

UNION INTERPARLEMENTAIRE



INTER-PARLIAMENTARY UNION

**Association of Secretaries General of Parliaments**

**COMMUNICATION**

**from**

**Mr Geert Jan HAMILTON  
Secretary General of the Senate of the Netherlands**

**on**

**“The formation of a Government in a multi-party democracy“**

**Geneva Session  
March 2018**

Forming a new government after parliamentary elections often is a delicate process in parliamentary democracies. The more political parties involved, the more complicated the process may be and the longer it can take. In recent years formations in Belgium (2010-2011), Spain (2015-2016) and Germany (2017-2018) took considerable time.

In the Netherlands elections for the House of Representatives (*Tweede Kamer der Staten-Generaal*) were held on 15 March 2017. It took until 26 October 2017 until a new cabinet was constituted, i.e. 225 days, a new record in the duration of the formation of a new government in the Netherlands. The Third Rutte cabinet was formed by a coalition of the political parties People's Party for Freedom and Democracy (VVD), Christian Democratic Appeal (CDA), Democrats 66 (D66) and Christian Union (CU).

The questions this paper goes into are:

- What has made the Netherlands a multi-party democracy?
- What is the constitutional, legal, procedural framework for the formation of a new cabinet in the Netherlands?
- Why did it take so long to form a new government and what consecutive steps were taken in the process?
- How was the country governed during the formation process?
- What are some of characteristics of the 2017 formation process?

### **The Netherlands: a multi-party democracy**

At the national level legislative power in the Netherlands is invested in the States General (*Staten-Generaal*), which is bicameral. The House of Representative (*Tweede Kamer*) has 150 members, elected for a four-year term. The elections for the Senate (*Eerste Kamer*), which has 75 members, are indirect. The members of the Senate are elected for a four-year term by provincial councillors after national elections have been held in the provinces on the basis of proportional representation at the provincial elections.

The Netherlands has an electoral system based on proportional representation (PR). PR characterizes electoral systems by which divisions in an electorate are reflected proportionately in the elected body. If  $x\%$  of the electorate support a particular political party, then roughly  $x\%$  of seats will be won by that party. The essence of such systems is that all votes contribute to the result: not just a plurality, or a bare majority, of them.

In the Netherlands parties make lists of candidates to be elected, and seats get distributed to each party in proportion to the number of votes the party receives. Voters vote for a candidate on a particular list. The vote total of all candidates on a list will pool to the party.

The Netherlands has a multi-party system, with numerous parties, in which usually no one party ever secures an overall majority of vote. The threshold for a party to be in parliament is 1/150th of the total number of valid votes.

In a multi-party system multiple political parties across the political spectrum run for national election, and all have the capacity to gain control of government offices, separately or in coalition.

There are a multitude of political parties in the Netherlands. Never in Dutch parliamentary history has a single party obtained more than 50% of the votes. A record high was 32% of the popular vote for one party. Consequently, parties must cooperate and form a coalition government. Parties that are not included in the coalition constitute the opposition. All the Dutch cabinets since 1918 have been coalition cabinets, supported by two or more political groups, which together have had a majority in the House of Representatives. A minority cabinet can also gain "passive" support to get a majority in the House. One or more parliamentary groups promise they will support the cabinet. In principle these groups support the decisions made by the cabinet, but they do not have any ministers or state secretaries in the Government. From 2010 to 2012 this situation existed in the Netherlands.

In the 20th century the political landscape was based on pillars: the main currents were christian democratic, social-democratic and liberal. Voters at elections used to remain in the domain of their own pillar. In recent decades the traditional pillars have lost ground. Voters have become more volatile. New parties were created and shifts among voters can be substantial.

Since the elections for the House of Representatives in 2017 there are 13 parties represented in the House. In the Senate there are 12 parties. The growth in the number of parties has been the result of the original parties from the 'pillarized' era losing ground, the creation of new parties and the low threshold for being elected in parliament.

### **The constitutional, legal, procedural framework for the formation of a new cabinet.**

The Dutch constitution states in article 42 the main principles of Dutch government: that it is formed by King and ministers (Subarticle 1) and that "the King is inviolate; the ministers are responsible" (Subarticle 2). This means that the King cannot act in a public capacity without ministerial approval: externally the governmental policy is always represented by the responsible minister who is also accountable towards parliament.

The Prime Minister and the ministers are appointed and dismissed by Royal Decree (Article 43). Such decrees are also signed by the Prime Minister, who signs his own appointment and those of the others (Article 48).

The cabinet of the Netherlands is the executive body of the Dutch government. It consists of ministers and junior ministers (state secretaries). The cabinet requires support from both chambers of the Dutch parliament to pass laws. Thus to form a stable government sufficient, and preferably majority support in both chambers is required.

As mentioned, since the adoption of the current proportional representation system (in 1918) no party has even come close to the number of seats needed for a majority in its own right. To gain sufficient support in both chambers it is therefore necessary to reach an agreement of two or more parties to form a government with majority support. The negotiations leading to this agreement are the 'cabinet formation' period in the Netherlands.

Cabinet formation is engaged in, in two situations. After general elections the House of Representatives is renewed; and ministers are discharged. The cabinet will be a caretaker cabinet (also called demissionary cabinet) until a new cabinet is formed. Due to changing party representations in the House where the political primate lies, a new cabinet has to be negotiated. Even if the same parties continue, the agreement has to be renegotiated to fit election promises and shift in powers. Another reason for cabinet formation can be the fall of a cabinet, i.e. those cases where the agreement between parties breaks down. In the latter case (in principle) a new cabinet can be formed without general elections, although in practice the House of Representatives is almost always disbanded and early general elections are called.

The formation of a Dutch cabinet is the process of negotiating an agreement that will get majority support in parliament for the appointment of the council of ministers and gives sufficient confidence that agreed policies will be supported by parliament. Dutch cabinet formations tend to be a time consuming process, and is for the most part not codified in the constitution.

Until 2012 the Head of State took the lead in the formation of a new cabinet. He (from 1898 until 2013 in practice *She*, as we had Queens) used to consult with the leaders of the political groups represented in the House of Representatives. On the basis of these consultations the King would appoint a skilled negotiator, either as *informateur* or as *formateur*, to negotiate the formation of a majority government in consultation with the political leaders. These negotiations used to involve the parliamentary groups which in principle were ready to conclude a coalition agreement and form a government. The negotiations on a coalition agreement usually were led by an informateur. The informateur often was a relative outsider and a veteran politician who had retired from active politics: a member of the Senate, Council of State or a minister of state. He generally had a background in the largest party in the House of Representatives. It was also possible to appoint multiple informateurs, with backgrounds in other prospective partners. The informateur was given a specific task, often to 'seek a coalition of parties with coalition agreement and a majority in parliament.' The informateur had meetings with individual chairs of parliamentary parties, and chaired sessions of negotiations between them. During these negotiations the parties tried to find compromises on the policies of the future government and draft a coalition agreement. Once the coalition agreement had gained support from the majority in parliament, the King appointed a formateur to compose the cabinet and attract ministers and secretaries of state for this. Usually the formateur was the the intended prime minister.

A remarkable change in the procedure was carried through in 2012, when the House of Representatives decided to take away the initiating role from the King and from then on self set the framework for coalition agreements and appoint informateurs and formateurs.

The House decided to insert in its Rules of Procedure the following paragraph on the formation of a Cabinet:

## **CHAPTER XIA. CABINET (IN)FORMATION**

### **Section 139a. Designation of cabinet (in)formateur(s)**

1. Immediately after the installation of a newly elected House of Representatives, but no later than one week after installation, the House shall have a plenary debate on the election result. The aim of the debate is to designate one or more informateurs or formateurs and to draft the assignment to be carried out by them. If that aim can not be achieved in the same sitting, the House shall decide on the matter in a next sitting, as soon as possible.

2. After completion of an information assignment the House shall draft a formation assignment, in principle within one week thereafter, and shall designate one or more formateurs to carry out the assignment.

3. If the designated informateurs or formateurs terminate their assignment (*without result*), the House shall draft a new assignment, in principle within one week thereafter, and shall designate one or more informateurs or formateurs to carry out the assignment.

4. If the Cabinet falls before the end of its term of office the House can discuss the desirability and the direction of a new Cabinet formation. Subsections 1 to and including 3 shall apply mutatis mutandis.

5. The designation of an informateur or formateur shall take place in accordance with Sections 69 up to and including 73.

### ***Section 139b. Asking for information from the cabinet (in)formateurs***

During the carrying out or following the conclusion of a(n) (in)formation assignment, the House may decide to invite a formateur or an informateur c.q. formateurs or informateurs to give information about the course of the cabinet (in)formation process.

### **The formation of the Cabinet in 2012 and in 2017**

In 2012 11 parties were elected into the House of Representatives. The two major parties (the People's Party for Freedom and Democracy and the Labour Party) together received a majority in the House of Representatives (79 seats out of 150). In spite of major political differences the two parties felt compelled by the election result to form a government. It only took them 54 days to form a coalition government.

In 2017 the election result was much more complicated. It immediately was clear that at least four parties were needed to get a majority in the House of Representatives.

Party		Party leader/ top candidate in 2017	Seats in 2012 out of 150		Seats in 2017 out of 150	+/- in 2017
	People's Party for Freedom and Democracy	VVD Mark Rutte	<b>41</b>		<b>33</b>	-8
	Labour Party	PvdA Lodewijk Asscher	<b>38</b>		9	<b>-29</b>
	Party for Freedom	PVV Geert Wilders	15		20	+5
	Christian Democratic Appeal	CDA Sybrand Buma	13		<b>19</b>	+6
	Democrats 66	D66 Alexander Pechtold	12		<b>19</b>	+7
	GroenLinks	GL Jesse Klaver	4		14	+10
	Socialist Party	SP Emile Roemer	15		14	-1
	Christian Union	CU Gert-Jan Segers	5		<b>5</b>	+0
	Party for the Animals	PvdD Marianne Thieme	2		5	+3
	50PLUS	50+ Henk Krol	2		4	+2
	Reformed Political Party	SGP Kees van der Staaïj	3		3	+0

Denk	DENK	Tunahan Kuzu	-			3	+3
Forum for Democracy	FvD	Thierry Baudet	-			2	+2

**Coalition in 2012:** People's Party for Freedom and Democracy (41 seats) and Labour Party (38 seats); together 79 seats in a House of 150

**Coalition in 2017:** People's Party for Freedom and Democracy (33 seats), Christian Democratic Appeal (19 seats), Democrats 66 (19 seats) and Christian Union (5 seats); together 76 seats in a House of 76

On 16 March the leaders of all the elected parties met with the Speaker of the House of Representatives to appoint a 'scout'. The outcome was that the minister of Health, Mrs. Edith Schippers, was asked to act as scout and have preliminary talks with the party leaders. After consultations with all of them she advised to open negotiations between the liberal party VVD, the christian democratic party CDA, the social liberal party D66, and the green left party GL.

## Information phase

### ***Informateur Schippers***

On the basis of this advice, the House of Representatives on 17 March appointed Mrs. Schippers to formally start the negotiations for a new cabinet among the four mentioned parties. The informateur started meetings with the individual chairs of the four parliamentary parties, and chaired sessions of negotiations between them. During these negotiations the parties tried to find compromises on the policies of the future government and draft a coalition agreement.

The negotiations between VVD, CDA, D66 and GL lasted until 16 May. Mrs. Schippers reported to the House that the negotiations had failed, particularly because of disagreements on the issue of migration and asylum. After a debate in the House Schippers was appointed informateur again to explore what other option(s) for a coalition were conceivable. On 29 May she reported that after consultations with all party leaders, due to mutual exclusions and due to severe political differences of opinion on certain issues, she did not see a viable coalition lying ahead. She advised the House to appoint another informateur, as 'Any variant of a majority coalition that has been raised so far has met with objections from at least one of the political groups concerned.' She suggested to appoint Mr. Herman Tjeenk Willink, a minister of State and a former vice-president of the Council of State, (the most important advisory body of State of which the King is the formal president).

### ***Informateur Tjeenk Willink***

On 30 May the House discussed the deadlock. Different parties blamed each other for blocking the formation of a coalition and declared themselves ready to enter new negotiations. Nearly all parties expressed confidence in Mr. Tjeenk Willink, so he was appointed informateur. He was assigned to investigate the possibility for a majority or minority cabinet that could count on sufficient support in the parliament. A day later Tjeenk Willink indicated that he would focus on a majority cabinet that could count on sufficient support in the Senate and the House of Representatives and 'that would tackle major issues'. From the beginning he focused on a cabinet of which in any case VVD, CDA and D66 would be part of. In the Dutch media these three received the term 'engine block'. In his final report he concluded that, in spite of important differences between D66 and CU on medical-ethical questions, a cabinet of the three parties mentioned and the Christian party CU was the only possibility and the four parties were ready to negotiate further.

### ***Informateur Zalm***

Following Mr. Tjeenk Willink's advice the House appointed Mr. Gerrit Zalm, former minister of Finances, the next informateur on 28 June. It was his assignment to investigate the formation of a majority cabinet of VVD, CDA, D66 and CU that would seek wide support in parliament. Periodically the public was informed that agreements had been reached on important topics. Negotiations continued until 9 October. Then the four party leaders presented their draft coalition agreement named: 'Confidence in the future'. The day after the informateur handed his final report to the Speaker of the House, concluding that the four political groups supported the coalition agreement.

### ***Formateur Rutte***

On 12 October the House of Representatives appointed Mr. Mark Rutte, leader of the liberal party VVD (and Prime Minister since 2010) formateur with the assignment to form a coalition consisting of VVD, CDA, D66 and CU. He indicated that he would seek the swearing in of the new cabinet on 26 October. On 25 October the ministers attracted (6 VVD, 4 CDA, 4 D66 and 2 CU, with deputy prime minister posts for three ministers from CDA, D66 and CU) held their 'constituting deliberations'. Afterwards the Prime Minister-to-be handed his final report to the Speaker of the House of Representatives. The King appointed the new ministers and state secretaries by Royal Decree on 26 October. He swore them in in his palace in the Hague. This finished the formation procedure.

### **Demissionary government from 15 March to 26 October.**

After the dissolution of parliament and before the appointment of a new cabinet, the incumbent cabinet of VVD and PvdA stayed on as a demissionary cabinet. After they formally had presented their resignation to the King, the King asked them to continue to do everything that is necessary in the interest of the country. Although it is customary for a demissionary cabinet to limit itself to urgent and pressing matters



and not to take any controversial decisions, the Senate allowed the cabinet to finish off its legislative agenda. No laws pending in the Senate were declared controversial. While the groups in the House of Representatives, particularly the groups that were involved in the cabinet formation, were seized by the progress in the negotiations for a new government agreement, the Senate, by tradition not directly involved in the formation of a new cabinet, could continue its legislative program and finish the treatment of bills already accepted by the House of Representative.

### **Some characteristics of the 2017 cabinet formation**

In the first months of 2017 the Netherlands were under the spell of a very vivid elections campaign. The predictions were that there could be a head-to-head struggle between the prime minister's party VVD and the Wilders party PVV on which one would become the biggest party. There were expectations that the two coalition parties of the Rutte II cabinet would lose seats. The outcome of the elections was that the VVD indeed lost seats but remained by far the biggest party in parliament. Coalition party PvdA (Labour) suffered the largest election defeat in its history (from 38 seats back to 9). The PvdA did not want to play a role in the formation of a new cabinet. A new combination had to be found, which finally was the combination of two christian parties (CDA and CU) and two liberal parties (VVD and D66).

People vote for parties in the Netherlands, but with the great variety of parties in parliament they have to await which government they get and how the coalition agreement compares to the political program of the party they voted for. A coalition agreement in this landscape necessarily is a compromise.

A critical point of the process was that it took place outside the public eye. Citizens simply had to await what coalition and what coalition program their voting behavior in March would lead to. The length of process has been criticized publicly. Nevertheless it is acknowledged a negotiating process in a shredded political landscape takes time. Thanks to the good economic situation in the Netherlands, the long duration of the cabinet formation in 2017 did not damage the continuity in government of the country. The demissionary government did its duty while the way was paved for a new coalition. A constant factor in Dutch politics remained prime minister Rutte who formed his third cabinet in a different political composition.

From a procedural point of view one can note that the rules laid down in the Rules of Procedure of the House of Representatives have been observed without fail. There sometimes is debate whether the formation of a new cabinet should be regulated at a higher level of legislation (in the Constitution or by law). At the request of both houses of parliament a State Committee was installed in 2017 which is reviewing the functioning of parliamentary system as whole. This Committee might also come up with new proposals on the formation of a government in the Netherlands. The final report of this State Committee is expected by the end of 2018.