforced through additional funding, and further efforts are made to improve the process for enacting legislation. The Government Coalition Agreement announced that independent institutions such as the National Ombudsman, the Court of Audit, the Data Protection Authority, and the Advisory Board on Regulatory Pressure will be granted additional resources to enable the effective fulfilment of their mandate. Furthermore, it envisaged that the factual exchange of information between civil servants and Members of Parliament will be improved and that the House of Representatives will be reinforced by increasing the structural financing of several of its sections¹⁵³. Additionally, the Government has appointed a National Coordinator against Discrimination and Racism, and announced the establishment of a State Commission against Racism and Discrimination¹⁵⁴. The Netherlands Institute for Human Rights¹⁵⁵ has been tasked with investigating the effect of discrimination on decision-making processes by administrative authorities¹⁵⁶. As regards the process for enacting legislation, efforts are ongoing to make legislative proposals more easily readable and to further improve the website used for their online consultation. In addition, the framework for impact assessments is being revised in order to ensure its thorough application in the formulation of policy and legislation¹⁵⁷.

On 1 January 2022, the Netherlands had 8 leading judgments of the European Court of Human Rights pending implementation¹⁵⁸. While the Netherlands' rate of leading judgments from the past 10 years that remained pending was at 40%, the average time that the judgments

¹⁵⁰ Dutch Safety Board, Approach corona-crisis – Part 1: until September 2020, 16 February 2022.

¹⁵¹ See for example: Supreme Court, ECLI:NL:HR:2021:1497 and ECLI:NL:HR:2021:1568, rulings of 22 November 2021, and Court of Appeal of the Hague, ECLI:NL:GHDHA:2021:2452, ruling of 14 December 2021.

¹⁵² Supreme Court, ECLI:NL:HR:2022:380. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 14. The Court of Appeal of the Hague had quashed a judgment of the Hague district court, which found the curfew measure to be unlawful due to a lack of a correct legal basis. The Attorney General at the Supreme Court had advised to uphold the ruling of the Court of Appeal.

¹⁵³ Government coalition agreement, 15 December 2021. In that regard, the Venice Commission recommended that *'both committees and individual MPs should benefit from sufficient staff and resources that are earmarked for scrutiny of the [G]overnment and laws'*, Venice Commission, The Netherlands – Opinion on the Legal Protection of Citizens, 18 October 2021.

¹⁵⁴ Input from the Netherlands for the 2022 Rule of Law Report.

¹⁵⁵ Accredited with A-status by the Global Alliance of National Human Rights Institutions (GANHRI).

¹⁵⁶ The College has been given this task in the follow-up to the childcare allowances affair. The College is celebrating its tenth anniversary in October 2022, and a second evaluation of the College will start in the second half of 2022.

¹⁵⁷ Input from the Netherlands for the 2022 Rule of Law Report. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 13-14.

¹⁵⁸ The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

had been pending implementation is 2 years and 10 months¹⁵⁹. The oldest leading case, pending implementation for 6 years, concerns the irreducibility of a life sentence imposed on a prisoner suffering from mental illness¹⁶⁰. On 1 July 2022, the number of leading judgments pending implementation remains 8¹⁶¹.

The landscape for civil society organisations remains open, but certain concerns remain regarding new legislation applicable to them. The Netherlands continues to have an open civil society landscape¹⁶². Following criticism on the draft legislation aimed at preventing undesirable foreign influence by increasing scrutiny of civil society organisations (CSOs)¹⁶³, the Government modified the draft bill to remove the distinction based on the origin of donations to CSOs and to clarify that a court has to confirm the use of sanctioning powers. However, certain concerns remain as to the wide margin of appreciation that mayors would have in deciding to request information from CSOs regarding donations and to impose penalty payments to enforce such requests. Furthermore, stakeholders also raised concerns as regards recent legislation and draft legislation that expand the possibilities to prohibit certain CSOs in the interest of public order¹⁶⁴, as well as regarding draft legislation that grants additional powers to the national Coordinator for Counterterrorism and Security (NCTV) to collect personal information for anti-terrorism purposes¹⁶⁵.

The new Open Government Act has entered into force, introducing a new legal framework for access to Government information. The new Open Government Act entered into force on 1 May 2022, introducing a number of changes to the legal framework for access to Government information (see Section III). While the new Act reinforces the possibilities to obtain access to Government information, stakeholders criticised the softening of certain provisions throughout the legislative process and emphasised that it remains to be seen whether the Government will adopt a more transparent attitude towards information provision under the new legal framework¹⁶⁶. Additionally, the Digital Publications Act entered into force on 1 July 2021, providing for the publication of administrative decisions not addressed to specific persons, with the objective of increasing the transparency of such decisions.

¹⁵⁹ All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 60.

¹⁶⁰ Judgment of the European Court of Human Rights of 26 April 2016, *Murray v. the Netherlands*, 10511/10, pending implementation since 2016.

¹⁶¹ Data according to the online database of the Council of Europe (HUDOC).

¹⁶² See the rating given by CIVICUS, ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed, and closed.

¹⁶³ 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, pp. 14-15.

¹⁶⁴ 2021 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 15.

¹⁶⁵ Information received from civil society organisations in the context of the country visit to the Netherlands.

¹⁶⁶ Information received from civil society organisations in the context of the country visit to the Netherlands.

Annex I: List of sources in alphabetical order*

* *The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en.*

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Annex II: Country visit to the Netherlands

The Commission services held virtual meetings in March and April 2022 with:

- Commissariaat voor de Media
- Dutch Foundation for Public Broadcasting
- Fiscale Inlichtingen- en Opsporingsdienst
- Free Press Unlimited
- Huis voor Klokkenluiders
- Instituut voor Informatierecht
- Ministry of Education, Culture and Science
- Ministry of the Interior and Kingdom Relations
- Ministry of Justice and Security
- Nederlands Juristencomite voor de Mensenrechten
- Netherlands Helsinki Committee
- Nederlandse Orde van Advocaten
- Nederlandse Vereniging voor Rechtspraak
- Nederlandse Vereniging voor Journalisten
- National Ombudsman
- National Police
- National Internal Investigations Department
- Prosecution service
- Raad voor de Rechtspraak
- Raad voor het Openbaar Bestuur
- Supreme Court
- Transparency International

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

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute (OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe