

Adoption: 25 March 2021

Confidential  
GrecoRC5(2021)6

## FIFTH EVALUATION ROUND

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

## COMPLIANCE REPORT

# NETHERLANDS



Adopted by GRECO  
at its 87<sup>th</sup> Plenary Meeting (Strasbourg, 22-25 March 2021)



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

COUNCIL OF EUROPE



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## **I. INTRODUCTION**

1. GRECO's Fifth Evaluation Round deals with "Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies".
2. This Compliance Report assesses the measures taken by the authorities of the Netherlands to implement the recommendations issued in the Fifth Round Evaluation Report on the Netherlands which was adopted at GRECO's 81<sup>th</sup> Plenary Meeting (3-7 December 2018) and made public on 22 February 2019, following authorisation by the Netherlands ([GrecoEval5Rep\(2018\)2E](#)).
3. As required by GRECO's Rules of Procedure,<sup>1</sup> the authorities of the Netherlands submitted a Situation Report on measures taken to implement the recommendations. This report was received on 30 September 2020 and served, together with additional information subsequently provided, as a basis for the Compliance Report.
4. GRECO selected Norway with respect to top executive functions in central governments) and Serbia (with respect to law enforcement agencies) to appoint Rapporteurs for the compliance procedure. The rapporteurs appointed were Mr Jens-Oscar NERGÅRD, on behalf of Norway, and Ms Katarina NIKOLIĆ, on behalf of Serbia. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report examines the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any pending recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

## **II. ANALYSIS**

6. GRECO addressed 16 recommendations to the Netherlands in its Evaluation Report. Compliance with these recommendations is dealt with below.

*Preventing corruption and promoting integrity in central governments (top executive functions)*

### **Recommendations i to viii**

7. *GRECO recommended:*

*- developing a coordinated strategy for the integrity of persons entrusted with top executive functions, based on analysis of risks, aiming at preventing and managing*

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<sup>1</sup> The Compliance procedure of GRECO's Fifth Evaluation Round is governed by its Rules of Procedure, as amended: Rule 31 revised bis and Rule 32 revised bis.

*various forms of conflicts of interest, including through responsive advisory, monitoring and compliance measures (recommendation i);*

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

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

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

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

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

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

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

8. The Netherlands authorities report that on 22 February 2019, the evaluation report was sent by letter from the Dutch Cabinet to Parliament, and hence made public. In this letter the Cabinet explained that the implementation of the recommendations regarding the ministers and state secretaries could take shape, *inter alia*, through amendments to the Cabinet Members' Manual.
9. The authorities state that a document has now been prepared for consultation within the Council of Ministers. In this note the Council of Ministers is asked to make guiding statements for the implementation of the above-mentioned recommendations. A memorandum was discussed in the Council of Ministers in October 2020. On this basis, work is now being carried out on the elaboration of proposals for further promotion of integrity in central government.
10. GRECO takes note of the information provided by the Netherlands authorities and regrets that no tangible progress has been achieved on any of the recommendations contained in the Evaluation Report regarding persons with top executive functions since its adoption in December 2018. It notes that some of the recommendations, such as the one to develop an integrity strategy and a code of conduct for PTEFs, goes beyond amending the Cabinet Members' Manual. GRECO encourages the authorities to step up their efforts toward the implementation of all recommendations concerning PTEFs.
11. GRECO concludes that recommendations i to viii have not been implemented.

*Regarding law enforcement agencies*

12. As a backdrop to this report, the authorities provide information on an investigation concerning the police infiltration of the EncroChat encrypted communication system, which was used by criminal networks. This investigation has led to multiple prosecutions against individual belonging to criminal organisations in the Netherlands already in 2020, but the encrypted messages that have been cracked have led to believe that some law enforcement staff have been involved. Several investigations into organised crime following from the police infiltration are ongoing and expected to continue in the coming years. Moreover, the Tackle Corruption Team (*Team Aanpak Corruptie*) has already been set up to investigate police corruption in connection with EncroChat messages, under the leadership of the National Police Internal Investigations Department and with the support of detectives from the National Police. Investigations are carried out under the authority of the Public Prosecutor.
13. In addition, the authorities also refer to the ongoing reform of the internal investigation system within the police, including when it comes to ethical breaches. The review internal investigation has led to a number of recommendations concerning the entire process of internal investigations. The Chief of police has concluded that the current system should be changed. A Programme director has been appointed to launch these changes. Whilst GRECO commends the efforts made by the authorities to adapt and improve the internal fight against corruption within the National Police, it emphasises that all the following recommendations and their implementation are essential to preventing corruption in the law enforcement, for instance regarding the prevention of

leaks of confidential information, the regular vetting throughout the career of police staff and the protection of whistleblowers.

**Recommendation ix.**

14. *GRECO recommended (i) that the Theme pages of the Professional Code of the National Police (NPN) be further developed with guidance, examples and lessons learned, offering adequate guidance on conflicts of interest and other integrity related situations (e.g. gifts, third party contacts, accessory activities, handling of confidential information) and that a similar instrument be established for the Royal Marechaussee (KMar); and (ii) to ensure supervision and enforcement of these instruments.*
15. The Netherlands authorities state that the National Police of the Netherlands (NPN) has updated the Theme pages of its Professional Code. The Theme pages are now supplemented with examples from case law and cover issues such as gifts and business invitations, financial interests, business with suppliers, ancillary activities, and contacts in private life. The changes in the Theme pages were published in December 2020. The authorities add that a better link is to be made between the Theme pages and the Toolkit Prevention in order to offer employees guidance on integrity related situations. The Toolkit is a resource material for team discussions about dilemmas, regulations and integrity risks in daily work and touches upon the integrity related situations mentioned in the recommendation. This further guidance through the Theme pages and toolkit can be used within the context of both team discussions and the periodic discussions between employee and supervisor. All information is available on the Police's intranet.
16. As to the Royal Marechaussee (KMar), the authorities signal that, in 2019, new Rules of Conduct (*gedragsregels*) for the Defence Social Security and Integrity were published and promoted. Cohesiveness, Security, Trust and Responsibility, the four core values from the code of conduct (*gedragscode*) form the basis for these new rules of conduct. The Defence Code of Conduct is value-based and describes the desired behaviour that employees must adhere to. The Defence Code of Conduct and the Defence Rules of Conduct are inextricably linked. However, no new rules have been drawn up for the composition of the Rules of Conduct. The rules provide explanations and references to existing legislation and regulations. According to the authorities, the main improvements that have been applied to the rules of conduct concern: purpose and consequences of undesirable behaviour; definitions and concepts; specifying the target audience; which behaviour is appreciated or unacceptable; the consequences incurred. The various themes are provided with practical examples.
17. As to the supervision of compliance with the rules of conduct of the KMar, the authorities state that it is a complex process for which managers are in the first place responsible. Therefore, commanders and team leaders are constantly encouraged (by integrity advisors) to apply the Code of Conduct during performance evaluations, briefing and/or teambuilding events. The management teams are also assisted and advised in cases where internal rules are exceeded. The Safety and Integrity Department (*Cluster Integriteit*) of the KMar is primarily responsible for the supervision and enforcement of the KMar integrity policy. Situations of abuse and other security

incidents are reported directly to the Safety and Integrity Department for further follow-up or advice. Investigations into breaches of rules of conduct, rules on conflicts of interest, related prohibitions or limitations, are conducted mostly on the instructions of or under the responsibility of a Marechaussee Commander. Measures can be taken if the investigation confirms that there has been a breach. Internal investigations are carried out by the Internal Investigations Section (SIO). The SIO investigates possible criminal offences and misconduct committed by employees of the KMar. The Division works under supervision and the authority of the Public Prosecution Service. Finally, KMar staff members can seek assistance from the official integrity bodies to support their efforts to implement and enforce the KMar integrity policies (e.g. confidential counsellor, Central Organisation for Defence Integrity expertise centre, Committee on Undesirable Behaviour, Personnel officers and legal advisers, etc.).

18. GRECO takes note of the developments regarding the Professional Code of the NPN. It notes that Theme pages of the Professional Code have been revised in order to provide concrete examples inspired from the case law, regarding conflict of interest related matters such as gifts, the handling of confidential information, financial interests, contacts with suppliers and third parties. GRECO is satisfied that these Themes pages are a useful, practical supplement to the Professional Code of the NPN. In respect of part (ii) of the recommendation, information is lacking on how supervision and enforcement of the Professional Code as supplemented by the Theme pages on integrity matters are ensured.
19. GRECO notes the adoption of the Rules of Conduct by the KMar in 2019, which complement the Code of Conduct, and provide more practical information and examples on conflicts of interest linked to gifts, ancillary activities, contacts with third parties, and the handling of information. This was previously lacking in the KMar and responds to part (i) of this recommendation. As to part (ii) of the recommendation, GRECO notes that supervision of compliance rests firstly with managers but that situations of breaches are reported directly to the KMar's Safety and Integrity Department for further follow-up or advice and, where necessary, investigations into possible breaches can be carried out.
20. Overall, GRECO acknowledges the positive developments that have occurred in the KMar and in the NPN regarding integrity standards and guidance. However, regarding supervision, GRECO would expect further measures to ensure adequate supervision and enforcement within the NPN. Therefore, GRECO considers that the requirements of this recommendation have only been partially met.
21. GRECO concludes that recommendation ix has been partly implemented.

**Recommendation x.**

22. *GRECO recommended that the in-service training on ethics and integrity for the National Police (NPN) and the Royal Marechaussee (KMar) staff, including managers, be*

*enhanced by developing at national level further regular training programmes as a support and complement to the existing decentralised training in the units.*

23. The Netherlands authorities indicate that various developments are underway with regard to training in the NPN. The police education curriculum is currently being adjusted to ensure that integrity issues are integrated. A new education block on integrity is currently being developed, with emphasis on dilemmas and using the Theme pages of the Professional Code. Work is ongoing to develop a professional e-learning programme through a mobile phone application. This has been trialled and the results are being assessed. The aim is to identify teams where poor results in the tests have been obtained and to provide additional information or support from a coordinator linked to the Department of Security, Integrity and Complaints. Moreover, the development of a national induction programme for new recruits is ongoing; new employees are also to be encouraged to discuss dilemmas, questions or integrity risks they identify in their work with each other and with existing colleagues. The programme is being further elaborated and meetings in person are planned to start during the second quarter of 2021, depending on the COVID19 situation. Target awareness-raising campaigns are organised on the basis of identified risks: an ongoing campaign deals with unintentional information leaks. In addition, a theatre play on police work and life has been seen by 20 000 police employees, the aim being to promote an ethical working climate; the play will continue being shown in 2021. A film showing a performance of the play has been made to illustrate dilemmas between work and private life and trigger debates. Part of this experience will feed into the revised curriculum.
24. As regards the KMar, the authorities indicate that in the regular training programme, attention is regularly paid to integrity and making the right moral choices in difficult and risky situations. This takes place both in the context of the initial training and during regular training. In addition, work-related dilemmas are discussed within teams and it is decided at team level which training is necessary depending on the questions and risks that arise. In recent months, e-learning and blended learning have been organised. Two short practical training courses have recently been developed within the Open Defence Academy (ODA) around the themes Leadership & Ethics (6 modules) and Integrity & Vulnerability (4 modules). For more in-depth knowledge, an online Master Class on Ethics and Information Security is also available online. One additional step that will be taken is that the “Prof-check Integrity and Training Moral Fitness” (TMF) will be made mandatory for managers in 2022. In addition, a new application for mobile device became available in April 2020 (My Defence) that provide support for internal communication and information, integrity and security for the entire Defence organisation. In the Integrity section of this application, attention is paid to, among other things, forms of undesirable conduct, alcohol and drugs, ancillary activities, contacts with the business community and dealing with information. In addition, it is possible to report undesirable behaviour or an integrity violation via this app. Similarly to the NPN, a play was put up to trigger team discussions about an ethical working climate, safety, integrity and ethical dilemmas.
25. GRECO notes that the NPN is currently revising its education curriculum to promote integrity issues, developing an e-learning programme through a mobile phone

application and creating an induction training for new recruits that incorporates integrity issues. A play has been performed to trigger discussions within teams on ethical behaviour within the NPN. GRECO considers these to be promising developments that still need to fully ripen.

26. GRECO also notes that the KMar includes integrity issues in its initial and professional training. Moreover, e-learning courses, which focus on integrity matters, have been developed such as leadership and integrity as well ethics and information security. A mobile phone application has been put in service in April 2020 where integrity issues are being tackled such as ancillary activities, contacts with the business community and dealing with information. A play has also been performed to encourage discussions on ethical behaviour within the KMar.
27. In view of the above, GRECO accepts that a number of new initiatives have been taken to put more emphasis on integrity in initial and in-service training programmes. It would be advisable that the regular in-service training programmes for the NPN and KMar also provide for a number of mandatory training days. Moreover, as many initiatives that have been reported are still being developed and that their full implementation should result in more structure and coordination at the national level (see Evaluation Report para. 170), GRECO considers that the requirements of this recommendation have only been partially met for the time being.
28. GRECO concludes that recommendation x has been partly implemented.

**Recommendation xi.**

29. *GRECO recommended that adequate measures and appropriate resources be allocated in order to ensure that within the National Police (NPN) vetting and screening of staff takes place at regular intervals during their entire service.*
30. The Netherlands authorities report that the Minister of Justice and Security prepared a legislative proposal to ensure that police officers and external officials working for the police are also screened along their careers. The legislative proposal introduces a duty to report changes in personal circumstances, continuous screening based on judicial data and incidental and periodic repeat examinations, for example when the work/function is changed. On 4 February 2020, the House of Representatives adopted the legislative proposal. On 13 October 2020, the proposed law was adopted by the Senate. The authorities expect that the draft law come into force in the second half of 2021, together with the underlying regulations, but that no date has been fixed.
31. GRECO welcomes that draft legislation has been prepared by the Government with a view to ensuring the regular vetting of police officers and external officials working for the NPN all along their careers. It underlines the particular relevance of this step against the background of the investigations into organised crime that led to serious allegations of corruption in the police (EncroChat encrypted communication system, see para. 12). It notes that the proposed legislation was adopted by the Parliament. GRECO underlines that the recommendation calls for adequate measures and appropriate resources for



regular vetting. GRECO notes in this respect that no date has been fixed for the entry into force of the relevant legislation. Therefore, until this law comes into force together with the necessary implementation measures, the recommendation can only be considered as partly complied with.

32. GRECO concludes that recommendation xi has been partly implemented.

**Recommendation xii.**

33. *GRECO recommended that the procedures in situations where gifts and advantages of a certain level have been offered/accepted be reinforced, in particular by introducing a standard format for the reporting/declaration of gifts/advantages and such offers, that these be registered and subject to supervision.*
34. The Netherlands authorities report with regard to the NPN that in accordance with the Police Act (Article 47 paragraph 4), the Civil Service Act 2017 applies with regard to the acceptance of gifts (Article 8, paragraph 1, sub e). This stipulates that civil servants are not permitted to accept or request gifts, allowances, rewards and promises from a third party without the consent of the employer if they have a relationship with this third party as a civil servant. This is further elaborated in the policy rule on handling gifts. Insofar as registration is concerned, a supervisor records this when the employee reports gifts. There is no specific format for reporting. This can be done in the personnel file, for example. The authorities add that there is no general administration for gifts received for senior officials. According to their report, this has been tried, but proves difficult to keep up with in practice mainly because it is difficult or sometimes impossible to make an adequate estimate of the value of gifts.
35. As for the KMar, the authorities indicate that the laws and regulations on receiving gifts and invitations have been included in the new Defence Rules of Conduct (*gedragsregels*), adopted in December 2019. In addition to the formal regulations, the Rules of Conduct provides practical examples. The general situation is that employees of the KMar are not allowed to receive gifts, compensations, promises or presents. In addition to the existing regulations, the Ministry of Defence and the KMar do not see any reason for an obligation to report and centrally register the gifts received or offered. Such an obligation would require amendment of legislation on employment conditions and legal position. The authorities consider that this is a time-consuming process without preventing problems. The KMar therefore considers a strategy of protecting and encouraging ethically responsible behaviour more adapted.
36. GRECO notes that the information provided by the authorities does not appear to show that the rules on gifts have been reinforced in the NPN as per the recommendation. The Evaluation Report had pointed out that many exceptions to the ban on gifts existed, that there appeared to be no annual threshold for several gifts from the same person and that there was no register of gifts. More formalised procedures (including the use of special forms for reporting in the NPN) for situations where gifts (with the exception of obviously trivial gifts) have been offered/accepted was expected to be introduced as well as registers of gifts. The procedure for reporting gifts appears to stay rather flexible

as there is no standardised form and there does not appear to be a register. This cannot be considered as a more formalised procedure, within the meaning of this recommendation, that would allow appropriate supervision. Moreover, there is no procedure for senior officials receiving gifts, which is a gap.

37. As for the KMar, GRECO considers it a positive step that gifts are covered by the new Defence Rules of Conduct. A threshold of EUR50 is fixed and it is specified that this must be a one-off occurrence. Gifts in the form of cash, valuable papers, services and travel cannot be accepted nor can gifts addressed to staff member's home address. All gifts need to be reported to the manager to decide what to do with it. Similarly, caution must be observed for invitations to meals, sporting or cultural events, and invitations that include an overnight stay are to be turned down. That said, there does not appear to be a register of gifts or similar system, which would make appropriate supervision possible. As per the recommendation, GRECO reiterates that some form of register is necessary to keep track of gifts.
38. Overall, while progress towards the implementation of the requirements of the recommendation can be seen in the KMar, GRECO cannot consider that this recommendation has been more than partially complied with.
39. GRECO concludes that recommendation xii has been partly implemented.

**Recommendation xiii.**

40. *GRECO recommended enhancing control measures in respect of access to and use of confidential information, in order to prevent unauthorised access to law enforcement registers and leaking of information.*
41. The Netherlands authorities report that in recent years the NPN have taken various measures to ensure proper security access for police systems. The police now uses two systems for granting new authorisations: the Identify Access Model (IAM), on the basis of which authorisations are automatically granted, and the authorisation tool for supervisors (ATL), an interface on IAM with which supervisors can grant additional authorisations to an employee for specific activities. To monitor the use of the systems, logging data is collected and the Security Operations Centre (SOC) uses methods for detection and monitoring of use. In addition, a number of systems automatically search for signals of atypical use with the aim of detecting a hack or other abuse of the system at an early stage. It is expected that this method can be expanded to multiple systems in the coming years. Although abuse can never be ruled out, the police supplement the authorisation with pro-active monitoring of the use of the information by its staff and third parties under its responsibility. The first results regarding one unit show that the supplement increases the cleaning power by testing for other uses and also provides indications of possible infringements by third parties who want to take over accounts. As soon as this pilot, entitled "Atypical Signalling" and conducted within the Unit Amsterdam, has wound up and been evaluated, the project is to be rolled out nationwide, after positive decision making of the Corps Leadership and approval of the

Central Works Counsel (*Centrale Ondernemingsraad*). This is expected to take place in Spring 2021. Policy and instructions are currently being developed.

42. From February 2019, the KMar started to follow up mainly technical control measures. The themes of data protection and data security are part of the Data Strategy of the KMar. This long-term business strategy ensures, among other things, that roles and processes around data management are set up and that it complies with legislation and regulations. Data protection focuses on the protection of personal data and data security focuses on the integral security and protection of information, including police information. The authorities underline the importance of mobile phone application created for the KMar, which discloses KMar and Police data on the mobile device (HitNoHit application). This application provides the KMar-officer on duty with all necessary basic police information in relation to persons, vehicles and documents. Use can only be obtained with a Defence device and authorisation takes place according to an authorisation matrix based on function (position and no longer by name). In the communication campaign for the new version (version 2.0), special attention was also paid to the way in which the employee and organisation should use the application responsibly and with integrity. Furthermore, this application is now connected to the basic roster programme (OPRS). In those cases where the employee conducts a search while s/he is not performing work according to the duty roster, the system issues a default warning. If the employee still decides to use the system, a message is simultaneously sent to the employee's manager. Developments are to be monitored in the near future to see what additional measures are necessary.
43. The authorities also submit that the process for organising authorisations and identification in police systems is also one of the many technical control measures. Logging and the random checks on loggings are part of an ongoing development process. In order to monitor the use of the systems, all systems are eventually to be connected to the Logging as a Service (LaaS) environment. This makes it possible to keep track of who has consulted which information. Preparations are currently being made within the KMar to identify atypical use of other police applications. A so-called business case was submitted to the Joint IV Centre of Defence (JIVC) at the beginning of 2020 for follow-up and technical adjustments of the systems. With the envisaged technical measures, in the event of abuse or an attempted break-in (hack) it is not only clear afterwards what happened, but this can be detected earlier and prompt action can be taken if necessary. In addition to the aforementioned technical aspects, responsible data use also requires a culture and behaviour change and adjustments in the organisation. The KMar feels that the quality and compliance awareness of employees with regard to data is insufficient and must be strengthened. Recently (summer 2020) a working group was set up to formulate appropriate control measures from different angles. In its effort to achieve more awareness, the working group is focusing on three dimensions, namely human factors, technology and workflow.
44. GRECO takes note of the initiatives taken by the NPN to reinforce its authorisation protocols to access confidential police information, including a logging data collector and a system to track down atypical access to information. A pilot is being conducted and national rollout is expected in Spring 2021.

45. Insofar as the KMar is concerned, electronic controls have been further developed, in particular with the launching of a mobile application which allows to track down searches for information outside duty hours and inform managers simultaneously. Logging data and the random checks on loggings are also being developed and are being linked to a common system so that eventually it will be possible to see who consulted which information from this common data system. The KMar has also established a working group to explore further control measures.
46. GRECO is pleased to note that the authorities are dealing with the problems relating to leaks of confidential information, which was highlighted in the Evaluation report and was made all the more pressing by the serious allegations of corruption within the police linked to the EncroChat encrypted communication system used by criminal organisations (see para. 12). Measures are underway, in particular, in relation to the use of and access to confidential information via mobile information device. But these measures have not yet been fully put in place. Therefore, the requirements of the recommendation have only been partly met.
47. GRECO concludes that recommendation xiii has been partly implemented.

**Recommendation xiv.**

48. *GRECO recommended that a study be conducted concerning risks of conflicts of interest in relation to post-employment and other activities of police officers (including the top level), after they leave the police service, with a view to considering appropriate regulations in this area.*
49. The Netherlands authorities report that a study has been commissioned by the Research and Documentation Centre (WODC) of the Ministry of Justice and Security to the University of Utrecht. The study started in September 2020 is to be completed by Summer 2021.
50. GRECO notes that, in line with the recommendation, a study has been commissioned by the Ministry of Security and Justice's Research and Documentation Centre (WODC) due to be completed by Summer 2021. Therefore, pending the completion of this study whose purpose should be to consider regulations in this area, GRECO considers that the requirement of the recommendation has been partly met.
51. GRECO concludes that recommendation xiv has been partly implemented.

**Recommendation xv.**

52. *GRECO recommended (i) enhancing the current regime for declarations by introducing an obligation in respect of the top management of the National Police (NPN) and the Royal Marechaussee (KMar) to declare financial interests in accordance with a predefined format, when taking up their duties and at regular interval thereafter, (ii) to*

*designate posts which are vulnerable to conflicts of interest, and (iii) to provide for suitable oversight.*

53. The Netherlands authorities reiterate that, insofar as the NPN is concerned, Article 55b of the General Legal Status of the Police Decree (*Barp*) includes a prohibition on having financial interests, owning securities or conducting securities transaction that affect the proper performance of the function of the officer or the proper function of the public service. Work is currently being done on a Financial Interests Policy Rule, detailing for which officials there is a duty to report financial interests, what is meant by financial interests and how these interests must be reported. The policy rule is in an advanced stage and is then to enter the decision-making process. In addition, the appointment of a Financial Compliance Officer who is to supervise the reporting thereof and the adequate implementation of this policy rule, was approved by senior management in December 2020.
54. As for the KMar, the authorities state that it is necessary to establish that a position is associated with a certain risk of a conflict of interest. This involves looking at the policy field and the position of the civil servant, especially for top officials. KMar employees must report any financial interests, as a result of which the proper performance of the position cannot reasonably be guaranteed, and high-risk financial interests, to the Minister of Defence. This can be found in the *Algemeen militair ambtenarenreglement*. A draft memorandum was adopted in 2018 that provides further details for registering financial interests. This memorandum has not yet formally entered into force. The proposed obligation to declare financial interests extends, in addition to the interests of the official him/herself, also to those of the spouse or registered partner, the minor natural or adopted children and the adult natural or adopted children when the officer manages those interests. If the officer manages financial interests for others (natural persons, companies or institutions), the officer must also disclose these interests. The functions involving specific risks have not yet been formally designated. A standard form for declaring financial interests also has yet to be established. It is still unclear when Defence expects to complete this.
55. GRECO notes that some developments are underway for the NPN. A Financial Interests Policy Rule is being drafted with a view to specifying which officials have a duty to report financial interests, what is meant by financial interests and how these interests are to be reported. Insofar as supervision is concerned, the function of Financial Compliance Officer has been established and is to be appointed to monitor reporting of interests under the aforementioned Rule. These developments have the potential of improving the situation in a way that appears to go in the direction of the recommendation.
56. As regards the KMar, GRECO notes that developments are also ongoing. A draft memorandum giving further details for registering financial interests was adopted in 2018 but is yet to enter into force formally. Officers are to be required to disclose their financial interests and those of their spouse/partner, children and dependents when they manage their interests as well as others (including natural persons, companies or institutions) whose interests they manage. However, the functions involving specific risks have not yet been formally designated, a standard form for declaring financial

interests has yet to be established, and there is no mention of supervision. Moreover, it is not clear when the aforementioned Rule is to enter into force.

57. Overall, GRECO considers that undeniable progress is underway but that it has yet to materialise. Moreover, certain aspects need furthering (in particular, the regularity of declarations and their supervision). In the meantime, GRECO cannot carry out a full assessment of the aforementioned developments, and consequently the various requirements of the recommendation have only been partly met.
58. GRECO concludes that recommendation xv has been partly implemented.

**Recommendation xvi.**

59. *GRECO recommended (i) establishing a requirement for law enforcement officials to report corruption related misconduct within the service; and (ii) adapting the protection of whistleblowers in that respect.*
60. The Netherlands authorities report that all civil servants are required to report criminal facts, criminalised under Art. 162 of the Code of Criminal Procedure (*Wetboek van Strafvordering*), including corruption. The thematic pages of the NPN advise to first discuss misconduct with a colleague and if unsuccessful discuss it with management. According to the NPN, reporting misconduct or an integrity risks is not related to the requirement that officials under Art. 162 of the code of Criminal Procedure must report these fact. The former come under administrative law while the latter come under criminal procedure law. NPN staff can also report suspected wrongdoings to confidential counsellors. The authorities are of the view that the protection of whistleblowers, provided for within the framework of the Whistleblowers Authority, need no change as a result of this.
61. The authorities state that, in recent years, the KMar has taken additional measures to stimulate and simplify the reporting of signs of integrity violations. However, a general duty to report is not in line with the integrity policy and culture of the KMar. In principle, reporting is done to the manager, directly to the integrity advisor or the Defence Integrity Reporting Centre (MID), which is outside the Defence organisation. If the report subsequently reaches the competent authority, it is responsible for follow-up actions. The aim is for the reporter to be informed in all cases of actions taken as a result of the report. An external organisation receives the reports (telephone or e-mail) about alleged abuses and integrity violations on behalf of the Defence organisation. All reports of suspected integrity violations, including complaints, are registered in a new central system. The new registration system ensures that confidentiality is guaranteed, follow-up and feedback are monitored, and progress is reported to the reporting individual. If a reporting individual is dissatisfied with the handling of his/her report, s/he can contact the National Ombudsman or the Dutch Whistleblowers Authority. In addition, it is possible to make an anonymous report via the confidential line (NL Confidential). The legal protection of those reporting situations of abuse is primarily governed by law (see Article 125quinquies, paragraph 3 of the Central and Local Public Administration Personnel Act, Article 47, paragraph 3 of the Police Act and Article 12quater, paragraph

2 of the Military Personnel Act 1931). Preservation of confidentiality is a main principle of whistleblower protection. According to the Internal Whistleblowers Regulations, a person making a report in good faith, are protected from all forms of unfair treatment, including any retaliation, disadvantage or detriment suffered by a whistleblower.

62. The authorities report having taken steps towards implementation of the 2019 EU Directive on Whistleblowers. Draft legislation was sent for advice to the Council of State in December 2020. With regards to disadvantages faced by the whistleblower, the burden of proof will be changed. A reporter only will only have to prove they made a report and were placed at a disadvantage. The employer will then have to prove that this disadvantage does not stem from the report. Additionally, the reporter is to be protected against judicial proceedings following from the report.
63. GRECO notes at the outset that steps have started to transpose the EU Directive on Whistleblowers. Regarding the NPN, GRECO observes that the Theme pages of the Professional code of the NPN simply advise employees to discuss misconduct with the colleague concerned and, where unsuccessful, with their management: this falls short of a requirement on NPN staff to report misconduct as per the recommendation. GRECO therefore considers that in essence the situation has not changed. GRECO is of the view that reporting wrongdoing from within the police can equate to whistleblowing, especially in sensitive cases and as such may require special protection. In effect, most cases of whistleblowing take place from within the organisation where the alleged corruption situation arose. The Evaluation Report pointed out that a requirement to report corruption from within the police “also demands a certain level of protection against retaliation of those who submit such reports in good faith. The “code of silence” is prevalent in most hierarchical organisations and the protection of whistleblowers within the organisation is particularly important to deal with this problem” (Evaluation Report, para. 244).
64. GRECO notes that in the KMar there is no duty to report suspicions of corruption within the organisation but that additional efforts have been made to stimulate and simplify reporting. Reports can not only be made to line managers but also to integrity advisers or directly to the Defence Integrity Reporting Centre (MID), which is outside the Defence organisation. In addition, an external organisation (CAOP) receives reports about alleged abuses and integrity violations in within the Defence organisation; confidentiality of the reports is guaranteed and information on progress is provided to those who made reports. Overall, while there is no duty to report suspicions of integrity breaches, GRECO is satisfied that a framework is in place to facilitate the reporting of breaches and there are guarantees of confidentiality as a way of protecting whistleblowers but also protection against any form of retaliation, which complies with the expectations of this recommendation.
65. GRECO concludes that recommendation xvi has been partly implemented.

### III. CONCLUSIONS

66. **In view of the foregoing, GRECO concludes that the Netherlands have satisfactorily implemented none of the sixteen recommendations contained in the Fifth Round Evaluation Report.** Eight recommendations have been partly implemented and eight have not been implemented.
67. More specifically, recommendations ix to xvi have been partly implemented and recommendations i to viii have not been implemented.
68. With respect to top executive functions, GRECO regrets the lack of progress on the implementation of any of its recommendations and calls on the authorities to take decisive steps to implement recommendations on persons with top executives functions. It notes that some of the recommendations concerning PTEFs, such as to develop an integrity strategy and a code of conduct, go further than to amend the Cabinet Members' Manual, which appears to be underway, and encourages the authorities to step up their efforts toward the implementation of these recommendations.
69. Regarding law enforcement agencies, GRECO notes that some progress can be witnessed with respect to all eight recommendations, although some aspects are yet to materialise. Given the ongoing investigations connected to the EncroChat encrypted communication system used by criminal networks that led to suspicion that some law enforcement employees were involved (see para. 12), GRECO highlights that it is more crucial than ever to implement all its recommendations in order to further strengthen efforts to stamp out corruption from the law enforcement. Measures are being put in place to reinforce authorisation protocols on access to police information and to detect atypical access more efficiently. The Theme pages of the Professional Code of the National Police (NPN) have been updated to cover better integrity matters, and the Royal Marechaussee (KMar) adopted practical Rules of conduct that provide practical examples of integrity dilemmas. However, more will have to be done regarding the supervision and enforcement of these documents in the NPN. Efforts are also ongoing with a view to fully incorporating integrity matters into training. Moreover, legislation was adopted by Parliament to provide for regular vetting in the NPN and is expected to come into force by the second half of 2021. The regime of declarations of interests is also currently being revamped in order to enhance it. Finally, while there is no duty to report misconduct linked to integrity issues, some measures are being introduced to support reporting, and various channels to reports are provided in the KMar as well as ways of preserving the anonymity of the individuals reporting misconduct. While undeniably efforts have been made towards the implementation of all recommendations, much still depends on how these will be finalised and will materialise. GRECO can only encourage the authorities to place emphasis on the requirements of the recommendations when introducing all these new measures.
70. In view of the above, GRECO notes that further progress is necessary to demonstrate an acceptable level of compliance with the recommendations within the next 18 months. Pursuant to Rule 31 revised bis, paragraph 8.2 of its Rules of Procedure, GRECO invites



the Head of delegation of the Netherlands to submit additional information regarding the implementation of all recommendations by 30 September 2022.

71. Finally, GRECO invites the authorities of the Netherlands to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make the translation public.