

# **Testing European legislation for subsidiarity and proportionality – Dutch list of points for action**

## **Introduction**

In response to a provision in the coalition agreement, all the Dutch government ministries have conducted an analysis of EU legislation that is either already in force or anticipated in their policy areas. The organisations of experts and stakeholders listed in the annexe have also been consulted. This survey focused both on legislation that the Netherlands would prefer to be taken up only at national level – in accordance with the principle of subsidiarity – and on legislation that in our view has been designed or threatens to be designed in a way that goes beyond what is needed to attain its ends – based on the principle of proportionality.

The government has summarised the results of this survey in the list of points for action below, which will be discussed in the Dutch parliament and then presented in the EU. To this end we will contact the European Commission and canvass for support in the Council among the other member states. This is a list of issues that the Netherlands would like to have addressed or tackled in a different way than at present. This does not mean that we take a purely negative attitude towards EU legislation. Our consultations have confirmed that in many fields there is broad support for European legislation, and that the Netherlands often succeeds in addressing its issues in the course of the negotiation process.

On the basis of this survey the government has also drawn up a number of general recommendations, which should be followed whenever EU legislation is being drafted or adopted. We will draw attention to both these recommendations and the specific points for action and seek support for them in the EU.

## **Recommendations**

- i. Action taken by the EU should always be motivated by citing a clear legal basis in the Treaties. This basis should be concisely formulated and clearly related to the proposed action. The Commission should refrain from introducing proposals with an indirect or uncertain legal basis ('creeping competences').
- ii. If the Treaties do not give the EU competence in a specific policy area and the Commission thus cannot propose legislation, it should in principle also refrain from issuing non-binding communications or recommendations or taking an activist approach to that policy area in some other way.
- iii. When there are widely shared objections to EU legislation in the Council, for example on grounds of subsidiarity, political agreements may be made between the Council and Commission – without the 'acquis' needing to be modified – determining that the Commission will refrain from taking any further initiative in that area.

- iv. EU legislation should focus wherever possible on the main lines of policy and on the goals to be attained, rather than prescribing in detail how those goals should be achieved. Unnecessary details and too much emphasis on uniformity in EU legislation can have a needless and undesirable impact on national implementing modalities and costs. Wherever possible, member states should be given scope to use the means that are most effective in their specific situation in attaining the end in view.
- v. The Commission should be as explicit as possible in its proposals about the details of implementation costs and other costs at both EU and national level entailed by EU legislation.
- vi. To ensure that EU legislation is designed in a way proportional to the end in view, better and more systematic use could be made of impact assessments. Sunset and evaluation clauses should be incorporated in proposals where necessary so that modifications can be made to deal with any unforeseen adverse consequences.
- vii. Member states should be involved as much as possible whenever EU legislation that affects them is being drafted and considered through implementing acts, delegated acts or implementation and elaboration by EU agencies. All these processes should take as much account as possible of the implementation practices in the member states. There are still examples of legislation that has major consequences for member states in whose elaboration member states are insufficiently involved.
- viii. If the EU Court of Justice interprets EU legislation in a way that EU legislators did not foresee or intend, the problem should be addressed as much as possible by modifying the EU legislation on which the Court based its judgment. Sometimes a Court judgment lays bare tensions between the Union's policy objectives and those of the member states. (The Court's judgment on student allowances, included in the Dutch list of points for action below, is an example of this.) Such situations should be avoided as far as possible, and parties to both national and EU legislative processes should adopt a proactive approach to this end.
- ix. The opportunity offered when a new European Commission takes office in 2014 should be seized to review the priority assigned to all the EU's different tasks. These recommendations and the list below of points for action drawn up by the Netherlands could be translated into an action agenda for a more modest, more sober but more effective EU, starting from the principle: 'at European level only when necessary, at national level whenever possible'. The Dutch EU Presidency in the first half of 2016 could play a role in promoting such an agenda.

## **List of points for action** (grouped by Council configuration)

### *General Affairs*

#### **1. Regulation on the statute and funding of European political parties**

The Dutch government takes a favourable view of the proposal to change the statute of European political parties and allow them to obtain a legal status based on EU law. However, we have fundamental reservations about some parts of the proposal which in our view go further than necessary. We have principled objections to making the registration of political parties conditional on substantive and internal, organisational criteria, and to the European Parliament's proposed role in enforcing these conditions. As long as a party's views and organisation do not violate the law, it is up to the voters to judge them.

→ The Netherlands will make an effort in the negotiations on this Regulation, which are still in progress, to eliminate from the proposal the parts of it that we think go too far.

#### **2. Salary increase for EU staff**

In the Netherlands' view, the Commission's proposals for an annual salary increase for EU staff fail the test of proportionality in recent years, because they take no account of the financial crisis. The European Council of February 2013 agreed that EU salaries would be frozen for two years. The Netherlands will also endeavour to change the method of setting EU salaries in the new EU Staff Regulations.

→ The Netherlands will press in the annual negotiations for EU salaries that are in line with current remuneration trends in the member states. We will continue to press for this, among other ways by endeavouring to change the method of setting EU salaries in the new EU Staff Regulations.

#### **3. EU agencies**

The Common Approach to decentralised agencies (a political agreement reached in 2012 by the Council, Commission and European Parliament) laid down parameters for such matters as EU agencies' establishment, hosting, human resources policy, transparency and accountability. The Netherlands is in general critical of the expansion of agencies' remits and of increases in their budgets. We also take a basically critical stance towards the creation of new EU agencies.

→ On the basis of our general critical attitude, the Netherlands will insist on strict observance of the basic preconditions for the creation of new EU agencies, arguing for restraint in this regard. In every case the added value of a new agency should be clearly demonstrated.

#### **4. EU budget**

The Netherlands has questioned the subsidiarity and/or proportionality of various EU programmes. In our view, programmes funded from the EU budget need to have demonstrable added value. This added value for example has not been demonstrated for the Globalisation Fund, and has not always been demonstrated when Structural Fund resources are spent outside the poorest regions

of the poorest member states. In addition, the EU budget should not grow faster than national budgets. Agreements have now been made in the European Council on a maximum for EU expenditure in the 2014-2020 period (as part of the multi-annual financial framework (MFF)).

→ The Netherlands is satisfied with the European Council outcomes concerning the MFF for 2014-2020. We will press in the midterm review of the current MFF for a critical look at the efficiency and make-up of the EU budget (in line with the resolution on this point by MPs Michiel Servaes and Mark Verheijen).

#### *Foreign Affairs*

### **5. Regulation establishing the European voluntary humanitarian aid corps EU Aid Volunteers**

The Netherlands considers the structure and budget proposed by the Commission to implement this idea too top-heavy.

→ The Netherlands will press in the negotiations that are still in progress to keep EU Aid Volunteers' policymaking and management structure as lightweight as possible so as to avoid erecting a top-heavy bureaucratic organisation. We will also press for limiting the financial commitments entailed and finding the necessary funds in the existing EU humanitarian aid budget, so that no additional contributions will be demanded from the member states. EU Aid Volunteers should also avoid duplicating the work of existing volunteer organisations like the UN Volunteers.

### **6. Directive on consular protection for citizens of the Union abroad**

In the Netherlands' view, this Commission proposal sets standards that are too strict and too detailed. Consular assistance demands as much flexibility as possible in the interests of responding to different situations.

→ The Netherlands will press in the negotiations that are still in progress to leave member states enough scope to shape their own consular services (in line with the right to consular assistance enshrined in the Treaties and Charter) on the basis of conditions set by the member states themselves.

#### *Competitiveness (Internal Market, Industry, Research and Space)*

### **7. Regulation on the Community Customs Code**

The Regulation on the Community Customs Code is currently being revised. In this area the Netherlands is ensuring that member states retain enough scope to design their own implementation procedures. Member states need a certain degree of flexibility so that they can use the means that are most effective in their specific situation in achieving the end in view.

→ After the adoption of a new Community Customs Code, the Netherlands will critically scrutinise the Commission's exercise of its delegated powers within the parameters in force. In general, we

attach importance to retaining an appropriate balance in the Community Customs Code between uniformity and flexibility. This is in the interests of promoting international trade, and has always been a central Dutch concern.

#### **8. Regulation on Community statistics relating to the trading of goods between member states**

The EU lays down detailed rules for the way in which statistics on intra-Community trade should be requested and collected. The Netherlands considers this undesirable, in part because this statistical requirement accounts for half of the administrative burden on Statistics Netherlands (CBS). Today there are more modern ways to collect data that would impose less of an administrative burden.

→ While the Netherlands originally made a positive assessment of the proportionality of the Regulation that was adopted in 2004, we are now actively urging that it be modified. The Commission is already at work on proposals along these lines.

#### **9. Regulation laying down harmonised conditions for the marketing of construction products**

The Construction Products Regulation, which is to replace the Construction Products Directive, includes more requirements for companies to obtain a CE mark on construction products. The new rules would also tighten up government oversight of implementation of the legislation. The Netherlands sees the Regulation as justified in terms of subsidiarity, as a means of creating an internal market for construction products, but we have concerns about the proportionality of its practical elaboration. In our view, the new rules would entail an undesirable increase in the administrative burden on companies involved in drafting and storing the Declaration of Performance for the CE mark and sending it to end users.

→ The Netherlands will join with other member states to urge the European Commission to take measures to reduce the administrative burden on business. This could be achieved by modifying the delegated acts adopted on the basis of the Regulation. The Council could possibly decide to withdraw the delegation.

#### *Economic and Financial Affairs*

#### **10. Financial Transaction Tax (FTT)**

The current Commission proposal does not meet the conditions laid down in the Dutch coalition agreement: that pension funds be exempted, no disproportionate effects arise from levying the tax in conjunction with the bank tax, and revenues flow back to the member states. This FTT has been designed in such a way that even parties outside the FTT area, like Dutch pension funds, will be taxed when they trade financial instruments issued in FTT countries. In addition, parties in the FTT countries will impose a surcharge when they buy financial instruments issued outside the FTT area, on the grounds that they will be taxed by their home country. This will make financing of private and public debt more expensive even for parties outside the FTT area.

→ The new Commission proposal will serve as a basis for further negotiations. The Netherlands will continue to do its best to raise attention from the Commission and other member states to our concerns.

### **11. 'Shock absorption fund' for euro countries**

In a recent Communication, the European Commission expressed its support for moving in the long term towards an autonomous budget for the euro area with a stabilising, countercyclical function. The Netherlands is opposed to this idea. Economic stabilisation can best take place at national level, within the limits of the agreements in the Stability and Growth Pact. The proposed eurozone mechanism could have the adverse effect of allowing countries to shift the risks of their inadequate reforms to EU level.

→ The Netherlands opposes the Commission's idea. Economic stabilisation can best take place at national level.

### **12. Direct taxation**

The Netherlands considers direct taxation a national prerogative. Past Commission proposals in this area, like the Common Consolidated Corporate Tax Base (CCCTB) proposed in 2011, have been negatively assessed on grounds of subsidiarity. There are however specific areas within direct taxation, such as tax fraud and evasion, where proposals are assessed positively in terms of subsidiarity because they have key cross-border dimensions.

→ In the Netherlands' view, the Commission in principle should not take any initiatives in the area of direct taxation. If initiatives are nonetheless taken, we believe that the EU level is only appropriate for addressing genuinely cross-border dimensions of direct taxation.

### **13. Non-harmonised indirect taxation**

With regard to non-harmonised indirect taxation (notably car taxes), the Netherlands seeks to preserve national policy freedom. In 2005 we and other member states made a negative assessment on grounds of subsidiarity of a proposed Directive on passenger car-related taxes. As a result there was no unanimity on the proposal in the Council. In 2012 the Commission published a Communication on cross-border tax obstacles for passenger cars, of which the Netherlands once more made a largely negative assessment.

→ The Netherlands does not support EU legislative initiatives in this area.

### **14. Tax related infringement proceedings**

The Commission sometimes attempts by means of infringement proceedings to force member states to reduce differences in their systems of direct taxation. The Netherlands considers this an undesirable method. Countries are after all allowed to have different tax systems, and any adverse effects these may have can be addressed in other ways, for example through bilateral tax treaties. It is also disturbing that the Commission does not always take simultaneous action against all the member states concerned, so that there is not enough of a level playing field. In addition, the

budgetary consequences can be substantial. The Netherlands views the Commission's interference with national autonomy on this point as undesirable.

→ The Netherlands strongly urges the Commission to respect member states' autonomy in levying taxes, and to cease trying to reduce differences in their systems of direct taxation by means of infringement proceedings.

#### **15. Insurance of natural and man-made disasters**

The Commission has issued a Green Paper with a view to possible legislation in this area, which lies at the interface between environmental policy, humanitarian aid and the internal market for insurance. However, the very disparate situations in the different EU member states (their vulnerability to different kinds of disasters, their varying degrees of disaster preparedness, and different levels of involvement by private insurers and the public sector) make it extremely difficult to devise measures at EU level that would be practicable and effective in all the member states.

→ The Netherlands does not support EU legislative initiatives in this area.

#### **16. Insurance guarantee schemes**

The European Commission recently canvassed the level of interest among member states in adopting EU policy on the liquidation of insurance companies in financial difficulties. Such an EU policy could include a harmonised system of insurance guarantee schemes. In the light of the limited risks that insurance companies pose for financial stability, however – there is no possibility of a run on insurance companies comparable to runs on banks – the introduction of such a system could have a disproportionate impact. Individual member states often already have adequate facilities to protect policyholders and beneficiaries of specific forms of insurance.

→ The Netherlands does not support EU legislative initiatives in this area and will therefore assess proposals for an insurance guarantee system very critically.

#### **17. Directive on payment accounts**

The Commission recently published a proposed Directive aimed at improving the comparability of payment account fees, facilitating switching between payment account providers and enhancing access to payment accounts. While the Netherlands shares the Commission's goals, we do not believe that it has shown convincingly that this is a European problem. It is therefore highly questionable whether an overarching European approach is needed.

→ The Netherlands will urge the Commission to provide clear arguments for its proposals, and will in a critical spirit weigh the costs against the benefits.

### **18. Directive on family reunification**

The existing Directive on family reunification gives the Netherlands, where family reunification is a source of major migratory flows, too little scope to conduct its own national policy, for example by imposing age and civic integration requirements. For this reason the Netherlands questions the Directive's proportionality.

→ The Netherlands will press to make several of the Directive's provisions more flexible. We will exert ourselves to this end in EU bodies, among other ways by making an active contribution to the working group that is providing input for the Commission's planned interpretative guidelines.

### **19. Directive on the admission of third-country nationals for the purposes of research, studies, pupil exchange, etc.**

The Commission recently presented a proposal for a more uniform procedure for the admission and residence of researchers, students, pupils in exchange programmes, paid and unpaid interns, volunteers and au pairs. The Netherlands has several reservations about the proposal in terms of both subsidiarity and proportionality. In our view, the grounds for such EU rules for labour migration are the added value of the knowledge economy, which transcends individual member states. This does not apply however to the categories of pupils in exchange programmes, unpaid interns, volunteers and au pairs. With regard to those categories, we make a negative assessment of the proposal in terms of subsidiarity. In so far as a Directive is a desirable instrument at all in this regard, it is in our view proportionate only if it leaves member states sufficient scope for national policy.

→ The Netherlands will press in the negotiations on this Directive either to remove the categories from it that in our view go too far, or at least to ensure that the provisions concerning these categories entail the fewest possible obligations.

### **20. Proposals to harmonise the law of criminal procedure**

The Commission has announced several different proposals aimed at harmonising aspects of the law of criminal procedure (such as rules on the rights of vulnerable suspects, the presumption of innocence and the gathering of evidence). In the Netherlands' view, the law of criminal procedure is primarily a matter for the member states. Legislation at EU level should only be considered when practical experience shows that rules on the law of criminal procedure are needed in the interests of efficient cooperation on criminal law enforcement. We also believe that in general the existing EU legislation should not be revised until there is an evident necessity to do so; for example, legislation should not be 'Lisbonised' simply because the Treaty of Lisbon exists. This necessity can only be evident after we have had considerable experience with the existing legislation.

→ The Netherlands urges the EU to focus on eliminating any gaps that may exist in cooperation on criminal law matters, thus strengthening this cooperation in the interests of successful prosecutions

in cross-border cases. We will also oppose the introduction of legislative proposals purely on the grounds that the Council of Europe has already adopted a Convention on the same subject.

## **21. Proposals to harmonise substantive criminal law**

The Commission has announced several impending proposals aimed at harmonising aspects of substantive criminal law (such as enforcement of criminal laws against identity fraud and against customs law violations). In the Netherlands' view, substantive criminal law is primarily a matter for the member states.

→ In this case too, the Netherlands' position is that the EU should focus on eliminating any gaps that may exist in cooperation on criminal law matters. With regard to the competence enshrined in article 83, paragraph 2 of the Treaty on the Functioning of the European Union, we believe that harmonisation of criminal penalties should only be considered when differences in law enforcement in an area that has been subjected to harmonisation measures are so great that they create safe havens for criminals.

As indicated above, the Netherlands is also averse to revising existing European legislation as long as there is no evident necessity to do so. In the field of substantive criminal law, the revision of the Framework Decision on money laundering serves as an example of what we want to avoid.

## **22. Sectoral social dialogue committee for central government administrations**

There are at present 40 European sectoral social dialogue committees, including one for central government administrations. In the Netherlands' view central government, including its public-law employees, is a matter for the member states themselves. We see no added value in this dialogue at EU level for central government administrations.

→ The Netherlands will press for the repeal of the internal European Commission decision establishing a sectoral social dialogue committee for central government administrations and designating the European Union Public Administration Employers (EUPAE) as the representative of central government employers.

*Agriculture and fisheries*

## **23. Possible legislation on pan-European forestry agreement**

The Netherlands regards forestry policy as primarily a matter for national governments.

→ The Netherlands is not in favour of EU legislation in this area, and if any proposals are put forward, they will probably be rejected on the grounds of subsidiarity.

## **24. Implementing Regulation on marketing standards for olive oil**

This Regulation, which takes the rules set out in the Regulation establishing a common organisation of the markets in agricultural products and applies them to olive oil, is a good example of how implementation legislation can entail risks to proportionality. The provision on how olive oil

in the catering sector had to be presented – since retracted by the Commission – illustrates how the administrative burden can easily grow disproportionately. Member states are expected to have less freedom to modify the Regulation if this legislation comes about through the use of delegated acts – the Commission’s authority to further elaborate legislative provisions.

→ When it comes to formulating rules in this area, the Netherlands favours more direct involvement of the member states. The introduction of delegated acts would not help in this regard.

## **25. EU programme for school milk and fruit**

The Netherlands supports the EU programmes for subsidising/cofinancing the provision of dairy products, fruit and vegetables to school pupils, especially from the point of view of good nutrition. As long as the programmes exist, the Netherlands will certainly want to continue to make use of them. Yet having said that, the Netherlands feels that such programmes can best be set up and implemented at national level. There is no transnational dimension here.

→ The Netherlands would like the EU programmes for school milk and fruit to be phased out.

## *Environment*

### **26. Environmental Noise Directive**

This Directive does not address a problem with a transnational/EU-wide character. In the Netherlands’ view the emphasis should be on source-based policy (vehicles, railway material), in order to ensure a level playing field. There is a connection here to the recent proposal on airport noise, which the Dutch parliament deemed to be at odds with the subsidiarity principle.

→ The Netherlands does not believe that any EU legislation is needed in this area, because noise pollution is not a problem with a transnational/EU-wide character. A level playing field should be ensured by means of source-based policy.

### **27. Environmental impact assessments**

In the view of the Netherlands, EU legislation in this area is highly detailed, with too much of an emphasis on means (rather than ends). This can have an unwanted effect on national implementing modalities and costs.

→ The Netherlands favours less detailed EU legislation with respect to environmental impact assessments.

### **28. Water Framework Directive**

In the opinion of the Netherlands, using the ‘one-out, all-out principle’ to assess the ecological quality of surface water does not present a realistic view of water quality and the efforts being made in this area. Too high a value on a single parameter should not carry undue weight in an

integrated assessment, particularly as it could have been caused by emissions in another part of the river basin.

→ If the Directive or its annexes are amended in the future, the Netherlands would urge that member states be given more leeway in performing integrated assessments.

### **29. Air Quality Directive (fine particulate matter)**

Because of a stringent assessment system for air quality measurements, the Netherlands is forced to take far-reaching local measures in a limited number of areas in urban settings (hotspots) – especially as regards fine particulate matter – in order to comply with air quality standards, even though the majority of the pollutants are not local in origin.

→ If the Directive or its annexes are amended in the future, the Netherlands would urge that member states be given more leeway in interpreting the measurements and the implications of excess values at hotspots.

### **30. Proposed Directive on maritime spatial planning and integrated coastal management**

In principle, coastal management is not a transnational issue. And in cases where it is, it is a bilateral issue at most, and facilities already exist for addressing it. Spatial planning at sea can be transnational (e.g. windmills and shipping routes), but on this point the Netherlands has doubts about the justification for EU involvement presented in the proposal. Moreover, this proposal could create an opening for more EU initiatives on spatial planning. The Netherlands is not in favour of this. Indeed, parts of the present proposal go further than necessary to achieve the envisioned goal, for example by establishing specific-result obligations.

→ In negotiations on this proposal the Netherlands will work to ensure that the resultant Directive deals only with maritime spatial planning (MSP), and thus contains no provisions on integrated coastal management. With regard to MSP, the Netherlands feels that the Directive should confine itself to requiring coordination, without containing any substantive provisions.

### **31. Soil Framework Directive**

Soil is a policy area that should be addressed primarily on a local and regional scale. That said, the Netherlands recognises that European policy is desirable. It is in the Netherlands' interests that other European countries have a sustainable soil policy, due in part to the need for a level playing field (soil pollution), the transnational dimension (especially water management, qualitative and quantitative) and food safety. A joint strategy also helps achieve the objectives of international biodiversity policy, the Water Framework Directive, the future Groundwater Directive, the Nitrates Directive and the climate objectives. Yet the Netherlands believes that a directive is a disproportionate instrument. Soil management is a prime example of a policy area that should be handled at national, regional and local level. Its international aspects are limited. The strategy thus adheres to the principle of proportionality, but the Directive does not. Because a blocking minority exists, consisting of countries that are mostly opposed to a soil directive for the same reason, the

negotiations on the Commission's proposal have come to a standstill. The Commission is, however, taking every opportunity to move the dossier forward again.

→ The Netherlands would like the Commission to abandon any new initiatives to achieve agreement on a Soil Directive. Soil management is a policy area with only limited international aspects.

### **32. Floods Directive**

This Directive does not confine itself to bodies of water that cross national frontiers; it also has implications for smaller, regional waters because it encompasses complete river basins in detail. It is debatable whether this is an issue of subsidiarity or proportionality. What is known for certain is that the Directive scarcely imposes any new obligations over and above what is already being done in the Netherlands in this area, with the exception of the mandatory merging of existing plans in a flood risk management plan per river basin. In the light of recent experiences with this Directive in practice, the Netherlands believes that the EU should refrain from dealing with smaller bodies of water, but should instead concentrate on the main ones with scope for anomalous types.

→ The Netherlands would like to see less unnecessary detail in the Directive and a greater focus on its primary objective.

### **33. Climate, renewable energy and biofuels**

The aim of biofuel policy is twofold: achieving energy independence and reducing CO<sub>2</sub> emissions. Some conventional biofuels have only had limited success, as their production requires energy, generates other greenhouse gases and/or has negative effects on food production and land use. Moreover, the administrative burden imposed by the European biofuel policy is relatively high, because detailed records must be kept on the origins and use of biofuels. The existing Renewable Energy Directive stipulates that by 2020 the share of biofuels in road transport should be at least 10%. To ensure that advanced biofuels (which do not entail the above-mentioned disadvantages) constitute a significant proportion of this figure, a number of amendments have recently been proposed with the aim of imposing an upper limit on the use of conventional biofuels and changing the record-keeping system so that advanced biofuels count for extra. However, this will add tens of millions of euros to the cost of attaining a 16% share of renewable energy by 2020, because advanced biofuels do not count for extra in this case.

→ In the negotiations the Netherlands will seek to modify the regime, so that conventional biofuels with a poor climate score are discouraged, advanced biofuels count towards the 16% goal for renewables to an equal degree, and the administrative burden is limited.

*Education/Youth Affairs/Culture/Sport*

### **34. Media freedom and pluralism**

The High-Level Group on Media Freedom and Pluralism, an independent group of experts assembled by the Commission, recently submitted a report to the Commission. The Commission

has held a consultation on this issue. The Netherlands disagrees with a number of the group's recommendations, including the suggestion that supervisory authorities for free media should be able to issue fines to media/journalists or revoke an individual's status as a journalist.

→ The Netherlands is not in favour of EU legislation in this area. Any further initiatives on this front by the Commission will be examined very critically by the Netherlands, with a view to safeguarding freedom of expression.

### **35. Court judgment on portable student support for higher education**

The 2012 judgment by the European Court of Justice in *European Commission v. the Netherlands* (C 542/09) on the Dutch system of portable student support shows that tensions can arise between, on the one hand, measures to encourage student mobility (a policy goal of the EU and the Netherlands) and, on the other, the free movement of workers. The Netherlands takes the view that portable study finance, given its avowed goal and its financial viability, should benefit students with ties to the Netherlands who relocate to another country for educational purposes.

→ The Netherlands believes that the interest of student mobility and that of the free movement of workers are not mutually exclusive, and we will work with other member states to find a solution to this matter.

*Transport/Telecommunications/Energy*

### **36. Tunnel Safety Directive**

Most tunnels in the EU are located within a single country, and for that reason tunnel safety should not be considered an EU-wide issue; it is, at most, a bilateral one. This is not a matter on which member states are mutually dependent, nor is there any need to create a level playing field.

→ For these reasons, the Netherlands does not believe this issue should be dealt with at EU level. In the case of cross-border tunnels, bilateral agreements can be made.

### **37. Opening the market for passenger transport by rail (Fourth Railway Package)**

The Netherlands is thus far not convinced that the (further) opening of the market in this sector has a clear added value for travellers in terms of price and quality of service. A national impact assessment is still being conducted. In addition, the Commission's proposals only give member states limited flexibility to tailor their implementation to their own specific circumstances.

→ In the negotiations on these proposals, the Netherlands will argue that member states be given more scope to take measures that are best suited to obtaining the intended result in their specific situation.

### **38. Preference for global legislation over EU legislation**

The question has arisen in a number of areas whether worldwide legislation is preferable to EU legislation, e.g. for CO<sub>2</sub> emissions in ocean shipping (as yet no EU legislation), the on Aviation ETS

Directive and the Eco-Management and Audit Scheme (EMAS) Regulation. It should be noted that the absence of international legislation on a given issue can be a legitimate reason for drafting EU law. There may also be a need for supplementary European legislation on other grounds. This was, for example, the case with issues like the Social Agenda for Maritime Transport, the equipment of maritime vessels and the scrapping of ships. There are also disadvantages associated with overlapping legislation, such as a lack of clarity regarding implementation and additional costs for member states and companies.

→ Whenever advisable, the Netherlands will work to ensure that certain issues are dealt with at global level, and to muster the support of other member states for this.

### **39. Telecom package**

This extensive package was largely supported by the Netherlands, though it did grant the Commission veto power on rulings by the national supervisory authorities (such as in the case of the revision of the EU regulatory framework for electronic communications networks and services).

→ Then as now, the Netherlands regards this as disproportionate, because it puts pressure on the independence of the supervisory authorities, which are expected to act on the basis of facts and expertise, without being swayed by market parties and political considerations. While the Netherlands believes in the value of harmonising these authorities' implementation practices by means of delegated legislation, enough scope should be left for the authorities to take account of specific national circumstances.

### **40. Regulation on reducing the cost of broadband**

This proposal, which seeks to reduce the cost of installing broadband by using existing infrastructure, does not give the member states enough freedom to take decisions on the basis of specific national needs. This creates an unnecessary financial and administrative burden.

→ In the negotiations the Netherlands will take the position that member states should have more scope to implement the relevant cost-reducing measures proportionately and flexibly, thereby substantially lowering the costs and administrative burden for those member states.

### **41. Directive on the accessibility of public-sector websites**

The Netherlands does not feel there is any need for the EU to establish accessibility requirements and conformity standards for public-sector websites to promote the operation of the internal market. The government will take a critical view of more far-reaching or divergent requirements from the EU on international accessibility standards and compliance monitoring practices.

→ The Netherlands is not convinced of the need for legislation at EU level on this issue, and will adopt a critical stance during negotiations.

#### **42. Directive on the energy performance of buildings**

The Netherlands is committed to improve the energy performance of its built environment. In order for the energy label and the minimum requirements to play a useful role, the Netherlands would like greater freedom to raise private homeowners' awareness of the energy performance of their homes and encourage them to invest in this area. Given experiences with the implementation of the previous Directive on this subject (2002/91/EC), detailed, mandatory measures are not expected to have the desired effect. These measures will, however, lead to an increase in the administrative burden for private homeowners. Encouraging energy-saving measures for private residences is expected to have a greater effect on the actions of individuals than imposing measures whose direct result is not obvious. Given the very different situations obtaining in each country, individual member states must be given greater leeway in implementing the Directive in order to achieve its energy-saving objectives. It is necessary to develop alternatives that have the intended effect.

→ The Netherlands is actively looking for alternative solutions. If an additional impact assessment is conducted, the Netherlands will urge that incentive systems be taken into consideration as an alternative.

#### **43. Energy efficiency**

Because it seemed that the target of 20% energy savings at EU level would not be met, the EU had cause to raise this issue. The Netherlands was critical about the mandatory measures (the exemplary role of the government with regard to the premises of public-sector organisations, measures on power plants, and the use of heat in ways that relate to spatial planning), because the Netherlands is generally opposed to efforts by the Commission to dictate what action should be taken at national level in order to achieve certain European goals. The Netherlands agreed to the eventual proposal because the mandatory measures were either rendered voluntary or reduced to a level that we regard as feasible.

→ Although in this case the negative judgment led to a better outcome in negotiations, the Netherlands will, in future, continue to take a critical stance towards highly detailed proposals that specify what measures should be taken at national level in order to achieve certain European goals and entail a substantial administrative burden and costs.

*Employment/Social Policy/Public Health/Consumer Affairs*

#### **44. European Globalisation Adjustment Fund**

This fund was set up in 2006 to help workers who are laid off as a result of globalisation to find new jobs. However, in the view of the Netherlands and a number of other member states, this is chiefly a matter for national governments. Even so, as part of the agreement on the new Multiannual Financial Framework, the Netherlands did agree to extend the financing to 2020.

→ The Netherlands would like to limit the scope of this fund as much as possible. To that end we will work with member states that share our critical views.

#### **45. External dimension of social security coordination**

The Commission published a Communication on this subject in 2012. The Netherlands is not in favour of a European initiative to conclude EU-wide agreements with third countries in the area of social security, particularly in cases involving the export of benefit payments. The Netherlands feels strongly about the autonomy of member states in the area of social security. We believe that the Union is unable to adequately look after the interests of individual member states in this area by means of an EU-wide approach. Furthermore, the Netherlands takes the position that bilateral agreements could be better tailored to specific Dutch wishes regarding enforcement. Experience shows that enforcement issues play a much less prominent role in the EU.

→ The Netherlands does not support this initiative. In 2012 it successfully lobbied for this Communication to be taken off the agenda. If the Commission puts the subject back on the agenda, the Netherlands will again undertake to block any EU-wide agreements with third countries in the area of social security.

#### **46. Social security systems**

From the point of view of subsidiarity, the discussion on the social dimension of the EMU is crucial. The main question is whether, given the economic and social impact of the present crisis, new and possibly broader social policy should be developed at European level to complement the budgetary, financial and economic measures taken in response to the euro crisis. As stated in greater detail in a letter to parliament of 24 May 2013, the Netherlands believes that efforts to strengthen the social dimension of the EMU must dovetail with existing agreements and fit into current legal and financial frameworks. This means, among other things, that no attempts should be made to bring about further harmonisation of social security systems. The EU coordinates and supplements national policy, but the member states must shape the fundamental principles of their labour market and social security systems themselves (including their financial balance). The relevant assessments must be made at national level.

The Netherlands believes that efforts must be made across Europe to achieve greater labour market participation, fair pay and a decent standard of living. In addition, it is necessary to combat the negative impact of labour migration, including the abuse of social security systems (especially those of member states that are popular destinations for migrant workers). To achieve this, it is necessary to use existing instruments to coordinate socioeconomic policy among the member states, including the open method of coordination (OMC) and country-specific recommendations in the context of the European Semester. Better expenditure of European resources is also advisable.

→ The Netherlands believes that no further harmonisation should be undertaken with regard to social security systems. Europe coordinates and supplements national policy, but the member states must define the fundamental principles of their labour market and social security systems themselves (including their financial balance). The relevant assessments must be made at national level.

#### **47. Regulation on the Fund for European Aid to the Most Deprived**

The Netherlands believes that there is no transnational element to this proposed fund. In addition, we feel that member states should determine their own poverty policies. Setting aside money for the most deprived and dictating what form this support should take limits member states' ability to pursue an effective policy, with due regard for national circumstances and structures. The €2.5 billion earmarked in the MFF offers sufficient scope for expenditure within national policy priorities and allows member states to define the target group and the form the support will take.

→ The Netherlands is opposed to the Commission's proposal for this fund. If it turns out that a majority of member states are in favour of the fund, the Netherlands will endeavour to create a number of options, whereby member states themselves can decide if they want to make use of the fund or dispense their resources for the most needy via the ESF. That way, member states that choose not to make use of the fund will not suffer any reduction to their national allocation.

#### **48. Directive on improving gender balance among non-executive directors of companies listed on stock exchanges**

The Netherlands sees no reason for EU-level legislation in this area. The Netherlands engages in self-regulation when it comes to promoting the position of women in the upper management of companies. The member states should decide for themselves how to implement agreements to improve the gender balance.

→ In the negotiations on this proposal, the Netherlands will consistently oppose any legislation at EU level on this issue. Member states can take measures of their own, tailored to their own specific situation.

#### **49. Revision of Pension Fund (IORP) Directive**

The purpose of this revision is to increase possibilities for setting up transnational pension funds. In principle, the Commission has the power to put forward proposals on oversight requirements for pensions funds. Although for now the Commission's proposal does not address the trade-off between risk and certainty for pension participants, the fact that member states' pension systems differ greatly means that the proposal will become highly complex.

→ The Commission has provisionally indicated, pending further research, that in carrying out the announced revision of the IORP Directive, no requirements will be imposed on capital buffers for pension funds. The fact that this element will – at least initially – not be part of the revision of the Directive, eliminates a significant objection on the part of the Netherlands. Nevertheless, we will continue to critically monitor the revision process, with a view to ensuring that the proposal does not touch on the content of pension schemes.

#### **50. Portability**

In the past, the Netherlands has had major problems with the Directive on improving the portability of supplementary pension rights (Portability Directive, COM (2005) 507). The proposed rules on value transfers posed a significant risk of capital flight abroad. The Directive would have a

major impact on the national systems of the member states, without any advantageous effect on the internal market. Because of differences in the systems the Directive would apply only to a small number of member states; fiscal hurdles would not be eliminated, and no clear regulations would be established for trade unions and employer's associations. These shortcomings prompted the Netherlands to issue a negative assessment with regard to both subsidiarity and proportionality. In the end, the proposal ran aground in the EPSCO Council in 2008.

→ A modified version of the proposal is currently being considered. This revised proposal aims to eliminate the waiting periods for migrant workers to take part in pension schemes. Migrant workers' 'dormant pension rights' will also be guaranteed. The Netherlands already complies with this requirement, so the proposal no longer presents any problems for us. The eventual version will be evaluated on the basis of whether it entails legal risks or financial consequences, and whether it genuinely contributes to promoting EU-wide labour mobility.

### **51. Safety, health and welfare legislation**

The Netherlands finds that EU legislation in this area is highly detailed and specific about means (rather than ends). This can limit the options for tailoring implementation to national circumstances and lead to higher implementation costs. In some cases these means-based provisions are also included in EU-level agreements between trade union and employers' associations in given sectors.

→ The Netherlands is pressing for a system in which legislation on working conditions focuses on essentials and the sectors themselves are given the freedom to flesh out the provisions in sector-wide agreements (self-regulation). A certain degree of caution is warranted in translating these sector-wide agreements at European level into legislation. Without wanting to detract from the importance of the European social dialogue, arrangements involving trade unions and employers' associations (such as the agreement in the hairdressing sector) should be evaluated in the light of European principles of 'smart regulation'. This includes carrying out full impact assessments.

### **52. Directive on Equal Treatment outside the Labour Market**

There are a number of unclear points in the original proposal for the Directive, especially with regard to scope, terminology and the financial and administrative burden. As a result of this lack of clarity, the Netherlands has been cautious about commenting on the question of proportionality. Regulating access to social protection and education should be possible at national level as well.

→ The Netherlands will seek to ensure that the resultant Directive is as closely aligned as possible with national policy choices and, in instances where this is not possible, to create sufficient scope for member states to make their own decisions on adhering to the requirements of the Directive and, where necessary, to extend the timeline for compliance. The Netherlands wishes to see an explicit and clear definition of the Directive's scope, with due regard for the division of powers between the member states and the EU, as well as a clarification of the terminology used and the financial and administrative impact.

### **53. Directive on extending maternity leave**

The Netherlands' main objection is that it has not been demonstrated that increasing the length of maternity leave is necessary from a health perspective. When the Directive was being considered by the European Parliament, its scope was further broadened. As this would entail significant costs for the vast majority of member states, the legislative process ground to a standstill. The proposal has not been dropped completely, and for that reason it remains a point of concern.

→ The Netherlands will closely follow developments on this issue and, if necessary, will oppose attempts to revive the proposal.

### **54. Organ Donation Directive**

This Directive, from 2010, contains provisions that have nothing to do with the quality and safety of organs intended for transplantation. These provisions' connection to the legal basis of the Directive is too uncertain and indirect. The Netherlands does, however, endorse the remainder of the Directive.

→ In the case of any future amendments to European legislation in this area, the Netherlands will work to ensure that no provisions of a medical/ethical character are proposed, under the banner of quality and safety, and if necessary, it will take a stand against such provision.

## **Annexe**

### **List of organisations consulted**

#### **A**

ABP, pension fund for the public sector and education  
Aedes, organisation of housing associations  
Association of Asset Managers and Consultants (VVenA)  
Association of Netherlands Municipalities (VNG)  
Association of Provincial Authorities (IPO)  
Association of the Dutch Chemical Industry (VNCI)  
Association of Water Authorities

#### **C**

Central Bureau for the Foodstuffs Trade (CBL)  
Commodity Board Commission on Food Law  
Confederation of Netherlands Industry and Employers (VNO-NCW)

#### **D**

De Nederlandsche Bank (DNB)  
Dow Chemical Company  
Dutch Association for Transport and Logistics (TLN)  
Dutch Association of Insurers  
Dutch Association of Rural Women  
Dutch Banking Association (NVB)  
Dutch Consumer Protection Association  
Dutch Federation of Agricultural and Horticultural Organisations  
Dutch Federation of University Medical Centres (NFU)  
Dutch Food Industry Federation (FNLI)  
Dutch Hospitals Association (NVZ)  
Dutch Railways (NS)  
Dutch Tax and Customs Administration

#### **E**

Ecorys  
Energie Nederland  
Enschede Municipality/Twente Region

#### **F**

Federation of Intermediate and Senior Employees (MHP)  
Federation of Patients and Consumer Organisations in the Netherlands (NCPF)  
FME-CWM Association, employers' organisation for the technology industry

**G**

G4

G32

Gasunie

General Inland Waterways Shipping Association

General Pension Group (APG)

**H**

House of the Dutch Provinces (HNP)

**I**

ING Group

**K**

KPN

**N**

National Federation of Christian Trade Unions (CNV)

Natuurmonumenten, a nature conservation association

Netherlands Health Insurers (ZN)

Netherlands Institute of Chartered Accountants (NBA)

Netherlands Mental Health Services (GGZ Nederland)

Netbeheer Nederland, the sector organisation for gas and electricity providers

**P**

Partos, professional association for international cooperation

Plantum, Dutch association for the plant reproduction material sector

Port of Amsterdam

Port of Rotterdam

ProRail

**R**

Royal Association MKB-Nederland

Royal Dutch Association for Veterinary Medicine (KNMvD)

Royal Dutch Transport Federation (KNV)

**S**

SABIC Europe

Schiphol Group

Shell Nederland

**T**

Tilburg Municipality

Trade Union Confederation FNV