

Standing and operational space of non-governmental organisations (NGOs) in contributing to respecting and promoting fundamental rights in EU Member States

The Netherlands 2017

Contractor's name: Art.1

Author(s): Eddie van Nieuwenhuizen,

Gregor Walz

Reviewed by: Ashley Terlouw

DISCLAIMER: This document was commissioned under contract as background material for a comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the report 'Challenges facing civil society organisations working on human rights in the EU'. The information and views contained in the document do not necessarily reflect the views or the official position of FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

Table of contents

1	Regulatory environment for the work of non-governmental organisations	3
2	EU Member State government funding for non-governmental organisations – trends and developments 2011-2016	6
2.1	Overall amount of government funding.....	6
2.2	Distribution of government funding	9
2.3	Restrictions (or other changes) on NGO funding from other sources 9	
3	Access to the decision-making process for non-governmental organisations working on fundamental rights.....	10
4	Further information.....	16

1 Regulatory environment for the work of non-governmental organisations

Title of legislation and reference	Topic (please make reference to categories A-F see guidelines)	Effect on civil society (positive or negative) Please include reference to source of information
<p>1. The Netherlands, Public Assemblies Act (<i>Wet openbare manifestaties</i>), 20 April 1988, available at: http://wetten.overheid.nl/BWBR0004318/2010-10-10 - change in implementation/application, not in the legislation itself</p>	<p>B</p>	<p>Negative</p> <p>The Dutch Public Assemblies Act took effect in 1988 and regulates the right to assemble and the right to demonstrate guaranteed by Article 9 of the Dutch Constitution. The right to demonstrate has come under pressure in recent years by measures of the municipal authorities, who try to restrict demonstrations in contravention of the Public Assemblies Act. We highlight one example: on 18 November 2016 the mayor of the municipality of Sittard-Geleen imposed restrictive conditions on demonstrators who wanted to protest against Black Pete during the entry of Sinterklaas, or Saint Nicholas, in Sittard-Geleen.¹ The demonstrators were only allowed to convey 'positive messages, thus no (negative) messages on racism in connection with the Sinterklaas festivities in all its dimensions'. On</p>

¹ Public Interest Litigation Project (PILP) (2016), 'Right to protest', Web page, available at: <http://pilpnjcm.nl/files/right-to-protest/>.

		<p>the day of the protest, 19 November 2016, the police decided to uphold the restrictions laid down in the mayor's decision. The protest placards with the text 'for a racism-free children's festivity' and 'Black Pete racism' were confiscated by the police. The Public Interest Litigation Project (PILP) of the Dutch section of the International Commission of Jurists (NJCM) lodged a legal complaint against the mayor of Sittard-Geleen on 28 December 2016. On 21 February 2017, PILP learned that it won its case on the right to protest. The appeals committee of the municipality of Sittard-Geleen has since then announced to the PILP that they will declare the appeal manifestly well-founded. The mayor admitted his mistake at a press conference. ² PILP specifies on its website four other examples on which the right to demonstrate and the related freedom of expression were under pressure in the Netherlands. In 2016, it saw the problematic arrests of 326 Feyenoord (soccer) fans in Rotterdam, a dozen</p>
--	--	--

² Public Interest Litigation Project (PILP) (2017), 'Case on right to protest won in Sittard-Geleen; mayor admits mistake', News release, 15 March 2017, available at: <http://pilpnjcm.nl/en/case-right-protest-won-mayor-admits-mistake/>.

		feminist protesters in Spijkenisse, 200 anti 'Black Pete' protesters in Rotterdam and the arrest of a foreman of 'Pegida' after displaying an image of a swastika thrown in the trash. ³
2.The Netherlands, Supreme Court (Hoge Raad) (2015), State vs Privacy First and Other, Case No. 14/02737, 22 May 2015, ECLI:NL:HR:2015:1296, available at: http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2015:1296	E	Negative In this arrest of the Dutch supreme court, it was decided that NGO Privacy First and 19 co-plaintiffs were inadmissible in a civil lawsuit initiated by NGO Privacy First against the storage of fingerprints under the Dutch Passport Act. ⁴ Since this arrest, it has become highly difficult for non-governmental organisations (NGOs) to institute legal proceedings in the general interest in order to fight human rights violations (including privacy violations) in the Netherlands. ⁵ Privacy First was able to take civil action in the general interest, on behalf of the Dutch population at large. Since the early 90s, this is possible via a special procedure under Article 3:305a of the Dutch Civil

³ Public Interest Litigation Project (PILP) (2017)', 'Right to protest under pressure', Web page, available at: <http://pilpnjcm.nl/files/right-to-protest/>.

⁴ Privacy First (2015), 'Dutch Supreme Court passes on Passport Trial to Council of State', Web page, 28 May 2015, available at: <https://www.privacyfirst.eu/court-cases/639-dutch-supreme-court-passes-on-passport-trial-to-council-of-state.html>.

⁵ Netwerk VN-Vrouwenverdrag (2016), 'Factsheet : Acces to effective remedies', 11 November 2016, available at: <http://www.vn-vrouwenverdrag.nl/factsheet-access-to-effective-remedies/>.

		<p>Code, the so-called 'action of general interest'. But this decision by the supreme court blocks this possibility. The NGO Privacy First has pointed out the lack of effective legal remedies for NGOs due to the arrest by the Dutch supreme court in its submission to the fifth periodic review of the Netherlands by the UN Human Rights Committee (12 December 2016).⁶ Privacy first uses the phrase 'highly difficult'. There are no further examples of lawsuits where the Supreme Court has stopped NGOs by this arrest.</p>
--	--	---

2 EU Member State government funding for non-governmental organisations – trends and developments 2011-2016

2.1 Overall amount of government funding

The revenue channels of NGOs in the Netherlands are donations, subsidies and contributions. Many NGOs in the Netherlands receive government funding. The national government, the provincial authorities and the municipal authorities fund all sorts of NGOs. Some of these subsidies are structural, meaning that they support the general work of an organisation, while some others are tied to a project with a more limited scope. There are no studies or official documents which provide an overview of the overall amount of government funding to NGOs. The budgets of the national government, the provincial authorities and the municipal

⁶ Privacy First (2016), Submission of Privacy First to the fifth periodic review of the Netherlands by the UN Human Rights Committee. 12 December 2016, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NLD/INT_CCPR_IC_S_NLD_26075_E.pdf.

authorities have no separate items for NGOs. The term NGO has no official status in the Netherlands.

At the same time, it is clear that changes have occurred in the government funding for NGOs in the period 2011–2016 due to policy changes and general austerity measures. We cannot present an overview of all NGOs funded in different domains, but we present illustrations of the overall trend by examining the trends and development in three domains. These are: integration of migrants, non-discrimination and patient rights.

Integration of migrants: from the end of the 1970s, the Dutch government developed a targeted policy aimed at the societal integration of migrants in the Netherlands. As part of this policy, the Minorities Consultation Act was implemented in 1997⁷ and was repealed in 2013. It used to determine the consultation between a limited number of organisations representing the interests of a specific ethnic minority or migrant community on the one side and the national government on the other side. As part of the Minorities Consultation Act, these organisation received subsidies (€ 3 million on an annual basis). These official organisations represented people of Chinese, Turkish, Moluccans, Southern European, Caribbean Dutch, Surinamese and Moroccan descent and refugees. These organisations were statutory dialogue partners of the government, and were consulted on all policies that affected minority communities. By repealing this act, the national government also withdrew the subsidies. Some of the organisations continue to exist, but are now dependent on subsidies related to projects and donations. In 2015, the national government stopped its subsidy for FORUM, the Institute for Multicultural Development. FORUM was the largest non-governmental actor in the field of integration policy in the Netherlands.⁸ It received a subsidy of € 5 million annually. FORUM has ceased to exist. Parts of its tasks and activities were taken over by the Integration and Society Platform (*Kennisplatform Integratie & Samenleving*), but with a much lower budget. All this implies a strong reduction in funding for NGOs in the field of migrant integration.

⁷ Kasem, E., De Jong, J. & Büller, N. (2016), *Evaluatie Landelijk overleg minderhedenbeleid : Onderzoek doelmatigheid en doeltreffendheid van het LOM-beleid*, Amsterdam, Van de Bunt Adviseurs available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2017/01/30/beleidsdoorlichting-integratie-en-maatschappelijke-samenhang>.

⁸ The Netherlands, Minister of Social Affairs and Employment (Minister van Sociale Zaken en Werkgelegenheid) (2014), *'Afbouw FORUM en de inrichting van de kennisfunctie op het beleidsterrein van integratie'*, Letter to the House of Representatives, 6 June 2014, available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2014/06/06/kamerbrief-afbouw-forum-en-de-inrichting-van-de-kennisfunctie-op-het-beleidsterrein-van-integratie/kamerbrief-afbouw-forum-en-de-inrichting-van-de-kennisfunctie-op-het-beleidsterrein-van-integratie.pdf>.

Patient rights: the Ministry of Health, Welfare and Sport annually gives subsidies to around 200 patient representative organisations and organisations representing persons with disabilities. These patient organisations represent the interest of patient groups. Three of these organisations are umbrella organisations. The other organisations represent patients with a specific disease or people with a specific disability. In 2011, the total amount of funding was € 43 million, in 2015 the total amount of funding was € 25.8 million.⁹ This is a 40 % reduction.

Non-discrimination: there are some 20 organisations in the field of non-discrimination in the Netherlands. Most of these are local organisations. There is one national organisation in the field of non-discrimination, Art.1, which used to receive a structural subsidy of around € 1 million each year. However, this subsidy was withdrawn in 2011. The local organisations are funded by municipalities to handle and register reports or complaints of residents who have experienced or witnessed discrimination. The Municipal Anti-discrimination Services Act (*Wet gemeentelijke antidiscrimatievoorzieningen*) obliges each municipality to ensure that every resident has the right to receive assistance from an anti-discrimination service in case he or she has experienced or witnessed discrimination. Each year, municipalities fund local anti-discrimination organisations to perform this task, which was mandated by the Municipal Anti-discrimination Facilities Act. Municipalities receive a financial contribution of € 0.372 for each resident (€ 6 million in total) from the national government.¹⁰ A number of municipalities who have stopped funding the local anti-discrimination organisation, have chosen to perform the registration and handling of complaints about discrimination themselves, thereby ignoring the demands of independence enshrined in the law. At the same time, the local anti-discrimination organisations receive less subsidies for carrying out other activities.¹¹ In the period of 2011–2016, the total amount of funding to anti-discrimination organisation has therefore decreased.

In all three domains we have analysed that there has been a clear decrease in government funding, related to austerity programmes and

⁹ Witmond, B. et al (2015), *Beleidsdoorlichting en evaluatie. Artikel 4.1: Positie van de client*, Rotterdam / Utrecht, Ecorys / Verwey-Jonker Instituut.

¹⁰ Struik, P. (2012), *Evaluatie van de Wet gemeentelijke antidiscrimatievoorzieningen*, Arnhem, Partners+Pröpper, available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2012/12/18/evaluatie-van-de-wet-gemeentelijke-antidiscrimatievoorzieningen/evaluatie-van-de-wet-gemeentelijke-antidiscrimatievoorzieningen.pdf>.

¹¹ Struik, P. (2012), *Evaluatie van de Wet gemeentelijke antidiscrimatievoorzieningen*, Arnhem, Partners+Pröpper, available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2012/12/18/evaluatie-van-de-wet-gemeentelijke-antidiscrimatievoorzieningen/evaluatie-van-de-wet-gemeentelijke-antidiscrimatievoorzieningen.pdf>.

political choices. This is especially true for structural subsidies (or so-called core subsidies). In the field of the integration of migrants, nine organisations lost their structural subsidies, whereas one organisation in the field of discrimination. This trend has been confirmed in the domain of women's rights organisations by the Dutch Women's Council (*Nederlandse Vrouwen Raad*), a national umbrella of approximately 50 women's organisations.¹² The result of this decrease is that organisational structures have been weakened and NGOs have less room to develop their own activities according to their own priorities. Within the scope of this project, it is not possible to examine all sectors of public policy, but these three sectors can serve as an illustration of a broader trend.

2.2 Distribution of government funding

There are no studies or official documents which provide an overview of the overall amount of government funding to NGOs so we cannot say if there is any redistribution of government funding across different types of activity.

2.3 Restrictions (or other changes) on NGO funding from other sources

Since 2008, the Dutch Tax Administration can designate an institution to be a 'Public Benefit Organisation' (PBO) (*Algemeen Nut Beogende Instelling*). More than 60,000 PBOs are registered with the Dutch tax authorities. Not all of them are NGOs, but all NGOs can apply for a PBO status. PBOs are offered a number of tax advantages:

- (1) A PBO does not pay Dutch inheritance tax or gift tax on inheritances or gifts that the institution allocates to the general good.
- (2) A PBO does not pay Dutch gift tax on gifts that the institution makes for the general good.
- (3) Natural and legal persons making donations to a PBO may deduct their gifts from their Dutch income tax or corporate income tax.¹³

As of 1 January 2014, new conditions apply to PBOs.¹⁴ Each PBO must publish the following information on an internet site: the name of the organisation, the RSIN (Legal Entities and Partnerships Identification Number), tax number, contact details, objective of the organisation, policy plan, name and position of the board, members, the payment policy, a

¹² Based on information provided by an official of the Netherlands Women's Council (*Nederlandse Vrouwen Raad*) in an interview by telephone held on 4 April 2017.

¹³ The Netherlands, Tax and Customs Administration (*Belastingdienst*) (2017), 'Public Benefit Organisations', Web page, https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/business/other_subjects/public_benefit_organisations/.

¹⁴ The Netherlands, Tax and Customs Administration (*Belastingdienst*) (2017), 'New conditions apply to ANBIs as of January 1st 2014', Web page, https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/business/other_subjects/public_benefit_organisations/new_conditions_apply_to_anbis_as_of_january_1st_2014/new_conditions_apply_to_anbis_as_of_january_1st_2014.

report of the activities that have already been carried out, a financial statement (containing the balance sheet, the profit and loss statement, explanation). A PBO can publish the required particulars on its own internet site or on the collective internet site of for example a branch organisation.

This is the only change in the regulation of NGO funding that has taken place within the reporting period.

3 Access to the decision-making process for non-governmental organisations working on fundamental rights

Title of legislation/policy	Reference	Short summary (max 500 characters)
Act repealing Minorities Consultation Act (<i>Wet intrekking Wet overleg minderhedenbeleid</i>)	The Netherlands, Act repealing Minorities Consultation Act (<i>Wet intrekking Wet overleg minderhedenbeleid</i>), 19 June 2013, available at: http://wetten.overheid.nl/BWBR0033596/2013-07-23	The Act repealing the Minorities Consultation (<i>Wet Overleg Minderheden</i>) took effect on 23 July 2013. From 1997 to 2013, this act regulated the consultation between a limited number of organisations representing the interests of a specific ethnic minority or a migrant community on the one side and the national government on the other side. These official organisations represented Chinese, Turkish, Moluccan, Southern European, Caribbean Dutch, Surinamese and Moroccan communities and refugees. These organisations were statutory dialogue partners of the government, and were consulted on all

		<p>policies that affected minority communities. As part of the Minorities Consultation Act, these organisation received subsidies (€ 3 million annually). The Act repealing Minorities Consultation ended the structural subsidies of these organisations and the structural consultation. The Committee on the Elimination of Racial Discrimination (CERD) expressed its concerns about the repeal of the Minorities Consultation Act.¹⁵ The Dutch government indicated to the CERD that a dialogue was taking place regularly between the Minister of Social Affairs and various minority groups (replacing the structure provided by the repealed act). However, the CERD is concerned that this form of dialogue may be less effective to convey the situation and concerns of</p>
--	--	---

¹⁵ United Nations, Committee on the Elimination of Racial Discrimination (CERD) (2015), *Concluding observations on the nineteenth to twenty-first periodic reports of the Netherlands*, available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2015/10/28/bijlage-3-concluding-observations-on-the-nineteenth-to-twenty-first-periodic-reports-of-the-netherlands/bijlage-3-concluding-observations-on-the-nineteenth-to-twenty-first-periodic-reports-of-the-netherlands.pdf>.

		<p>minorities than regular consultation with representatives properly designated by the respective groups. An evaluation study on the Minorities Consultation Act was published in 2016.¹⁶ It concluded that the act enabled the national government to make more effective policies aimed at minority groups, providing these with opportunities to influence the affected minority communities. Since this study was published in 2016, three years after the repeal of the act, it did not have any effect on the decision by the government to repeal the Minorities Consultation Act. The publication of the report led to an in-depth interview with a former civil servant working on minority consultation in a national newspaper (<i>Volkskrant</i>), in which the civil servant called for a reinstatement of the structural</p>
--	--	--

¹⁶ Kasem, E., De Jong, J. and Büller, N. (2016), *Evaluatie Landelijk overleg minderhedenbeleid : Onderzoek doelmatigheid en doeltreffendheid van het LOM-beleid*, Amsterdam, Van de Bunt Adviseurs available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2017/01/30/beleidsdoorlichting-integratie-en-maatschappelijke-samenhang>.

		dialogue. ¹⁷ However, this interview was not followed up by a debate or other reactions. The criticism of CERD has also not led to any political debate or to plans aiming to initiate legislation to replace the repealed act.
2015 Social Support Act (<i>Wet maatschappelijke ondersteuning 2015</i>)	The Netherlands, 2015 Social Support Act 2015 (<i>Wet maatschappelijke ondersteuning 2015</i>), 9 July 2014, available at: http://wetten.overheid.nl/BWBR0035362/2016-08-01	The 2015 Social Support Act (like its predecessor) obliges local authorities to give citizens and other stakeholders an opportunity to participate in the formulation of policies as part of the implementation of the Social Support Act. They do this in several ways, including through consultative councils, so-called ' <i>Wmo-raden</i> ' or ' <i>Wmo Councils</i> '. Research from 2014 (on the old Social Support Act) showed that there was a tendency for Wmo Councils to be given a purely advisory role at the expense of their advocacy (based on research in eight municipalities). ¹⁸

¹⁷ The Netherlands, Volkskrant (2017), 'Integratie-expert: *'Inburgering, dat bespreek je als overheid niet in de moskee'*, article, 27 February 2017, <http://www.volkskrant.nl/4467591>.

¹⁸ Kromhout, M. , Feijten, P., Vonk, F., De Klerk, M., Marangos, A.M., Mensink, W, Den Draak, and De Boer, A. (2014), *Social support in development. Evaluation of the Dutch Social Support Act (Wmo) 2010-2012*, The Netherlands Institute for Social Research, English summary available at: <http://www.scp.nl/english/dsresource?objectid=36876&type=org>.

		<p>The 2015 Social Support Act (<i>Wet Maatschappelijke Ondersteuning 2015</i>) took effect on 1 January 2015. It replaces the old Social Support Act which took effect in 2007. The goal of the Social Support Act is to support people with a disability to live independently. The former Social Support Act had the same goal. The difference with the latter is that the present one is more ambitious and has a wider scope. The act is implemented by the municipalities.</p>
<p>Council of Europe Convention on preventing and combating violence against women and domestic violence</p>	<p>The Netherlands, Council of Europe Convention on preventing and combating violence against women and domestic violence (<i>Verdrag van de Raad van Europa inzake het voorkomen en bestrijden van geweld tegen vrouwen en huiselijk geweld</i>), 11 May 2011, available at: http://wetten.overheid.nl/BWBV0006074/2016-03-01</p>	<p>On 1 March 2016, the Council of Europe Convention on preventing and combating violence against women and domestic violence took effect in the Netherlands. Article 9 of this convention obliges states to recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society organisation that are active in combating violence against women and which</p>

		<p>establish effective co-operation with these organisations. The Convention is seen as a direct legislation and therefore provides the immediate obligation for openness to consultation. There are no signs at the moment that municipalities have changed their policies towards NGOs because of the Istanbul Convention. After having checked the website of the four biggest municipalities of the Netherlands (Amsterdam, Rotterdam, The Hague and Utrecht), no new policy initiatives were found because of the ratification of the Istanbul Convention. The Netherlands Women's Council (<i>Nederlandse Vrouwen Raad</i>) indicated that many civil servants of municipalities are not aware of the Istanbul Convention yet.¹⁹</p>
<p>Open Government in the Netherlands, Action Plan</p>	<p>The Netherlands, Ministry of the Interior and Kingdom Relations (<i>Ministerie van Binnenlandse Zaken en Koninkrijksrelaties</i>) (2013), Netherlands</p>	<p>Since 2012, the Netherlands is formally part of the Open Government initiative. It has drawn up two action plans: one covering the period 2014–2015 and</p>

¹⁹ Based on information provided by an official of the Netherlands Women's Council (*Nederlandse Vrouwen Raad*) in an interview by telephone held on 4 April 2017.

	<p>Action Plan Open Government, available at: https://www.opengovpartnership.org/sites/default/files/Netherlands%20Action%20Plan%20Open%20Government%20Partnership.pdf</p> <p>The Netherlands, Ministry of the Interior and Kingdom Relations (<i>Ministerie van Binnenlandse Zaken en Koninkrijksrelaties</i>) (2015), Open government in the Netherlands. Action Plan 2016-2017, available at: www.opengovpartnership.org/sites/default/files/LR_91332_Actieplan_ENG_v2.pdf</p>	<p>one covering the period 2016–2017. Most action points of these action plans focus on making government information (more) available to citizens and to NGO’s by using digital means. One action point of the Action Plan 2014-2015 focuses on making the decision-making process itself more accessible by introducing online consultation for citizens, businesses and institutions on planned legislation. This is already standard practice in the Netherlands since 2009. One action point of the Action Plan 2016-2017 entails the training of civil servants of the national government in in their role as ‘networking officials’ who can interact effectively with civil society.</p>
--	--	--

4 Further information

No further information.