

## **2024 Rule of Law Report Country chapter on the Netherlands**

### **Questions to the Ministries**

#### Pillar I – Justice System

1. The 2023 Rule of Law Report refers to draft legislation aiming at abolishing the power of the Minister of Justice to instruct the prosecution service to investigate or to prosecute in an individual case<sup>1</sup>. In this regard, the Venice Commission recommends removing the Minister's power to give instructions not to prosecute in specific cases, or at least to limit this prerogative to clearly defined exceptional circumstances<sup>2</sup>. Could you elaborate your views on this matter?

**The legislative proposal to remove the Minister's power to give instructions in specific criminal law cases is still pending in the lower house (Tweede Kamer). Unfortunately we are unable to share the governments' position before the discussion of the proposal in the lower house.**

2. The 2023 Rule of Law Report reports on reforms following failures in ensuring the safety of key witnesses as well as of their relatives and their advisors in criminal proceedings<sup>3</sup>. Could you update us on the latest developments regarding these reforms both as regards the use of key witnesses as well as protection measures? Are you aware of any instances of attempts by organised crime to intimidate members of the judiciary or infiltrate them and are there any measures to counter/prevent this?

**At this moment both our witness protection programme and the monitoring and security system are in transition.**

**With regard to the witness protection programme the following update can be given: In a letter to Parliament the Dutch Minister of Justice and Security (dated 31 March 2023 – as received by the European Commission), announced that the Dutch government intends to broaden the key witness scheme. This broadening includes, in the first place, a legal possibility for the Public Prosecution Office to negotiate and determine a crown witness deal with persons that are suspected of criminal charges of a less serious nature than currently possible. The Dutch legal framework on agreements with key witnesses is currently limited in scope. As a result, the exact extent of the legal bandwidth within which agreements are possible remains unclear. At present, the same legal framework does not regulate much about the obligations of the Dutch State on the one hand and the key witness on the other as well. This has shown to lead to undesirable situations. Therefore, before the key witness scheme can be broadened, the legal framework within which agreements can be made must be in order. That process is now still ongoing. On 11 January 2024 the Procurator General of the Supreme Court issued a report to the Minister of Justice and Security regarding the tasks performed by the Public Prosecution Office in the context of the witness protection system (see report in Dutch ). One of the conclusions was that government left the implementation of the Public Prosecution Office task regarding the protection of**

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<sup>1</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 4.

<sup>2</sup> Ibid, para. 72.

<sup>3</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands, p. 5,6.

witnesses almost entirely to practice and that there are no clear legal frameworks for witness protection. This means that the Netherlands is out of step with other countries. The recommendations will be included in the upcoming legislation.

With regard to the monitoring and security system, the following update can be given: Our monitoring and securing system will be fundamentally renewed, resulting in a new system to secure persons. The transition organization is fully occupied and all the projects have been started. The National Coordinator for Counterterrorism and Security (NCTV) directs this transition, but the implementation is done jointly with all partners, each with their own expertise and responsibility. The transition builds on the already deployed reinforcements.

Under the authority of the NCTV and our public prosecutor's office the security of the persons who are threatened is being monitored and based on the threat assessment of our intelligence and security services, the necessary security measures will be taken. It is not possible to make a statement about who is being protected or whether there are measures are being taken.

With regard to your last question, about measures taken to prevent or counter intimidation of members of the judiciary, the following can be said: Attention to threats among prosecutors, judges and lawyers is growing because of several events in recent years. An important example is the murder of Dutch criminal lawyer Derk Wiersum in September 2019. The murder of crime journalist Peter R. de Vries has further intensified this. In response thereto, several measures have been undertaken to prevent future intimidation of amongst others members of the judiciary.

The Dutch government has set up a team in which the National Coordinator for Counterterrorism and Security (NCTV), the Public Prosecutor's office, the National Police and the Royal Military Police work closely together to provide protection for lawyers, judges and prosecutors for whom it is appropriate. As part of increased security in criminal cases, investment is being made in the construction of two maximum-security court complexes and an additional secure courtroom in a Dutch maximum-security prison. This forms part of the investment in strengthening the resilience of judges, prosecutors and lawyers, among others, as part of the broad offensive against crime that undermines society. This team meets monthly under the chairmanship of the NCTV. Several good practices have already been exchanged and several initiatives have been funded using a resilience fund, including resilience training. In this way, the government facilitates and supports these professional groups to enable them to implement a strong integral security policy from employers and properly fulfil their employer responsibility in this area.

More information about specific measures taken by the Dutch judiciary in this regard can be found in the Council for the Judiciary's annual plan 2024.

3. In its 2023 Rule of Law Report, the Commission recommended to the Netherlands to  
`Continue efforts to improve the level of digitalisation of the justice system, in particular

as regards the publication of judgments<sup>4</sup>. With reference to your written input, could you clarify when it is expected that legislation on the publication of court judgments will be proposed and to which extent the “More and Responsible Publishing Programme” has led to an increase in the publication rate of judgments?

**There have been no significant updates yet. The legislative proposal is still in preparation. The aim is to bring it to consultation in 2024. Steady progress is being made with regard to the More and Responsible Publishing Programme.**

4. The 2023 Rule of Law Report reported on concerns expressed by judges and public prosecutors regarding staff shortages and challenging working conditions due to a high workload<sup>5</sup>. Based on prior exchanges, the Commission understands that an independent expert is due to propose recommendations on these matters. Could you provide us with an update on this matter?

**The report is currently being finalized and is expected to be published in spring 2024. We can share it with the Commission once it is published.**

5. In its Opinion of 8 October 2023 on the Dutch justice system, the Venice Commission recommends that the process by which the House of Representatives designates Supreme Court judges be carried out in a more open and reasoned manner<sup>6</sup>, for instance by making the list of candidates and reasons for their (non-) selection public. Could you elaborate your views on this matter?

**To respond to both question 5 and 6, we are currently considering the Venice Commission's recommendations. Consultations are being held with judicial institutions on the matter. We aim to inform Parliament in April 2024/this spring. We can share our appreciation once we have informed parliament.**

6. As regards the appointment procedure of candidates to the Council for the Judiciary, could you elaborate on the two following recommendations made by the Venice Commission:
  - a) The Venice Commission calls for circumscribing the Minister of Justice’s power in respect of the appointment procedure of candidates to the Council for the Judiciary and to the court management boards to guarantee against external pressure on the decisions on budgetary matters as an element of judicial independence<sup>7</sup>. What is your position on this matter?
  - b) The Venice Commission welcomes the development of mechanisms to ensure a broader participation of all judges in the selection of the candidates for the list that is submitted to the Minister of Justice and Security and recommends that such mechanisms be embedded in statutory law. Could you provide a state of play of such

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<sup>4</sup> Ibid, p. 2, 6,

<sup>5</sup> Ibid, p. 7.

<sup>6</sup> The Netherlands- Opinion of the Venice Commission on the legal safeguards of the independence of the judiciary from the executive power, 6-7 October 2023, para. 26.

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<sup>7</sup> Ibid, para. 45.

mechanisms, explain how they will be implemented and if their integration in statutory law is foreseen?

**See answer question 5.**

Pillar II – Anti-Corruption Framework

7. We understand from your written input that conversations with various stakeholders on how overall Dutch anti-corruption policy can be strengthened remain ongoing and will now focus on private sector corruption as well. Could you clarify the objective of these consultations and whether there are concrete measures you are considering?

**Currently, the Minister of Justice and Security is indeed engaging in discussions with relevant partners and civil society to explore how anti-corruption policies can be strengthened. The strengthening of such policies is the objective of the consultations. These discussions are still ongoing. For this reason, we cannot comment on any concrete measures yet. These will depend upon the final results of the consultation.**

**Notwithstanding this, where there are indications of (possible) corruption, urgent measures have been taken. For example, the Dutch Tax Authority has already implemented various measures to combat corruption within its organization. Some of their good case practices include increasing awareness with trainings and awareness sessions; improving the safety of their (computer) systems; and enhancing the physical and mental resilience of employees working at the Dutch Tax Authority. Another example can be found at the local governments, who are working towards decreasing the vulnerability of their work processes, such as the issuance of passports.**

**Additionally, the Minister of Justice and Security, together with the Minister for the Interior and Kingdom Relations, has also raised awareness of the urgency of the issue in the Ministerial Committee for Tackling Undermining (Ministeriële Commissie Aanpak Ondernijning; MCAO) on 4 July 4 2023. Subsequently, the MCAO committed itself to carry out an interdepartmental risk assessment that covers ministries, executive organizations and local government. This was initiated last year. The analysis of the risks, measurements and governance of ministries is almost finished. Currently, the next step of the risk assessment is being taken, which covers a selected group of executive organizations. Local governments will follow at a later point.**

8. Revolving Doors / Post-employment restrictions: We understand from your input that a legislative revision is still ongoing, with a draft sent to the Council of State.  
a) Has the draft changed in major ways compared to our discussion last year?

**The draft did not change in major ways before it was sent to the Council of State for its opinion. The changes made to the draft, compared to the version published for public consultation, are of a technical nature.**

b) We take note of the advice of the Council of State which was issued on 21 February 2024. Do you expect to amend the draft law on this basis?

**The government intends to submit the proposal to Parliament before this summer. It is possible that the draft will be amended on the basis of the advice of the Council of State. The Council of ministers has not yet decided about that.**

c) What is the timeline for the adoption of this law?

**The government intends to submit the proposal to Parliament before this summer. However, the timeline depends on the speed of the parliamentary debate on the bill in both Houses. In that regard, I would like to recall that the Netherlands has a caretaker government. Therefore, Parliament can decide that the bill is considered controversial and that Parliament wants to have their debate about the bill with the new government.**

9. Code of Conduct for ministers and state secretaries

a) Do you have any information about the application and implementation of the Code of Conduct in practice?

**The government has recently, at the initiative of the Minister of the Interior and Kingdom Relations, explicitly addressed the subject of integrity in the Council of Ministers. Given the current caretaker status of the government, that discussion was mainly focused on integrity in relation to possible follow-up positions of ministers. In the meantime, a more extensive session on integrity is being prepared with an expert, external supervisor for the start of the next government.**

b) Has Parliament so far had to enforce the Code?

**If you mean that Parliament has tabled a motion of no confidence, I would have to say no. However, members of Parliament sometimes ask questions about the application of the Code in individual cases of ministers.**

c) When will the integrity adviser for ministers be appointed?

**The government intends to appoint the integrity adviser on a short term /The government has appointed two integrity advisers recently (Antwoord afhankelijk van besluitvorming MR 15/3). We can send you the parliamentary letter about the appointment of the advisers.**

10. Lobbying: We understand further research work is still ongoing on the effectivity of the publication of minister's agenda and the lobby paragraph. We also noted that the effectiveness of relying on transparency of ministers' agendas has been criticised<sup>8</sup>. What concrete steps do you foresee on the issue of transparency of lobbying, in line with the recommendation from the 2023 Rule of Law Report?

**The government has asked professor Braun from Leiden University to conduct a research into whether the improvement of the public agendas of ministers and the**

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<sup>8</sup> <https://www.transparency.nl/nieuws/2023/12/open-state-foundation-transparantie-agendas-bewindspersonen-verslechert/>

lobby paragraphs in legislation have made sufficient effect after tightening the implementation guideline for public agenda's a. If this turns out not to be the case, the government announced that they will still consider to look into the possibility of creating a lobby register. The results of the study are expected during 2024. In the meantime, the government is exploring which parts of lobby registers are effective and feasible elsewhere. If, as a result of the evaluation or through a new coalition agreement, a lobby register is chosen, then ideation has already started. For example, we spoke with France, Germany, the UK and visited Ireland to speak about their lobbyregister. We are also planning to visit Brussels to hear about the transparency register at the EU. In addition, the ministry of the Interior spoke with the Open State Foundation, who did some research about the public agenda's of ministers, on how the ministries could improve their public agenda's. So we are definitely in action to follow up your recommendation about lobbying.

11. GRECO continues to note the absence of a system of regular financial declarations by ministers or state secretaries during their mandate. Are there any plans to introduce such a system?

**Section 3.5 of the code of conduct for ministers includes a chapter on financial interests and trading in securities while in office. When accepting such an interest, a minister must make provision for this and report this to the House of Representatives (for example distancing financial interests). Because the acquisition of such interests will by the nature of the matter take place in the private life of the minister concerned and the Prime Minister cannot independently acquire knowledge of this, the obligation to inform the House of Representatives about this rests with the minister himself. We therefore conclude that we have made a system of regular financial declarations by ministers or state secretaries during their mandate.**

12. Political party financing: Could you elaborate on the work in relation to the Law on Political Parties? Do we understand correctly that the proposal remains under consultation?

***The answer to his question will be sent after the digital visit.***

13. Could you provide us with more details on the national risk assessment, which is being carried out by the WODC during 2024?

**In 2024, the Scientific Investigation and Documentation Centre (Wetenschappelijk Onderzoek en Documentatie centrum; WODC) will conduct a National Risk Assessment on public and private sector corruption in the Netherlands, on a local, provincial and national level. The purpose of the NRA is to identify the corruption threats with the largest potential impact, to determine the height of the largest potential impact and to determine the level of resilience against such corruption threats (both on a preventive and repressive level). Furthermore, the NRA will offer insights in the nature of the largest corruption threats and determine the overall risk level of these threats.**

**The NRA is scheduled to start in April 2024. According to the preliminary planning, the NRA will be finalised at the end of 2025.**

14. Subversive organised crime: From the written input, we understand that further measures are being taken in relation to subversive organised crime. Could you further expand on the following:

- a) At this point, do you have any further information on the WODC-research concerning corruption risks in the mainports?

**RAND Europe has finished their research on corruption threats, potential impact and policy instruments in the Port of Rotterdam and on Schiphol Airport. The report will be published 18th of March, 2024, at the latest. The government will respond to the report with a letter to parliament. We will use the report in our discussions on further policy development against corruption.**

**The findings of the study are in line with earlier research on this topic. The study has produced an overview of the main contextual factors of the Port of Rotterdam and Schiphol Airport that make these main ports vulnerable to corruption. By linking the modus operandi and the main port sectors, a list of corruption threats was constructed. This list was discussed and prioritized by experts, after which the researchers estimated the potential impact of the largest threats using seven weighted impact criteria. This led to a ranking of threats with the greatest potential impact. Experts were then asked to estimate the ability of the port/airport to anticipate, prevent, counter mitigate and/or recover from corruption threats using the combined set of available tools and measures. Experts from both main ports considered that the (potential) impact of corruption through bribery in the law enforcement chain was the greatest. They also consider the ports' resilience greatest against this threat, because many policies have already been developed in this area for both main ports. Corruption through social pressures in the workplace, leading individuals not to fulfil their reporting obligations was also identified as a key threat for both main ports. Moreover, Schiphol Airport was considered by experts to be particularly vulnerable to corruption among key planners and brokers. In the Port of Rotterdam, resilience was rated lowest for blackmail and financial bribery in the logistics chain of goods towards the hinterlands. The heightened vulnerability attributed to these specific threats is not entirely unexpected, given that they transpire, at least in part, beyond the direct influence of the relevant main port authorities. Please see the English summary of the report for a more extensive description of the findings, conclusions and recommendations.**

- b) Would you have any possible timeline as regards the proposal to make this risk analysis mandatory for all local governments? (We noted the publication for public consultation)

**The risk analysis is being conducted in several consecutive steps. Firstly, we have questioned all ministries on their risks, measures and governance. Currently we are working with a selected group of executive organisations to create a suitable questionnaire, which will be used to give more insight in the risks that executive organisations are facing with regards to corruption and integrity. Only after we**

**have gained enough information from this group, we can continue on to the local governments. We do not expect that we can start questioning local governments earlier than before the end of 2024 with the first version of the questionnaire. This is based on the fact that the risk analysis ended up taking a lot more time than expected (difficulties finding the right people in each organisations, lack of responses, analysing the responses, et cetera) for both ministries and executive organisations.**

- c) Could you update us on the work of the Nationale Samenwerking Ondermijnende Criminaliteit (NSOC)? Will it continue to play a similar role?

**The answer to this question will be combined with the questions to the PPS on this topic.**

15. Foreign bribery:

- a) We understand that any measures as regards self-reporting and self-investigations remains under deliberation by the Ministry. Do you have any insights and/or a timeline in relation to this work?

**On February 26th 2024, the Dutch Parliament has been informed about proposed measures to implement and regulate self-investigation and self-reporting . Regulation is proposed by means of a Directive by the Public Prosecution Service. The PPS is currently deliberating if, and if so how, guidelines for self-reporting and self-investigation can be combined in one Directive or if two separate Directives are required. A draft Directive for consultation is expected in the summer of 2024. Additional legislation is currently not deemed necessary.**

- b) The OECD also criticises the low level of enforcement on foreign bribery cases. Could you outline which steps are being taken in that regard?

**Several measures have been taken to improve the level of enforcement on foreign bribery. Taking into account the average timespan of complex, international legal investigations (five to seven years), the effect of these measures is not immediately visible.**

**More resources have been allocated to the investigative authorities. As mentioned in the initial Rule of Law input (December 2023), from 2024 onwards, a second dedicated anti-corruption team consisting of up to 24 fulltime employees will come into force, nearly doubling the capacity of the Fiscal Intelligence and Investigation Service (FIOD) for corruption cases.**

**Additionally, during the period 2020-2027 the Public Prosecution Service structurally receives around EUR 100 million in additional funds to attract more prosecutors.**

Pillar III – Media Pluralism and Media Freedom

16. Considering the current admission criteria for new broadcasters, including the number of paying members, how does the government assess the impact of these criteria on media

plurality and representation of diverse societal groups? Is the government considering revising these criteria to better reflect societal diversity?

**It has long been concluded that the current set of admission criteria for new public broadcasters is not sustainable in the current media environment. This not only has to do with the fact that the criteria do not ensure that all different societal groups have representation within the Dutch public broadcasting system, but also with the fact that these admission criteria lead to a large number of separate organisations (currently: 13) that are responsible for producing content within the national public broadcasting system.**

**The government has recently installed an advisory committee to come with an advice on how to update the current set of admission criteria to make better representation as well as less organisations within the system more likely. The advisory committee published this report mid-September 2023. We are currently in the process of analysing this report, identifying consequences of proposed solutions and offering alternatives. The way in which proposed alternatives to the current system make it less or more likely to reflect different groups and viewpoints in Dutch society is one of the core themes within the analysis.**

**A first analysis of the report will be sent to parliament at the end of march. This analysis only offers different solutions, choosing one of the alternatives to the current system is up to a new cabinet, as this one is in a caretaker period following the recently held elections.**

17. NGOs have raised concerns regarding the current insufficient enforcement of ethical standards at the NPO's broadcasters. Given the editorial autonomy of public broadcasters relying on the NPO, how is the need for editorial independence balanced with the responsibility to uphold journalistic quality and ethical standards?

**Freedom of speech is one of the pillars of a free democratic society. In the Dutch Constitution the editorial independence and the absence of censorship of the media is guaranteed. This fundamental right is counterbalanced by the obligation to ensure high journalistic standards and ethics. This is reflected in de Dutch Media Act 2008.**

**According to the public remit as stipulated in article 2.2 of this act the media-content of public broadcasters must meet high professional journalistic standards. Furthermore, article 2.88 of the Media Act 2008 emphasizes the duty for the public broadcasters to draw up an editorial statute containing guarantees for journalistic quality and ethics. To this end the national public broadcasters joint together in drawing up an overarching journalistic code.**

**It is generally recognized that in an free world defining journalistic quality standards and ethics is the concern of the sector itself and that supervising compliance also is provided within the sector itself. Monitoring compliance with the code is therefore attributed to an independent Ombudsman. In the extreme situation that a broadcaster systematically acts contrary to its public duties, including the application of journalistic standards, and therefore endangers the**

**fulfilment of the public media remit, the independent media authority, the Commissariaat voor de Media, can take enforcement action.**

**In last resort, when multiple sanctions are imposed on a broadcaster, the broadcasting license can be withdrawn by the minister. It goes without saying that such decisions are not to be taken lightly and only on the basis of careful assessment of facts, sufficient legal bases and proportionality.**

**In short: the public broadcasting system functions on the basis of editorial independence, but this is counterbalanced by obligations that come with the assigned public task.**

**Finally, there's the Journalism Council. This council is an independent self regulatory body for the media. Anyone can contact the Council with complaints about journalistic conduct that, in their opinion, has not been handled properly by the medium itself. Furthermore, the Council can make statements on its own initiative on certain journalistic topics.**

18. Following the adoption of new legislation criminalising doxing of journalists, what measures have been taken to enforce this law effectively, and what impact has it had on the safety of journalists?

**The legislation criminalising doxing has entered into force on January 1st, 2024. It not only criminalises the doxing of journalists, but of all citizens. It does however contain higher possible punishments for the doxing of specific professionals, among which journalists.**

**To enforce this law effectively, the public has been provided with information about this legislation and what they can do when they are a victim of doxing. An important step is to file a formal report with the police. Since the entry into force of this legislation the police can act earlier (for instance when personal information is disseminated on the internet) and more decisively (launch a criminal investigation and possibly arrest a suspect). The first cases of doxing have in fact been taken up by the police. Leading, among other things, to the identification of a number of suspects. It is too early to tell how these cases will progress in the remainder of the law enforcement process.**

**Since this legislation has only entered into force a few months ago, it is hard to say what the impact on the safety of journalists is. In the first two months of 2024 one (1) formal report has been filed with the police by a journalist as a result of doxing. This does not mean that other journalists have not been doxed. In daily life, not all instances of criminal behaviour lead to a formal report with the police. Many victims choose to either do nothing, or take different types of actions, for example attempting to remove their personal information from the internet with the help of the internet platform.**

19. Some NGOs have raised concerns about surveillance of journalists in the Netherlands. How is the government ensuring that the surveillance of journalists by intelligence services is conducted with appropriate legal safeguards and transparency, especially in light of previous concerns raised about this practice?

***The answer to his question will be sent after the digital visit.***

20. What progress has been made in the trial concerning the murder of Peter R. de Vries? What measures are being taken to prevent such incidents in the future (especially in the context of witness protection)?

**On November 1, 2022, the court decided that the two criminal cases into the murder of Peter R. de Vries should be combined. One criminal case concerns the alleged perpetrators of the murder of De Vries (13Iraklia) and the other concerns the client(s) of and other parties involved (26Hendon). In June 2022, the Public Prosecution Service demanded two life sentences in 13Iraklia. However, the court did not reach a decision due to new information and decided that the trial had to be over. The substantive hearing started on January 23, 2024 and will last until June 2024. Nine suspects are in court.**

**On January 31, 2024, the public prosecutor's office issued a sentence: life imprisonment was demanded against three suspects, the suspected shooter, the driver and the murder broker. The officers demanded prison sentences of up to 21 years for the six other suspects. The court will make its ruling in June 2024.**

21. The Council of Europe Platform to promote the protection of journalism and safety of journalists reports several cases where journalists faced violent threats. Following the government's initiatives to improve the safety of journalists, including the additional funding for PersVeilig, how do you assess the effectiveness of these measures?

**For an effective approach, the Netherlands believes it is very important to gain insights in how the measures work in practice and about the effectiveness of the measures. In 2023, the WODC (Research and Documentation Centre) of the Ministry of Justice and Security published a study into the nature and scope of violence against journalists. The purpose of this study was to gain insight into the developments regarding violence against journalists over the last ten years and to develop a profile for the type of offender responsible for these crimes. The efficacy of the current measures was also studied in practice and a review was given on which additional measures could prove effective in combatting aggression and violence against journalists. An important finding was that journalists are generally satisfied with the PersVeilig initiative and the agreements between the different actors, but the survey also showed a critical side when it comes to the implementation of the policy.**

**The effectiveness of the measures related to PersVeilig can be discussed in the Steering Group on Aggression and Violence against Journalists (consisting of the Public Prosecution Service, the National Police, the Dutch Society of Editors-in-Chief and the Dutch Association of Journalists (NVJ)). The steering group exchanges regularly about experiences, trends and bottlenecks with regard to the agreements made in the Protocol PersVeilig. This working method makes that problems can be tackled in an effective manner, if the Protocol PersVeilig doesn't work in practice the way it is intended. This Steering Group is part of the project PersVeilig.**

**Moreover it is important to mention that an evaluation study of the project PersVeilig is conducted at this moment and will be published this summer. The results will give insights in the effectiveness of PersVeilig, the organisational and financial structure of PersVeilig and the different activities of PersVeilig.**

22. [*In writing if possible: How do you assess the current situation regarding access to documents in the Netherlands? Which progress has been made in light of the criticism from the Commission's 2023 report (invocation of exceptions and the time necessary to respond to requests) and the planned implementation test announced in the "Kamerbrief" of 8 September 2023?*]

**The Commission asks about the implementation of the Open Government Act (Wet open overheid; Woo). Since the Act took effect on 1 May, 2022, important progress has been made toward a more transparent government. For example, since September 2022, all policy notes accompanying parliamentary documents are proactively disclosed<sup>9</sup>, several policy measures were announced and initiated aimed at preserving work-related chat messages from government officials (political officials and government leaders)<sup>10</sup>, and since June 2023, administrative bodies can join the 'Woo Index', a digital infrastructure in the form of a referral index, designed to allow users to find all mandatory proactively disclosed<sup>11</sup> documents in one central place.<sup>12</sup>**

**One year after the implementation of the Woo, the government recognizes that despite efforts, there are challenges in implementing the Act. As also stated in the 2023 Commission report<sup>13</sup>, steps need to be taken to accelerate the processing of information requests under the Woo. To this extent pilots were conducted in 2023 with the goal of gaining insight into what measures contribute to faster and better processing of requests.<sup>14</sup> Furthermore, an implementation review (invoeringstoets) on the Woo was conducted.<sup>15</sup> The review identified challenges faced by citizens, journalists and administrative bodies regarding the Act, as well as best practices. In addition, the external research agency formulated several recommendations on the identified challenges.**

**Following the publication of the implementation review, the Advisory Board on Public Access and Information Management and the Government Commissioner for Information Management have been asked to reflect on the outcomes of the review and issue advices. Based on these advices, the outcomes of the implementation review, and the Woo pilots, a Cabinet response will follow in 2024 on measures to improve the implementation and enforceability of the Woo. This will include a consideration of the outcomes and recommendations of the Advisory Board's survey of journalists on access to public information.**

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<sup>9</sup> Kamerstukken II 2021/22, 28 362, nr. 59.

<sup>10</sup> Kamerstukken II 2022/23, 32 802, nr. 67; Kamerstukken II 2022/23, 32 802, nr. 75.

<sup>11</sup> Section 3.3. of the Open Government Act.

<sup>12</sup> Brief 'Actieve openbaarmaking overheidsinformatie: Woo-index', beschikbaar via <https://www.open-overheid.nl/instrumenten-en-diensten/publicaties/2023/6/brief-bestuursorganen-woo-index/brief-bestuursorganen-woo-index>

<sup>13</sup> [https://commission.europa.eu/system/files/2023-07/44\\_1\\_52625\\_coun\\_chap\\_netherlands\\_en.pdf](https://commission.europa.eu/system/files/2023-07/44_1_52625_coun_chap_netherlands_en.pdf)

<sup>14</sup> Kamerstukken II 2023/24, 32 802, nr. 80.

<sup>15</sup> Kamerstukken II 2023/24, 32 802, nr. 80.

**Important for an accelerated and improved handling of information requests is also the government's information management. The steps the government plans to take to enhance its information management and public access are outlined in the Multi-Year Plan for Transparency and Information Management (Meerjarenplan Openbaarheid en Informatiehuishouding), published and shared with parliament in December 2023.<sup>16</sup> Finally, the government recognizes the importance of monitoring the processing of information requests. Therefore, starting in 2022, an annual overview of the processing of information requests at ministries is provided in the Annual Report on Operational Management (Jaarrapportage Bedrijfsvoering Rijk).<sup>17</sup> We are also working to develop a government-wide dashboard to track the processing of requests.<sup>18</sup>**

23. [*In writing if possible: Given the persistent challenges of market concentration within the media sector in the Netherlands (the 2023 Media Monitor reports that there is an increasing market share with fewer media companies), has there been any progress in developing and implementing measures to reduce media market concentration since the last report?*]

**Since the last report, no new measures have been taken. The proposed merger of RTL Nederland and Talpa (two major commercial broadcasters) has been rejected by the national competition authority ACM, according to standard competition rules.<sup>19</sup>**

**In the upcoming year, the Netherlands will implement the obligations of the EMFA Regulation.**

#### Pillar IV – Other Institutional Issues related to Checks and Balances

24. In its 2023 Rule of Law Report, the Commission recommended to the Netherlands to 'further continue the comprehensive follow-up to the childcare allowances affair, involving all relevant state authorities, building also on the work of the State Commission on the Rule of Law'. Could you provide an update with regard to the measures taken in this regard, including in response to the opinion of the Venice Commission on the Legal Protection of Citizens<sup>20</sup>, notably as regards improvements of the legislative process, communication between state powers and the use of artificial intelligence?

**With regard to the use of artificial intelligence for the system of allocating allowances including childcare allowances several measures were implemented or are being implemented by the Dienst Toeslagen. In our most recent letter to the House of Parliament 'Current status of the Dienst Toeslagen'<sup>21</sup> these measures are**

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<sup>16</sup> Kamerstukken II 2023/24, 32 802, nr. 344.

<sup>17</sup> Kamerstukken II 2022/23, 31 490, nr. 328.

<sup>18</sup> Kamerstukken II 2021/22, 33 328, nr. 43.

<sup>19</sup> <https://www.acm.nl/nl/publicaties/acm-verbiedt-overname-talpa-door-rtl-definitief>.

<sup>20</sup> Venice Commission, *Netherlands-Opinion on the Legal Protection of Citizens*, CDL-AD (2021)03 adopted on 15-16 October 2021, paragraphs 134-137 in particular. Cabinet response to the report of the Venice Commission 'The Netherlands - Opinion on the Legal Protection of Citizens', 12 April 2022.

<sup>21</sup> [Belastingdienst | Tweede Kamer der Staten-Generaal](#).

described in detail (see pages 4 till 14 for the latest and more specific 11 and 12). All these measures are aimed at using risk models and algorithms in a responsible manner.

The following improving processes:

- There is now the option to moderate any recovery, the 'all or nothing' approach is no longer used, an opinion procedure applies and the label 'O/GS' (intentional or gross negligence) is no longer used.
  - The recent establishment of the independent and external Analytics Advisory Committee contributes to the ethically responsible handling of algorithms and the organization of business processes.
  - The Impact Assessment for Human Rights when using Algorithms (IAMA) is currently being applied for the further development of the new risk model 'Indication of Targeted Treatment for Rent Allowance' (also known as the Treatment Choice Model).
  - The GDPR also requires that a Data Privacy Impact Assessment (or DPIA) be carried out for, among other things, risky processing of personal data. This is also applied to the current work processes of the Dienst Toeslagen.
  - Dienst Toeslagen no longer receives information from the Municipal Personal Records Database (BRP) about a possible second nationality from citizens with Dutch nationality. This can therefore no longer be registered or processed in our systems.
  - Finally, new methods of control and enforcement are being developed, for which purpose the Enforcement Strategy of the Dienst Toeslagen has also been drawn up. This was made public on May 23, 2023.<sup>18</sup> The safeguards framework for selection instruments was also shared. The implementation of the enforcement strategy and the safeguards framework is a multi-year approach.
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- As reported in 2023 the government is working on an amendment to the General Administrative Law Act (Awb) for the purpose of making it more human-centred.
  - A more human-centred Awb would strengthen its ability to protect and safeguard the rights of the people in relation to the government.
  - This Bill has been forwarded to the judiciary, municipalities and governmental organizations for an informal consultation in the first half of 2023.
  - The aim was to provide an early possibility to make a first impact assessment of the consequences of the proposal.
  - The informal consultation was widely participated in: many written responses have been received and the proposal was discussed in a round of expert sessions with governmental organizations and other stakeholders like academics.
  - The results of the informal consultation have been processed in the second half of 2023.
  - Now a formal and (internet)consultation has started February 1<sup>st</sup> 2024, which gives stakeholders and everyone else interested the possibility to react via [www.internetconsultatie.nl/waARBORGfunctieawb](http://www.internetconsultatie.nl/waARBORGfunctieawb), the results of which will be publicly available.

- **During the 6-month consultation period governmental organizations will also further assess the impact of the Bill on their daily practice and public tasks**
- **Furthermore a reflection document on algorithmic decision making has been given in public consultation via [www.internetconsultatie.nl/algorithmischebesluitvormingenawb](http://www.internetconsultatie.nl/algorithmischebesluitvormingenawb). The aim of this is to further explore whether it would be necessary to regulate this topic in the General Administrative Act in order to enhance safeguards.**
- **As a result of an inquiry by the House of Representatives into the childcare allowance affair, a motion from the Members of Parliament Ploumen and Jetten was passed in Parliament requesting the Government to conduct a comprehensive inventory of areas in which legislation is harsh on people and to make proposals to include hardship clauses in those laws.**
- **To implement the motion, each ministry has conducted an inquiry into laws and regulations that may have a harsh impact on citizens.**
- **All the ministries have concluded their inquiry last year and the results have been forwarded to parliament**
- **Further discussions now take place within the policy domains concerned and with the specific committees of the House of Representatives. For example: a revision of social security legislation is under discussion in the so-called "Vaste commissie voor Sociale Zaken en werkgelegenheid" (Committee on Social Affairs and Employment Opportunities).**
- **In general the Government is of the opinion that recognizing, acknowledging and following up on signals of harshness is not a one-time exercise, but a continuous process that must be structurally embedded in policy processes. The inventory is thus an instrument in a much broader palette of measures and actions that the Government is working on for the purpose of avoiding harsh effects of legislation.**

25. What is the Government's response to the final Report of the Parliamentary Inquiry into the Government's fraud policy published on 26 February 2024?<sup>22</sup>

**The Government has received the final Report with great interest and is planning to formulate a response.**

26. As mentioned in the 2023 Rule of Law Report, stakeholders submit that mayors often take quick decisions to curb or ban a protest based on security considerations and that certain preventive and repressive actions undertaken by the police are disproportionate. Could you provide us with an update as regards the Government's response to this

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<sup>22</sup> Rapport parlementaire enquêtecommissie Fraudebeleid en Dienstverlening, Blind voor Mens en Recht, 26 February 2024, [Blind voor mens en recht PEFD \(tweedekamer.nl\)](http://BlindvoorMensEnRechtPEFD(tweedekamer.nl))

criticism<sup>23</sup>, also considering the recent judgment of the European Court of Human Rights in the case of *Laurijsen and Others v. the Netherlands*?<sup>24</sup> [BZK](#)

**The Government takes the criticism, regarding recent events that put the right to freedom of assembly under pressure, very seriously. The Government believes the right to freedom of assembly is strongly protected by the Dutch Constitution and (international) treaties such as the European Convention on Human Rights (as also expressed in its letter from July 2023), but also admits that the events of the past months raise questions. The Government is currently drafting a letter for the Parliament regarding this topic.**

**The judgment of the European Court of Human Rights in the case of *Laurijsen and Others v. the Netherlands* has recently (i.e. on 21 February 2024) become final. The Committee of Ministers of the Council of Europe supervises the execution of judgments of the European Court of Human Rights by the member states. In the course of that process, the Government is currently preparing a so-called action plan in which it will indicate to the Committee of Ministers the measures planned and/ or taken to execute the judgment. These concern both individual measures aimed at erasing the consequences of the violation for the applicants, and – where applicable – general measures to prevent future violations similar to the one that occurred in the case at hand. Such action plan must be submitted at the latest within six months of the judgment becoming final.**

27. Could you provide an update on the state of play with regard to the draft law on Transparency of Civil Society Organisations (*Wetsvoorstel transparantie maatschappelijke organisaties*)?[\[in writing if possible\]](#).

**The draft law on Transparency of Civil Society Organisations (*Wetsvoorstel transparantie maatschappelijke organisaties*) is pending in the lower house (Tweede Kamer) and is currently scheduled for plenary discussion in April 2024 (subject to change).**

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<sup>23</sup> The Commission is aware of [Evaluatie Wet openbare manifestaties | Tweede Kamer der Staten-Generaal](#)

<sup>24</sup> Judgment of the European Court of Human Rights of 21 November 2023, *Laurijsen and Others v. the Netherlands* (application nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17), 21 November 2023.