



law regulations
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 integrity coordinator **introducing**
THE DUTCH criminal law
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governmental code of conduct
 multilayered integrity system
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 corruption authorities act

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INTRODUCING THE DUTCH APPROACH TO GOVERNMENTAL INTEGRITY

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SUMMARY

The level of governmental integrity is key to citizen's trust and societal progress. The Netherlands has traditionally been a frontrunner in promoting integrity and opposing corruption. It has done so in a unique, multilayered manner. Whereas many advise National Integrity Agencies and develop one-size fits all approaches, the Dutch central government has effectively allowed government at all layers, as well as all public sector organizations to develop their own practices. Within a relatively minimal legal framework and by way of best practice-policies instead of directives, many municipalities, the provinces and other public sector organizations throughout the Netherlands have made integrity a key component of their organization. Integrity is taken as something one can organize, by way of compliance as well as moral learning – the two pillars of a working integrity policy. This multilayered approach is also used with regards public procurement, wherein general integrity policies intersect with specific guidelines and procedures for tenders. The strength of the Dutch approach is at the same time its weakness; leaving all layers of government develop their own policies implies too that some will go beyond what is required while others lack behind.



1. INTRODUCTION

The Netherlands has built-up a solid status internationally when it comes to anti-corruption and governmental integrity. While hard data is difficult to come by the recent 5th place on Transparency International's Corruption Perception Index provides a hint at its success.

While this Index may not reveal everything, it does suggest something that most Dutch would have to agree upon: 'hard' corruption, like unofficial fees for a passport, is not part of the Dutch everyday experience. This does not mean that no integrity breaches such as conflict of interest, leaking of confidential information and false usage of reimbursement arrangements do not occur, but these are often relatively minor infractions that do not go by unnoticed. This denotes that the Dutch approach to integrity may be worth looking into for countries aiming at a higher level of governmental integrity.

Core reasons for the success of the Netherlands in attaining and maintaining a high level of integrity can be found in its political and cultural traditions.

The Netherlands has since long been a stable liberal, constitutional democracy with built-in checks and balances on power such as an independent judiciary, free press and competitive elections conceived within a consensus-oriented parliamentary model in which a range of ideological parties have to work together. Moreover, within Dutch culture government has long been considered respectable and trustworthy. A high level of economic development and relatively well-paid government positions further strengthens the overall level of governmental integrity.

Top 10 Transparency International Corruption Perception Index

RANK	COUNTRY/ TERRITORY	SCORE
1	Denmark	91
2	Finland	90
3	Sweden	89
4	New Zeland	88
5	Netherlands	87
5	Norway	87
7	Switzerland	86
8	Singapore	85
9	Canada	83
10	Germany	81
10	Luxembourg	81
10	United Kingdom	81

While these structural components underpinning the Dutch integrity system are crucial, the active work put into improving the integrity of government (in the broad sense, including all public organizations) plays an important role too. Integrity is a dynamic concept and practice in the Netherlands. This is at least partially the result of the decentralized approach to integrity, which implies that all public sector organizations have the responsibility to develop their own integrity policy. It also implies that increasingly acceptance is developing within organizations that integrity is simply a core aspect of the daily work practices. What we see today, then, is a multilayered integrity system that is rather well-developed particularly on the local level.

1.1 Key elements of the Dutch approach

A marquee moment in the development of the Dutch approach to public integrity comes in 1992. At the yearly conference of the Association of Netherlands Municipalities, Minister of the Interior and Kingdom Relations, Ien Dales expressed her worries about the integrity of Dutch government. Unexpectedly, and typically, instead of calling for stricter laws and harsher penalties, however, hers was a call for a joint approach to integrity. The invitation was heard by professionals and academics alike. From the next day onward integrity became a trending topic.

What is meant by ‘integrity’ and what it implies for the government to further integrity has been under development since Dales’s speech. ‘Integrity’ is often understood as a personal trait, opposite to corrupt. You either have it or you do not. Whereas Dales in her speech still reiterated this traditional understanding of integrity by her famous parallel that a *bit* of integrity is as impossible as being a *bit* pregnant, it has become clear that this is problematic framing of the concept. A more succinct and practical understanding of integrity disentangles the concept from the person. Integrity is not a trait of a person but describes the action or choice of a person. The implications of this shift in understanding are far-reaching. As the saying goes, the path to hell is paved with good intentions. Rules can be broken by accident – because of lack of knowledge or judgments can be misinformed. Does a person lack integrity in such cases? No, they made wrong or faulty decisions without themselves being immoral. More importantly, however, with regards to the integrity of civil servants and political representatives, by understanding integrity as applying to actions it opened the way to consider integrity as something one could work on. Conceiving integrity as an ‘action concept’ enabled the path to understand integrity first

and foremost as a responsibility of government, something to be organized in a structural manner so that it is guaranteed no matter who runs the organization of who is voted into office. The message is optimistic: organizational integrity is within reach to all. It just takes time and effort. This new perspective on integrity as something to be organized has been laid down in the renewed **Civil Service Act** (2006) and the **Model approach to the Basic Integrity Standards for Public Administration and the Police** (2006).

A first key element of the Dutch approach is thus that integrity is something to be organized. A second key feature concerns the manner in which one organizes a functioning integrity system. In the Netherlands integrity policy is organized based on two pillars: a careful compliance-mechanism and a functioning moral learning process. Both pillars hinge on a set of rules and procedures and are shaped by a set of facilities. Initially, notably influenced by certain key scandals – such as the construction sector fraud scandal – integrity policy focused on a relatively narrow conception of compliance focusing in on rules and regulations, with some attention to preventative action. By trial and error so to say – parallel to the development of the understanding of integrity as an ‘action-concept’ – it became clear under an organization perspective compliance becomes more than individuals abiding by rules or be punished. Government organizations have to organize themselves in such a manner that rules and procedures are well-conceived and transparent, while preventative measures are in place to protect civil servants and political representatives by preventing them from committing integrity breaches. Disciplining and punishing can only be the endpoint of a careful compliance system.

An important side-effect of the developments made within the Dutch context, working on organizational integrity was increasingly understood in a more positive manner. Integrity was increasingly understood to entail the professional status of the civil service as an organization that acts on values, or more precisely, that ‘does right by others’. Integrity of government in its core, then, refers to the exercise of the monopoly power of government in a just manner. At this point we are far beyond mere rule-abiding behavior. Sometimes integrity, in this light, can even require one to deviate from the prescribed rules. In other words, within the Dutch perspective the civil servant’s independent moral judgment takes precedence over the rule. This is a rather unique element of the Dutch approach that can possibly be traced to its secular culture with little regard for centralized, moral authority.

Such dependence on individual judgment means one needs to strengthen moral judgment, i.e. moral judgment also stands in need of organization and cultivation. How can a public sector organization be organized such that it

will increasingly do right by the people and organizations for which and with which it works? In other words, a pillar of moral learning process is an essential second component to a functioning integrity system. And this requires installing mechanisms to strengthen the individual moral judgment and to organize structural moral deliberations so as to built knowledge from within the organization. Furthermore, this knowledge has to be articulated and utilized to reflect on current rules, procedures and most notably improve the decisions made by the organization.

The last and third key feature of the Dutch integrity system is its multilayered approach. The Netherlands is a decentralized unitary state, providing subnational government a range of freedoms and responsibilities. The central government generally sets the general framework within which local and regional governments ensure implementation as they see fit. These freedoms come with responsibilities regarding the implementation. With regards to integrity policy this decentralized approach is apparent. The national government outlines the general framework within which local and regional government as well as public sector organizations develop their own internal integrity policy.

Over the last 25 years' extensive knowledge on how to organize integrity within public sector organizations within the Netherlands has been built up. Less attention has been given to the political tiers of government so far. This changed about a decade ago. Waning trust – fairly or unfairly so – in politics and some recent scandals have sharpened the awareness of the vulnerability of political office, particularly in the Netherlands. Dutch citizens do not only scrutinize politicians on compliance with rules, even demanding them to prevent the perception of conflict of interest; they require morally right decision-making. This is not an easy challenge given the fact that coalitions of parties make up the executive offices and that here too a decentralized approach is preferred. Lessons learned at the level of the civil service and the positioning of the mayor or Kings's Commissioner – non-elected offices in the Netherlands – are the instruments now used to organize political integrity.

Trust in national institutions (2008 & 2013).

	National Parliament 2013	Δ Trust national parliament since 2008	National government 2013	Δ Trust in national government since 2008
European average	29%	-7%	29%	-8%
Netherlands	48%	-16%	43%	-15%

Numbers extracted from Table 2 of Public Integrity and Trust in Europe (2015) ERCAS, Hertie School of Governance.

Trust in local and regional government (2013)

	Regional government in 2013	Δ Trust in local and regional governments since 2008
European average	45	-4
Netherlands	56	-8

Numbers extracted from Table 3 of Public Integrity and Trust in Europe (2015) ERCAS, Hertie School of Governance.

1.2 The brochure

This brochure gives an overview of the current system in place in the Netherlands. ‘Integrity system’ here refers to the multilayered make-up of governmental integrity, meaning the integrity of national and subnational government as well as the public sector organization. Special focus will be on local government and the organization of public procurement. In principle, much of what can be said about the the organization of integrity at the level of subnational government is exemplary of the manner in which other public sector organizations (even the traditional monopoly power-wielding organizations such as the police, the Tax Authority, the military) manage integrity. Only at the level of national government does integrity still largely translate into rules and compliance. The integrity of private sphere actors is not considered. While the integrity policies of governmental organizations do curb the practices of private actors, the organizational integrity of private actors is a separate subject.

The brochure is meant to provide insight into the Dutch approach. It is not meant as a critical reflection. Certainly, the Netherlands faces its fair share of challenges too sustaining its high level of governmental integrity. Trust in politics is waning, the financial crisis of 2008 has let to deep cuts in the budgets of public sector organizations and the recent decentralization of many social policies (health, youth and socio-economic participation) from the national to the subnational level creates many new challenges and risks within the system. Lastly, with the integrity of government within the Netherlands at a high level, the Netherlands has still much work ahead when it comes to its role in international politics and particularly the financial and economic system, as the Panama Papers have made abundantly clear again.

To provide a relatively exhaustive and informative text that presents the Dutch integrity system in a relatively uncontroversial manner, the brochure builds on primary texts – national legislation and directives, best practice tools – and secondary texts reflecting on the state of play in the Netherlands. Furthermore, the author and the organization of the author are active participants in the field of governmental integrity in the Netherlands, working or having worked with around 100 municipalities, provinces and many other public sector organizations such as the police and the Tax Authority. This experience from the field provides a wealth of information and insight into the challenges still at play, particularly at the local level, and the existing local differences regarding implementation.

In the following, national level policies, actors and legal arrangements will be first outlined. The third paragraph deals with current good practice regarding the organization of integrity. The brochure ends with a reflection on the organization of integrity in public procurement in the Netherlands.



2. MANAGING INTEGRITY AT THE NATIONAL LEVEL

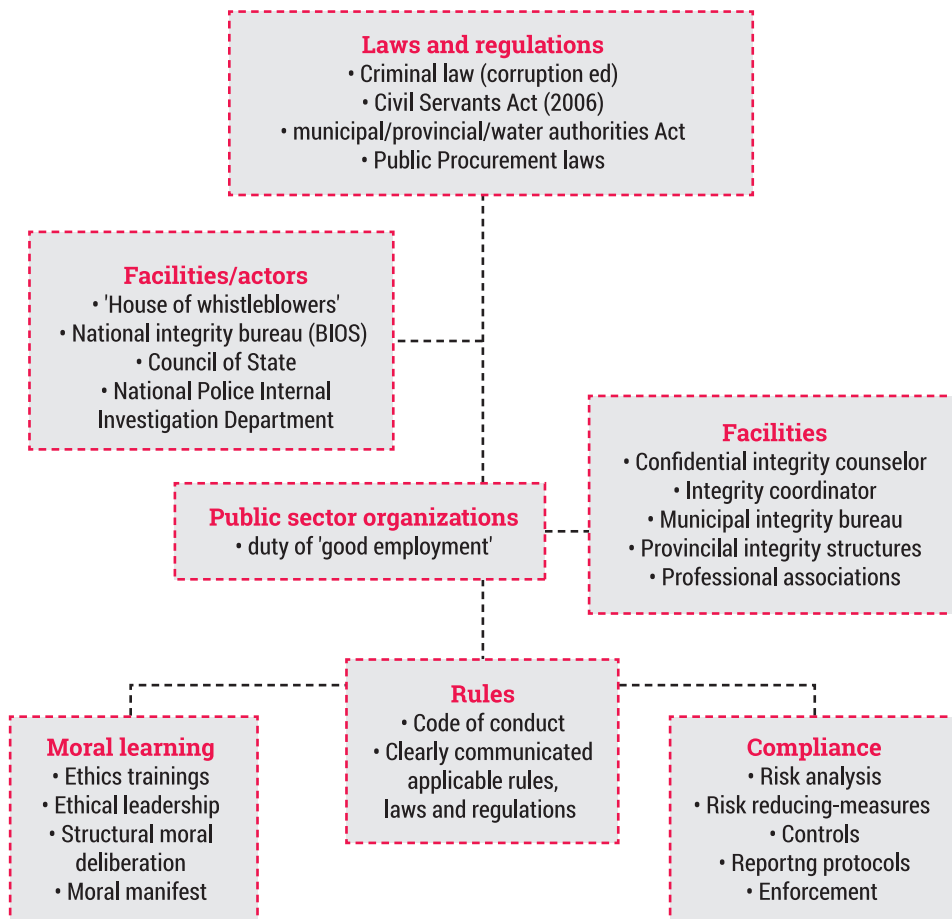
The general framework of the integrity of government is set at a national level. Those elements of integrity that fall under criminal law, such as corruption, fraud and abuse of confidential information fall under the competent authority of the Ministry of Justice and Security and breaches thereof are prosecuted by the National Police Internal Investigation Department (within the Public Prosecutor Service). The broader legal and institutional framework of integrity is set by the Minister of the Interior and Kingdom Relations. It is within this context that public sector organizations as well as the political tiers define their integrity policy. The applicable laws, regulations and norms differ, however, between the civil service and the political tiers. Whereas integrity of civil service is foremost considered a question of the organization, wherein the civil servant stands as an employee to the civil service organization, at the political level there is effectively no organization. This fact makes the organization of integrity for the political tiers a different and more difficult challenge, particularly with an eye securing the continuity of the integrity policy.

The minister sets the general outline. The details are left to the national, regional and local organizations and political bodies. Regarding civil services one can see quite some overlap in integrity policies throughout all public organizations, such as the municipal and regional civil service, the police and the tax authorities. Differences concern the extent and care with which compliance mechanisms are developed as well as the implementation of moral learning. Some organizations are still at the level of merely raising awareness for integrity while others have installed proper mechanisms for moral learning. The national level civil service unfortunately is largely an example of the former, while certain larger municipalities (such as Amsterdam) as well as the military provide best practices, often developed with specialized external integrity advisers.

At the political level differences in approach are more apparent, partially because thinking about the subject is less developed. In reaction to Dales' speech, the focus turned to improving the integrity of the civil service. Less attention was given to political integrity. While this has changed by now, a second hurdle to a fitting, and broadly accepted, approach for all political bodies concerns the fact that neither a council nor the executive is an organization with a hierarchy and continuity. Add to this the fact that there is sometimes a fine line between questions of integrity and the political game, it becomes clear that obtaining political integrity presents a different challenge. At the same time, at the political

level choice to work on integrity – or at least, the manner in which – is dependent on the choices of the council. With no hierarchy in place, it is the majority of a council that chooses what will be done to further the agenda. Whereas legal arrangements and norms set for the subnational political bodies are rather unison (confirmed by the shared model code of conduct), their implementation differs therefore widely. Some see integrity as a nuisance at worst or something of a person’s inner compass at best, while others embrace it as a question to work on as a political body. The former will have a legally mandated code of conduct, shelved somewhere, the latter has an elaborate code developed by the councilmembers themselves, possibly complemented by arrangements for a careful compliance practice and more. On which side a municipality sits not sporadically depends on their history with integrity breaches. At the national level there is a rather singular approach to integrity.

The Dutch integrity system for public sector organizations



2.1 The national legal and institutional framework for public sector organizations

The most important legal requirements regarding the organization of integrity are laid out in article articles 125ter, 125quater and 125quinquies of the **Civil Servants Act** of 2006. The Act applies to almost all civil servants in the Netherlands, except the in article 2 of the Act listed exceptions (such as the military civil servant). In fact, the Act establishes the general legal position of civil servants as employees of the state, the particulars of which are further stipulated in the applicable labor conditions agreements per sector of government.

The Civil Servants Act understands integrity firstly as pertaining to the relationship between employer and employee. In article 125ter the Act prescribes that the competent authority will behave like a 'good employer' and the civil servant as a 'good employee.' What both definitions consist of is further clarified in the following two articles, 125quater and 125 quinqueies. Interestingly, these articles mostly sum up the obligations of the employer: the organization has to develop an integrity policy raising awareness for the subject, include integrity related activities within personnel policy, define a code of conduct, an oath of office as well as reporting protocols that ensure the careful handling of suspicions of integrity breaches.

At same time the Civil Service Act came into force, a range of governmental agencies crafted the 'Basic Standards'. Whereas the Civil Service Act states that every public organization needs to formulate an integrity policy, the Basic Standards provide the minimum requirements of such a policy. They were formulated following a critical report on current integrity policies in public administrations and the police, which concluded that many organizations had insufficiently developed integrity policy. The 18 Basic Standards, 13 of which apply to the civil service and 5 to the political tiers, are drawn from a range of best practices in existence at the time. To name a few standards, organizations need to make an overview of vulnerable functions and work-processes and develop control measures to minimize them, confidential information regulations have to be in place, procurement policies have to be written down and the integrity-related information needs to be easily accessible in one place. The basic standards articulate a minimum framework. Organization can and are still required to fill in the specifics, with some going quite extensively beyond what is specified in the standards.

The Civil Servants Act and the Basic Standards both frame an organization's integrity policy. Support into further articulating their policies organizations can

find at the **Dutch National Integrity Office (BIOS)**, which was established by the Ministry of Internal Affairs and Kingdom Relations at around the same time. BIOS task is to support public sector organizations in developing, implementing and maintaining an integrity policy. It does so through providing integrity officers with access to knowledge and research, practical instruments, best practices, meetings and by developing model codes and protocols. BIOS thus has a supporting role as a knowledge base. While originally part of the Ministry, per 2009 it received a more independent status. In the near future, as per July 1 2016, BIOS will be integrated into the newly established **House of Whistleblowers** (see below). Whereas the Act on the House prescribes it reporting and investigatory duties, BIOS will be integrated to provide for the second preventative, knowledge-based, pillar within the House.

2.2 The national legal and institutional framework for political representatives

At the most general level, the **General Governance Act** (1994), which organizes the relationship between the government and private actors, frames political integrity. The Act prescribes a range of standards, such as sufficient motivation and certainty of law, to which all government decision needs to answer. Moreover, in Article 2:4 it prescribes that all governing bodies ought to make their decisions in an unbiased manner. This means that any person with a conflict of interest is not allowed to influence the process of decision-making. Many of the standards formalized in the General Governance Act were developed through jurisprudence. Today, these are captured in the so-called **Principles of Good Governance**. These principles include but go beyond those incorporated in the General Governance Act and formulate the basic rules of behavior for the government to do right by all dependent on them.

When a government agent acts contrary to these principles, a complaint procedure can be started up. In the final instance, a case can arrive at the **Council of State's** Administrative Jurisdiction Division. While it is a stretch to consider all activity of the Division to have to do with integrity, it does fulfill an important role in holding government accountable on the minimum quality requirements of their decisions.

All political offices and positions in the Netherlands fall under a specific **'judicial position regulations'**. These regulations specify rights and duties of the representative and importantly articulate the financial means a political representative receives for the fulfillment of his or her office. With regards to

integrity their importance lies in their inclusion of arrangements that enable the passive right to vote – the right of all citizens to run for office. Herewith one's financial standing becomes inconsequential to execute the office appropriately. Moreover, it suppresses the temptation to receive money or services from private parties. Since such arrangements come with the risk of fraud and abuse (including non-functional expenditure or private use of public goods), these regulations have to be translated into clear prescriptions and accountability procedures within the organization. In recent times the Dutch media has made an issue of the abuse of these financial arrangements using the **Freedom of Information Act** (WOB) to gain insight into all expenditure of civil servants and political representatives.

Notwithstanding the shared arrangements, discrepancies between integrity policies of political bodies is apparent. Local councils and administrations, for one, have a more active (and visible) integrity program. The reason hereto can be that at the local and regional level a non-elected and thereby non-politicized office (the mayor and the King's Commissioner) heads the council and executive, whereas such figure is absent at the national level. Their particular position has given the mayor and King's Commissioner an increasing role as an anchor point in political integrity, confirmed their recent legal status as 'guardians of integrity'. The main instrument for Ministers and secretaries at the national level is a confidential Handbook for new Ministers and State Secretaries' in which the rules pertaining to integrity are laid down – such as the prohibition of holding any ancillary positions and the rules regarding receiving gifts and invites. Ministers, secretaries and members of the houses parliament all have to take the oath of office too. To members of the two houses of parliament there are a range of statutory provisions and Rules of Procedure in place that provide requirements and prohibitions. New parliamentarians also are offered an integrity training. The high level of public scrutiny, however, is probably the most apt tool at hand at the national level.

The integrity landscape at the local and regional level is richer. The applicable law is formulated in the **Municipalities Act** and the **Provinces Act**, both revised in 2016. These Acts lay down a broad range of issues pertaining to the functioning of councils and the administration, including specific integrity measures. Among those, conflict of interest receives most attention. Regarding conflict of interest, it is important to note that much of the content is given through jurisprudence built up through rulings of the Council of State's Administrative Jurisdiction Division as the Acts prohibit voting with a conflict of interest but do not specify the exact delineation of the concept. Also included in the Acts is the Oath of Office.



3. ORGANIZING INTEGRITY AT THE SUBNATIONAL LEVEL

The framework for the integrity policies of all public sector organizations is set at the national level. Organizations, however, have much leeway in crafting their policy. An upside of this decentralized approach is that it stimulates public sector organizations to consciously work in a voluntary manner on their own integrity policy, with some going far beyond the minimum set by the basic standards. Others, however, barely fulfill those basic requirements set at the national level. The following presents a best practice of integrity policy of public sector organizations. Much of the challenge in the Netherlands today concerns the full implementation such practice.

3.1 Structural elements of an Integrity system

Organizational integrity requires organization. A successful and lasting integrity policy is built on two pillars – a compliance system and a moral learning process – that both hinge on a set of rules. This set-up can be broken down into seven structural features of a mature integrity policy.

The moral learning pillar consist of:

1. Individual moral judgment: individual civil servants have to be enabled to strengthen their capacity to make the right decision. For this they need tools to investigate their judgments and where needed to adjust them A civil service trained in moral judgment is key to a successful organization.
2. Moral deliberation: an infrastructure is needed to investigate the concrete difficult decisions colleagues in the same line of work are confronted with. Installing such deliberations in a systematic manner enables improved decision-making and streamlines the actions and choices the involved civil servants.
3. 'Moral manifest': through the moral deliberations valuable knowledge is built up on common dilemma's and the manner in which arguments and values are weighed. These insights need to be articulated, written down and made transferable. A perspective on the common dilemma's, basic principles and moral hazards within the line of work becomes apparent. This 'manifest' subsequently provides an instrument to reflect and improve upon existing rules and procedures.

4. Rules: these provide the hinge between the moral learning and the compliance system. Carefully crafted rules (including laws, regulations and codes of conducts) provide guidance to civil servants trying to do the morally right. In as much, rules are shortcuts to a moral judgment. At the same time, the internal moral learning process enable organizations to reflect and improve on current rules. The rules provide the input for the compliance system.

The compliance pillar consists of:

5. Preventative compliance: the first compliance task of the organization is to prevent integrity breaches from happening. In as much, the organization has a duty to protect their employees against integrity risks such as temptations, false or hardly verifiable accusations and third party violations. Through risk analyses the organization gain insight into the vulnerable spots within work processes. Based on this knowledge it must implement measures to minimize these vulnerabilities and protect employees from integrity risks.
6. Careful repressive compliance: where integrity risks cannot be sufficiently reduced, controls need to be in place to prevent employees to give in to temptations. Controls strengthen preventative compliance and are the starting point of the repressive practice. In case prevention is unsuccessful and suspicions of breaches emerge, a carefully crafted reporting and investigative practice needs to be in place to undertake fact-finding. Registering all reports of integrity breaches provides important insights again into the existent vulnerabilities within the organization.
7. Enforcement: when the investigation shows an integrity breach has taken place punishment is in place. Care, comparability as well as proportionality are of utmost importance in deciding punishment. The aim is to improve behavior within the organization and protect employees against integrity breaches of their colleagues.

These seven structural elements all need organization. Notable in this scheme is the fact that organizational integrity starts off with the individual's moral judgment. Enforcement – often thought off as the key element of an integrity policy is its mere endpoint.

3.2 Organizing integrity

Many organizations still rely on managers and HR-personnel to take the lead on integrity policies. This often leads to lack of communication and a less than coherent or complete integrity policy. Within such organizations integrity often remains an 'extra' that comes besides the prioritized day-to-day operations. To organize integrity in a coherent manner others have either installed an **integrity officer** (coordinator) or, in some larger cities, have developed an **integrity bureau**.

The integrity officer is the linchpin of the organization's integrity policy and secures its continuity. In practice, the role of this officer is defined in differing manners. Ideally, the integrity officer is given the operating space to initiate integrity-related activities and to place the subject on the managerial agenda. He or she develops, together with management, activities to keep awareness of integrity high and ensures that the structures and policies in place are up-to-date and functioning. The officer advises management and serves as sounding board for employees, develops and reviews codes of conducts and other investigative protocols and coordinates with external agents. The officer authors a yearly integrity report and maintains a database on anonymized reports of integrity breaches. Lastly, the integrity officer is involved, in an advisory capacity, in the investigations into a report of an integrity breach – from the moment of reporting, through the liaising of an external investigative bureau, to potential punishment and follow-up care.

Whereas integrity officers will still be dependent on external experts in executing integrity-related tasks, larger organizations can internalize all aspects of a successful integrity policy. To this end, they set up an integrity bureau such as the City of Amsterdam (BIA). BIA was established in 2001, as a consequence of developments at the national level (the report of the Van Traa committee on the infiltration of organized crime into politics) and within the city (millions embezzled at the Parking Authority). BIA is a fitting example of the decentralized nature of the Dutch integrity system. Its upsides are its relatively flexible nature and very direct and accessible relationship with the city and the civil servants it works for. Unfortunately, BIA is not a model to follow for smaller municipalities for reasons of scaling but it has garnered international attention as a source for knowledge-sharing on best practices. A somewhat different yet comparably laudable initiative is the Provincial Integrity Structure of the province of Limburg. Although not a well-delineated bureau like BIA, this 'structure' links the integrity policies of municipalities, the Water Authorities and the provincial government within the province of Limburg. This structure is an alliance within which all participate on a voluntary basis.

3.3 Organizing for reporting integrity breaches

Reports of integrity breaches are mostly handled internally, within the organization, in the Netherlands. Only when it becomes clear that the breach concerns a criminal act will the National Police Internal Investigation Department become involved. To secure an appropriate handling of reports all Dutch public organizations are by law required to have a **reporting protocol** (a ‘whistleblower regulation’). Given the now familiar decentralized approach, these protocols can in theory differ somewhat between organizations albeit the differences on paper are relatively small because of relatively detailed legal prescriptions and good practice-models.

The end goal of these protocols is to enable (internal) reporting of malpractices. To obtain this result reporting protocols as well as investigation protocols need to ensure the security and privacy of both the person reporting and the person under suspicion. In case an organization cannot provide these certainties, malpractices will go unreported. The first person to report a suspicion to is one’s direct superior, or, in case is not willing or able to do so, the integrity officer is a second option. Both the superior and the integrity officer, however, have a duty to report the suspicion to the competent authority, the general director. He or she is the one, advised by the integrity officer, who decides whether, how and by whom an investigation will take place.

Given the fact that reporting is organized within the organization in the Netherlands, employees do not always feel that their safety is ensured. Fear of reprisal (by managers for instance) does place a high bar to actually reporting malpractices. Public sector organizations therefore – as ‘good employers’ – are all required to install a **confidential integrity counselor** to create such a safe environment. The counselor can be a person within the organization or an externally appointed person. In the first case it concerns a regular employee of the organization who is appointed into the position on the basis of the confidential counselor regulation. An external counselor is an experienced counselor oftentimes drawn from an organization within Working Conditions Service (‘ARBO’). Because of issues of scaling, municipalities sometimes work together (through for instance establishing a foundation) to recruit a confidential integrity counselor.

The confidential integrity counselor is not an alternative hotline for reports. This would effectively undermine its function of providing a confidential space where employees can freely and in anonymity discuss questions they have and receive advice. The counselor is tied to confidentiality and is not allowed to act upon the stories of employees without explicit approval of the employee. This element,

however, of its duty of confidentiality becomes complex, however, when the story refers to acts that can be considered criminal. The counselor's role is also not to mediate and certainly not investigate suspicions of integrity breaches. He or she is a sounding board and adviser that provides guidance to the employees.

To further lower the burden for reporting, external reporting outlets have been developed. A national **telephone hotline** is in existence and reports can be made to the **Council for Integrity Investigations in the Public Sector** (Onderzoeksraad Integriteit Overheid). Reports to the latter are in general made in case the internal handling was deemed insufficient. Other agencies that provide reports are the **Advice Centre for Whistleblowers** (an independent governmental body), the **Whistleblower Expert Group** (former whistleblowers) and **Publeaks** (a group set up by journalists).

A most notable development in this regard is the creation of the **'House of Whistleblowers'** by the Dutch government. This House, by law established as an independent government agency and in effect per July 1 2016, will be the point of reference for all whistleblowers – from the public and private sphere. In as much, it will incorporate the above mentioned

Council for Integrity Investigations in the Public Sector as well as the Advice Centre for Whistleblowers.

All official external whistleblower agencies come together under one roof. Employees can file reports at the House but can furthermore also receive social and psychological assistance when needed. In a further move to centralize expertise on integrity, BIOS will be incorporated. The House then will consist of a branch responsible for prevention and advice, and a branch responsible for whistleblowers.

Cooperation

Integrity is largely organized at the subnational, organizational level in the Netherlands. Particularly at the level of the provinces and municipalities there formal and informal networks developed, pushing an 'integrity culture'. Notable are the Association for Netherlands Municipalities (organizing the yearly 'Integrity Day') and the Association of Dutch Provinces. Dutch mayor's meet separately within the context of the Society of Dutch Mayors, which every year organizes the so-called 'Lochem conferences' where integrity is oftentimes an important subject.



4. POLITICAL INTEGRITY AT THE SUBNATIONAL LEVEL

The content and even the broad structures of integrity that applies to civil servants to a large degree also apply to holders of political office. The manner in which integrity is organized is, however, quite different. This for the simple fact that political bodies are not organizations. Strides have been made in the last decade. Differences between councils are still large though and many commence with an active integrity agenda only after an (alleged) integrity breach has taken place.

4.1 Local and regional politics: integrity of municipal and provincial councils

Elected officials are their own highest authority. The management of integrity, therefore, is to a large extent a shared task of the individual members of a council. The mayor of the municipality, and the King's Commissioner of the provinces, however, rather uniquely play an important role regarding integrity. As non-elected offices, they present a non-political position that holds continuity. Within the Dutch system, the mayor and the Commissioner represent and protect the fundamentals of democracy on which all citizens are in consensus – such as the quality of the political process, human rights, and the exercise of the monopoly on violence. For these reasons, current solution to organizing integrity at the political level seek to utilize the particular position and the status of the mayor and King's Commissioner. This has recently been formalized in the amended Municipal and Provincial Act (February 1 2016) in which mayors and the Commissioners are ascribed the title of guardian of integrity. Tellingly, however, few instruments are at the Mayor's or Commissioner's disposal. The obvious reason hereto is that he or she is not a competent authority over the council members. Personal leadership and moral appeal to municipal council member to uphold their responsibility are his key tools to work with.

The first main challenge for the council is to clarify the applicable laws. A main problem with the legal prescriptions is that they are not always exhaustive or clear. Conflict of interest is a key example. The Municipal as well as Provincial Act are clear that council members cannot fulfill certain functions (for instance, minister) or perform certain acts (such as selling property or goods to the municipality). Infringements of these prescriptions can actually lead to

the forced resignation of the council member from his or her seat. The idea behind these prescriptions is that these functions and actions by definition lead to a conflict of interest. Herewith, however, only a small – and relatively unproblematic part of conflict of interest is captured. The Acts also state that a council member cannot vote when he or she has a conflict of interest (nor can the council member influence the decision-making process as the General Governance Act informs). What it exactly means to have a conflict of interest remains rather unclear and has only been partially been fleshed out through jurisprudence. At the same time, the implication of voting with a conflict of interest can have quite extensive consequences. The reputation of the council member shattered, and a council decision that can be nullified (either by royal decree or by the Department of Administrative Law of the Council of State. Preventative tools that prevent council members from mistakenly breaching integrity rules, therefore, are needed. A well-articulated code of conduct that translates the dispersed legal rules into clear articles is a suitable instrument to which many municipalities have turned in recent years.

In their function as guardians, mayors and King's Commissioners organize events and trainings centering around integrity. Increasingly a more structural approach is taken that focuses on developing succinct codes of conduct, updating protocols and developing transparent procedures on reimbursement policies. More challenging still within the political context is the installing of a moral learning process with the council as an investigation into the morally right requires a temporary suspension of political judgment. While in training sessions council members are willing to do so, it is hard to mimic this atmosphere once opposition and coalition parties square off in the political arena. With citizens becoming more vocal in expressing their dissatisfaction with the outcomes of politics, however, doing right by them in council decision becomes increasingly salient.

More recently, municipal councils have tackled the issue of how to deal with a suspicion of an integrity breach. Too often such suspicion, with the helping hand of the media, is used as political fodder, hurting the person under suspicion (before any guilt has been established) as well as the public's trust in politics. To forego these situations, a 'Gentle Agreements' between municipal councils and the mayor has been drafted in a range of municipalities. Comparable to the reporting and investigation protocols at the civil service, in these agreements, council members agree unanimously to handle suspicions of integrity breaches as a non-political affair, to hold back on publicity and to treat the one under suspicion with care. Moreover, the agreement provides the mayor with certain tools to take up his or her role as guardian of integrity.

4.2 Local and regional politics: integrity of municipal and provincial executives

Municipal and provincial aldermen to a large extent fall under the same arrangements as council members. A most obvious difference is that aldermen or provincial executives can actually be punished for their integrity breaches, namely, by the council who can demand his or her resignation – a feat that is not uncommon particularly since the shift from a monistic to a dualistic political system.

[BOX 4] Taking up the position of aldermen comes with more scrutiny too and run higher

integrity risks because of their position. Mayors and municipal councils, therefore, increasingly decide to screening candidate-aldermen on integrity risks. These screenings, depending on the agency executing them, can consist of rather superficial screening of the candidate him or herself, building on the required Declaration

of Good behavior from the Ministry of Security, these screenings investigate whether candidates might pose an integrity risk. A more advanced type of screening does not screen the candidate but builds a risk profiles, which focuses on the vulnerabilities for integrity risks of the candidate and offers protective measure to limit these vulnerabilities.

The professional political magazine for regional politics, Binnenlands Bestuur, publishes the 'aldermenresearch' in which the number of aldermen resigning each year are summed-up. In 2014, 9 of 27 aldermen that had to resign for political reasons did so because of integrity-related issues or the appearance of conflict of interest. 2015 only 1 in 6 had to resign for integrity reasons. Given the total number of 74 aldermen stepping down, the total number of aldermen that resigned for integrity-reasons was actually higher.

Lastly, with some exceptions, mayors and King's Commissioner's, too are under the similar legal restraints. Other than aldermen and provincial executives, Mayors and Commissioners cannot be politically held accountable because of their appointed, self-standing office. Particularly mayors are under high scrutiny regarding integrity because of their public persona. For this reason, they are also vulnerable threats made by third parties. Formally mayors nor Commissioners

can be voted out by by the council but without the council's support this is what effectively happens – albeit that this is mere theory for the very secure position of the King's Commissioner who operates at relative distance to the public. In case a mayor loses support it is the Commissioner that can request him to resign. The Commissioner is in a comparable position regarding accountable but then to the minister of the interior.



5. PUBLIC PROCUREMENT

Public procurement is one of the most vulnerable and consequential processes within public sector organizations. Particularly large scale public works, infrastructural projects and IT-overhauls are costly endeavors appealing to many private parties. Experiences of the past have exemplified the particular vulnerabilities of these competitive economic undertakings for government. Standing out is the so-called construction fraud-case that came to light in 2001. A damning affair that lingered on for many years, subject to a parliamentary investigation, it heightened attention to procurement practices. The result hereof has been the development of a comprehensive set of rules, procedures and monitoring regarding the whole processes. Hereby not only the risk of corruption and fraud but also all forms of favoritism have been guiding. Lunch invitations by contractors or a Christmas gift are largely remnants of the past. Moreover, the so-called **'Model K'** was developed, which procuring authorities can require private agents to submit with their offers. This 'Model K' statement says that the bidding company's bid is in accordance with fair competition rules and has to be signed by the highest level of management.

Like all EU member states, the Netherlands is bound by EU Directives on public procurement. It is at the EU level that the procurement methods – broadly put, open, European; open, national; closed multiple-source; closed single-source – are bound by thresholds levels. In short, the higher the value of the tender the greater the importance attached to complete transparency in all facets of the process. Recent EU directives have led to an amended **Public Procurement Act** (passed both Houses on March 22, 2016 and will be in effect per July 1, 2016) has passed both houses. Directive 2014/14/EU contained a novelty, adding for the first time an article (Article 24) on Conflict of Interests (distorting fair competition), which is formally translated into Article 1.10(b) of the amended Dutch Public Procurement Act. Formally a new article in the Public Procurement Act, concern over conflict of interest was long included in the procurement policies of public organizations as a consequence of the Civil Servants Act and the Basic Standards, which require the organization to install and operate an integrity policy. Public procurement protocols of municipalities will, for instance, refer to their general integrity policy. A new element, however, is the requirement that contracting authorities pro-actively 'prevent, recognize and solve' potential integrity breaches, which can create a shift regarding burden of proof in complaint procedures. Whereas up until the burden was with the complainer, the government will now be more on the defensive.

The Public Procurement Act lays out the general legal framework for tenders. These are quite extensive already: while diverging per tender method, contracting

authorities are obliged to publish a notice of the tender, specifying requirements for eligibility and criteria for selection (in the Netherlands, the economically most beneficial proposal). Post-decision, results have to be communicating including a motivation to the parties of the made choice. These extensive requirements are all in place to ensure three core principles, supporting a competitive free market: non-discrimination, equality and transparency.

The concrete measures to harness the integrity of all these processes lies at organizational level. Again, a rich landscape of best practice advice – Including an expertise and exchange center on public procurement (*PIANOo*) created by the Ministry of Economic Affairs – and a model code of conduct developed by the Association of Netherlands Municipalities provide guidance. To this extent, the integrity of public procurement is at a high level in the Netherlands, although budget cuts do put pressure on the current system.

The specific challenge of public procurement in the Netherlands today comes down to securing the basic principle guiding the process: enabling a free and competitive market for public tenders. And it must do so while, at the same time, keep a grip on potential breaches like fraud and, currently more pressing, favoritism. The government is in a unique position when offering a tender. Government, as the guardian of free and fair market competition enters that market itself when it offers a tender. As a contracting party, allocating public money, it has therefore a strong duty to ensure that procurement procedures live up to the highest integrity standards enabling fair competition and all but eliminate the possibility of favoritism.

With past experiences of fraud and corruption in mind, strong rules and procedures have thus been put in place to serve this basic principle. The stringent procedural set up and rules pertaining to public procurement, however, make that Dutch public sector organizations struggle to keep tenders workable and not excessively costly. To this extent a fourth principle applying to the method of tendering is developed, the principle of proportionality. Guided by the 'Proportionality Guide', public sector organizations can select procedures and requirements fitting the specific tender. Yet challenges emerge because of these tight regulations. Smaller parties have a difficult time entering the market because of the stringent prescriptions, which thereby effectively undermine a level playing field. At the same time, the current system creates stimuli for government agencies to place tenders below certain threshold values – for instance by way of contract splitting – to escape too much red tape. The end result hereof is that the Netherlands lags behind in public offerings within the EU – an often-heard critique. A consequence of the high amount of closed tenders is that the odds that favoritism might takes place increase – a risk further heightened by the fact that recent budget cuts have lead to understaffing at vulnerable positions.



6. LITERATURE

6.1 Primary sources

6.1.1 Legal sources

Dutch:

Civil Servants Act ('Ambtenarenwet') (2006). <http://wetten.overheid.nl/BWBR0001947/2016-01-01>.

Freedom of Information Act ('Wet openbaarheid van Bestuur') (1991). <http://wetten.overheid.nl/BWBR0005252/2015-07-18>.

General Governance Act (Algemene Wet Bestuursrecht (1994). <http://wetten.overheid.nl/BWBR0005537/2016-05-20>.

Municipalities Act ('Gemeentewet') (2016). <http://wetten.overheid.nl/BWBR0005416/2016-02-01>.

Provinces Act ('Provinciewet') (2016). <http://wetten.overheid.nl/BWBR0005645/2016-02-01>.

Public procurement act ('Aanbestedingswet') (2012). <http://wetten.overheid.nl/BWBR0032203/2016-05-01>.

EU:

Directive 2014/24/EU of the European Parliament and of the Council (2014). <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0024>.

6.1.2 Other official publications

Dalis, C.I. (1992). *Concerning the integrity of public administration* ('Om de integriteit van het openbaar bestuur'), Speech at the annual conference of the Association for Netherlands Municipalities. <http://www.integriteitoverheid.nl/fileadmin/BIOS/data/Speeches%20en%20presentaties/speechministerdalescongresvngjuni1992.pdf> (*Dutch*).

Ministry of Internal Affairs and Kingdom Relations, Association of Netherlands Municipalities, Interprovincial Consultation, Union of Water Authorities, and Dutch Police Institute (2006). *Model approach to the Basic Integrity Standards for Public Administration and the Police*. http://www.integriteitoverheid.nl/fileadmin/user_upload/Modelaanpak_Basisnormen_Integriteit_Openbaar_Bestuur_en_Politie.pdf.

Dutch Central Government (2013). Proportionality Guide ('Gids Proportionaliteits'). <https://www.rijksoverheid.nl/documenten/rapporten/2013/02/20/gids-proportionaliteit>.

6.2 Sources used and suggestions for further reading (English only)

Van Delden, W., F. van de Wouw, and J. van der Veer (2008a). The Amsterdam Integrity System. In L. Huberts, F. Anechiarico, and F. Six (Eds), *Local Integrity Systems; world cities fighting corruption and safeguarding integrity*, BJU legal publishers, The Hague.

ERCAS (2015). *Public Integrity and Trust in Europe*, Hertie School of Governance. Report commissioned by the Dutch Ministry of the Interior and Kingdom Relations.

European Commission (2014). Report from the commission to the council and the European Parliament: Anti-corruption report.

Hoekstra, A. and M. Kaptein (2012). The Institutionalization of Integrity in Local Government, *Public Integrity*, 1:15.

Huberts, L., F. Six, and K. Lasthuizen (2008b). Evaluation of the Amsterdam integrity system, In: L. Huberts, F. Anechiarico, and F. Six (Eds), *Local Integrity Systems; world cities fighting corruption and safeguarding integrity*, BJU legal publishers, The Hague

Huberts, L. (2014). *The Integrity of Governance: what is it, what we know, what is done and where to go?* IIAS, Palgrave Macmillan, Hampshire.

Huberts, L. and A. Hoekstra (2016). *Integrity Management in the Public Sector: The Dutch Approach*, BIOS, The Hague.

Lambo, T. and A. Hoekstra (2014). *The Netherlands: Developments in Monitoring Integrity in Public Administration*, in: Prime witnesses: case studies of self-assessments for monitoring integrity in the European Union, Lambo, T., W. van Dooren and P.M. Heywood (Eds), Commissioned by the Minister of Internal Affairs and Kingdom Relations, the Netherlands.

Transparency International (2012). *National Integrity System Assessment Netherlands*, T.I. Netherlands, The Hague.

Transparency International (2016). *Corruption Perception Index 2015*, T.I



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