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Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies

EVALUATION REPORT

NETHERLANDS

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GRECO
Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY

1. This report evaluates the effectiveness of the framework in place in the Netherlands to prevent corruption in respect of persons entrusted with top executive functions (PETFs), including ministers, state secretaries, political advisors, and members of law enforcement agencies (LEAs), i.e. the National Police of the Netherlands (NPN) and the Royal Netherlands Marechaussee (KMar).

2. The system of government in the Netherlands is based on solid constitutional principles providing a framework where the government and its members are subject to a high degree of political accountability to Parliament and to the democratic process. The government (Council of Ministers), selected and led by the Prime Minister, must always enjoy confidence by Parliament. Being a collective body, considerable importance is attached to trust, collegiality, consensus and unity within the government. At the same time, ministers are vested with discretionary powers in respect of their particular ministries and fields of competence, while also being personally accountable for their acts before Parliament. This system places a large degree of responsibility on the members of the government and other PTEFs. The development of policies, strategies and guidelines are particularly important in such a system.

3. The current report recommends the development of an overall government strategy for the integrity of PTEFs, based on a risk analysis aiming at preventing various forms of conflicts of interest which may arise. In this spirit, the establishment of a code of conduct for PTEFs which focuses specifically on ethical and integrity matters - along with measures for their implementation - would be an appropriate complement to the existing Handbook for Ministers and State Secretaries. In this context, it is particularly important to address areas such as lobbying and post-employment situations. Moreover, the current system needs to be complemented with a requirement upon PTEFs to report situations of conflicting interests as they occur (ad hoc) and for them to declare personal interests (including of a financial character) not only before a new government is formed, but also at regular intervals, while in office. Such a requirement needs to be coupled with transparency and appropriate scrutiny.

4. The report acknowledges that there is a strong commitment to integrity matters in the police services in the Netherlands and policies in this respect have long been a priority. It is also noted that the police services enjoy a high degree of public trust by the population. Although integrity policies are nothing new in the Netherlands, it is worth mentioning that the police have not been spared of integrity violations, for example, in respect of leaking information and connections with organised crime groups; this is a worrying trend that is currently being dealt with by the authorities.

5. Codes of conduct exist in both NPN and KMar. The NPN deals with its ethical guidelines as "living instruments" that evolve over time in the form of "Theme pages", attached to a general professional code. This is a commendable approach, which is very useful for general awareness and training of police officers. However, the current guidelines would benefit from being further complemented with practical guidance etc. to provide an even more consolidated framework. A similar approach would be preferable also for the KMar. Considering that these agencies both carry out law enforcement functions, joint efforts would be preferable. Training materials are also well developed in the NPN and the coordinating role in this respect at central level could be further strengthened for synergy reasons, considering that the practical training is largely decentralised to the regional units. Particular areas that require further efforts - as highlighted in the report - relate to management of situations of gifts/advantages, the use of confidential information and situations of post-employment. Enforced vetting procedures of staff while in service are required and a system of declaration of financial interests among officials holding sensitive posts is foreseen but has not yet gone into practice, which is regretful. The report also highlights a need to introduce a requirement upon police officers to report corruption related misconduct within the service; this goes beyond the current obligation to report criminal offences.

6. Criticism in the Netherlands in respect of the effectiveness in practice of the legal framework for providing public access to documents and information held by public authorities is worrying and the authorities are urged to pursue on-going reforms in this respect.

II. INTRODUCTION AND METHODOLOGY

7. The Netherlands joined GRECO in 2001. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in March 2003), Second (in October 2005), Third (in June 2008) and Fourth (in June 2013) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (http://www.coe.int/greco). This Fifth Evaluation Round was launched on 1 January 2017.[1]

8. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of the Netherlands to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of the Netherlands, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, the Netherlands shall report back on the action taken in response to GRECO's recommendations.

9. To prepare this report, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to the Netherlands from 14 to 18 May 2018, and reference was made to the responses by the Netherlands to the Evaluation Questionnaire, as well as other information received from public institutions and civil society. The GET was composed of Mr Jean-Christophe GEISER, Senior Legal Adviser, Swiss Federal Office of Justice (Switzerland), Ms Vita HABJAN BARBORIČ, Head of the Centre for Prevention and Integrity of Public Service, Commission for the Prevention of Corruption (Slovenia), Mr Thomas FERNANDEZ, Head of Division, Internal auditing and corruption prevention Unit, Federal Police Headquarters (Germany), and Ms Marijana OBRADOVIC, Assistant Director for Prevention, Anti-Corruption Agency (Serbia). The GET was supported by Mr Roman CHLAPAK of the GRECO Secretariat.

10. The GET interviewed the Chief Police Commissioner, the Ombudsman and the Acting Secretary General of the House of the Representatives, as well as representatives of the Ministry of Justice and Security, the Ministry of the Interior and Kingdom Relations, the Central Government Audit Service (Ministry of Finance), the Court of Audit, the Whistleblowers Authority, the Ministry of General Affairs, the House of Representatives, the National Police of the Netherlands (NPN), the Ministry of Defence, and the Royal Netherlands Marechaussee (KMar), law enforcement unions, NGOs and academia. In addition, the GET also had a meeting with one professor researching on media and former journalist.

[1] More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's website.

III. CONTEXT

11. The Netherlands has been a member of GRECO since 2001 and has undergone four evaluation rounds focusing on different topics related to the prevention and fight against corruption. Overall the Netherlands has a good record in implementing GRECO's recommendations under each evaluation round. At the closures of procedures on compliance with recommendations, 100% of recommendations of the first evaluation round had been fully implemented, 50% of the recommendations of the second evaluation round (with three out of six partly implemented), 74% of the recommendations of the third evaluation round (with two partly implemented and three not implemented out of nineteen) and 42% of the recommendations of the fourth round (with two partly implemented and two not implemented out of seven). The compliance procedure under the fourth evaluation round is currently on-going.

12. Public perception of corruption in the country has been consistently low over the years. In 2017 the Netherlands was ranked tenth best country in the world at fighting corruption by the Inclusive Growth and Development Report of the World Economic Forum[2] and it resulted eighth among the least corrupt countries in the world according to the 2017 corruption perception index published by Transparency International (TI).[3] Similarly, the 2017 Special Eurobarometer on Corruption[4] ranked the Netherlands among the countries with the lowest level of corruption in the EU. According to the survey, 44% of Dutch respondents believe that corruption is widespread in their country (EU average: 68%), however, the actual number of people having experienced or witnessed cases of corruption in the last 12 months is low (5%, in line with the EU average), and only 4% of respondents felt personally affected by corruption in their daily lives (EU average: 25%). Half of those polled believe that the giving and taking of bribes and abuse of power for personal gain are widespread among politicians at national, regional or local level and 43% of respondents believe it is common among police and custom officers (above the EU average of 31%).

13. With regard to top executive functions, the 2014 EU Anticorruption Report on the Netherlands[5] highlighted some weaknesses in the integrity framework applicable to politicians, particularly with regard to transparency and oversight of financial and business interests of ministers and state secretaries. Moreover, in practice, alleged conflicts of interest involving former ministers and state secretaries have been increasingly discussed in Parliament and society together with the possibility to develop stricter and clearer rules on post-employment restrictions. The same problems were also reported by the 2012 National Integrity System Assessment published by Transparency International.[6]

14. The public perception on corruption among police and custom officers is dealt with in a study on integrity violations within law enforcement agencies published in 2017[7] which shows that although there is no indication that corruption within such agencies is increasing, more needs to be done to fight corruption and other integrity violations (e.g., leaking of information and private contacts with criminals) within their own ranks. The Police came out as being especially vulnerable on this front, as officers, in their daily work, regularly come into contact with crime and offenders. There have been a number of integrity related incidents and crime committed by the police in recent years, concerning leaking/selling of confidential information[8].

[2] http://www3.weforum.org/docs/WEF_Forum_IncGrwth_2017.pdf
[3] https://www.transparency.org/news/feature/corruption_perceptions_index_2017
[4] https://data.europa.eu/euodp/data/dataset/S2176_88_2_470_ENG
[5] https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_netherlands_chapter_en.pdf
[6] https://www.transparency.org/whatwedo/nisarticle/netherlands_2012
[7] https://www.maastrichtuniversity.nl/blog/2017/10/increased-pressure-law-enforcement-organised-crime
[8] https://nltimes.nl/2018/02/19/cop-gets-5-years-selling-police-info-criminals

IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)

System of government and top executive functions

System of government

15. The Netherlands is a constitutional monarchy and a parliamentary democracy. The King is the Head of State and the Prime Minister (PM) is the Head of the Government (Council of Ministers, Cabinet). Formally the government consists of the King and the ministers and state secretaries, but in reality it is the PM/ministers/state secretaries, and not the King, who are responsible for the acts of the government[9], including the running of the day-to-day governmental affairs and the decision-making.

16. The Cabinet is accountable to Parliament, which is elected every four years. The Cabinet as well as the individual ministers/state secretaries stay in power as long as they enjoy the confidence of Parliament. The "rule of confidence" is one of the most important and crucial government principles in the Netherlands, although it is not laid down in the Constitution or law. By expressing lack of confidence, Parliament can force a cabinet (or an individual minister or secretary of state) to resign.

17. The King does not attend the Council of Ministers' meetings but he delivers the annual "speech from the throne" in which the government, through the King, outlines government policy for the next budgetary year to Parliament. The King signs all Acts of Parliament and Royal Decrees, including the ones on appointment and dismissal of high ranking officials, but the Prime Minister, relevant ministers or state secretaries initiate and take responsibility for them. The King represents the Kingdom of the Netherlands at home and especially abroad, which is a ceremonial function. At no point does the King exercise discretionary powers in an executive capacity.

18. As agreed by GRECO, a head of State would be covered by the 5th evaluation round under "central governments (top executive functions)" when s/he actively participates on a regular basis in the development and/or the execution of governmental functions, or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure, taking decisions on the appointment of individuals to top executive functions.

19. The GET notes that the Head of State in the Netherlands does not actively participate on a regular basis in the development and/or execution of governmental functions. The role of the King is clearly of a representative and ceremonial nature and the few links to the executive branch that exist are limited to ceremonial/formal decisions and in these situations the King is clearly to be guided by the government, within the constraints set by the Constitution, laws and precedents. This prevents the King from exercising discretionary powers in an executive capacity. It follows that the Head of State in the Netherlands does not fall within the category of "*persons who are entrusted with top executive functions*" (PTEFs) which is covered by the current Evaluation Round.

Status and remuneration of persons with top executive functions

20. A new government (Cabinet or Council of Ministers) is formed after parliamentary elections following a coalition negotiation process[10] through which an agreement is to be reached between the parties to join a government coalition. This process is led by a *formateur* (normally the leader of the

[9] Article 42 of the Constitution. Ministerial responsibility, linked to royal inviolability, was introduced in 1848.

[10] Because of the strict proportional voting system of the Netherlands, no single party has ever won an absolute majority in the House of Representatives. At least two parties have always been needed in order to form a majority coalition. This usually leads to complicated and lengthy negotiations. At the end of the formation, the new Prime Minister reports to the House of Representatives on the formation process.

largest party). The formation process comprises the government programme/policies, the composition of the cabinet and the division of ministerial portfolios.

21. The GET was informed that prior to the appointment of ministers and state secretaries, the *formateur* interviews the cabinet candidates who, by putting themselves forward as candidates, agree to a procedure during which checks concerning criminal records (convictions), tax and customs records and intelligence and security records are checked. The results of the vetting exercises are shared and discussed with the candidates who, in addition, are responsible for raising all relevant facts and circumstances, including relevant private interests at their own initiative. The minutes of these meetings and the private interest declarations remain confidential.

22. If successful, the *formateur* will present a list of ministers and state secretaries to form the cabinet, who are then to be formally appointed. They are obliged to swear an oath of loyalty to the King, the Charter and the Constitution. However, this process cannot take place without parliamentary support and the cabinet and its members can only remain in power as long as they enjoy confidence by Parliament and the PM. The current government includes 24 ministers and state secretaries (14 male and 10 female), which provides a balanced participation of men and women in line with the Committee of Ministers' Recommendation Rec (2003)3 on balanced participation of women and men in political and public decision making.

23. According to the Constitution (Article 45), the Council of Ministers considers and decides the general government policy and ensures its coherence. The Prime Minister chairs the Council of Ministers and has the final responsibility for the general government policy. However, the government is a collective body and considerable importance is attached to good coordination and collegiality, in order to reach consensus and to ensure the unity of government policy (one voice position)[11]. While ministers remain largely responsible for their own policy fields, they are involved in the decisions made on all issues raised.

24. Each ministry is headed by a minister who has political responsibility over public bodies and persons under their competencies. Overall, they enjoy discretionary powers and authority over such bodies or persons, except for certain independent institutions, such as the National Electoral Council and the Whistleblowers Authority.[12] Moreover there are officers who possess independent powers pursuant to an Act of Parliament, like tax inspectors and members of the Prosecution Service. They have powers to impose taxes and are empowered to prosecute without interference of the Minister. However, these civil servants are still under the authority and responsibility of the Minister. Ministers without portfolio are also members of the government; however, they do not direct a particular ministry. Both types of ministers can have their own budget chapters. Ministers are independently accountable to Parliament and may be dismissed by Parliament.

25. State secretaries are also cabinet members and bear political responsibility for the policy field entrusted to them by the pertinent minister. The division of responsibilities between ministers and state secretaries is usually determined during the formation of a cabinet and is then recorded in a description of tasks. A state secretary can replace his/her minister in the cabinet, without the right to vote. A state secretary also attends cabinet meetings if the agenda includes a topic for which s/he is responsible. State secretaries are accountable to Parliament independently. Parliament may dismiss a state secretary, while the Minister can remain in office. Contrary to that, if Parliament loses confidence in a minister, the state secretary makes his/her portfolio available. However, the replacing minister may then ask him/her to accept the same portfolio again.

[11] This unity of government policy is an important principle of the Dutch system of government. Ministers and State Secretaries must speak with one voice. If a Minister or State Secretary has serious objections to one or more elements of government policy and is not willing to conform to it only the option of voluntary resignation remains.
[12] In recent years the Framework Act on Independent Administrative Bodies laid down general rules for these institutions.

26. Ministers and state secretaries may delegate the decision making power to top level civil servants for routine matters (for instance with regard to the granting of various forms of permission or in respect of selecting and appointing civil servants of ranks below the top management etc.). The top level managers in the civil service include secretaries-general (most senior civil servants), directors-general (on average four to five in each ministry, responsible for a defined area of policy/execution/supervision/operation), inspectors-general and other equivalent positions. Top managers are to offer their ministers unbiased advice. Once political decisions have been taken, top managers are to execute the decisions loyally. That said, it is the ministers or state secretaries, not senior civil servants, who are ultimately accountable to Parliament. Top level civil servants are not political nominees and the ministers/state secretaries have limited influence on appointments to these positions. Their recruitment and selection are conducted according to open, transparent, merit-based standard procedures. The appointments are made for a maximum of seven years.

27. Ministers and State Secretaries may appoint one political assistant at the expense of the relevant ministry, duly informing the Prime Minister and the Council of Ministers**.** Political assistants are recruited without competition but enjoy the status of civil servants. Their appointment coincides with the term of office of the cabinet member. The political assistants may remain employed for a maximum of six months after the departure of the relevant cabinet member, to ensure the orderly completion of formal duties. They may, however, be reconfirmed by another (incoming) minister as his/her personal assistant or be employed within the ministry, if s/he passes a competition to the civil service (this has apparently happened on several occasions). The main role of political assistants is to liaise with Parliament and its committees as well as to ensure links with party-related events, as opposed to civil servants who are not allowed to maintain any political contacts (except following explicit instructions by a minister etc.). Exact duties of political assistants vary from one case to the other[13]. Political assistants are included in the official structure of a ministry, often the Office of the Secretary-General or a similar unit; however, they cannot be entrusted with public relations duties. The role of political assistants may vary, they do not play a decisive role as do top executive functions. They are not politically responsible for decision making, nor do they take part in the Council of Ministers, according to the authorities.

28. The GET notes that political assistants are employed on the basis of trust. There are practically no rules pertaining to their activities. Political assistants communicate personally with parliamentary committees and they have an advisory role. Even if they do not operate independently, they can for example assess how MPs weigh certain initiatives and convey ideas to the relevant minister or state secretary, thus influencing the functioning and the decision-making process of the executive. Their activities and tasks depend mainly on the employing minister/state secretary concerned. The GET notes that the status of political assistants is somehow contradictory. On the one hand, they are discretionary selected and employed by the top executive officials and they have functions closely relating to these officials' political functions. On the other hand, they enjoy status as civil servants, who are obliged to stay out of political considerations. Depending on their functions, mandates and seniority, GRECO takes the view that political assistants may have an influential role in respect of ministers' and state secretaries' decision-making and in such situations should be regarded as persons entrusted with top executive functions (PTEFs). Consequently, there are situations where their status as members of the civil service, including the regulatory framework (e.g. code of conduct) for the civil service does not appear appropriate for political assistants.

29. The gross annual salary of ministers is €159,488.89 (including year-end bonus and holiday allowance). The annual remuneration of a state secretary is €148,879.40[14]. In addition, ministers are entitled to a monthly allowance of €349.79 (net). This allowance is doubled to €699.59 (net) for the Prime Minister and Minister of Foreign Affairs. State secretaries receive a monthly expense allowance

[13] Depending on the cabinet member, their position, the political attention on and the 'weight' of the Ministry, assistant's work experience etc. Letter from the Prime Minister to the House of Representatives dated 30-10-2003.
[14] Source: Ministers and State Secretaries (Legal Status) Act

of €291.10. Ministers or state secretaries are also entitled to a relocation allowance when their home is located at least 50 kilometres from the ministry. Political assistants have a gross annual salary of between €37,000 and €80,000, depending on the pay scale they justify (as regulated in the Manual for Ministers etc.). The top civil servants (e.g, secretaries general) have a gross annual salary € 145.394,51.

30. According to the Netherlands Bureau for Economic Policy Analysis (CPB), the average gross annual salary in the Netherlands for 2017 is €37,000.00. There is no special tax regime for PTEFs or any other public officials. All benefits in kind that are given to cabinet members and their expense claims are published online. The four-eye principle applies to the expenses of ministers and state secretaries. The secretary-general signs for the expenses incurred by and for ministers and state secretaries.

31. The entitlements system is regulated by the Ministers and State Secretaries (Perquisites) Decree which provides that expenses of a ministry are recorded under administrative costs. Under certain circumstances, ministers or state secretaries may personally pay expenses for the purpose of their position, but these payments are to be justified and kept as limited as possible. The secretaries general have an advisory role also in this regard. All entitlements cease to apply immediately after ministers and state secretaries vacate office, except the entitlement to a benefit or pension. Secretarial support and transport can be claimed for a further one year only in relation to the activities relating to the former position.

32. Former Cabinet members (including those who had to resign are paid the so-called "waiting money" during a limited period until they have found a new occupation for a period of up to 3 years and 2 months. The person entitled receives 80% of the salary the first year and 70% the second year, but s/he is obliged to apply for new jobs during this period.

33. The Central Government Audit Service and the Court of Audit conduct accountability audits. This includes auditing the expenses incurred for the political top management, known as the administrative costs.

Anticorruption and integrity policy, regulatory and institutional framework

Anticorruption and integrity policy

34. There is no general strategy or legal framework specifically aimed at anti-corruption and integrity policy. That said, the current legislation and regulations taken together provide a legal framework that reflects such a policy. This framework has been developed on an *ad hoc* basis over the years, often as consequences of problems encountered. The GET understood that the issue of public integrity was high on the political agenda in the Netherlands in the 1990s and 2000s, and resulted in relevant amendments to the Civil Servants Act and the creation of the Dutch National Integrity Office (BIOS). In recent years, the public integrity issues seem to enjoy less attention. The BIOS has been dismantled and replaced with the Whistleblowers Authority (see below, paragraphs 51 and 230), however, with a narrower mandate. The current Government programme has few references to integrity and anti-corruption, none of them relating to PTEFs.

35. In contrast to the civil service or local government, the integrity and anti-corruption framework applicable to PTEFs is not regulated by laws or a dedicated code of conduct. However, there is in place a "Handbook for Ministers and State Secretaries" (*The Blue Book*)[15], as well as circulars of ministers and letters of the Prime Minister or ministers to the House of Representatives which deal with additional guidelines on integrity issues. The Handbook is a comprehensive document dealing with a variety of issues relevant for forming and running a government, how to organise meetings, budgetary regulations, principles for communication etc. and it is, indeed, a useful tool for government officials. However, it does not provide a strategy for integrity matters, even if it contains some guidance also in

[15] See https://www.rijksoverheid.nl/documenten/richtlijnen/2017/10/03/handboek-voor-bewindspersonen

respect of the integrity of ministers/state secretaries. The GET noticed that, above, all, trust and political responsibility are at the core of the system, which explains the focus on self-regulation or no regulation to protect matters of integrity. In addition, the GET did not come across a coordinated system for analysing risks of corruption in respect of PTEFs.

36. In view of the above identified shortcomings, the GET considers it important to increase the attention to questions regarding the integrity of PTEFs and areas where risks of conflicts of interest and corruption appear particularly challenging. Such an approach should aim at analysing the current situation in order to allow for a dedicated anti-corruption and integrity policy covering PTEFs. As noted earlier in this report, there may be situations where political assistants, appointed by ministers/state secretaries in addition to their advisory role may be influential in respectof top executive functions where this category of officials needs to be covered by integrity policies. A policy for PTEFs, including ministers, state secretaries and, as appropriate, political assistants at different levels should also build on the findings and recommendations in the current report. In view of the above, **GRECO recommends developing a coordinated strategy for the integrity of persons entrusted with top executive functions, based on analysis of risks, aiming at preventing and managing various forms of conflicts of interest, including through responsive advisory, monitoring and compliance measures.**

Legal framework, ethical principles and rules of conduct

37. The relevant legal framework on integrity includes the Constitution and legal acts such as the Criminal Code; the Government Information (Public Access) Act; the General Data Protection Regulation (GDPR) and the GDPR Implementation Act, the Civil Servants Act, the Central and Local Public Administration Personnel Act, the Government Accounts Act, and the Intelligence and Security Services Act 2017. Integrity matters are streamlined in the Oath for Ministers and State Secretaries.

38. In addition, in order to receive information on integrity/anti-corruption matters, PTEFs may consult different documents such as the Handbook for Ministers and State Secretaries, circulars of ministers and letters from the Prime Minister or ministers to the House of Representatives addressing specific integrity issues. These are not legal rules, but they reflect the content of constitutional and legal provisions, while presented in a self-regulatory guiding format.

39. Central to this is the Handbook for Ministers and State Secretaries, which provides some guidance on issues such as the acceptance of gifts, financial and business interests and other forms of situations where conflicts of interest are at stake (in)compatibilities, access to information, confidentiality, security, official trips, remuneration, benefits etc. The Ministry of General Affairs is responsible for the Handbook and it revises and updates it regularly.

40. The GET notes that rules on expected conduct of PTEFs are scattered through various instruments, including the Handbook, circulars and letters of the PM and ministers etc. While the GET welcomes the Handbook for Minsters and State Secretaries as a “living document”, that is updated regularly, it also notes that it is a broad document, which most importantly deals with rules of procedure applicable to ministers and state secretaries, but its main focus is not on integrity issues. Furthermore, it does not cover sufficiently the aspects of conflicts of interest (as detailed below). Its general provisions may be subject to different interpretation and they lack elaborate explanations. Moreover, there is no particular enforcement mechanism connected to these rules/guidelines, apart from the political oversight exercised by Parliament. Furthermore, these guidelines, including the Handbook, do not appear to be particularly well known by the public, nor suitable for public awareness raising. The GET would therefore see much benefit in establishing a consolidated code of conduct in respect of PTEFs that contains principles and guidelines on the integrity of PETFs in a comprehensive and dedicated document to be complemented with explanations and examples. Moreover, such a document should be given broad publicity, in order to inform the public as to what it should expect from PETFs. It is noted that in this respect, such a code should also cover political assistants, as appropriate, when they carry out top political/executive functions.

41. According to GRECO's longstanding practice, a code of conduct needs to be coupled with some form of enforcement. The Dutch authorities have in this respect submitted that it is not compatible with the constitutional law to take measures against ministers and state secretaries with regard to supervision and sanctions other than those of Parliament, as ministers and state secretaries are responsible to Parliament. While acknowledging that ministers and state secretaries are accountable to Parliament, the GET cannot see why, for example, the Prime Minister could not have a role in supervising the implementation of such a code in respect of his/her government.

42. The GET is pleased that in respect of civil servants (including top civil service officials) there is a Code of Conduct in place. This Code also covers political assistants. The Code lists integrity values, including independence, impartiality and reliability. Moreover, it covers the issues of conflicts of interest, gifts, financial interests, secondary activities, incompatibilities, cooling-off periods, the reporting of violations and protection of whistleblowers. On the one hand, the GET notes that political assistants are covered by this Code in so far as they carry out non-political functions; on the other hand, political assistants or advisers are recruited differently, have different status as compared to the civil servants and carry out political functions, as reflected above. Therefore, it appears appropriate to cover political assistants by integrity rules for PTEFs in situations where they may be influential in respect of PTEFs' decision making.

43. In view of the foregoing, **GRECO recommends (i) that a consolidated code of conduct for persons entrusted with top executive functions be developed, complemented with appropriate guidance regarding conflicts of interest and integrity related matters (e.g. gifts, outside activities, third party contacts, lobbying, etc.) and made easily accessible to the public; and (ii) that such a code be coupled with a mechanism of supervision and sanctions.**

Institutional framework

44. The GET notes that there are a number of institutions which under different mandates are somewhat linked to integrity and anti-corruption matters in public administration. The Ministry of the Interior and Kingdom Relations has a systemic policy responsibility for integrity matters in the public administration. It may therefore appear appropriate to place future work on risk analysis and integrity strategy matters under its responsibility.

45. A number of ministries have their own inspectorate that conducts inspections in respective policy areas. They report directly to the top management of a ministry, on both financial and policy related issues, for the purpose of policy adjustments. A well-organised budget process and a set of budget rules contribute towards a restrained policy process. Each ministry has its own integrity officer. These officers collectively form the Cross-ministerial Platform for Integrity Management (IPIM). The IPIM functions as an advisory body for the top management of the Central Public Administration in relation to the integrity policy for civil servants. However, the IPIM plays no role in the integrity policy for ministers and state secretaries.

46. The system of providing counselling, advice and training for PTEFs is very fragmented and roles are shared by several persons/institutions. It would appear that the PM is responsible for answering questions on dilemmas concerning cabinet members. However, it would also appear that the secretary of the Council of Ministers and colleague ministers as well as secretaries general of ministries, have this function.

47. Parliament consists of the House of the Representatives and the Senate. The main tasks of the former are to monitor the government's pursuit of its policy, to determine the budget (the budget right), draft legislation (together with the government) and to draw attention to social issues (the agenda function). The House of Representatives may put oral and written questions to ministers and state secretaries. Furthermore it has a right to conduct inquiries and lighter forms of investigations

and a right of interpellation (putting oral questions to and debating with ministers and/or state secretaries), according to the Parliamentary Inquiries Act. These rights are exercised in the context of the confidence rule. This means that governments must provide Parliament with all the information that it needs in order to be able to perform its monitoring tasks (Article 68 of the Constitution).

48. If Parliament believes that a particular case must be fully investigated, it can initiate an independent parliamentary investigation, outside of the government. The most serious form of investigation is the parliamentary inquiry, which requires a majority vote in Parliament. However, such an inquiry is not always needed to establish the essential facts of a specific case. A normal investigation by members of parliament sometimes suffices. The difference between an 'ordinary' investigation and a parliamentary inquiry is that a parliamentary commission of inquiry may hear witnesses under oath. An investigative committee may not do that but it may conclude that a parliamentary inquiry is desirable. The commission of inquiry (investigative commission) issues a report to the House of Representatives. Based on such a report, the House of Representatives first holds a debate with the commission and then with the responsible people from the government. The ultimate aim is to learn from the past and adopt measures for the future. The following parliamentary inquiries have been held since 2000: Fyra Train (2013); Housing Corporations (2013-2014); Financial System (2011-2012); Srebrenica (2002-2003); Construction Industry (2002-2003).

49. The General Intelligence and Security Service conducts background checks before candidate ministers or state secretaries take office. It checks in particular whether there is any relevant information in its files relating to the candidates that has been gathered in connection with its duties as specified in Article 6 of the Intelligence and Security Services Act 2002. This Act has been replaced by the Intelligence and Security Services Act 2017 which is expected to enter into force in the course of 2018.

50. The National Ombudsman, appointed by Parliament, is also an independent institution The Ombudsman deals with complaints from the general public concerning public administration and informs public-administration agencies how they can improve their services. The Ombudsman can start an investigation upon complaints or *ex officio*. Everyone involved must cooperate in such an investigation. The outcome of the investigations is a report stating whether there has been a wrongdoing and what the authority may do to correct its procedures. The decisions of the Ombudsman are not binding. In addition, the Ombudsman issues a report to the House of Representatives each year.

51. The Whistleblowers Authority is an independent administrative body providing advice and support to those who report work-related abuse,[16] and may conduct investigations, following complaints. The Whistleblowers Authority has the power to request information and may issue reports on the basis of the gathered information describing the situation of abuse. The report contains conclusions and, if necessary, recommendations to end the situation of abuse or to prevent repetition. The findings of the investigation and the opinion in the report are not binding. The Whistleblowers Authority does not deal with requests concerning ministers and state secretaries regarding integrity dilemmas as such. However, there have been some cases in the last years, involving ministers, but they resigned eventually. Most cases did not relate to integrity issues. In one of the cases a member of government resigned because of declarations based on incorrect data in a previous job.

Awareness

52. The Handbook for Ministers and State Secretaries outlines the rights and obligations of ministers and state secretaries in some situations of conflicts of interests, e.g. dealing with gifts,

[16] A report must relate to a situation of abuse of social relevance, such as a violation of a statutory rule; danger to public health; danger of harm to the environment; danger to the effective functioning of a public-administration agency or company because of improper acts or omissions.

secondary positions, secondary activities, official trips etc. It has been used for many years and PTEFs are supposed to be aware of its content. The "Manual, which is a public document, can be consulted on the website of the Central Public Administration[17]. This document is complemented by circulars and letters addressed by the PM and ministers. The 2002 letter to the House of Representatives on the handling of corruption risks and conflicts of interests, is also a public document. Furthermore, at the start of a government's term of office, the Prime Minister informs the House of Representatives stating the arrangements that have been made by ministers and state secretaries concerning situations of incompatible interests etc. that have been dealt with in the formation process (see above, paragraph 21).

53. The GET notes that the Handbook for Ministers and State Secretaries and circulars are not supported by a dedicated strategy, structure or mechanism to more actively providing advice, counselling and awareness to PTEFs. It was told that, when necessary, ministers and state secretaries can seek advice from the Prime Minister, from colleague ministers/state secretaries, the secretary-general or any other trusted person. The GET takes the view that more needs to be done to establish a pro-active and harmonised approach in respect of PTEFs' (including political assistants, as appropriate) awareness of situations of conflicting interests and corruption prevention. It is of the opinion that channels to communicate, if needed on a confidential basis, on dilemmas of PTEFs should be more clearly defined, consolidating the institutional memory and practices. It would therefore be useful to designate someone at government level, as appropriate, as a confidential counsellor for PTEFs. Furthermore, training is reportedly not provided to the PTEFs in this respect. Consequently, **GRECO recommends (i) establishing confidential counselling to persons entrusted with top executive functions on integrity related issues, conflicts of interest etc.; and (ii) raising the awareness of integrity matters among persons entrusted with top executive functions, including through training at regular intervals.**

Transparency and oversight of executive activities of central government

Access to information

54. Article 110 of the Constitution stipulates that the public administration must allow '*public access in accordance with rules to be prescribed by Act of Parliament* during the performance of its duties. These rules are set out in the Government Information (Public Access) Act (WOB). The underlying principle of this law is that information in the possession of public bodies regarding administrative matters is public as a main rule. Exceptions to the main rule can only be justified if provided for in law.

55. The GET notes that the letter which the *formateur* (future PM) sends to the House of Representatives following the formation interview, possibly containing arrangements to resolve (potential) conflicts of interests, is made public.

56. The Handbook for Ministers and State Secretaries details the procedure for access to information requests. In principle, each government body is responsible for handling such requests, sometimes in conjunction with the policy department. Requests that cover several or all ministries are to be coordinated by the ministry with the primary responsibility for the issues relating to the request.

57. The law further stipulates that public bodies should also provide information of their own accord in the interests of proper and democratic administration. In order to increase transparency about meetings of ministers regarding political and policy priorities. The Cabinet decided in 2016 to publish online relevant agenda appointments with persons and/or subjects including public speeches

[17] See https://www.rijksoverheid.nl/documenten/richtlijnen/2017/10/03/handboek-voor-bewindspersonen

and information on government meetings. Each minister is responsible for the content of his/her own ministry webpage[18]. Since 2012 the expenses of all ministers are made public.

58. Pursuant to Article 68 of the Constitution, ministers and state secretaries provide "orally or in writing the Houses [of Parliament] either separately or in joint session with any information requested by one or more members, provided that the provision of such information does not conflict with the interests of the State".

59. All regulations that include the employment conditions of ministers and state secretaries can be publicly accessed online. There is also a special website, where the information is accessible to the public and presented coherently.

60. The GET recognises that the Netherlands has in place a legal framework for providing transparency of public affairs under the Constitution and the Government Information (Public Access) Act (WOB), which as a main rule should provide for public access, if not excluded under the law. The application of this legal framework is however not without criticism; grounds for declining requests have been used extensively and the statutory time limit within which the information is to be provided is often not respected. The lack of an administrative oversight body and lengthy court proceedings further compound the problem.[19] More in general, interlocutors met by the GET pointed to an insufficient pro-active approach of the authorities and a culture among government agencies to consider information not public, unless there was a good reason to make it public (rather than the other way around).

61. The GET notes that the WOB was amended in 2016 to abolish financial penalties for the lack of timely providing information, to address the large number of impossible requests which were only being made to be financially rewarded. The GET was informed that the WOB is currently in the process of being replaced by the draft Open Government Act (WOO). The draft law is currently pending in the Senate. The authorities submit that the draft law aims at strengthening the system, in particular towards more proactive provision of information and codifying the right of citizens to access public information. Active disclosure of information is proposed to be reinforced by obligating the authorities to disclose various information (incl. (draft) laws and other legislation, information on government organisation and procedures etc.). Also public bodies will need to keep a publicly accessible online register of documents and datasets in their possession, according to the draft.

62. GRECO takes the criticism in respect of the WOB seriously. An efficient system providing for access to public documents and information is a cornerstone for transparency and prevention of corruption. It would appear that draft legislation is underway, which could possibly remedy some of the major problems referred to in respect of the WOB, if adopted. GRECO urges the Dutch authorities to pursue this promising process.

[18] See www.rijksoverheid.nl

[19] This criticism is not new. Already in 2011 the Ombudsman referred to the legal jungle of the WOB, whereby he considered that the government used the WOB to put up barriers (see https://www.nationaleombudsman.nl/nieuws/2011/ombudsman-wob-juridische-jungle) and in 2012 Transparency International included similar criticism in its National Integrity System Assessment of the Netherlands (see https://www.transparency.nl/wp-content/uploads/2016/12/TI-NL-NIS-report.pdf).

Transparency of the law-making process

63. In the Netherlands the draft laws at government level are subject to public consultation on a dedicated website[20]. This is cabinet policy since 2011. In practice, the minimum period for consultation is four weeks. Everyone can provide comments, and may have their comments made public. Generally, draft laws and related explanatory notes are published for consultation, together with a summary of answers on the 7 questions of the Dutch comprehensive impact assessment system IAK[21] and sometimes with other background information documents (i.e. information about implementation aspects etc.). When the consultation period is finished, all comments (published on the website or not) are taken into account to improve the quality of the draft and the explanatory note. A short summary of comments and their follow-up are published online[22]. This is done after the Council of Ministers has decided on the draft and the draft is sent to the Council of State for advice. The final draft is then sent to Parliament, where it is made public.

64. In addition, consultations may be organised with representatives of parties that are affected by the draft or that have a role in the development of the draft. Sometimes social media (e.g. LinkedIn or Twitter) are used for consultation. Policy-documents are increasingly published online.

65. Information about drafts that are being prepared by the central government is published on a dedicated website. When Parliament decides on drafts, the final versions of the texts are published. The Prime Ministerial Directives on Drafting Legislation - Directive 4.44 concerns reporting about contacts with third parties in the process of law-making. The explanatory note on a draft law should include, if possible and relevant, information on third parties which have given relevant input to a draft, the way in which input was provided, the content of the input and what impact it has had.

Third parties and lobbyists

66. Lobbying is part of the political decision-making process in the Netherlands, which has been described as continuously striving for consensus and the creation of broad-based support (the *polder model*)[23]. It is seen as an important way to exchange all sorts of information, to influence the decision-making process and to increase public support for decisions. Lobbying is an active and growing sector in the Netherlands[24]. There are even institutionalised relationships and partnerships, between government and the private and non-profit sectors.

67. Lobbying as such is not much regulated in the Netherlands. However, a voluntary and public register (pass for parliamentary entry) of the House of Representatives was put in place for lobbyists in 2012. Moreover, a voluntary code of conduct for the largest association of lobbyists was introduced in 2001.

68. The only rule affecting PTEFs in respect of lobbying is a ban on former cabinet members to lobby in their former ministry (Handbook for Ministers and State Secretaries). However, this rule does not apply to a minister lobbying other ministries of a government and it has some more limitations. For more details see the Chapter "Post-employment restrictions" below.

69. The GET learned that in the last few years lobbying has been more closely monitored by the media and has become a political issue. Within several sectors there is increasing pressure for more transparency regarding lobbying activities in the Netherlands. During its on-site visit, the GET noticed

[20] See www.internetconsultatie.nl
[21] See www.naarhetiak.nl
[22] See www.internetconsultatie.nl
[23] National Integrity Systems (NIS) Study for the Netherlands, Transparency International – see https://www.transparency.org/whatwedo/nisarticle/netherlands_2012
[24] There are an estimated 2000 interest organisations of all kinds and sizes making their way to the centres of government and parliament in The Hague, where the interest traffic flow takes place.

a clear perception that influence from lobbyists is growing in the governmental process. It understood that a form of a "legislative footprint" is to be included in the explanatory notes of relevant draft laws (Directive 4.44). In practice, each ministry decides whether to and how to reflect such contacts between government officials and third parties, including lobbyists. The GET welcomes a policy towards more transparency but takes the view that more needs to be done to increase the transparency in this respect.

70. The GET notes that apart from a ban on former ministers/state secretaries to lobby in their former ministry, and the registration requirements in Parliament, lobbying as such is not much regulated in the Netherlands. There is no definition of lobbying, no register of lobbyists targeting PTEFs, and there is no requirement to declare contacts with lobbyists and no supervision of lobbyists' contacts with office holders and civil servants. More generally, the GET believes that a coherent and comprehensive framework for the legal regulation of lobbying activities should be established in line with relevant Council of Europe standards[25], in particular by providing for definitions of lobbying, ensuring transparency of lobbying activities, maintaining public registers of lobbyists etc. and such measures would be appropriate in respect of lobbying in relation to PTEFs. This area also requires rules of conduct for the PTEFs, including political assistants, as appropriate. Consequently, **GRECO recommends (i) introducing rules and guidance on how persons entrusted with top executive functions engage in contacts with lobbyists and other third parties who seek to influence governmental processes and decisions, and (ii) increasing the transparency of contacts and subject matters concerning lobbying of persons who are entrusted with top executive functions.**

Control mechanisms

71. The Central Government Audit Service (ADR) is the independent internal auditor of the Central Public Administration. The statutory duty of the ADR is to audit the financial information in ministerial annual reports and then issue an audit certificate for this purpose. The ADR issues a separate report for each Ministry (and for the budget funds) that is addressed to the relevant minister. The ADR may also conduct demand-driven audits at the request of the ministerial management. All reports are expected to be public. The ADR is the internal auditor of the individual ministries and reports in that regard solely to the instructing ministry and not to other parties. The ADR verifies whether the interplay between the ministerial management and control is running smoothly and issues an independent opinion in this regard.

72. The Court of Audit is an independent institution which examines whether the Central Public Administration is spending public money effectively and lawfully. All ministries and other government organisations that fall under the Central Public Administration can be audited by the Court of Audit[26] which is entitled to access all relevant information that it requires, including confidential information. It provides the Minister of Finance and Parliament with recommendations which are made public. The Court of Audit presents an annual report on its activities over the preceding year to the government and Parliament. Based on the opinion of the Court of Audit, Parliament decides whether to discharge the government from any liability. The Court of Audit also reports to Parliament on the outcome of separate investigations so that members of Parliament can decide whether a minister is pursuing an effective policy. The Court of Audit decides for itself what to investigate; however MPs, ministers and state secretaries may also request an investigation.

Conflicts of interest

73. The Constitution and legislation contains some provisions aiming at preventing conflicts of interest. These are subsequently spelled out in the Handbook for Minsters and State Secretaries. A

[25] Council of Europe Recommendation CM/Rec(2017)2 to member states on legal regulation of lobbying activities in the context of public decision making.
[26] Government Accounts Act

Constitutional rule is that members of cabinet cannot also be members of Parliament. To this end the Handbook contains some rules to temporarily guide outgoing/new cabinet members leaving/entering a position as an MP during the transition period.

74. Moreover, the Handbook regulates the procedure to be applied by the *formateur* (future PM) during the "formation" process of a new government, which aim at preventing conflicts of interest in the future. The standards on these matters are also contained in the Letter from the PM to the House of Representatives concerning the Assessment of Candidate Ministers and State Secretaries, dated 20 December 2002, and the Letter from the Prime Minister to the House of Representatives concerning the Adoption of the budget statement of the Ministry of General Affairs, the King's Office and the Oversight Committee for the Intelligence and Security Services of 2013.

75. As already mentioned, the *formateur* (future PM) will rely on information, such as the criminal record, taxation information and intelligence information, provided by state authorities and the candidate is deemed to have granted such access with his/her candidacy. However, the main responsibility to submit information and to decide on whether a conflict of interest exists and to find appropriate solutions to resolve such situations is placed on candidate ministers/state secretaries themselves. The *formateur* takes a broad view on the situation and indicates only whether the chosen solutions seem plausible on the basis of the information provided by the candidates. The responsibility for the chosen problem-solving approach and its correct implementation therefore rests to a large extent and primarily with the candidate ministers/state secretaries.

76. During their term of office, cabinet members are personally responsible for not participating in any decision-making if their participation could run counter to the due and proper performance of their duties. Ministers or state secretaries are also responsible for not participating in any decision-making on matters that involve their partner, children, other family members, business relations, interests, former interests or previous positions, if participating could run counter to the proper performance of their duties.

77. The system described is to a large extent built on trust and it places the responsibility to a large extent on the individual candidates/cabinet members to interpret what should be considered appropriate to report in respect of conflicts of interest as well as how to deal with such instances when they occur. In such a system, detailed rules, guidance and counselling would be crucial.

78. In this context, the GET considers that the current rules/guidance on conflicts of interest appear insufficient and that the system would benefit from being reviewed. Turning to the procedure, while it would appear that the dialogue at the formation stage (of a government) is rather well developed and that it involves an obligation upon candidates to reveal situations which may amount to conflicts with future government functions, there is not much of a follow-up procedure to prevent conflicts of interest as they occur when PTEFs are in office. Just as well as it is important to check possible conflicts of interest before a government is formed, it is also necessary to do so on a continuous basis throughout its mandate. In this context, the GET reiterates the need to develop a strategy to improve integrity and the management of conflicts of interest, as already stated in this report. The GET also underlines the need to establish more specific rules and guidance on preventing and resolving conflicts of interests, beyond the issues of secondary activities and financial and business interests in a future code of conduct, as recommended (paragraph 43) and through training and counselling as also recommended (paragraph 53). Furthermore, the GET is of the firm opinion that PTEFs, including political assistants, as appropriate, should be obliged to report various situations of conflicts as they occur (on an *ad hoc* basis) as a necessary additional safeguard. Consequently, **GRECO recommends that a requirement of *ad hoc* disclosure be introduced in respect of persons entrusted with top executive functions in situations of conflicts between private interests and official functions, when they occur.**

Prohibition or restriction of certain activities

Incompatibilities, outside activities and financial interest

79. Ministers and state secretaries cannot have a seat in Parliament because of a constitutional ban (Article 57, paragraph two, of the Constitution). Nonetheless a minister or state secretary who has vacated office and is thus waiting for his/her discharge as minister or state secretary, may combine this with a position as an MP until a decision is made on his/her vacating office. This means that ministers and state secretaries can only form part of Parliament temporarily after an election during the period of a caretaker government. However, they do not receive any remuneration as MPs and it is an unwritten rule they will only make very limited use of their mandate as MPs in such situations.

80. According to the Handbook for Ministers and State Secretaries, during the interview between the *formateur* (future PM) and the candidate ministers/ state secretaries, the *formateur* will inform the candidates that s/he must resign from all paid and unpaid positions, secondary positions and any secondary activities before the government is sworn in. The GET was informed that secondary positions and secondary activities are to be interpreted as broadly as possible for this purpose and thus include volunteer positions in clubs or associations, part-time professorships, editorial posts and memberships of committees etc. Continuing in a 'dormant' role by means of a zero-hour contract is not permitted either. However, the sole membership of an association (thus not in an administrative position) does not fall under this rule.

81. If a candidate nevertheless believes there is good reason to continue in a certain position, for a fixed period or otherwise, this will be possible only with the *formateur's* or Prime Minister's express consent, in highly exceptional cases.

82. In relation to financial and business interests of cabinet members, any appearance of subjective decision-making must also be avoided. This is not limited only to the policy area for which a minister or state secretary is directly responsible. The formation interview systematically looks at whether the candidate has any controlling rights in relation to relevant financial or business interests. Where applicable, candidates must either fully dispose of these interests or enter into an arrangement by which they cannot, and will not, exercise their controlling rights during their period of office.

83. The Handbook for Ministers and State Secretaries details, in a non-exhaustive manner, which financial and business interests present or do not present risks of an actual or apparent conflict of interests. It also provides guidance on accepted problem-solving approaches; it is considered that there is no risk of an actual or apparent conflict of interests in the following circumstances: the holding of liquid assets; movables and immovable property that are not commercially operated; movables and immovable property that are commercially operated without the candidate having any influence over management and operations; bonds; shares in public investment funds (unless holders have special powers for financial markets; non-risk-bearing participating interests in undertakings; options on shares that can be exercised only after the term of office; shares in undertakings in relation to an investment mortgage over immovable property.

84. However, it is stated in the Handbook that there is an actual or apparent conflict of interest in the following circumstances: the holding of shares or risk-bearing participating interests/investments in individual listed and non-listed undertakings, insofar as the cumulative value thereof when the position is accepted exceeds €25,000[27]; shares in public investment funds held by the minister and state secretary of finance (because of special powers for financial markets); movables and immovable property that are commercially operated, where the candidate has influence over management and

[27] This threshold applies because the risk of such a relatively small amount in shares or participating interests influencing how Ministers or State Secretaries form their opinion is deemed to be negligible. Requiring the candidate to still dispose of, convert or place that package of shares/participating interests at arm's length would be disproportionate against that background.

operations, and insofar as the cumulative net annual proceeds exceed €3,500[28]; options on shares that can be exercised during the term of office; option of returning or 'zero-hour contract' at an employer; financial and business interests of a partner in case of a marriage in community of property.

Contracts with state authorities

85. There is no explicit prohibition on PTEFs entering into contracts with State authorities. However, it would appear that such relations are excluded as in relation to financial and business interests of cabinet members, any appearance of subjective decision-making must also be avoided and this is not limited only to the policy area for which a minister or state secretary is directly responsible (as noted in the Handbook). Moreover, general legislation on public procurement is fully applicable in this context.

Gifts

86. The Regulation for the Adoption of Protocol Instructions 2016 (Instruction 3) and the Handbook (Chapters 5.1.10 and 5.4.3) provide guidance on the issue of gifts. In summary these guidelines provide the following instructions: Cabinet members must always exercise utmost restraint when accepting gifts. Gifts that cabinet members in office or their partners receive in that capacity from third parties are classified as government gifts, which are to be registered by the Protocol office (description of the gift, donor, occasion and date).

87. There are also some rules in place on the management of gifts within ministries and public administration. It is the secretary general of a ministry that is responsible for this.

88. The GET notes that there are guidelines in place on acceptance of gifts by PTEFs. Gifts above the value of €50 are to be registered by the ministry and gifts of a lesser value than €50, given directly to a minister, can be kept without further registration. However, there is no explicit value limit as such for what is an acceptable gift. There appears to be no threshold in respect of several accepted gifts from the same donor (e.g. annually). Furthermore, the notion of gifts is not explained in detail. Although it would appear that all forms of services representing a monetary value are covered, it is less clear to what extent other forms of benefits, such as hospitality and invitations etc. are covered according to the guidelines. Moreover, the registered gifts offered to PTEFs are not made public (contrary to registers of gifts and travels of the House of Representatives). In view of the foregoing, the GET believes it would be helpful if a clearer line was drawn, and better explained to PTEFs and to the public, between acceptable and unacceptable gifts, introducing an annual threshold for accepted gifts and covering a broad variety of benefits and hospitality. Moreover, transparency and oversight, including public scrutiny in respect of registered gifts offered to PTEFs, need to be enhanced. The authorities are invited to address these concerns as already recommended in paragraph 43.

Misuse of public resources

89. As stated in chapter 5.1.5 of the Handbook for Ministers and State Secretaries, rules are in place to prevent the misuse of public resources for private or political gain. Expenses and benefits have to be justified. Misuse of public resources may constitute a criminal offence.

Misuse of confidential information

90. Article 26 of the Rules of Procedure for the Council of Ministers, Subcouncils and Committees stipulates that a duty of confidentiality exists in relation to what is discussed or transpires in meetings. The Handbook for Ministers and State Secretaries (4.1.3) contains detailed rules on confidentiality in respect of meetings and documents of the cabinet, as well as after leaving office. The rules of private

[28] This threshold is taken from the income tax exemption for providing lodgings.

and public law apply to the acts of former ministers and state secretaries, including the duties of confidentiality laid down in Articles 98 et seq. and 272 of the Criminal Code.

Post-employment restrictions

91. The "revolving doors phenomenon" linked to high government officials is well-known in the Netherlands. The GET was informed of several controversies where former ministers were employed immediately after leaving office in the private sector, with some links to their previous responsibilities[29].

92. The Handbook for Ministers and State Secretaries indicates that when accepting a position after the end of their term of office, ministers or state secretaries must take care not to create appearance to have acted improperly during the performance of their official duties or dealt incorrectly with knowledge gained during that period. Any intention by cabinet members who are still in office to hold talks on future positions for themselves are to first be approved by the Prime Minister.

93. Following up on the policy document "Lobbying in daylight: listening and showing", the Council of Ministers agreed (2017) to ban lobbying by former Cabinet members (according to Government circular and the Handbook for Ministers and State Secretaries) meaning that they cannot act as intermediaries, lobbyists or agents in commercial contacts with their former ministry, specifically in the policy areas for which they were previously responsible.[30] The ban aims at preventing outgoing or former cabinet members from improperly using their expertise, influence or network as former cabinet members for the organisation that employs them after they leave office. Ministries have to expressly refuse lobbying by former cabinet members. This covers civil servants, who may not maintain any commercial contact, in any form (emails, telephone calls or other telecommunication or participation in a business delegation) with former cabinet members. The ban lasts for two years after leaving office. The ban on lobbying does not apply to political advisers.

94. However, there are exceptions to this ban, former cabinet members working in trade and industry after they leave office, may head or form part of a trade delegation organised by the former ministry. Former cabinet members may also hold subsequent positions in the public administration (e.g. King's Commissioner, mayor, member of a provincial or municipal executive), including membership of a parliamentary representation.

95. The GET notes that, apart from the particular situations described above, there are no general rules in place concerning post-employment of PTEFs. This is rather striking in a country such as the Netherlands, where the private sector is large and where the lobbying industry is considered important for the public sector and the government. The Dutch authorities refer to the obligation upon cabinet members in office not to take employment contacts without the agreement of the PM as well as the ban on lobbying by former ministers in respect of their ministry as measures which fit the Dutch system and conditions instead of complex systems of post-employment restrictions. The GET accepts that the ban on former ministers is a measure in the right direction; however, this restriction appears rather limited in scope. The ban on lobbying is not obligatory in all situations and it does not, for example, prevent former cabinet members from lobbying in other policy areas of the same government.

96. The problem relating to "revolving doors" can be dealt with by a range of measures and there is no best way of addressing the potential risks of conflicts of interest in this respect. However, the few and limited measures in place in the Netherlands appear insufficient. There is no general "cooling off" period or restriction on certain types of activity over a period of time, nor is there a dedicated mechanism from which PTEFs must gain approval or advice in respect of new activities following

[29] Former Minister of Transportation employed by KLM, former Minister of Finance employed by a bank etc.
[30] https://lobbywatch.nl/lifting-the-lid-on-lobbying/

government service. Nor is there any particular regulation providing transparency, oversight and enforcement in this area. It follows that conflicts of interest in situations where PTEFs (including political assistants, as appropriate) seek new employment in the private sector or where former PTEFs are to accept such employment following their government service require new and broader regulation. Therefore, **GRECO recommends introducing general rules dealing with post-employment restrictions before persons entrusted with top executive functions seek new employment in the private sector and/or are about to enter into such employment after their termination of functions in the public sector.**

Declaration of assets, income, liabilities and interests

Declaration requirements

97. As mentioned above, the Handbook for Ministers and State Secretaries and the letters from the Prime Minister to the House of Representatives concerning the assessment of candidate ministers and state secretaries, (dated 2002 and 2013) deal, to some extent, with declarations of various interests to be made by cabinet candidates during the process of forming a government. According to these guidelines, cabinet candidates are required to declare problematic interests to the *formateur* (future PM). The major responsibility is thus placed on the candidates themselves, who are expected to identify problematic interests, on the basis of a non-exhaustive list (e.g. paid and un-paid functions, ancillary positions, holding of shares and business activities etc.), and in case of conflicting interests they are to find and implement appropriate solutions.

98. The financial and business interests of a partner, adult child and other family members do not have to be declared. The Dutch reasoning behind this is that today's society regards people as independent individuals, who are deemed to be economically independent. The line of what constitutes relevant financial and business interests, as raised during the formation of a government, is drawn at the interests over which the candidate minister or state secretary has personal control or joint control. That dividing line does not alter the fact that ministers or state secretaries are personally responsible during their term of office for not participating in any decision-making on matters that involve their partner, children, other family members, business relations, interests, former interests or previous positions, insofar as participation could run counter to the due and proper performance of their duties. However, they are not obliged to report such situations as they occur, see paragraph 78.

99. The interview during the formation is based on trust, as the *formateur* can only broadly assess the reported problems and the appropriateness of proposed solutions. There are no formal mechanisms to check how the solutions are implemented in practice. The interaction between the *formateur* and candidate is strictly confidential. No public statements may be made regarding the content of the interview. The sole exception to this rule is the letter at the start of a government's term of office in which the Prime Minister indicates which arrangements have been made by ministers and state secretaries concerning incompatible financial and business interests and which secondary positions are being maintained, which is public.

100. Although future ministers and state secretaries are to report conflicting interests during the formation of a new government, this exercise stands largely behind closed doors. More importantly, there are no declarations or reporting obligations upon cabinet members during their mandate. The GET believes that the transparency over financial and business interests of cabinet members (and political assistants, as appropriate) needs to be considerably enhanced through a regulatory framework requiring declarations at the beginning of their mandate and at regular interval during the mandate concerning assets, income, liabilities and other interests. Such declarations should be made public. In this context, it should also be considered to include financial information of close and dependent family members, although for privacy purpose the latter information should not necessarily be made public. **GRECO recommends (i) that persons entrusted with top executive functions be obliged to declare their financial interests publicly on a regular basis; ii) considering including**

financial information on spouses and dependent family members in such declarations (it being understood that the latter information would not necessarily need to be made public) and (iii) that the declarations be subject to an appropriate review mechanism.

Review mechanisms

101. As already mentioned, the declarations made by candidate members of cabinet during the formation process are possible to be reviewed by the *formateur* (future PM) on a confidential basis. Moreover, the measures taken to prevent conflicts of interest by the individual candidates are made public. The declarations may also be subject to scrutiny by Parliament.

102. The GET is of the opinion that this system is not sufficient and has recommended that a new system of declaration of financial interests be accompanied by an appropriate review mechanism, see paragraph 100.

Accountability and enforcement mechanisms

Criminal proceedings and immunities

103. Ministers and State Secretaries may not be prosecuted or otherwise held liable in law for anything they say during and in relation to parliamentary proceedings (article 71 of the Constitution). Ministers and state secretaries do not enjoy general criminal immunity and can in principle be investigated/prosecuted for any crime.

104. The NPN Internal Investigations Department (*Rijksrecherche*) investigates offences or potential misconduct of government. It falls under the authority of the Board of Procurators General of the Public Prosecution Service. In the previous 10 years the NPN Investigations Department has conducted no criminal investigation with regard to a minister or a state secretary.

105. Article 119 of the Constitution provides for a special procedure in respect of violations of law committed by ministers and state secretaries while in office. According to the Act of Ministerial Responsibility and Malfeasance of Members of Parliament, Ministers and State Secretaries (of 1885) only a limited range of crimes are covered by "crimes while in office", including passive bribery and abuse of office. In such situations, cabinet members can be tried only following a decision either by Parliament or by the government and such cases are to be tried by the Supreme Court. The GET was informed that this procedure has never been used.

106. The GET notes that this old law may make it cumbersome to prosecute ministers and state secretaries in respect of certain crimes committed during the exercise of their duties. Even if the list of such crimes is limited, it is noted with concern that it includes situations of passive bribery, which is at the core of the current evaluation. As such, the law could be an obstacle to prosecuting such offences. The GET understood that there have been attempts to amend the legislation providing for this special procedure, which appears to be a form of limited immunity. This exceptional procedure is the current legal framework, but has so far never been put in practice. For this reason a dedicated commission is reviewing the procedure and its legal basis. The commission will publish its advice at the end of 2019. **GRECO recommends ensuring that the procedures allowing for investigation and prosecution of abuse of office (including passive bribery) do not hamper the criminal justice process in respect of ministers/state secretaries suspected of having committed corruption related offences**.

Non-criminal enforcement mechanisms

107. As referred to in this report, there are a number of control mechanisms in place which together provide a rather solid system of control over government business. The "High Councils of State" as described in the Constitution include the main ones, i.e. the House of Representatives and the Senate

(Parliament), the Council of State, the Court of Audit and the National Ombudsman. These institutions are independent of the government and play an important role in the system of checks and balances. There are also inspectorates in the ministries.

108. As far as the PTEFs are concerned it would appear that they, to a large extent, are responsible for their own acts or omissions, as well as for the acts of advisors and civil servants working under their direction. Moreover, ministers and state secretaries are dependent on support from the Prime Minister and this relation is largely based on trust. Ultimately, PETFs are responsible to Parliament. Both Chambers of Parliament have the power to require information from ministers (and state secretaries), and the latter have an obligation to provide such information in return, which, as a main rule, goes public.

109. In addition to political accountability under parliamentary and public scrutiny, there are no non-criminal enforcement proceedings applying directly to ministers or state secretaries. Although the GET fully understands that this is how the political system is built, it has already stated that there is a need to further develop rules/guidelines in respect of PTEFs as a complement to the element of trust. To this end GRECO has recommended that a future code of conduct be accompanied by credible enforcement measures, see paragraph 43 , including a notion of transparency embedded in the system.

110. The political assistants, who are liable under the Code of Conduct of Integrity of the civil service in so far as they carry out non-political functions, who fail to comply with integrity rules, may be subject to disciplinary sanctions, ranging from a written reprimand, reduced remuneration / entitlement or fine to full or partial withholding of salary, transfer, suspension or dismissal[31]. In addition, the enforcement of a future code of conduct for PTEFs may also cover political assistants in certain situations.

[31] General Government Officials Regulations, Article 80.

V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

Organisation and accountability of selected law enforcement authorities

Overview of various law enforcement authorities

111. There are seven national law enforcement agencies in the Netherlands. The National Police of the Netherlands (NPN) and the Royal Netherlands Marechaussee (KMar) are responsible for maintaining law and order and guarding safety and security, including border control. In addition, there are four law enforcement agencies specialised in tax and financial fraud, billing fraud, safety of food, environment and housing. The law enforcement agencies operate as separate organisational structures under the responsibility of various ministries.

112. This report focuses on the NPN and the KMar, being the largest law enforcement agencies and performing the main law enforcement duties under national legislation in the Netherlands. The organisation and functions of the NPN and the KMar are regulated in the Police Act of 2012 as far as policing in civil society is concerned. The NPN is under the authority of the Ministry of Justice and Security. The KMar is a military service under the authority of the Ministry of Defence.

113. While being two distinct law enforcement agencies, there is also a framework in place for the synergies between the NPN and KMar; a cooperation agreement establishes and promotes structural and *ad hoc* cooperation between the two authorities, covering operational policing, integrity and security matters and internal investigations.

114. In principle, both law enforcement agencies perform their duties under the responsibility of the competent authority (Article 3, Police Act 2012). When enforcing criminal law, they act under the authority of the Public Prosecutor. If the NPN or the KMar act to enforce public order or to provide assistance in case of need, they are under authority of the relevant local authority (mayor of a city or region).

The National Police of the Netherlands (NPN)

115. The National Police of the Netherlands (NPN) is a civil organisation, with its own legal personality. It consists of ten regional units and a national unit (the Central Unit), the Police Services Centre (finance, ICT, communications and HR support) and the Commissioner's Staff (supporting the leadership). In addition, the NPN has its own police academy which provides police training. The NPN has 61 189 employees (64.4% men and 35.6 % women), of whom 40 523 (75% men and 25% women) are in operational positions and 18 228 (44% men and 56 % women) are administrative/technical staff. There are 1 008 managers (73% men and 27 % women). As further described below, the Netherlands has a system in place for employing staff on the basis of better gender balance.

116. The NPN is led by a Commissioner, in charge of the operational management and administration of the organisation. The Commissioner, who reports to the Minister of Justice and Security, represents the police functionally and officially. The Commissioner leads the NPN through the "Force Command", which also consists of the Deputy Commissioner and three other members of the leadership of the NPN.

117. The Police Act of 2012 launched a major reorganisation of the Dutch police, merging 25 regional forces into one national police force, consisting of 10 regional units and a Central Unit. The Central Unit deals in particular with organised crime, terrorism and serious violence. It conducts major operations, and ensures security and protection of the Royal House and other VIPs. The integrity policy is also dealt with centrally. The 10 regional police units, each one managed by a chief constable, deal

with the day to day policing, enforcing the criminal law and maintaining public order locally[32]. Law enforcement policies of the regions are established by a regional board, consisting of the mayor of the largest municipality of the region, the chief constable and the local chief prosecutor.

118. A police region is divided into several districts, each led by a district chief. The districts consist of a number of local units or teams. The number of police employees in a given region is determined by the number of inhabitants and the level of crime in the region and differs considerably from region to region (approx. from 300 to 5000).

119. After having consulted the Board of Prosecutors General and the regional mayors, the Minister of Justice and Security sets the national policy objectives for the NPN (Article 18 of the Police Act 2012), as well as the policy objectives for the regional units and the Central Unit (Article 20 of the Police Act 2012). The Minister divides the resources across the NPN units. The Minister is also responsible for adopting administrative documents, such as the budget, multiannual estimate, financial statements, management plan and annual reports.

120. The Minister can give the Commissioner both general and specific instructions for the execution of his/her tasks and powers (Article 31 of the Police Act 2012). The power to give instructions relates solely to the Commissioner's powers, and not to the operational duties of the NPN which are performed under the responsibility of the regional authorities (mayors or public prosecutors).

121. Authority over the NPN in relation to public order and assistance is exercised by the mayor of the region (Article 11 of the Police Act 2012), who is accountable to the municipal executive. If the NPN acts to enforce criminal law or to perform legal duties, it does so under the authority of the public prosecutor or (in special situations) the Minister of Justice and Security (Article 12 of the Police Act 2012). In addition, "three-way consultations" are held at regional and territorial (district) level (Public Prosecution Service, mayor and NPN management). This can also be organised at municipal level at the mayor's request (Article 13 of the Police Act 2012).

122. The GET understood that the reorganisation of the police (implementation of the Police Act 2012), from a largely decentralised police force with autonomous regions into a centralised national organization, has been seen as an important reform, in particular in terms of providing for more coordination and collaboration in police activities. However, the reform has also raised considerable concern in the Netherlands, not least within the NPN. Criticism expressed in the public domain suggest that the massive reform that turned the organisation upside down was introduced too hastily and that the police have since become too much of a centralised service and a number of further adjustments have been required, and is still underway.

123. Article 103.1 of the 2012 Police Act provides that within five years from the entry into force of the Law, the Minister of Justice and Security is to send Parliament an evaluation of the efficacy and effects of the law in practice. In 2013, the evaluation was assigned to a specially established independent Evaluation Commission. The results of the evaluation were published in November 2017. While recognising the benefits of the creation of a centralised national police, the Evaluation Commission concluded, *inter alia*, that the 2012 Act had led to a structure in which multiple roles lie in the hands of the Minister of Justice and Security; the Minister determines the national priorities, chairs the National Consultation Board and is for some tasks the competent authority of the National Unit; the Minister proposes and approves the police budget, negotiates labour agreements and appoints various supervisors (management, inspections accountants etc.).

[32] Police officers are authorised to perform their duties throughout the entire country. However, police officers who are assigned to a regional unit refrain from acting outside their assigned area unless action is reasonably necessary, on the basis of a statutory rule, or under instruction or with consent of the competent authority over the NPN.

124. In the light of its findings, the Evaluation Commission made a number of recommendations, *inter alia*, that the various roles (policy, operational and supervisory functions) should be clarified; that the Commissioner of the NPN should be given more freedom in providing policy-related, managerial and staff direction and in steering the budget process, as is customary for independent legal entities. The Evaluation Commission also requested that the ministerial designation of powers (i.e. the Minister's power to give the Commissioner general and specific instructions) should be clarified. Further, the Commission also called for a more effective and efficient supervisory regime over the police, through the establishment of external audits instead of ad hoc measures and to making better and coordinated use of the complaints procedures for the organisation as a whole.

125. The GET takes note of the criticism of the 2012 Police Act and its impact on the reform. It is pleased that the follow-up measures to the reform are underway. For the purpose of this Report, the GET was particularly concerned that the demarcation of tasks and powers between the Minister and the Commissioner was not totally clear and that much of the powers were in the hands of the Minister, despite the fact that the NPN is a separate legal entity and a legal person. Operational independence of the police in combination with full accountability for actions taken is at the core of Council of Europe standards for democratic policing[33]. It may be particularly important to make the distinction clear between policy powers at the ministerial political level on the one hand, and operational/administrative independence of the police on the other hand.

Royal Netherlands Marechaussee (KMar)

126. The Royal Netherlands Marechaussee (KMar) is a police organisation with a military status (Gendarmerie). It is one of four services of the Armed Forces of the Netherlands. The KMar also conducts traditional police functions in civil society (law enforcement, public order, security and border control etc.). KMar is also the police of the armed forces and forms part of the Ministry of Defence. The Police Act 2012 (Article 4) and the Safety (BES Islands) Act 2012 (Article 5) regulate the policing activities of the KMar.

127. For the performance of police duties, the authority over the KMar is the same as over the NPN. Authority over the KMar in relation to public order and assistance is exercised by the mayor of the region, who is accountable to the municipal executive. If the KMar acts to enforce criminal law or to perform legal duties, it does so under the authority of the public prosecutor unless any law stipulates otherwise. The KMar falls under the responsibility of the Minister of Defence, who is responsible for the management of the KMar and for determining the size, composition and required degree of readiness of the KMar. The KMar has a force commander, namely the Secretary-General of Defence, on behalf of the Minister of Defence.

128. The KMar has a total staff of 6 497 employees[34] (83% men and 17 % women), of whom 93% are operational military employees. It consists of 25 brigades and the staff has military ranks. The brigades are under the National Tactical Commando (LTC), which is the operational headquarters of the KMar. The brigades perform all operational and support duties of the KMar. The LTC manages all operational units via the Operations Centre (OPSENT). KMar has its own training centre, the KMar Education, Training and Knowledge Centre (OTC KMar) is responsible for all basic and follow-up training of the KMar. The institute falls under the direct responsibility of the Commander of the KMar (CKMar).

Access to information and data protection

129. The Government Information (Public Access) Act (WOB) regulates access to information held by public authorities, including by the NPN and the KMar. The authorities proactively publish

[33] European Code of Police Ethics, Rec2001)10, e.g. sections 15 and 16
[34] 1 January 2017

information on their activities and respond to requests for information from the public. Anyone can submit a request for information under the WOB. As a main principle, government information is public, but there are exceptions to this provided for in law. The absolute grounds for refusal include state security, unity of the Crown or special personal data. Also, in some cases, the law enforcement authorities have relative grounds for refusal, for example, regarding the information on investigations. In those cases the authorities weigh the interest that is protected by the ground for refusal in relation to specific data against the general or public interest for information. Typically, the NPN would refuse to provide the information which gives insight into confidential investigative strategies and methods. Substantive information on specific criminal investigations is only made public after the consent of the Public Prosecution Service. In addition, there are rules for communicating with the media.

130. Furthermore, the Police Data Act and the General Data Protection Regulation apply to the processing of personal data by the NPN and the KMar. These Acts place restrictions on the provision of such data.

131. The WOB provides access to public information. This applies also in respect of the law enforcement agencies which, however, subject to their particular tasks are further restricted to providing information to the public, for integrity or investigatory reasons etc. General concerns raised earlier in this report (paragraphs 60-62) about the implementation of the WOB are also relevant in respect of the law enforcement agencies.

Public trust in law enforcement authorities

132. The GET has no doubt that public trust in the police is recognised as crucially important for the police in the Netherlands. This follows from a number of documents provided and interviews held on-site. This is, for example, reflected in the Integrity Policy of the NPN (2014-2017) where it is stated that the "Police gets it legitimacy from the trust of citizens". This approach is also reflected throughout the Professional Code of the Police (NPN), which informs the public of what the police do, stand for and value. To this end, the NPN has developed various structures for building trust with the community by being close to citizens (e.g. community policing, interactive information tools via the Internet; web pages and social media).

133. Research in the Netherlands indicates that trust in the police is generally high and that the police is among the most trusted institutions in the country for several years now. Public confidence in the police was as high as 74.5% in 2017 (on a scale of 0-100), according to Statistics Netherlands[35]. Internal research from the NPN, also indicates high levels of trust in the Dutch Police 68.7 points (on a scale 0-100)[36]. Furthermore, the EU Special Eurobarometer 470 (2017) also indicates a high level of public trust in the Police, 61 % (EU average 60%). The Commission evaluating the police reform has indicated that the trust in the Police has not decreased following implementation of the 2012 Police Act.

134. There is no specific research available on the level of trust in the KMar; however, the Defence system (not limited to but including the KMar) also enjoys a high level of public trust (64.8 %).

Trade unions and professional organisations

135. More than 90% of NPN employees are members of police trade unions. There are four national unions: the Dutch Police Union (NPB, 24 827 members), General Christian Police Union (ACP, 23 810 members), the General Dutch Police Association (ANPV, 6 559 members) and the Association of

[35] cf. https://nltimes.nl/2018/05/28/dutch-confidence-police-least-church, https://www.cbs.nl/nl-nl/nieuws/2018/22/meer-vertrouwen-in-elkaar-en-instituties

[36] "National trust and reputation research", scholars working for the Erasmus University in Rotterdam came to these scores in 2015. This research was ordered by the police.

Middle-Ranking and Senior Police Officers (VMHP, 1 030 members). They consult directly with the Minister of Justice and Security on matters of general interest to the legal status of police officers and also enter into collective labour agreements for the police sector. When the NPN integrity policy has consequences for the legal status of police officers, these police unions are consulted. There are also five regional police unions, which do not enter into direct dialogue with the Minister.

136. KMar officers may to join military unions which are part of the public administration personnel bodies. These consult directly with the Minister of Defence. Before the Minister decides on matters of general interest to the legal status of military officers and civil servants, including the general rules concerning the implementation of human resources policies, these will be consulted. The military unions do not provide any public information about their members.

Anti-corruption and integrity policy

Anti-corruption and integrity policy, mission statements and ethical principles

NPN and KMar

137. The mission of the NPN is to ensure safety, enforce the law and to protect democracy. As far as integrity matters are concerned, the GET learned that NPN highlights values, such as integrity/honesty, reliability, courage and connection to the public as being at the core of the organisation. To this comes the strong emphasis on public trust as an important factor for policing in the Netherlands.

138. In 2005, a model approach to basic integrity standards for the public administration was established, providing for minimum requirements of an integrity policy, according to the following priorities: 1) Focus on integrity; 2) Codes of conduct; 3) Suitability checks during recruitment and selection; 4) Risk-prone positions; 5) Taking an oath or making a solemn affirmation; 6) Secondary activities; 7) Financial interests; 8) Measures aimed at protecting information; 9) Business gifts; 10) Public procurement and tenders; 11) Confidential integrity counsellors; 12) Procedure for reporting suspected misconduct; 13) Procedure in case of an actual or suspected breach of integrity. The NPN integrity policy is largely based on this model approach.

139. Over the years, the integrity policy of the police has developed from the so called integrity policy 1.0, that was mainly aimed at preventing and sanctioning misconduct (setting standards and establishing internal institutions to control compliance with these rules), and integrity policy 2.0 that emphasised values, awareness and training to the current integrity policy 3.0. Integrity is no longer considered as a separate element but as an integral part of "craftsmanship and professional responsibility". Therefore emphasis is put on setting clear guidelines and values, and explaining the goals behind rules. This enables employees to apply them in specific situations. The approach is broad: there are rules that are to be applied; there is policy on softer aspects, such as values and culture (discussing dilemma's to increase moral consciousness); and, integrity is part of leadership development and professional responsibility.

140. Furthermore, it is acknowledged in the Netherlands that a changing society leads to different expectations of law enforcement authorities. Society involvement is critical towards the way the NPN and KMar fulfil their job and the GET was told that experiences have shown that over-standardised procedures lead to ineffective service. It is considered essential to provide professionals with the attitude and competencies needed to reach ethical assessments in unique situations.

141. Against this background, the NPN and KMar have a strategy that is aimed at making ethical norms part of the daily job of employees and managers, based on a balance between compliance (standards, codes, procedures and enforcement) and discretionary powers for the professional. The integrity policy is updated annually and was last updated in October 2018.

142. In 2014, the NPN adopted the Professional Code of the Police (NPN), which lists the core values to be upheld by the police staff, including integrity/honesty, reliability, courage etc. It also refers to professionalism and leadership. The Code says that the Police should be free from corruption and open to discussing integrity dilemmas. The Code is regularly reviewed and is said to be used as an instrument to positively influence employees' behaviour. It is issued to all new employees; it contains, inter alia, the oath of police officers. Further, it contains information on the tasks of the police, their mission to serve, values to uphold principles such as the rule of law, core values of integrity and trust, professionalism (expertise), leadership, how to deal with dilemmas (of the public) etc. The GET appreciates this document which, in a clear way, summarises the values of the NPN. It is an important document, in particular for public awareness reasons.

143. All police officers and (trainees) have to take an oath that s/he has not given or pledged anything to obtain his/her position and that s/he shall not accept any pledges of gifts in order to do something or refrain from doing something during employment. They also have to swear allegiance to the Constitution and to carry out dutifully and accurately their assignments. Moreover, the Commissioner's portfolio includes integrity management and managers have a role in streamlining integrity, ensuring that risks and dilemmas can be freely discussed in the organisation and integrity measures are undertaken with regard to new employees and during screening procedures.

144. The NPN Security, Integrity and Complaints Department (VIK) develops the framework of the integrity policy. The policy departments develop policy on specific topics. The units, the Police Services Centre and the departments are responsible for implementing this in their own organisational units. The chief constables of the units and directors focus on integrity within their respective parts of the organisation in order to be as close as possible to reality. The VIK department monitors the implementation. The relevant policy departments publish the information that comes out of this procedure.

145. The GET was informed that clear cut bribery cases are not very common in the NPN or the KMar. Recent integrity cases in the police top management[37] concern the misuse of official authority and public funds. There have been other cases of "unlawful appropriation'', such as internal theft or expenses fraud. There are also cases concerning violation of procurement rules[38]. However, the bulk of cases concern leaking (incl. selling) of confidential information and maintaining relationship with criminal networks[39]. The WODC Report on Organised Crime and Integrity Violations within Law Enforcement Organisations refers to a total of 80 cases within the four law enforcement authorities, including the NPN and KMar, as well as FIOD and customs, that could be linked to organised crime within a period of five years (40 cases within the police). In 2017, 121 persons have been dismissed as a result of integrity breaches.

146. The Mission Statement of the KMar concerns in particular the need to effectively enforce the law, to render assistance to those who need it, as well as to contribute to the effectiveness of the armed forces.

147. The KMar's integrity framework is stricter and more developed in certain aspects as compared to other divisions under the authority of the Ministry of Defence. This is due to the policing and investigative powers of the body. Overall, the integrity policy of the KMar is comparable with that of the NPN. Besides laying down rules of conduct, the KMar integrity policy focuses on structurally ensuring and promoting integrity and creating awareness of integrity risks. The education scheme

[37] Cases the former Chair of the Central Work Council and of the former Amsterdam Police Chief

[38] In 2012-2015 two police officers were fired due to their involvement in a tendering procedure for police vehicles.

[39] In 2012-2015 about 15 police officers were fired after having provided information to third parties, including family members, criminals and a detective agency.

includes initial and on-going specialised courses. The aim is to create an appropriate integrity culture with sound and moral attitudes. Open talks on problems and dilemmas are encouraged.

148. The Defence Code of Conduct, applying to the KMar, refers to five basic standards for conduct which can be summarised as relating to professionalism, cooperation, awareness of responsibility, acting ethically with respect, and security. The GET notes that the Defence Code of Conduct is general in character and not specific for policing and it is not directly enforceable. It was adopted in 2007 and is currently being revised and updated[40].

149. The Integrity Cluster of the KMar is responsible for the implementation of the integrity policy. The Cluster works together with the Central Defence Integrity Organisation (COID) and with NPN integrity bodies such as the Security, Integrity and Complaints Department (VIK). Managers, advisers, detectives and confidential counsellors implement the integrity policy within their own divisions. Commanders of high risk KMar units are advised periodically by the Integrity Cluster. Internal investigations into (possible) integrity breaches, criminal investigations and confidential investigations within the KMar are carried out by its Internal Investigations Division (SIO). The integrity policy of the KMar is based on a balance between protection, stimulation and enforcement. This enables the individual professional to come to appropriate moral behaviour under complex conditions. This process is also referred to as 'Moral Fitness'. Incidents are considered opportunities to learn and so the KMar integrity policy allows for learning from mistakes.

Code of Conduct

150. In the NPN, there are a number of instructions, memoranda etc. regulating the behaviour of NPN officers, including, for example, secondary activities, financial interests, gifts and the use of confidential information etc. However, these various documents are fragmented and would clearly benefit from being consolidated in one document, providing the necessary level of detail and being complemented by explanations and examples.

151. In 2014, the NPN adopted the Professional Code for the Police. As already noted above, this Code contains information on police tasks, their mission to serve, values to uphold principles such as the rule of law, core values of integrity and trust, professionalism (expertise), leadership, etc. This general instrument is valuable as it provides ethical principles for policing in a democratic society, the tasks of the police etc.; it fits well into the integrity policy and is also of great value for public awareness reasons. However, it is clearly not to be regarded as a code of conduct in the meaning of providing detailed guidance for police action in different situations, including where conflicts of interest may arise and, furthermore, it is not enforceable.

152. That said, the Professional Code is complemented with "Theme pages", which are regularly updated. These Theme pages are attached to the Professional Code and cover a variety of issues (one issue per theme) such as gifts, invitations, behaviour in free time, use of resources, safe working climate, handling of information, social media, representation, ancillary activities, truthful reporting, use of force etc. Each theme page lists the relevant provisions for a particular theme, where that exists, and includes a number of questions, as "food for thought". Reference is made to more detailed regulations and documents, that are easily accessible through hyperlinks. The GET welcomes the Theme Pages as very useful tools, in particular for training and reflection purposes; however, they cannot be considered as a consolidated code of conduct in their present form. The GET believes the NPN has come a long way in establishing ethical standards; however, a logical next step would be to add further guidance and examples and lessons learned to the Theme pages.

153. The Defence Code of Conduct (KMar) is a rather general document, stating a number of principles (professionalism, team work, responsibility, ethical treatment, respect and safe working

[40] It is expected that the revised code of conduct should be ready by the end of 2018.

environment). It is accompanied by some further guidance on confidential information, secondary activities, invitations and gifts, media relations, etc.). However, it does not provide much guidance in particular situations and it does not have a special police focus (Defence Code).

154. To sum up, the GET acknowledges that the anticorruption and integrity policy in the NPN and KMar is an integral part of the professionalism of the employees. The integrity policy is updated regularly, which is in line with GRECO standards; i.e. that codes of conduct are to be "living instruments" and they are public. The Theme pages, which are attached to the Professional Code of the NPN, are designed in a flexible way, which is to be welcomed. However, they need to be developed to include further guidance, examples as well as lessons learned. Likewise, the GET would see much value in establishing a code of conduct for the KMar regarding their particular law enforcement functions. To the extent possible, the authorities could opt for a joint instrument covering both the NPN and KMar in relation to their common task, as appropriate. **GRECO recommends (i) that the Theme pages of the Professional Code of the National Police (NPN) be further developed with guidance, examples and lessons learned, offering adequate guidance on conflicts of interest and other integrity related situations (e.g. gifts, third party contacts, accessory activities, handling of confidential information) and that a similar instrument be established for the Royal Marechaussee (KMar); and (ii) to ensure supervision and enforcement of these instruments.**

Risk management measures for corruption prone areas

155. In the NPN, risk analyses are conducted from three perspectives,: 1) specific risk prone areas (e.g. information security, physical security, management, personal integrity resilience, professionalism and trustworthiness), which call for promoting professional and ethical conduct, 2) certain positions in charge of high risk activities which require vetting and screening and 3) certain activities (requiring adapted risk analyses). Various entities and divisions within the force are responsible for conducting these analyses, including VIK department, AIVD, Working Undercover Department, HRM and Information Directorates.

156. There are many internal NPN regulations that aim at reducing risks of corruption in day-to-day work. Risks differ for each position; these are therefore incorporated in protocols for specific situations, for example, the four-eyes principle, maximum terms for certain positions, the use of two detectives per informant for criminal intelligence, authorisation management, annual mental health checks and interaction with suppliers to prevent conflicts of interest etc.

157. The KMar uses Integrity Risk Assessment (RAI) as part of its integrity policy. The Central Defence Integrity Organisation (COID) is in charge of risk assessments. The assessment, recommendations and control measures are included in a report presented to and discussed with the commander of the unit concerned. The Integrity Cluster regularly consults with units about the risks identified and the control measures implemented. It carries out awareness raising and educational measures for managers and employees. The assessments of the Defence Integrity Policy conducted in recent years by external organisations and investigative committees are publicly available online[41]. A risk inventory of the KMar was carried out in 2014. The risk prone areas include misuse of information and other systems; abuse of power; embezzlement/theft.

Multiple eyes principle and other internal measures

158. In the NPN, the four-eyes principle not only applies to granting authorisations but also in respect of criminal intelligence, searching suspects, collecting seized items (money and drugs),

[41] Limits to Unity (*Grenzen aan de Eenheid*') (organization culture), Netherlands Institute for Social Research/SCP (2016); "Moral Fitness" (tendering procedure, integrity), Van der Steenhoven Investigative Committee (2016); Mali Mortar Incident (*Mortierongeval Mali*), Security Research Council, Defence sector (2017); Organised Crime and the Integrity of Law Enforcement Organisations *(Georganiseerde Criminaliteit en Integriteit van Rechtshandhavingsorganisatie*s), WODC (2017).

conducting house searches, interviewing those suspected of committing serious offences, interaction with suppliers of goods.

159. Access to NPN facilities and information is determined in an authorisation model, tailored to each position. Some information is only available to designated users. There are specific rules for storage, transport, connection devises, encryption, mobile data carriers, printing and destruction of confidential documents etc.

160. The Defence Security Plan (DBB) includes KMar's security measures divided into general security and organisation, personal security, physical security, information security and industrial security. All positions in the KMar are designated as "confidential positions", which require that all employees are vetted by means of screening under the Security Screening Act.

Handling undercover operations and contacts with informants and witnesses

161. The Code of Criminal Procedure lists three undercover powers: systematic gathering of information (SI), pseudo purchases and services (PK/PDV) and infiltration (IF). All undercover operations in the Netherlands are conducted, coordinated and supervised by the Police Working Undercover Unit (WOD) (Restricted Operations Department). The procedural guidelines are explained in further detail in the Investigative Powers Guideline. The use of special investigative powers requires an order from the (Chief) Public Prosecutor. The Central Review Committee (CTS) is the Public Prosecution Service's internal advisory body responsible for reviewing and advising on the proposed use of more serious investigative powers and methods. The specific guidelines for undercover operations cannot be made public due to the sensitive nature of the activities and the associated risks. The specific training on the use of these special investigative powers focuses on the associated risks, the preconditions for using these powers and the protocols for dealing with third parties.

Advice, training and awareness

162. The Police Academy is in the lead when it comes to quality of the education and training of police officers. The Academy is responsible for the basic training of all police students. Integrity is a permanent feature of the basic training programme for new police officers and the theme is interwoven throughout the entire training.

163. The Central unit of the NPN is responsible for the maintenance of the competencies (while on the job). The follow up and specialised in-service training courses on integrity are prepared and delivered by the VIK department upon request by and according to the needs of the various heads of units. To this end, specific training is delivered to VIK department employees organised by the Police Academy. In-service training under the responsibility of the VIK department is based on real life situations and includes case studies and role plays on topics such as ethics, conflicts of interest, expected behaviour, moral dilemmas, disciplinary framework etc. The courses are delivered by experienced internal investigators. The GET understood that the major part of this in-service training is carried out by the 10 units under the responsibility of the managers in the units in a format that is as close as possible to the reality. Next to this, a special "toolbox prevention" has been developed, including the Professional Code and the attached Theme pages, dilemma movies, risk analysis tools etc. The toolbox is used to stimulate discussions within teams about experienced dilemma's and ways to deals with them. A theatre performance on ethical dilemmas has also been successfully developed, according to the authorities.

164. As far as counselling within the NPN is concerned, the GET was informed that employees who would like to discuss an integrity dilemma can contact their supervisor, VIK department, an HR advisor or a confidential counsellor on integrity (VPI). There are eight VPI available. Some VPI's are part of the Central Abuse Reporting Centre of the NPN. They can be contacted in case an employee would like to

report an abuse. The VPI will advise the employee confidentially on the steps the employee can take. The confidentiality entails that the VPI will not disclose the identity of the employee without written consent. This confidentiality can only be breached in case an employee reports a criminal offence for which there is a reporting obligation, or when, for example, human lives are at risk. If the employee wishes to formally report a suspected abuse, the VPI will guide the employee during the procedure and take care of the protection against negative consequences due to the formal reporting. Investigation into a report is done by an internal ad hoc committee, under the direct responsibility of the Commissioner.

165. Laws and regulations that apply to the NPN can be accessed by anyone via the central government's website[42]. The Professional Code of the Police and integrity policies can be downloaded on the police website[43]. Internal regulations and guidance are made available via the police's intranet, with the exception of rules that cannot be shared due to their sensitive nature. The police's activities relating to the integrity policy, the number of completed investigations and the scale and nature of neglect of duty are described in the annual NPN reports.

166. In the KMar there is a basic training curriculum including courses on integrity. In addition, specialised follow-up training courses on ethics have been developed[44] at national level. They are an integral part of the integrity policy of the KMar. Moreover, bodies such as the Central Defence Integrity Organisation (COID) provide a number of optional training courses on the theme of integrity and moral issues. The OTC KMar has a permanent pool of experts specialised in integrity training. In addition, a special "toolbox" has been developed, including a management model and a dilemma card game.

167. At the KMar, the Integrity Cluster, the Participation Committee (body elected by employees to represent their interests), the Central Defence Reporting Centre and the Spiritual Care Service(s) (focusing on mental well-being) can also provide advice on integrity dilemmas. In addition, there is within the KMar a network of confidential counsellors. These are colleagues that can advise employees and assist in case of questions, notifications and the filing of a complaint relating to unwanted behaviour. The counsellor discusses together with the employee which possible solutions there are to put an end to the undesirable situation. The counsellors are uniformly trained and have the privilege of non-disclosure within the organisation. Employees of the KMar can, regardless of location or function call one of the confidential counsellors. These counsellors are controlled by the Coordinator (CVP).

168. Laws and regulations that apply to the KMar can be accessed by anyone via the central government's website[45]. The Defence Code of Conduct (KMar) is published on the Defence website[46]. The integrity policy and the internal guidelines and procedures are described on the Defence Intranet and a brochure on the procedure for internal investigations has also been uploaded. The Integrity Cluster prepares the Annual KMar Integrity Report which is made public. The report explains the integrity policy and includes figures on the number of integrity breaches.

169. The GET notes that the NPN and the KMar are both fully aware of the importance of furthering a clear policy on police officers' integrity and it would appear that integrity related matters are already dealt with before recruitment in the form of information to the applicants ("Consciously blue"), as well as in the initial and in-service training. There are also networks in place both in NPN and KMar, providing for counselling, including on a confidential basis, in respect of ethical and integrity dilemmas. All this is commendable.

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[42] See www.wetten.nl

[43] See www.politie.nl

[44] Advanced Military Ethics (VME), Training Moral Judgement (TMO), Moral Consideration (MB), Moral Learning Guidance consultation (MLO), Socratic Guidance Interview, Train the trainer Moral Judgement, Training Moral Judgement (2-day), Workshop Risk Analysis.

[45] See www.wetten.nl

[46] See www.defensie.nl

170. The GET also noted that apart from the initial training, the curriculum of which contains obligatory integrity modules integrated in the training, it appears that the in-service training process for police officers (NPN as well as KMar) is less clearly structured. There is no formal plan or programme at the national level and the training sessions are largely demand driven and of an *ad hoc* nature. The management of the various units are in the first place responsible for implementing the integrity measures in their units and are also responsible for carrying out the training of the staff in their respective units. This decentralised approach, in particular, the focus on practical situations and interaction based on real situations is to be welcomed. At the same time the GET understood that the managerial oversight in respect of supervision and training and learning from experience needed to be improved.[47] Moreover, it heard from several interlocutors that this type of training requires more trainers in the units to be effective. The GET takes the view that the current in-service training (including at managerial level) would benefit from more structure and coordination at national level as a necessary complement to the decentralised training in the units. Such an additional approach would also provide more uniform training in the various units, based on nationwide experience.

171. In view of the above, **GRECO recommends that the in-service training on ethics and integrity for the National Police (NPN) and the Royal Marechaussee (KMar) staff, including managers, be enhanced by developing at national level further regular training programmes as a support and complement to the existing decentralised training in the units.**

Recruitment and career

Recruitment and promotion

172. The selection and appointment procedures follow established procedures in both the NPN and KMar but under different regulations; the NPN recruitment is part of an NPN specific procedure and recruitment to the KMar is part of a Defence (military) procedure. The legal frameworks include Police Appointment Requirements Regulation 2012 (Articles 4-7), Police Remuneration Decree (Article 2), General Military Personnel Regulations (AMAR), AMAR Implementing Regulation, Job Allocation and Promotion Guideline, Defence Civilian Employees Regulations (BARD) and Policy Rule on appointments, job assignments and the promotion of Defence (BAFBD). The guidelines for implementing job allocation and promotion processes are described in the Defence Job Allocation and Promotion Guideline (RF&B). These legal documents are accessible online.

173. Appointments to the NPN are made in accordance with established recruitment procedures, depending on the type of employment, but as a rule, guided by principles of transparency, equal opportunities and non-discrimination to find the most suitable candidates. Around two thirds of NPN staff are employed in operational positions (investigative police work) and one third in administrative positions. Staff is also divided into operational basic positions, management positions and support staff. The GET is pleased that as many as 94,6% of all staff are on permanent positions. This provides an important safeguard against undue pressure in relation to staff. Those who are not permanent staff are on probation or have a temporary fixed term contract.

174. At the selection stage, new law enforcement candidates have to undergo a realistic job preview ("Consciously blue") in order to provide the candidates with information about what the job entails, including both attractive and unpleasant parts.

[47] Organized Crime and Integrity Violations within Law Enforcement Organizations, the Research and Documentation Centre (WODC), Ministry of Justice and Security, 2017, see https://www.wodc.nl/onderzoeksdatabase/2748-georganiseerde-criminaliteit-versus-integriteit-handhavers.aspx

175. The selection procedure and requirements for basic grade operational police officers is laid down in law. Vacancies for basic grade operational police officers in the various regional units are made public on the website https://www.kombijdepolitie.nl Applicants apply to a specific regional unit.

176. Applicants must comply with fixed criteria, such as Dutch citizenship and age (minimum requirement of 18 years old) are checked automatically. If the applicant passes this stage, s/he will have an interview with the recruiter of the regional unit. In a second stage they have to undergo a realistic job preview. In the succeeding stage, applicants have to complete an adaptive cognitive ability test, a Dutch language proficiency test and a physical ability test. The next stage is a psychological assessment followed by the final selection stage in which a medical and security screening is performed. Security screening includes a criminal record check of the applicant, checking behaviour of the applicant on social media and checking debt & credit records of the applicant. Security screening is performed by the VIK department within the Central Unit. When applicants complete these stages successfully, they have an interview with their future manager, they become police recruits and start their training at the police academy on probation for a period of one year. From the moment they start their training, they also start working for a regional unit. When this probation period is completed satisfactorily, the police recruit gets a temporary appointment (a non-permanent time limited appointment) for the remaining time of their police training (2 years). After completing the police training successfully, s/he receives a permanent appointment.

177. For non-operational positions, a vacancy is opened and published on the website https://www.kombijdepolitie.nl. The relevant selection requirements are included in the vacancy text. Job profiles and the eligibility criteria are transparent and apply throughout the Netherlands. The recruitment and selection process for non-operational positions contains at least three stages. The first stage is an applicant shortlisting based on objective criteria (CV etc.). The shortlisted candidates are interviewed by a selection committee and matched with the eligibility criteria (competencies). Sometimes, tests are added for particular competencies. Finally, a security screening is performed by the VIK department within the Central Unit.

178. A separate recruitment procedure applies in respect of managers. Vacancies are filled on the basis of vacancy profiles. Selection committees consisting of an independent chairperson, two managers and three employees chosen by staff, carry out the selection. The nominations are binding and the chief constable appoints the managers.

179. As a rule, vacancies are first advertised internally so that each NPN employee has the opportunity to apply. If this does not lead to a post being filled, the vacancy is advertised externally. The vacancies are announced on-line and applications are to be submitted on-line. The NPN recruits 1000/1 500basic grade operational police officers, out of 20,000-25,000 applicants. The applicants of the underrepresented sex and the ones with an underrepresented ethnic background as well as young applicants are usually favoured, according to the authorities.

180. Both psychological and a physical aptitude tests may form part of the selection procedures. The General Intelligence and Security Service (AIVD) conducts the security screening for confidential and security positions. In addition, if there is any risk to State security, the applicants undergo security screening. The confidential positions of level A (e.g. investigators or officials in charge of appointments and promotions) are screened every five years. For the confidential positions of level B the screening procedure is repeated every 5-10 years. For employees in positions that are not considered confidential or security position there is a possibility to do a screening after five years, when the employee changes his/her position or when the employee changes his/her activities, but it is not done on a regular basis. The current law requires that staff pass the screening only before entering the police. Legal amendments are in preparation to change this.

181. As to the appointments of the top management, the Commissioner and the Force Command members (leadership of the NPN) and the regional chiefs of police (chief constables) are appointed,

suspended and dismissed by Royal Decree following a proposal of the Minister of Justice and Security. The Commissioner is appointed for a period of six years and may be reappointed for a period of three years. The regional mayors and the Board of Public Prosecutors are offered an opportunity to issue recommendations on these appointments. The Deputy Commissioner is selected from among the members of the Force Command and is appointed by the Minister of Justice and Security.

182. The KMar recruits both military and civilian personnel. The military staff is appointed for initial military training and service obligation after which they advance as non-commissioned officers (lower grades) and officers (at different ranks). While the military staff has a career system, civilian staff hold particular positions. Both non-commissioned and commissioned military staff carry out law enforcement functions.

183. The requirements for assignments to positions for military and civil personnel are standardised in legislation both in respect of military staff and civilians. The law stipulates that recruitment and promotion are based on merit and competition. The integrity issue is central during the psychological interviews. The Recruitment and Selection Services Centre (DCWS) provides the defence divisions with the required number of qualified military personnel and is responsible for the entire recruitment process, including psychological tests of military personnel. The HR Advice & Operations section deals with the recruitment of the civilian employees.

184. The Military Intelligence and Security Service (MIVD) conducts the security screening of all personnel as all positions at KMar are classified as "confidential positions", meaning that each KMar employee undergoes security screening (level B or level C). A higher screening (level A) applies to most sensitive confidential positions (HR employees are regarded as special confidential positions). The highest level security clearance is valid for a maximum of five years.

185. The GET is pleased that recruitment and promotions to the NPN as well as the KMar is carried out under well established procedures, manifested in legislation and regulations. The vacancies are publicly announced with detailed job descriptions and the selection criteria are based on competition and merit.

186. The GET noticed that screening of employees within the KMar is obligatory in respect of all posts and also carried out at regular intervals after recruitment. That said, the screening mechanism within the NPN appears to be considerably weaker. Apparently, ordinary police officers are screened only before recruitment and not at regular intervals, except in a few classified positions and in relation to new assignments when required. Moreover, the police officers' personal environment cannot be checked and random checks do not appear to be much used. The GET is of the opinion that screening and vetting procedures are important measures in order to check the integrity of individual police officers. Obviously, certain positions require such measures more than others. However, the fact that police officers may not be vetted or screened more than upon entry into the service is striking as a weakness of the system. The authorities are aware of this problem and are working on draft legislation that serves this purpose. The GET sees a need for dedicated measures to remedy this lacuna. In view of the foregoing, **GRECO recommends that adequate measures and appropriate resources be allocated in order to ensure that within the National Police (NPN) vetting and screening of staff takes place at regular intervals during their entire service.**

Performance evaluation

187. Performance evaluations are important mechanisms in the NPN and the KMar to assess the conduct and integrity of law enforcement officials throughout their career. These are carried out periodically in the form of interviews/discussions between mangers and staff. The topic of integrity is a permanent part of the performance exercises.

188. At the NPN, the discussions focus on personal results. The interview cycle consists of four interviews: the personal results interview, progress interview, performance review and career development. The personal results interview deals with the employee's contribution to the objectives to be achieved and what the employee needs for that purpose. The progress interviews looks at developments in relation to the arrangements that have been made. The performance review covers the employee's performance during the past and coming period. The career development interview aims at developing personal qualities and talents, and at developing the employee's career. These exercises are done at least once a year, but can be made more often if need be. In addition, an appraisal interview between the employee and the manager may be held at the employee's request or if the manager believes there is reason for doing so.

189. Similarly, in the KMar, managers assess the performance of staff. This starts at the introductory job talk, during which the employee is informed about what the position entails, followed by the annual performance reviews, which in addition to performance also includes working conditions, personal and professional relationships and developments, and current and future positions. During the appraisal interview, the supervisor informs the employee of their evaluation. This is a one-sided opinion of an employee's performance based on specific acts and conduct and competences. Finally, an exit interview may be planned when the employee leaves the position during which the entire work period is discussed.

Rotation

190. At the NPN some riskier organisational units have a prescribed service period, with a minimum and maximum length of service. For other units, rotation is encouraged but not obligatory. The length of service in the Special Interventions Division is seven years (with a possibility of three years extension) and in the Criminal Intelligence Team four years (with a possibility of two extensions). Police officers who are deployed to assist the Criminal Investigations Cooperation Team are assigned for a maximum of five years to work in the partnership that is responsible for combating serious and organised cross-border crime in the Netherlands Antilles. A minimum period of four years and maximum six/eight/ten years applies to undercover work (Undercover Operations). A prescribed service period of at least five years applies to employees of the Central Security and Protection Division. For liaison officers a maximum four-year period applies, with a possible one-year extension.

191. A job rotation system applies to Defence, including KMar personnel. Military personnel are assigned to their position for a three-year period. Specific job categories form an exception to this rule. In these cases, the term is six years with a possibility of a one-year extension. An example of this would be an expert in a special subject area. These positions are listed in the AMAR Implementing Regulation. In principle, KMar employees cannot be considered for another position during the first two years in their position. The job assignment process commences in their third year in that position. Some positions within the KMar have a maximum length of service. This includes positions on the Criminal Intelligence Team (TCI), where the maximum term is legally fixed at four years, with a possibility of extending that term twice for a further two years.

Termination of service and dismissal from office

192. At the NPN, there are established procedures for dismissal, similarly to appointment and promotion. The rules on discharge are set out in the General Legal Status (Police) Decree (BARP). There are various types of discharge, including discharge at own request, discharge due to unsuitability or incompetence, or punitive dismissal. In certain cases, e.g. in the event of illness or pregnancy, employees are protected against dismissal. All decisions affecting employees' legal status are open to objections and appeals. In cases where conditional or unconditional punitive dismissal applies, the officer mandated to impose disciplinary punishments is permitted to deviate from the outcome of the punishment consultation only with the Commissioner's prior consent.

193. The Military disciplinary law gives the authorities the power to impose sanctions on military personnel in order to advance the performance of their duties. The rules of conduct under disciplinary law for military personnel are described in the Military Disciplinary Law Act (WMT). If military personnel contravene these rules, a punishment can be imposed upon them, which takes the form of a reprimand, fine, additional duties or up to suspension for a fixed period with full or partial withholding of salary and, ultimately, dismissal. An objection can be filed against a decision imposing such a punishment on the basis of the General Administrative Law Act by both NPN and KMar employees, with a right to appeal to ordinary courts and a further right of appeal to the Central Appeals Tribunal.

Salaries and benefits

194. At the NPN, the Police Remuneration Decree provides a statutory framework for salaries and benefits. The salaries are fixed and follow a classification on a salary scale. A new police recruit receives a gross monthly compensation of around €865 (annually 10.380) during the first year of his/her training. After passing the first year they receive a monthly salary of €1263 during the second year and € 1432 during the third year. New constables who already had a job before starting the police academy receive a maximum monthly gross salary of € 2455 during their training (annually €29.460) (the average gross annual salary in the Netherlands for 2017 is €37,000.00) after finishing their training, constables receive a minimum monthly salary of €2052 (scale 6, annually 24.628). Most operational specialists (around 70%) earn in accordance with scales 6/7, i.e. approximately €40,000-50,000, including position related extra allowances. A police officer who temporarily performs duties on secondment for which a higher salary scale applies, may be paid in accordance with the higher salary scale.

195. Employees who perform their duties normally receive fixed increments each year (within their salary scale). In addition, the Police Remuneration Decree regulates the allowances paid to NPN employees in addition to their salary, such as for certain operations, overtime, infiltration, riot police, night duty or location-based duty etc. The GET also learned that a special allowance for excellent performance of duties exists, which can be decided by the manager. The amount depends on the circumstances. The team manager may be asked for explanations from his/her supervisor about the amounts decided.

196. A central budget for allowances is divided equally between all units. Every unit is responsible for organising a form of control on the granting of allowances. Some units coordinate centrally which allowances are given, some units decide for each team separately. Within those units, the granting of allowances can for example be discussed within the management teams. No allowance can be granted after the budget is finished. The budget can also be used for team activities. Allowances can be granted only once a year. The average allowance per person varies per unit, ranging from €220-820.

197. At the KMar, the monthly gross basic salary of a law enforcement officer varies from €1412 (sergeant) to a maximum of €3387 (captain). KMar officers may be entitled to one or more allowances because of their specific working conditions. The main allowances include in particular the irregular

service allowance (VEB). Occasionally the manager can nominate an employee who performs well with a merit allowance (granted for one year and capped at 10% of the salary) or with a bonus (ranging from €100-€1000, the average amount per allowance per unit differs: €350/€500). These rewards can in principle not be more than 20% of the gross annual salary per year. These allowances are granted and audited for legitimacy by the brigade management team and HR management at national level. Every year a financial budget is allocated to each brigade. This budget is also used for financial remunerations.

198. The GET is pleased that ordinary salaries and allowances for special functions etc. are statutorily fixed in both services. It notes that this is not the case in respect of bonuses for excellent performance, helping colleagues, attitude and behaviour. The GET fully understands that bonuses in various forms may be useful tools to encourage good behaviour in the service. That said, the GET takes the view that such bonuses to individual employees may be decided on a too loose discretionary basis, if they are not established on objective criteria. The GET did not come across any misgivings in practice in this respect, but encourages the police authorities to keeping this system under review.

Conflicts of interest

199. The GET notes that there is no general definition of conflicts of interest. That said, particular situations of conflicts of interest are regulated to various degrees concerning, for example, secondary activities and gifts etc. Furthermore, certain officials on designated posts are to declare their financial interests as a preventive measure, but personal/commercial relations with associated persons and family members etc. are not always recognised in this respect.

200. The GET takes the view that the rather narrow approach to what constitutes a conflict of interest, except for certain specifically prescribed situations, limits the possibilities to deal with unforeseen situations. This, in relation to the strong notion of trust within the system which where the officials, in the first place, are to assess potential conflicts of interest by themselves (e.g. whether an outside activity constitutes a conflict or not) opens up the use of "grey-zones". The GET believes that a more general definition of what may constitute conflicts of interest could be useful in this respect. Moreover, such a definition should be combined with requirements to declare/report potential situations of conflicts of interest within the police hierarchy. In such a way breaches of duty, originating from different forms of unforeseen conflicts of interest, whether of a personal or a financial nature, could be better prevented. A general definition of conflicts of interest and an ad hoc reporting regime should preferably form part of a future code of conduct, as recommended in paragraph 154.

Prohibition or restriction of certain activities

Incompatibilities and outside activities

201. The NPN and KMar employees must report any secondary activity that could affect police interests and must have permission to exercise such secondary activities. However, there is no reporting obligation if there is no conflict of interest; in the first place, the employees themselves are to assess whether there is any conflict of interest with intended secondary activities. If the employees are in doubt, they must consult their direct managers.

202. At the NPN, the general rules on secondary activities are included in Article 55a of the General Legal Status (Police) Decree (BARP) and Article 14a of the Legal Status (Volunteer Police) Decree (BRVP). The Secondary Activities Memorandum of 2014 lays down guidelines regarding the prohibition of secondary activities (incl. criteria, statutory limitations and indicative examples of situations). The memorandum provides an assessment framework for the permissibility of such activities, e.g. deliberation criteria, statutory limitations and indicative examples. There is no list of activities that are excluded. Instead the Memorandum provides generic grounds (and examples) upon which secondary activities may be refused: i) unacceptable conflicts of interest with the service (e.g. close connections

with the police function), ii) incompatible interests with the service (e.g. financial or policy related connection with the police) or iii) harm to the reputation of the service (e.g. secondary activities that disrespect regulations etc).

203. At the KMar, the general rules on secondary activities are included in Article 126b of the General Military Personnel Regulations (military personnel) and in Article 70b of the Defence Civilian Employees Regulations (civilian employees). The Defence Secondary Activities Regulations and its Explanatory note contain detailed guidelines on the matter. Employees that intend to perform secondary activities that may affect the performance of the assigned duties are to report such activities to the head of the service, using a readymade registration form. KMar staff and their managers may request advice from the Senior Integrity Adviser (SAI). Permission/refusal may be granted depending on the following grounds: whether the secondary activities may be i) detrimental to the performance of the assigned duties; ii) incompatible with the reputation of the profession or iii) the proper performance of the assigned duties would otherwise not be reasonably ensured.

Gifts

204. At the NPN, the Gifts Policy and Procedure Memorandum (2014) contains guidelines on acceptance of gifts. The general rule is that a gift may only be permissible if the value is less than €50 and the supervisor has granted permission to accept the gift. The staff must never accept gifts exceeding €50 or offered in the form of money or a discount, regardless of the value. Gifts cannot be solicited by the official.

205. Employees must report offers of gifts, in what manner it was offered, the assumed value and the name of the person who offered the gift. There is no central record of gift declarations. There is no duty to report minor gifts. A theme page has been added on the Intranet as an appendix to the Police Professional Code, providing for guidance on acceptance of gifts.

206. The general principle in KMar is that its employees, military and civil, must not ask for or accept payments, rewards, gifts or promises, unless allowed by the Ministry[48]. Instruction SG A/984 on the Implementation of the Defence Integrity Policy details guidelines on gifts and establishes a set of questions an officer must ask for himself before any gift may be accepted (the reason for the gift, its proportionality, etc.). In any event, gifts of a value exceeding €50 or in the form of voucher card, cash, services and trips or invitations are not allowed, but gifts up to a maximum of €50 may be accepted. Offers and accepted offers must be reported to the manager or the Integrity Cluster a special form for such reports is to be used. In case of doubt, the official or the manager may consult with the integrity adviser.

207. The GET is pleased that the rules on what is acceptable/not acceptable in terms of gifts are relatively well developed, although there appears to be a number of exceptions to the main principle not to accept gifts. Law enforcement officials may be allowed to accept gifts (except in cash, vouchers etc., which are always banned) the value of which is less than €50 on condition that the managers give their consent. The GET notes with some concern that there appears to be no annual threshold for several gifts from the same person, but there are some guidelines for the KMar to this end. Further, it would appear that neither the NPN nor the KMar keep registers of gifts or offers of gifts reported. The GET believes that more formalised procedures (including the use of special forms for reporting in the NPN) for situations where gifts (with the exception of obviously trivial gifts) have been offered/accepted should be introduced and that the authorities should provide for registers of gifts. **GRECO recommends that the procedures in situations where gifts and advantages of a certain level have been offered/accepted be reinforced, in particular by introducing a standard format for the reporting/declaration of gifts/advantages and such offers, that these be registered and subject to supervision.**

[48] Article 126d, General Military Personnel Regulations and Article 70f, Defence Civilian Employees Regulations

Financial interests

208. Article 55b of the General Legal Status (Police) Decree (BARP) deals with the financial interests of NPN police officers; in general, officers are not allowed to have financial interests which undermine the proper performance of their duties. There is no general obligation to declare financial interests in the NPN; however, BARP provides that certain police functions which involve particular risks of financial conflicts of interest are designated and those office holders have to declare their financial interests. At this moment there are no designated positions. Interests that would have be declared are financial interests and securities. Declarations would not be made public.

209. Defence officials, KMar, who hold or acquire financial interests as a result of which the proper functioning of the organisation would not be reasonably ensured must declare these interests to the Minister of Defence (Article 12quater, Military Personnel Act and Article 70c BARD). The Ministerial Regulation on Financial Interests in Defence (RFB) provides for compulsory declaration of financial interests in respect of designated top officials, covering also their family members. These declarations follow a standard format.

Misuse of public resources

210. At both the NPN and the KMar, there are internal regulations about the use of public resources. In principle, employees are not permitted to use official facilities, resources and equipment for private purposes or for secondary activities (e.g. cars, mobile devices etc.). There are also rules on travelling (use of means etc.).

211. Recently discovered cases indicate that top managers[49] of the NPN have been involved in misuse of public resources. This has been highlighted by a number of reports in which the need for strengthening internal control mechanisms of the NPN is considered necessary. The GET was pleased to note that NPN has started to establish a new internal audit system aimed at improving controls in spending public money and using public resources. Moreover, there are specific rules applying to employees involved in public procurement. The NPN Procurement Policy 2017 which describes how public resources should be handled, was adopted following scandals within the police in this area.

Third party contacts, confidential information

212. It may be deduced from the general principles of the Professional Code of the Police (NPN), the Thematic Pages and the Defence Code of Conduct (KMar), that contacts with individuals, associations, or groups with an image that is in conflict with the police mission are to be avoided. Apart from these principles, the GET did not come across any rules/guidelines regulating third party contacts, more than in particular situations such as in relation to public procurement, contracting, etc.

213. Closely related to third party contacts is the issue of handling confidential information. As a starting point, an intentional breach of confidentiality during the course of professional occupation or duty or from knowledge gained during a previous occupation, is criminalised according to article 272 of the Criminal Code and may lead to imprisonment. Disclosing information concerning state secrets is criminalised under article 98 of the Criminal Code and is also subject to imprisonment. Added to this comes the possibility of disciplinary sanctions for such misconduct. The NPN Thematic Pages includes some guidance in respect of handling of information as well as the use of social media.

[49] A former chief constable

214. The report on "Organised Crime and the Integrity within Law Enforcement Organisations" (2017) by the Research and Documentation Centre (WODC) of the Ministry of Justice and Security[50], which reflects research into serious integrity violations by law enforcement services (including the NPN and KMar), *inter alia*, notes that several integrity violations appear to be linked to organised crime groups and that misuse of confidential information is by far the most common integrity violation in the police.

215. The WODC study, public media reports and several interlocutors met by the GET on-site, pointed to a considerable lack of control over misuse of information and confidential information that police officers have been leaking to criminal groups, family and friends through the use of various technical devices, including smartphones. The GET noted that the management in both services is well aware of these problems and was informed that both the NPN and the KMar take a number of organisational measures to better protect information, through the granting of authorisations to access systems and information, but also through awareness raising and training. Unfortunately, it would appear that these problems are far from being resolved.

216. The GET wishes to stress that the problems encountered in respect of third party contacts and the handling of confidential information go hand in hand and should be considered top priority for both NPN and KMar to resolve. Detailed rules and guidance on third party contacts are called for and the same goes for the handling of confidential information. Existing guidance should preferably be further developed in a future code of conduct as recommended in paragraph 154. Further awareness raising and training in this respect are also necessary measures. Above all, comprehensive control mechanisms need to be introduced to prevent incidents in this area in the future. Consequently, **GRECO recommends enhancing control measures in respect of access to and use of confidential information, in order to prevent unauthorised access to law enforcement registers and leaking of information.**

Post-employment restrictions

217. There are no restrictions in respect of post-employment in the NPN and the KMar. The GET takes the view that in a country such as the Netherlands, which has a vibrant commercial private sector and which has a liberal policy in respect of secondary activities of police officials, the complete lack of regulations for situations of conflicts of interests in post-employment situations appears rather striking. Despite the fact that the GET did not come across any incidents and abuse in relation to such situations, it is of the opinion that the current situation merits further reflection as being an important area for preventing potential conflicts of interest and thus corruption. The problems of "revolving doors" can be dealt with in various ways, but it is an area where transparency and oversight are important tools. Considering the insufficient information about the needs in this area, **GRECO recommends that a study be conducted concerning risks of conflicts of interest in relation to post-employment and other activities of police officers (including the top level), after they leave the police service, with a view to considering appropriate regulations in this area.**

Declaration of assets, income, liabilities and interests

218. All employees of the NPN must declare secondary activities, but only in case such activities affect the interests of the NPN. They need permission to carry out such activities. The GET understood that the declarations of ordinary officers are not made public, while the declarations of top officials (Commissioner, Force Command, Central Unit Command, the chief constables of the units and the management of support units and the Executive Board of the Police Academy) are made public.

[50] Organized Crime and Integrity Violations within Law Enforcement Organizations, the Research and Documentation Centre (WODC), Ministry of Justice and Security, 2017, see https://www.wodc.nl/onderzoeksdatabase/2748-georganiseerde-criminaliteit-versus-integriteit-handhavers.aspx

219. Moreover, some to be designated police officers, who perform work involving particular risks of financial conflicts of interest or the risk of improper use of price-sensitive information, are to declare their financial interests (stocks / legal claims / real estate / building land / financial holdings in a company / mortgage debts etc.), as well as the possession of and transactions with securities that could affect the interests of the service in so far as these relate to the performance of their duties. A standard form is not used for such declarations and the NPN does not keep a register for this purpose.

220. KMar officers are obliged to declare secondary activities if they affect the police service and to have them approved. Such declarations are to be submitted to the manager and the CKMar provides an opinion to the Minister of Defence. Secondary activities that are declared by top managers (Vice-Admiral/Lieutenant-General) are made public. KMar officials who hold or acquire financial interests as a result of which the proper fulfilment of their duties or the proper functioning of the organisation would not be reasonably ensured, must declare financial interests (stocks / legal claims / real estate / building land / financial holdings in a company / mortgage debts etc.) to the Minister of Defence. The obligation to declare financial interests applies to a number of to be designated top officials.

221. The GET notes that both NPN and KMar officials are obliged to file declarations in respect of secondary activities and that officers on designated posts which are vulnerable to conflicts of interests, are to declare their financial interests. Moreover, it is to be welcomed that declarations on outside activities in respect of top officials in both Services are made public. Having said that, the GET is of the opinion that the current regime of declarations is the result of a minimalist approach to declarations. Considering that financial interest declarations represent an important tool for preventing, monitoring and revealing conflicts of interest and to preventing corruption, the current system is not satisfactory. It is to be noted that the officials have a margin of appreciation in deciding whether a secondary activity is at all in conflict with the service and thus whether s/he is at all obliged to declare, even if neglecting to declare may be punishable afterwards. Furthermore, the declarations are not to be submitted on a regular basis and the financial interest declarations are to be limited to officials occupying particularly sensitive positions in the services. At present no posts are designated. The regime of declarations, at least in respect of top officials of the NPN and KMar therefore need to be enhanced and put in practice. **GRECO recommends (i) enhancing the current regime for declarations by introducing an obligation in respect of the top management of the National Police (NPN) and the Royal Marechaussee (KMar) to declare financial interests in accordance with a predefined format, when taking up their duties and at regular interval thereafter, (ii) to designate posts which are vulnerable to conflicts of interest, and (iii) to provide for suitable oversight.**

Supervision and enforcement

Internal oversight and control

222. The Dutch authorities have explained that internal control within the NPN and KMar is built on three levels: 1) direct managerial control (first line management control); 2) senior management control (support advice and coordination, risk management, financial control etc.); and 3) internal audit. Internal investigations are triggered when there are suspicions of misconduct or neglect of duty by the officials. These investigations are conducted at the request and under the responsibility of the competent authority of the NPN or the KMar.

223. The various NPN units each have a Security, Integrity and Complaints (VIK) department, next to the VIK department within the Central Unit. The core duties of the VIK department at the Central Unit are developing framework policies in the area of integrity and complaints etc. However, the operational investigations, disciplinary and/or criminal, are carried out by the VIK departments within the units. In addition to handling complaints, the VIK units deal with mediation and reconciliation, monitoring security, screening new employees and prevention.

224. The NPN Internal Investigations Department can investigate serious criminal offences and misconduct committed by employees of law enforcement organisations (and other civil servants, semi civil servants or other officials in the public domain), and the use of violence (including firearms) by the police in case this has resulted in injury or death. In principle, suspicions of corruption offences within the NPN and KMar are investigated by the NPN Internal Investigations Department. This department falls under the responsibility of the Board of Procurators General. As such it plays the role of an impartial body when conducting its investigations. The NPN Internal Investigations Department consists of experienced detectives. It reports only to the Public Prosecution Service about the investigations it conducts.

225. The Justice and Security Inspectorate monitors the implementation of the NPN integrity policy on the basis of article 65 of the Police Act 2012. The monitoring focuses on the execution of duties and quality assurance by the NPN. This does not only apply to the functioning of the NPN as an independent organisation, but also to its role as a chain partner, for example, within the law enforcement system and the immigration process. The Inspectorate also controls the quality of the training and examinations conducted by the Police Academy. Significant events involving the NPN can also be investigated by the Inspectorate, if there is reason to do so in special cases. The Commissioner and the Director of the Police Academy are obliged to provide support to the Inspectorate in carrying out its activities. Within the context of the integrity policy, the Justice and Security Inspectorate issued a report, in September 2016, on the measures that serve to prevent police officers from misusing police information.

226. The Research and Documentation Centre (WODC) can also fulfil a role in the monitoring of the implementation of the NPN integrity policy. It is an independent division of the Ministry of Justice and Security that conducts scientific, policy-focused research. Reports and other publications are publicly available online. The Ministry of Justice and Security can request the WODC to conduct integrity related research. In September 2017 the WODC issued a report on organised crime and the integrity of law enforcement agencies.

227. In the KMar, the information provided in the statements of law enforcement officers for security screening is verified by the Military Intelligence and Security Service (MIVD). The primary function of the screening process is the risk assessment in relation to State security. The assessment of the ethical conduct of military personnel is closely connected to this.

228. The Integrity Cluster of the KMar, which deals with internal integrity policy also handles complaints against KMar staff in respect of various forms of alleged misconduct. The Integrity Cluster reports directly to the CKMar. The aim of this structure is to prevent undue influence from colleagues in management positions. Within the Integrity Cluster, it is the Internal Investigations (SIO), Integrity and Complaints sections that handle the investigations. In case of misconduct and negligence of duty - disciplinary investigations – they are conducted at the request and under the responsibility of the competent authority, i.e. the CKMar; and criminal investigations are conducted under the authority of the Public Prosecution Service. The GET was told that only experienced investigators who have attended specific training and legal courses at both the Dutch Police Academy and private training institutes work for the SIO and they are vetted every five years at the highest possible level by the Military Intelligence and Security Service (MIVD).

229. The GET also understood that KMar and the NPN can cooperate and provide support to each other in the course of investigations. Current investigations and new incidents are discussed periodically between the KMar and the NPN, as well as with the Public Prosecution Service and the Legal Human Resources Advice (JuHRA).

External oversight and control

230. The Whistleblowers Authority (established in 2016) is an independent administrative body providing support to anyone who reports work-related abuse[51] within the public or private sector. The authority provides advice on a confidential basis and may also carry out investigations. Employees may report work related abuse, e.g. danger to the effective functioning of a public administration; however, such reports should first have been made internally to their employer, before the Whistleblowers Authority can issue an investigation. In some cases, internal whistleblowing is not considered a reasonable option – for example in the case of immediate danger or when top management is involved in the wrongdoing – and whistleblowers can immediately report to an external channel.

231. The National Ombudsman deals with complaints from the general public about the public administration and informs public-administration agencies how they can improve their services. The National Ombudsman can start an investigation in response to problems or complaints, only if the complainant has also reported his/her complaint also to the authority concerned (for more details see paragraph 50). The Ombudsman regularly meets with the Chief of the National Police (two times a year) to follow the implementation of his recommendations. In general, the NPN implements the Ombudsman's recommendations (approx. 90% of them).

232. The Court of Audit is an independent body that investigates whether the Central Public Administration (including the NPN and Defence) is spending public money sensibly, efficiently and carefully. The Court of Audit does not only carry out financial investigations. In 2015, for example, it carried out an initial investigation into integrity within the in NPN in relation to accepting gifts and responding to invitations

233. The Central Government Audit Service is the internal auditor of central public administration. It investigates, among other things, the financial management of the Ministries. A significant part of the audits are demand-driven – requested by the Ministries. Sometimes they are initiated following questions in Parliament or media publications. The ADR conducted three audits of the NPN in recent years, including on the acceptance of gifts and invitations within the NPN; on the improvement programme on procurement and an audit on the processes/internal control concerning the expenses of the Central Works Council.

234. The Board of Procurators General, under whose responsibility the NPN Internal Investigations Department operates, is the oversight body of the NPN Internal Investigations Department. The Public Prosecutor's Office supervises all criminal investigations, including the ones conducted by the NPN and the KMar.

Complaints of the public

235. Complaints against the police are handled in accordance with the NPN Complaints Handling Regulations and the NPN Implementing Regulation for Complaints Handling 2013. They are recorded in a document tracking system. There are no costs associated with filing a complaint against the police, however, anonymous complaints are not accepted[52] and they must be submitted in writing.

236. At the NPN, the Security, Integrity and Complaints (VIK) departments of the various NPN units handle complaints about the conduct of police officers, including alleged integrity violations. Complaints concerning suspected abuse by NPN employees are handled by the Central Abuse Reporting Centre. As already mentioned, more serious cases are conducted by the VIK department as disciplinary offences or by the NPN Internal Investigations Department as criminal offences (under the lead of the Public Prosecution Service).

[51] A report must relate to a situation of abuse of social relevance, such as a violation of a statutory rule; danger to public health; danger of harm to the environment; danger to the effective functioning of a public-administration agency or company because of improper acts or omissions.

[52] Complaints must always include the complainant's name and contact details. The intention is for complaints to be handled in consultation with the complainant.

237. External complaints about police action are dealt with by the NPN in different phases. The first phase contains a possibility of mediation; five days after the reception of a complaint, the complainant is contacted by the NPN. If the complainant so requires, a meeting can be arranged between the complainant and the NPN employee concerned. If the complainant does not require this, or if such a meeting does not satisfy the complainant, the complaint will be submitted to a second phase under the Commissioner, who will obtain advice from an independent committee of the region. These committees consist typically of a mix of trusted persons, lawyers, civil servants, sometimes a retired police officer etc., appointed by the Minister, and they are independent from the police. Such a committee has its own procedures after which it delivers an advice to the Commissioner. The GET was told that such advices are almost always followed by the Commissioner, who has to decide whether the complaint is founded, unfounded or inadmissible. If the complainant is still not satisfied after this step, the complaint can be submitted to the National Ombudsman.

238. The NPN received 9,653 complaints from the public in 2017. Out of these, 7,359 were dealt with in dialogue with the complainant (first phase), 388 were dealt with by an independent complaints committee (second phase) and 154 were declared grounded. 1,906 cases were still open.

239. The Defence Complaints Procedure regulates handling of complaints at the KMar. Complaints can be submitted online or by ordinary mail within one year after the alleged violation. Anonymous complaints are not accepted. The KMar Complaints Department deals with complaints. It includes 14 staff members. If a complaint proves to be about serious situations of abuse, such as corruption, the Complaints Coordinator will submit it to the Head of the Integrity Cluster. The KMar received 562 complaints in 2017. Out of these, 551 were dealt with satisfactorily in dialogue (first phase) and 11 were dealt with by an independent complaints committee and the CKMar (second phase). Complainants, who are not satisfied after this, can send their complaint to the Ombudsman. Complaints received by the KMar particularly concern treatment, (road) behaviour/attitude, providing wrong information, issuing wrong documents and profiling.

240. Anonymous telephone reporting of integrity violations by government personnel and of criminal acts is also possible via the Trust Line which is part of an independent foundation, "NL Confidential", subsidised by the Ministry of Justice and Security (telephone number 0800 2800 200 https://www.devertrouwenslijn.nl/contact/). The anonymous messages are treated confidentially and they are transferred to the responsible organisation for further treatment.

241. The GET notes that the complaints mechanism of the NPN is well structured and that a number of complaints are dealt with and as it appears, resolved in an efficient manner through the mediation phase. It also welcomes the complaints, in the second phase, being tried by a committee independent of the police, but notes that the conclusion of such a committee is only an advice to the Commissioner, who has the last say in the case. The GET came across some criticism that the system was not sufficiently transparent vis-à-vis the public and that complainants were not given enough attention in the process and that it was not independent from the police. The GET notes that this system, as such is not independent from the police. Despite the role of the independent committee, it is the Commissioner of police who has the last say. As stated in the European Code of Police Ethics[53], article 61: "Public authorities shall ensure effective and impartial procedures for complaints against the police", which means that "police investigating the police" raises some doubts in this respect.

Reporting obligations and whistle-blower protection

242. The NPN and KMar officials who in the performance of their duties come across suspected criminal offences, including corruption offences, or other serious offences listed in the Code of Criminal

[53] Council of Europe Recommendation of the Committee of Ministers Rec (2001)10

Procedure must immediately report them to the prosecutorial authority (Article 162 of the Code of Criminal Procedure and Article 78 of the Military Disciplinary Act).

243. Internal reporting of other forms of misconduct can be made within the hierarchy or to the VIK department in the NPN or the Integrity Cluster of the KMar. Depending on the reported issue, the authorities may submit the report to an investigation commission, but it may also lead to internal disciplinary proceedings or submission of the complaint to the public prosecutor. The authorities state that the NPN and KMar are trying to create a culture in which people talk to each other instead of about each other. In such a way people can learn from mistakes. Reporting is always possible and obliged in cases of criminal offences, including corruption offences, but broader reporting obligation would go against the trust between law enforcement officers, according to the authorities.

244. The GET notes that apart from the obligation to report suspected criminal offences, including corruption offences, law enforcement officials are under no obligation to report situations of any other forms of misconduct and conflicts of interest etc. they come across in the service. The GET acknowledges that the NPN and KMar have a policy in place aiming at fostering integrity among its employees, which has already been commended. In the view of the GET, an obligation to report various forms of misconduct within the police service is not in itself contradictory to an inclusive integrity policy. But the lack of a rule to report corruption related misconduct is a clear weakness of the system, which should be remedied. It goes without saying that such a requirement also demands a certain level of protection against retaliation of those who submit such reports in good faith. The "code of silence" is prevalent in most hierarchical organisations and the protection of whistleblowers within the organisation is particularly important to deal with this problem. **GRECO recommends (i) establishing a requirement for law enforcement officials to report corruption related misconduct within the service; and (ii) adapting the protection of whistleblowers in that respect.**

245. The Internal Whistleblowers Regulations for the Central Public Administration, NPN and Defence came into force on 1 January 2017. Whistleblowers who report a suspicion of an abuse or another breach of integrity in good faith, are protected from adverse consequences during and after the handling of the report. Whistleblowers that seek advice can contact one of the confidential advisers. The regulation enables current and former officials to report situations of abuse that they find within their own organisation to the Whistleblowers Authority. The Whistleblowers Authority advises to first make an internal report, they can generally only accept a report for investigation once the official has already made a report internally. If reporting internally cannot reasonably be required, the whistleblower can report directly to the Whistleblowers Authority.

Disciplinary proceedings

NPN investigations	2014	2015	2016	2017
Total	1194	1153	1089	1509
Most common categories of disciplinary offences:				
Misuse of position	127	133	186	226
Misuse of powers	57	66		
Violence and/or treatment	108	65	89	142
Attitude and behaviour	-	-	78	127

KMar disciplinary cases	2014	2015	2016	2017
Driving under influence	1	1		2
Leaking misuse of information	1	1	2	3
Misuse of powers				1
Unintentional shot			1	2
Inappropriate contact(s)				1
Misconduct private				12
Military law and regulations	2	1		
Property crime		4		1
Traffic incidents / accidents	2	6	1	
Sexual offence		2		1
Forgery / fraud		4		2
Opium act		1		1
Domestic violence	1	4		
Incidents of violence	5		1	
Miscellaneous	25	19	15	7
Total	**37**	**43**	**20**	**33**

Criminal proceedings and immunities

246. Law enforcement officers, within NPN and KMar, do not enjoy any immunity or other procedural privilege. No special procedures apply under criminal law in respect of criminal prosecutions. Military law enforcement officers (KMar) are, in addition to being subject to the Penal Code, also subject to the Military Penal Code.

NPN investigations	2014	2015	2016	2017
Total	1194	1153	1089	1509
Most common categories of criminal offences:				
Personal freedom/body	441	442	376	354
Property	54	63	56	44
Perjury and fraud	55	47	35	-
Violation of secret	-	-	-	52

KMar criminal law cases	2014	2015	2016	2017
Driving under influence	4	5	5	4
Leaking / misuse of information	3	10	1	4
Unintentional shot	6	2	6	11
Military law and regulations	4	1	1	0
Property crime	16	6	6	3
Traffic incidents / accidents	11	16	9	11
Sexual offence	3	2	2	2
Forgery / fraud	1	2	2	1
Opium act	1	2	3	0
Domestic violence	3	4	4	2
Incidents of violence	9	16	8	12
Miscellaneous	8	9	6	9
Total	**69**	**75**	**53**	**59**

VI. RECOMMENDATIONS AND FOLLOW-UP

247. In view of the findings of the present report, GRECO addresses the following recommendations to the Netherlands:

Regarding central governments (top executive functions)

i. **developing a coordinated strategy for the integrity of persons entrusted with top executive functions, based on analysis of risks, aiming at preventing and managing various forms of conflicts of interest, including through responsive advisory, monitoring and compliance measures** (paragraph 36);

ii. **(i) that a consolidated code of conduct for persons entrusted with top executive functions be developed, complemented with appropriate guidance regarding conflicts of interest and integrity related matters (e.g. gifts, outside activities, third party contacts, lobbying, etc.) and made easily accessible to the public; and (ii) that such a code be coupled with a mechanism of supervision and sanctions** (paragraph 43);

iii. **(i) establishing confidential counselling to persons entrusted with top executive functions on integrity related issues, conflicts of interest etc.; and (ii) raising the awareness of integrity matters among persons entrusted with top executive functions, including through training at regular intervals** (paragraph 53);

iv. **(i) introducing rules and guidance on how persons entrusted with top executive functions engage in contacts with lobbyists and other third parties who seek to influence governmental processes and decisions, and (ii) increasing the transparency of contacts and subject matters concerning lobbying of persons who are entrusted with top executive functions** (paragraph 70);

v. **that a requirement of ad hoc disclosure be introduced in respect of persons entrusted with top executive functions in situations of conflicts between private interests and official functions, when they occur** (paragraph 78);

vi. **introducing general rules dealing with post-employment restrictions before persons entrusted with top executive functions seek new employment in the private sector and/or are about to enter into such employment after their termination of functions in the public sector** (paragraph 96);

vii. **(i) that persons entrusted with top executive functions be obliged to declare their financial interests publicly on a regular basis; ii) considering including financial information on spouses and dependent family members in such declarations (it being understood that the latter information would not necessarily need to be made public) and (iii) that the declarations be subject to an appropriate review mechanism** (paragraph 100);

viii. **ensuring that the procedures allowing for investigation and prosecution of abuse of office (including passive bribery) do not hamper the criminal justice process in respect of ministers/state secretaries suspected of having committed corruption related offences** (paragraph 106);

Regarding law enforcement agencies

ix. **(i) that the Theme pages of the Professional Code of the National Police (NPN) be further developed with guidance, examples and lessons learned, offering adequate guidance on conflicts of interest and other integrity related situations (e.g. gifts, third party contacts, accessory activities, handling of confidential information) and that a similar instrument be established for the Royal Marechaussee (KMar); and (ii) to ensure supervision and enforcement of these instruments** (paragraph 154);

x. **that the in-service training on ethics and integrity for the National Police (NPN) and the Royal Marechaussee (KMar) staff, including managers, be enhanced by developing at national level further regular training programmes as a support and complement to the existing decentralised training in the units** (paragraph 171);

xi. **that adequate measures and appropriate resources be allocated in order to ensure that within the National Police (NPN) vetting and screening of staff takes place at regular intervals during their entire service** (paragraph 186);

xii. **that the procedures in situations where gifts and advantages of a certain level have been offered/accepted be reinforced, in particular by introducing a standard format for the reporting/declaration of gifts/advantages and such offers, that these be registered and subject to supervision** (paragraph 207);

xiii. **enhancing control measures in respect of access to and use of confidential information, in order to prevent unauthorised access to law enforcement registers and leaking of information** (paragraph 216);

xiv. **that a study be conducted concerning risks of conflicts of interest in relation to post-employment and other activities of police officers (including the top level), after they leave the police service, with a view to considering appropriate regulations in this area** (paragraph 217);

xv. **(i) enhancing the current regime for declarations by introducing an obligation in respect of the top management of the National Police (NPN) and the Royal Marechaussee (KMar) to declare financial interests in accordance with a predefined format, when taking up their duties and at regular interval thereafter, (ii) to designate posts which are vulnerable to conflicts of interest, and (iii) to provide for suitable oversight** (paragraph 221);

xvi. **(i) establishing a requirement for law enforcement officials to report corruption related misconduct within the service; and (ii) adapting the protection of whistleblowers in that respect** (paragraph 244).

248. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the Netherlands to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2020. The measures will be assessed by GRECO through its specific compliance procedure.

249. GRECO invites the authorities of the Netherlands to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: www.coe.int/greco.

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