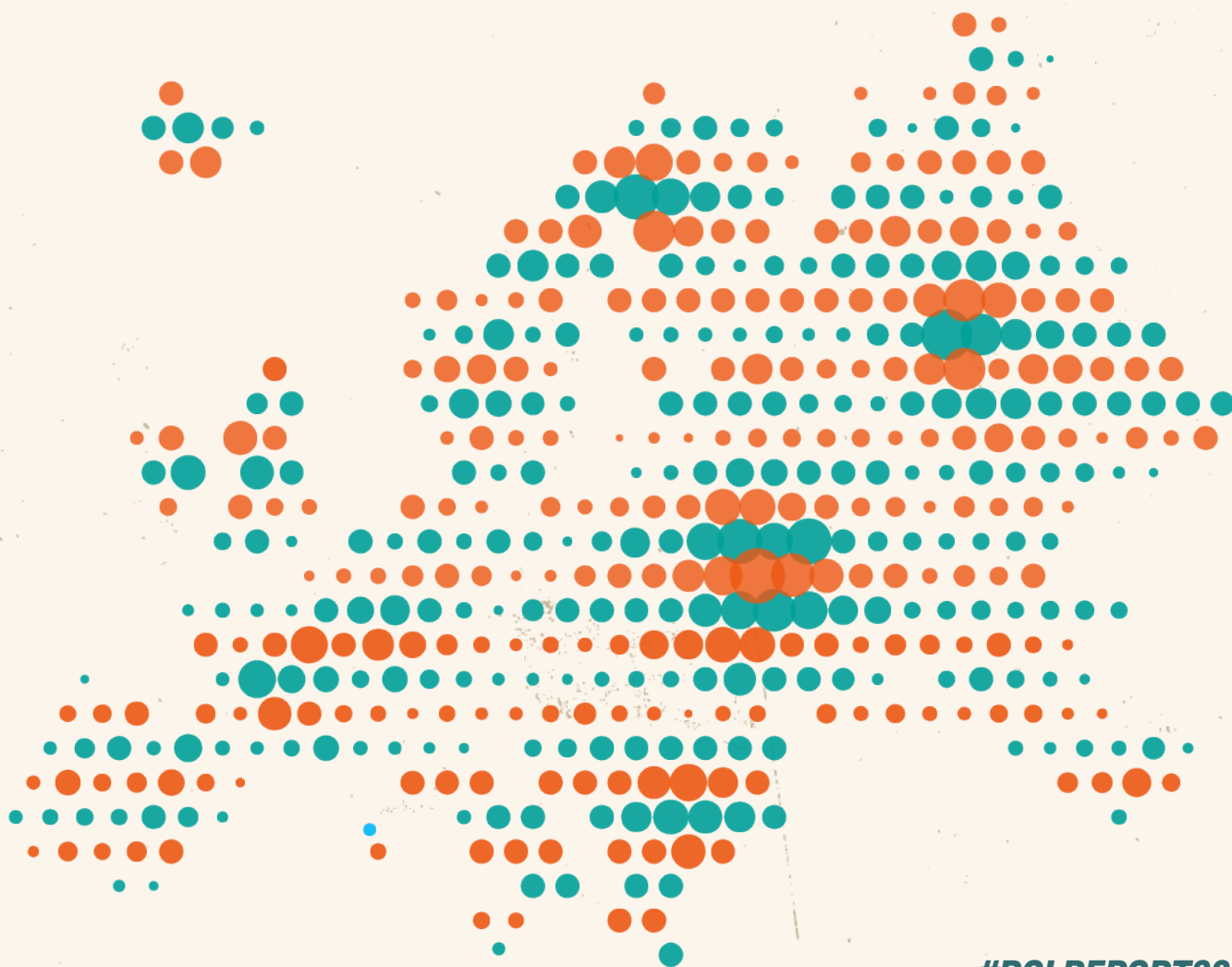


LIBERTIES

RULE OF LAW REPORT

2023

NETHERLANDS



#ROLREPORT2023



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FOREWORD

This country report is part of the Liberties Rule of Law Report 2023, which is the fourth annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member and partner organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and gathers public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2023 Report was drafted by Liberties and its member and partner organisations, it and covers the situation during 2022. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports, and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2023 Report includes 18 country reports that follow a common structure, mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Forty-five member and partner organisations across the EU contributed to the compilation of these country reports.

[Download the full Liberties Rule of Law Report 2023 here](#)

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NETHERLANDS

About the authors

This report has been compiled by Liberties on the basis of the official submission jointly authored by the Netherlands Helsinki Committee (NHC), Free Press Unlimited (FPU) and Transparency International Nederland (TI-NL) to inform the 2023 public consultation on the rule of law in the EU launched by the European Commission – subject to the consent of the authors. While not altering its content, this report is based on an edited version of the original submission and is structured on the basis of a reporting template drawn up by Liberties. Progress ratings of the various areas covered is the sole responsibility of Liberties.



The Netherlands Helsinki Committee (NHC) is a non-governmental organisation that promotes human rights and strengthens the rule of law and democracy in all countries of Europe, including the Central Asian countries participating in the OSCE.



Free Press Unlimited (FPU) is committed to promoting and defending press freedom and access to reliable information, particularly in countries with limited (press) freedom. Together with over 40 local media partner organisations, Free Press Unlimited strives to give people the information needed to help them survive, develop themselves, and monitor their government.



Transparency International Nederland (TINL) strives for a world in which government services, the political world, business, civil society and citizens are free from corruption. The emphasis is on improving integrity, transparency and accountability in Dutch society.

Key concerns

In the area of justice, steps have been taken to strengthen judicial integrity, particularly regarding possible conflicts of interests. The government reacted to protests from judges by substantially increasing the budget for the judiciary to improve the general efficiency and tackle the systemic underfunding of the justice system.

As regards corruption, the Netherlands received its lowest score ever on the 2022 Corruption Perceptions Index. This strongly correlates with weak rules and enforcement in the field of political integrity. The government proposed a cooling-off period for members of the government, but failed to make it mandatory and include adequate sanctions. To improve transparency, the government started publishing the agendas of public officials; however, a lobby register is still missing. The government continues to neglect whistleblower protection, remains opaque in its public procurement practices, and still shows weaknesses in its enforcement capacities.

The media environment continues to enjoy good levels of independence. The media landscape is still characterised by a high concentration of media ownership. Furthermore, national law does not contain specific regulations directed at SLAPPs nor does the Netherlands specifically monitor SLAPPs. On top of that, recent findings have shown that women journalists in particular face high levels of violence, mostly online. On the other hand, the government has announced extra measures to protect journalists and press freedom, such as better protection for journalists' addresses in the Dutch Chamber of Commerce. Parliament approved the allocation of funds for the establishment of an international independent investigative task force that can investigate cases of murdered journalists when impunity is a likely outcome.

Civil society still enjoys an open civic space. There are, however, concerning trends in relation to freedom of assembly, public participation, the safety of journalists, and the impact

of new (pending) safety and anti-terrorism laws.

State of play

- Justice system
- Anti-corruption framework
- Media environment and freedom of expression and of information
- N/A Checks and balances
- ↓ Enabling framework for civil society
- N/A Systemic human rights issues

Legend (versus 2022)

- ↓ Regression
- No progress
- ↑ Progress

Justice system –

Judicial independence

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

Judges are required to inform the president of the court of positions they hold outside their office. The president has a duty to check whether holding these positions is detrimental to their duties as judges, or to maintaining impartiality and independence or trust therein.

In response to GRECO reports, the Minister of Interior and the Minister of Justice and Security have initiated a bill to strengthen

judicial integrity, independence and impartiality, particularly regarding possible conflicts of interests. The internet consultation on the bill ended on 6 January 2022. One of the proposals aims to no longer allow judges to be members of the Senate or of the European Parliament. Judges are already prevented from being members of the lower house of Parliament.

The bill also aims to strengthen the rules regarding judges' financial interests in line with the rules for civil servants. A judge is not allowed to have financial or equity interests, or deal in securities, if trust in his or her impartiality or independence would not reasonably be ensured. The bill imposes a legal duty to report to the president in the case that such a situation occurs.

Finally, the bill makes it mandatory for every court to have an integrity policy for judges, taking into account guarantees of their independence. Based on an act to prevent money laundering and the financing of terrorism, the Minister of Finance has made rules for judges in apex courts and the Council for the Judiciary, their spouses and children and the partners of their children, to explain the origin of their assets. These rules do not apply to judges in district courts or courts of appeal.

Remuneration/bonuses for judges and prosecutors

The courts are financed based on a system that encourages them to work efficiently. Over the last ten years, however, for several reasons the government has economised on the budget for

the judiciary. As a result, there is very high pressure on judges to work as expediently as possible. It has repeatedly been established in research that judges, especially criminal and family judges, worked structural overtime. These judges claimed that it damaged the quality of their work. To improve this situation, the Council for the Judiciary asked representatives of judges to establish standards for the quality of judges' work. The standards helped to increase the budget for criminal cases and so lower the workload of criminal judges, but not for family cases. In 2022, the government acknowledged the judges' protests and the budget for the judiciary was substantially increased.

Another debate concerns the question whether, through exercising their financial powers, the Council for the Judiciary and the boards of courts might have excessive influence on how justice is administered. For example, financial incentives are used to ensure that cases are handled efficiently, making it less economical to handle cases with a three-judge panel instead of with a single judge. Re-assigning cases from a panel to a single judge may also be applied if a court has a backlog, as the corona crisis has shown.

Anti-corruption framework 🟡

General

The OECD has published revised Recommendations on Transparency and Integrity in Lobbying of the OECD.¹ Transparency International has provided input on these recommendations. The recommendations provide a new definition of lobbying and a comprehensive set of recommendations that countries should adhere to when it comes to transparency and political integrity. It is noteworthy that many of these recommendations from previous report are not implemented by EU member states, including the Dutch government.² More information and a comprehensive analysis of laws regulating lobbying can be found in the OECD's Lobbying the 21st-century report.³

In the field of corruption, the commission recommended that the Netherlands complete the implementation of revolving door legislation. The minister of Interior affairs and Kingdom Relations has since provided a proposal (that is currently undergoing consultation). Only minor policy changes have taken effect: mainly, a prohibition for public servants to contact former ministers or state secretaries when they become lobbyists. This already existed, but has been expanded to include adjacent

duties in response to the revolving door case of Cora van Nieuwenhuizen (see response to questions below). The proposed revolving door legislation (Wet regels gewezen bewindspersonen), currently up for consultation, includes non-binding, cooling-off rules. The proposal prescribes that ministers and state secretaries (henceforth: public officials) request advice on the admissibility of a new function in the private sector. The advice is provided by the board on the legal status of public officials (Adviescollege rechtspositie politieke ambtsdragers). The commission bases their advice on a questionnaire to be filled by a public official in advance. If the public official accepts their new position, the advice is published on a website. The commission is unable to sanction public officials that do not adhere to the advice. The government presumes that naming and shaming will be sufficient sanctioning.

Framework to prevent corruption

Integrity framework including incompatibility rules

As mentioned above, the government provided a proposal for the cooling-off period (Wet regels gewezen bewindspersonen). We are concerned that the government does not follow international best-practice. The proposal should include a mandatory cooling-off period with adequate sanctions to deter the revolving door between the public and private

1 <https://www.oecd.org/gov/ethics/lobbying/public-consultation-lobbying-influence.htm>

2 <https://www.oecd.org/gov/ethics/oecdprinciplesfortransparencyandintegrityinlobbying.htm>

3 <https://www.oecd.org/corruption-integrity/reports/lobbying-in-the-21st-century-c6d8eff8-en.html>

sector. This requires that there be mandatory rules and that the oversight commission has sufficient expertise. GRECO has stipulated some very clear requests, and we doubt that the current rules follow these requirements. For example, the case of Cora van Nieuwenhuizen⁴ shows that existing norms are insufficient to deter unwanted integrity risks. We doubt that the proposed rules will change that. In their current format, the rules rely too heavily on individual responsibility, whereas mandatory rules would reduce ambiguity. In addition, the commission does not have the remit to conduct an independent review. Instead, it depends on the information provided by public officials. This one-sided information flow should be addressed, by giving the commission sufficient investigative capacities. We would argue that the current legislation does not follow best-practices and does not have the necessary preconditions to prevent this kind of behaviour in the future.

For the first time, the new code of conduct of Parliament was applied, following a breach of the code by one of the Members of Parliament. The rules (Gedragcode Leden van de Tweede Kamer der Staten Generaal) indicate that politicians should provide their ancillary positions and additional income. A Member of Parliament failed to provide this information. For this reason, he received, as the first MP ever, a sanction after a majority vote in the House of Representatives. The punishment

did not lead to a change in his behaviour. We are concerned about this development. We recommended that the government equip the independent oversight body (College Onderzoek Integriteit) with the ability to institute sanctions toward MPs that do not follow the rules, and increase the penalty for neglecting the political integrity rules.

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

General transparency of public decision-making

The government started publishing the agendas of public officials. This is an improvement regarding transparency. However, research by the NGO Open State Foundation shows that these public officials do not always disclose their meetings and that compliance with current rules is generally low. This means that the public still receives very little information about third party contacts with public officials.⁵ When we consider lobbying transparency more broadly, we find that the Dutch government is still very opaque. This is in stark contrast to some neighboring countries and institutions such as Germany, France or the EU that have since adopted measures, such as a lobbying register, to improve transparency across the board.

4 <https://www.volkskrant.nl/nieuws-achtergrond/vraagtekens-bij-vertrek-minister-van-nieuwenhuizen-naar-energiebranche~b7359c68/>

5 <https://openstate.eu/nl/2022/10/agendas-ministers-iets-meer-openbaar-maar-nogsteeds-onvoldoende/>

There have been several proposals put forward by parliamentarians to institute more lobbying transparency, including a resolution for a lobby register and memorandum written by Pieter Omtzigt and Laurens Dassen that puts forward several proposals for creating a lobbying register and compliance with GRECO recommendations.⁶ The government, to this day, does not comply with any of the GRECO recommendations put forward in the Fifth Round of Evaluations.

In the Law for Political Parties (*Wet op politieke partijen or Wpp*), which is currently under consultation, financing of or financial support for political parties from foreigners is prohibited. The aim is to protect the functioning and organisation of political parties against foreign interference. Dutch citizens living abroad will be excluded from these measures. Donations above 250 EUR require a name, address and a date to be provided. Moreover, the proposed amendment to the Political Finance Act contains a proposal to increase the transparency on gifts from legal entities. Political parties will be obliged to report the names of the natural persons who are the ‘ultimate beneficial owners’ of the legal entity. We consider many of these measures to be good progress in the matter of political financing. A drawback of the current law is that the UBO registers has been closed following a ruling by the ECJ. This will likely mean in practice that the UBO cannot be traced. It remains to be seen in

practice to what extent donations from legal entities will be prohibited in that case.⁷

Rules on preventing conflict of interests in the public sector

See the measures on the cooling-off period in the section above. In addition, the government published a proposal to improve the integrity of public officials. In the explanatory memorandum, the government explicitly mentions that there have been no new rules added. Rather, the new policy document is a bundling of existing rules. In addition, a full review of the rules will be conducted in spring of 2023.

The government should take further steps to make the current process more inclusive and include third party stakeholders. Creating a risk-based integrity strategy was part of the recommendations by GRECO in their fifth evaluation, and the Netherlands is still not GRECO compliant in this regard.

There have been no new rules introduced in Parliament nor the Senate to prevent conflicts of interest.

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

In the Netherlands, the Whistleblower Authority (Huis voor Klokkeluiders) is responsible for the practical implementation

6 https://www.tweedekamer.nl/debat_en_vergadering/commissievergaderingen/details?id=2022A06553

7 See law under consultation at: <https://www.internetconsultatie.nl/wpp/b1>

of the law protecting whistleblowers, currently the Whistleblowers' Authority Act. This law was adopted in 2016. New legislation is currently under consideration in the Senate following the transposition of the EU Whistleblower Directive that standardizes whistleblower protections across EU member states.

To this day, the law does not sufficiently protect whistleblowers. The Parliament requested two researchers to investigate the extent to which the Dutch implementation of the Directive followed the minimum requirements of the EU Directive. The researchers concluded that the law follows the regulation only in the most formal sense, but not in spirit. They conclude that the law is not sufficient to protect whistleblowers in the Netherlands.

We would like to note several shortcomings in the new law, especially where the law fails to meet the requirements of the EU Whistleblower Directive. First, the law does not protect all whistleblowers. The law only protects whistleblowers who report wrongdoing in the public interest (*maatschappelijke misstand*). This definition does not include cases of sexual misconduct or, in some cases, corruption. And second, the law does not provide for financial, legal and psychological aid to whistleblowers, something that the Whistleblower Directive requires from EU member states.

Sectors with high-risks of corruption and relevant measures taken/envisaged for preventing corruption and conflict of interest

The Netherlands does not publish procurement sufficiently. An analysis by Follow the Money shows that more than 60% of procurement contracts are not published online.⁸ This makes the Netherlands the worst performing country in Europe. The Netherlands only publishes contracts above the European threshold of 140,000 EUR, which leads to an incredibly low publication rate and means less than 90% of the total amount of money spent on procurement is published online. Whereas other European countries have made efforts to improve procurement systems and the subsequent quality of the published data, the Netherlands has made no such efforts. This leads to inadequate reporting and substantial gaps in the visibility of public procurement contracts. This is especially striking given that, as we mentioned in our previous consultation, a contract had been awarded to a company providing faulty PPE masks. The Dutch government should improve transparency in public procurement contracts, as many of its European peers have done.

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

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

Transparency International finds in their 2022 annual report “Exporting Corruption” that the Netherlands still falls in the category of limited enforcement.⁹ In the period 2018-2021, the Netherlands opened 11 corruption investigations, commenced two cases and concluded three cases with sanctions. The main weaknesses are the tendency to enter into settlements that are opaque; a failure to increase prosecution of individuals with responsibility for foreign bribery; the decentralised organisation of enforcement and the inadequacy of complaints mechanisms and whistleblower protection. There are no published, updated statistics on foreign bribery enforcement. An annual enforcement report contains overall developments, statistics and data but does not have separate foreign bribery enforcement data.

Other

The Dutch Public Prosecution Service (OM) launched a criminal investigation into Rabobank, which is suspected of non-compliance with the Money Laundering and Terrorism Prevention Act. The investigation focuses on Rabobank’s role as gatekeeper for the purpose of combating money laundering and terrorist financing. Dutch banks have been

financed on multiple occasions for not adhering to money laundering legislation. This legislation is based on European anti-money laundering directives.

Media environment and freedom of expression and of information –

Media and telecommunications authorities and bodies

Conditions and procedures for the appointment and dismissal of the head/members of the collegiate body of media and telecommunication authorities and bodies

The Dutch Media Authority is led by a board of commissioners, all of whom are appointed by the Minister of Education and Media. However, the grounds on which the commissioners are appointed and/or dismissed are unclear.

The Dutch Foundation for Public Broadcasting has been criticised for not functioning properly within Dutch society. One of the main issues is the easy access to becoming a broadcaster by applying to the Foundation with 50,000 signatures and representing a “social movement”. Due to the increased number of broadcasters (this year Ongehoord Nederland and Omroep Zwart were added) the organisation has

⁹ https://images.transparencycdn.org/images/2022_Report-Full_Exporting-Corruption_EN.pdf

become more complex. Simultaneously, the current regulations provide little to no power to hold dysfunctional broadcasters accountable.

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

In 2022, the Dutch Foundation for Public Broadcasting sanctioned one of its broadcasters, ‘Ongehoord Nederland’ (ON), with multiple fines. ON is a broadcaster branding itself as a proponent of “the unheard voices” of the Netherlands, often inserting extreme-right political viewpoints. In a report, journalism ombudsman Margot Smit concluded that ON has broadcast discriminatory content as well as the spread of misinformation. The NPO believes that the broadcaster has “failed to comply with the legal obligation to cooperate with the performance of the public media assignment” since it entered the media landscape. The broadcaster was sanctioned for not acting in accordance with public values and not meeting “high journalistic quality standards” according to the NPO. In December 2022, the Dutch Foundation for Public Broadcasting sanctioned ‘Ongehoord Nederland’ with another fine of 56,000 EUR.

In 2022, the Netherlands served as the co-chair along with Canada in the Media Freedom Coalition (MFC). The Netherlands is also part of the High Level Panel of Legal Experts on Media Freedom within the MFC collaboration. The MFC is a partnership between 51 countries which work together to

fight for media freedom and the protection of journalists within their borders and abroad. The High Level Panel of Legal Experts on Media Freedom is an independent advisory board, which provides legal advice to the MFC members to stimulate or preserve media freedom through legislation or organisations. Dutch Minister of Foreign Affairs Wopke Hoekstra welcomed the co-chair position of the Netherlands in a letter where he reiterated the signed “Global Pledge on Media Freedom” by the 22 EU member states, a written commitment to improve media freedom at home and cooperate internationally.¹⁰

In 2022, the Dutch Media Authority instigated three investigations regarding violations of journalistic codes, conflicts of interests, as well as top incomes of employees within the Dutch Public Broadcaster. They want to scrutinize the independence of the Dutch Public Broadcaster due to suspicions of the above listed issues. Results of the investigations have not yet been published.

Transparency of media ownership and safeguards against government or political interference

Safeguards against state or political interference

The safeguards against state or political interference have not changed in 2022. The Dutch

10 <https://www.rijksoverheid.nl/documenten/kamerstukken/2022/04/05/kamerbrief-inzake-mediapluriformiteit-in-de-eu>

Foundation for Public Broadcasting is still not mandated to concern itself with the content of public broadcasters. In the past, we have noted that there is a lack of transparency regarding the decisions on, for example, how money is spent and which programmes will be aired. No clear changes have been made regarding this issue.

In September 2022, the European Commission published the legislative proposal European Media Freedom Act (EMFA) which is an initiative aiming to settle the growing concerns about malign foreign influence, hostile state acts towards journalists and the use of state media for propaganda. Even though this is a ground-breaking development within the EU, there is clear room for improvement within the EMFA. One main concern is enforcing transparency within the media in relation to government interference. Moreover, in the EMFA, the transparency is directed towards state advertising and not overall state financing; however, these rules only apply to local governments of cities with more than one million citizens. In the Netherlands, there are no cities with more than one million inhabitants, which would insinuate that no city qualifies for the transparency rule.

Rules governing transparency of media ownership and public availability of media ownership information, and their application

The Dutch media landscape is still characterised by a high concentration of media ownership. However, the announcement of the merger between the RTL Group and

Talpa Network, which was supposed to take place in 2022, has not yet been confirmed. The merger would be another setback for Dutch plurality in the audio-visual media industry, as there would be a total of two major commercial broadcasters monopolizing the field. The merger was under review during the majority of 2022 by the Dutch Consumers & Market Authority and came close to being sealed in October, but in December the merger still had not been given a green light. There are doubts about the merger due to differences within the two companies (organisationally as well as culturally) and about the implication of an even higher concentration of media ownership. Another related concern is that the owner of Talpa Network, John de Mol, is also part-owner of commercial channel SBS6. The merger between Talpa and RTL would thus mean a large concentration of commercial broadcasters as well as channels.

Safety and protection of journalists and other media activists

Rules and practices guaranteeing journalists' independence and safety

In June 2022, the Dutch government announced that it wants to take extra measures to protect journalists and press freedom after reviewing the publication of the World Press Freedom Index and the mission report from Media Freedom Rapid Response (MFRR). The Ministry of Culture and Media as well as the Ministry of Justice and Security announced it would continue financing PersVeilig ('PressSafety') until 2024. PersVeilig

is a collaboration of the NVJ trade union, the Dutch Association of Chief Editors, the police and the Public Prosecution Service. It is an organisation where journalists can report threats and receive proper safety training. Additionally, the government wants to ensure a properly functioning system to counter reports of online harassment of journalists. State Secretaries Uslu and Van Huffelen will talk to the Dutch Association of Journalists (NVJ), the Association of Editors-in-Chief, the police, the Public Prosecution Service and social media platforms about what steps are needed. Another important government initiative to promote press freedom and safety of journalists is the proposed law by Minister Yesilgöz-Zegerius to combat ‘doxing’, the sharing of someone’s personal data with the aim of intimidating that person.

In October 2022, an incident took place that challenged the independence and safety of journalists in the Netherlands. Member of Parliament Gideon van Meijeren secretly recorded his ambush of a political journalist from SBS6 and posted this on YouTube. He walked up to her office, unannounced and with a camera, and questioned her about a publication. The Association of Journalists stated the action was alarming and intimidating and called it a threat to the work of journalists, as van Meijeren clearly tried to intimidate the journalist.

In November 2022, a motion was approved by the Parliament to install a task force consisting of experts that will solve cold cases of murdered journalists. This was an important step taken towards installing practices to further

ensure the protection of journalists within the Netherlands and hopefully abroad.

Law enforcement capacity to ensure journalists’ safety and to investigate attacks on journalists and media activists

Media Freedom Rapid Response (MFRR) launched a mission in 2022, which gave insight to the violence against women journalists in the Netherlands and the lack of monitoring thereof by the Dutch government. As a result, PersVeilig conducted research that showed 8 out of 10 women journalists in the Netherlands experience violence, most of which is online. Almost a third of the women journalists claimed to experience such violence at least once a month. Most of the violence happens online, such as on Twitter. Many of the respondents also stated that they feel as though their employers do not take enough action to halt or prevent these disturbances. It is still unclear which concrete actions will be taken to help the situation.

There is still an issue of doxing regarding publicly available information on freelance journalists within the Netherlands. The Kamer van Koophandel (Chamber of Commerce) requires freelance journalists to list a business address. This address is often their home address, which can lead to direct attacks on freelance journalists. Journalist Marcel van Roosmalen gave a critical statement during a radio interview about Member of Parliament Gideon van Meijeren, which led to threats received at his home address and the publication of data about his children’s locations. The Chamber of Commerce already adjusted its policies in

January 2022 when it removed home addresses in its public database. However, business addresses are still available, which as mentioned, are often freelancers' home addresses. New laws are planned to be adopted to solve this issue.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

In April 2022, the European Commission announced its intention for an Anti-SLAPPs Directive and an accompanying recommendation within the EU. One of the recommendations is that states need to monitor SLAPPs. There is still no official data on SLAPPs within the Netherlands collected by the Dutch government. However, there have been cases that would be classified as SLAPPs that have taken place in the Netherlands in the past, as shown by independent researchers (CASE coalition). Furthermore, Dutch law does not contain specific regulations directed at SLAPPs. In fact, the government takes the position that Dutch procedural law has sufficient safeguards to protect against SLAPPs. It points to the doctrine of abuse of procedural law and abuse of law (see Article 3:13 BW). The government argues that the proposed regulations against SLAPPs are too vague and may lead to undesirable procedural complications. However, civil society organisations are pushing back on this stance, as they feel the Dutch position is too short-sighted.

Access to information and public documents

In October 2021, the new Government Information Act (Wet open overheid) was adopted and replaced the current Government Information Act (Wet openbaarheid van bestuur). The new Government Information Act should create more transparency and make government information easier to find, share and archive. The Act went into effect in 2022. The Act introduces an Advisory Council which consists of five people that oversee the implementation of the Government Information Act. Since the new Act went into effect, the Advice Council has been assigned a mediating role when it comes to handling complaints regarding information requests. Research has shown that the processing of complaints takes approximately 161 days, which is three times longer than the law requires. Interestingly, the website Platform Open Overheidsinformatie (known as Plooi), the platform that hosts documents required to be published and shared with open access, was put to a halt at the end of 2022. The website was undergoing major changes for the new Act (the government invested approximately 28 million euros for its development). However, the Advice Council stated it was best to continue with the development of Plooi because of IT problems. A brand new website is expected, but it is not clear when this will launch. Until then, information can be found on the Rijksoverheid (central government) website.

Enabling framework for civil society

Regulatory framework

Civic space in the Netherlands can be identified as open. There are, however, some concerning trends in relation to freedom of assembly, public participation, the safety of journalists, and the impact of new (pending) safety and anti-terrorism laws. The Netherlands has no comprehensive strategy to protect civic space. As recommended in the OECD report on civic space, formulating such a strategy could address these challenges and lead to proactive action to protect and expand civic space in the Netherlands.

- WTMO update

No progress has been made on the Civil Society Organisations Transparency Act (Wet transparantie maatschappelijke organisaties) after the Memorandum of Amendment published in 2021. Civil society organisations remain critical about this lack of progress.

- Update on proposed bill to criminalize persons travelling to areas controlled by terrorists organisations

The proposed bill to criminalize persons travelling to areas controlled by terrorists organisations (Wet strafbaarstelling uitreis naar terroristisch gebied) that, despite criticism

from CSOs and the Council of State, passed the House of Representatives in 2019 is still under the consideration of the Senate. The bill will be taken under further consideration as soon as an additional bill that arranges for the exemption of aid organisations and journalists, for which a public consultation was held in early 2022, passes. Although this exemption should take away the biggest concern for the freedom of movement of CSOs, human rights organisations remain critical about the added value of the bill, which is not proportionate to the restrictions it proposes.¹¹

- Update on proposed bill for the Administrative prohibition of subversive organisations

The proposed bill for the Administrative prohibition of subversive organisations (Initiatiefvoorstel Wet bestuurlijk verbod ondermijnende organisaties) passed in the House of Representatives and is still before the Senate. This bill aims to grant the power to the Minister of Legal Protection to prohibit an organisation insofar as this is necessary in the interest of public order if this organisation creates, promotes or maintains a culture of lawlessness. The Minister is also authorised, in the case of a legal entity, to dissolve it. The bill is problematic because it contravenes the Constitution and does not provide sufficient safeguards against potentially politically motivated decisions.

11 https://www.eerstekamer.nl/wetsvoorstel/35125_strafbaarstelling_verblijf

Financing framework, including tax regulations

There are different channels for CSOs and HRDs to access financial support. At government level, different funding programmes are offered by the ministries, where the Ministry of Foreign Affairs also allocates specific funding for human rights protection and protection of civic space in third countries. These funds are usually disbursed through open calls for application, with clear evaluation criteria.

When it comes to funding for activities in relation to advocacy for human rights and rule of law within the Netherlands, it is much more challenging to find resources. The Dutch government has no dedicated fund in this regard, so CSOs are largely dependent on funding from the private sector; e.g. philanthropic organisations, crowdfunding etc. There are some funding programmes on the government side when it comes to education, culture or service provision, but for advocacy work in relation to human rights or rule of law there is no dedicated fund.

Since last year, the CERV programme offers opportunities for funding. However, as there is only a small pool of funders that fund activities that fall within the scope of CERV in the Netherlands, with high competition and no government funding, securing the required co-funding is a big challenge for CSOs. This restricts the access of many CSOs to these funds, especially for those with no core funding. CSOs all over Europe are struggling with this.

Lastly, due to trends of a declining percentage of overhead that is allowed by donors, including the Dutch Ministry of Foreign Affairs, many CSOs struggle to cover their general operations beyond direct activity costs. This puts very high pressure on CSOs and their employees, increasingly leading to mental health issues. The same challenge exists with EU funding. As is the case in the whole of Europe, funders that provide flexible and longer-term funding are scarce and competition for these funds is very high. This leads to what has been described as a non-profit starvation cycle.

Access and participation in decision-making processes, including rules and practices on civil dialogue, rules on access to and participation in consultations and decision-making

Formally, there are multiple channels through which CSOs and HRDs can engage in the decision-making processes. This can be through public consultations about new laws, through direct contact with decision makers, or through different CSO networks and platforms that have regular talks with different branches of the government on their topics. For example, the Dutch Human Rights Network (Breed Mensenrechten Overleg) is in continuous dialogue with the Ministry of Foreign Affairs on human rights and civic space related topics.

However, there is a continuous trend of decreasing trust in politicians in the Netherlands, which is also reflected in the fact that many people do not feel represented. A recent study

showed that almost half of the Dutch citizens do not feel they have any influence over decision-making, and feel that decision makers do not care much about them. A large majority indicates that it would be good if there would be more opportunities for citizens to engage in decision-making.¹² This shows that there is room for improvement to the current channels for participation, where ‘nothing about us without us’ should be the leading principle. Consultations are too often seen as a ‘tick the box’ exercise, with little follow up on what has been done with this input. This is also often the experience of CSOs.

In a conference on ‘Democracy Under Threat’ in November 2022, organised by a coalition of CSOs from the Netherlands, a manifesto was shared with the Ministry of Interior and the Ministry of Foreign Affairs listing recommendations for actions in relation to the protection of democracy worldwide and in the Netherlands. This included multiple recommendations on improving the participation of citizens and civil society.¹³

Attacks and harassment

Worrisome trends have been signalled in relation to the right to protest. Last year a group of protesters from the action group ‘Kick Out Zwarte Piet’ were violently attacked while the

police failed to intervene and protect the protesters, which led to them being forced to stop the protests.¹⁴

Too often, unnecessary restrictions are proposed to the regulations and rules around protests, or protests are banned based on arguments related to maintaining public order and safety. Many cases of arrests of peaceful protests have been reported, especially in relation to climate protests. Amnesty Netherlands, who is monitoring the right to protest in the Netherlands, published a critical report on the right to protest.¹⁵

Fostering a rule of law culture

Debates in the national Parliament on the rule of law take place on a regular basis, mainly as part of the activities of the EU Committee of the House of Representatives. These activities (such as a debate with the Minister of Foreign Affairs, roundtable conversation between committee members or preparation for the GAC) are generally open to the public.

For example, the meeting between Commissioner Reynders and the Parliament on the Rule of Law Report 2021, covering

12 <https://www.scp.nl/publicaties/publicaties/2022/12/29/continu-onderzoek-burgerperspectieven---bericht-2-2022>

13 <https://democracyunderthreat.com/manifest/democracy-under-threat-manifesto/>

14 <https://www.volkskrant.nl/nieuws-achtergrond/wat-er-gebeurde-in-staphorst-het-is-hier-niet-veilig-zegt-de-politie-tegen-kick-out-zwarte-piet-en-rijdt-weg~bcd7c60e/?referrer=https%3A%2F%2Fwww.google.com%2F>

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

the chapter on the Netherlands in particular, was scheduled for 9 November 2022. Those interested were able to join the committee members present in Parliament for the entire conversation, while Commissioner Reynders called in via an online connection. A year prior, the meeting was fully online due to Covid-19 restrictions and the general public was at the time only allowed to partake in the first half of the meeting, after which the Commissioner and committee members continued the conversation behind ‘closed doors’.

A debate on ‘rule of law developments in the European Union’ – as part of the activities of the EU Committee - was initially scheduled for 24 November 2022, but postponed due to a simultaneous debate taking place on the budget of the Ministry of Foreign Affairs. This debate instead took place on 1 February 2023, during which the Minister of Foreign Affairs also discussed matters related to the GAC meeting of 6 February 2023. While this deferral was announced very last minute, the updates from the commission about the rescheduling, and the proposal by the Ministry of Foreign Affairs to merge the debate with the preparations for the GAC, are available to the public.

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The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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