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Reference
2021-0000627966

Your reference

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Re Integrity policy for former members of
government

1. Introduction

There is a tradition in the Netherlands of positive appreciation for the contribution by parties in civil society, in the establishment of policy and legislation. At the same time, the Cabinet is aware that this contribution engenders certain risks, such as unfair access to the public administration. In the Dutch context, the emphasis is on the balanced creation of policy, for which a member of government in office is accountable.

Against this background, individual citizens and society impose high demands on the integrity of members of government, not only while in office but also at the end of their period of office, in accepting possible future positions. Prevention, trust, awareness and personal responsibility are essential principles in this connection, and all apply to the policy on integrity for members of government. This approach also ties in perfectly with the constitutional structure whereby in this framework, ministerial responsibility is the most important principle.

In accepting a new post, first and foremost it is the personal responsibility of former members of government to diligently separate interests, to avoid any (appearance of) conflict of interests. Any (appearance of) a conflict of interests can after all detract from the support for the policy and authority of the government. There are relevant guidelines that appear in Letters to Parliament and the Handbook for Ministers and State Secretaries ('the so-called Blue Book'). This in no way changes the underlying principle of personal responsibility. However, there is a clear need for greater control by means of clear rules of conduct so that the former member of government is in a better position to take personal responsibility in his or her future career.

There is a grey area in which future positions may be possible, if further conditions are imposed. Until now, those conditions are absent in the integrity policy for former members of government.

In order to provide the necessary clarity for society, but also for the former members of government, the Cabinet feels that the time is now right to extend the existing rules. These will include the recommendations made to the Netherlands by the Group of States against Corruption in the Council of Europe (hereinafter: GRECO). These recommendations are aimed at issues regarding integrity and policy, with a view to improving the risk analysis of potential conflict of interests.

At decentral level, work has been underway for some time on achieving a balance within integrity policy between culture (maintaining an open dialogue) on the one hand and more structural measures (legislation and regulations), on the other. With regard to central government, that balance deserves more attention. Your House also recently called for a tightening up of these rules, as outlined in the Dassen motion (Parliamentary Papers II 2020-2-21, 35 896, no. 11).

It is the task of the Cabinet to fully consider the GRECO recommendations and the tightening up of the rules demanded by the House in the Dutch context, also in relation to other legal obligations and social interests. It is relevant in that context that in principle, in social and economic life, former members of government have the same rights, obligations and freedoms as anyone else, including the freedom to select their own posts and to enter into the accompanying contracts of employment. This contract freedom can only be restricted by or pursuant to the law (Article 19 (3) of the Constitution) and any such legal measure must be both necessary and proportional.

Moreover, in the Netherlands, it is considered most important that at the end of their period of office, members of government must (be able to) make the switch to another position in politics or society. This is expressed in an application obligation, and the obligation to accept suitable employment as expressed in the General Pension (Holders of Political Office) Act (Appa). It is entirely reasonable that former members of government, just like any other jobseekers, will seek a post that ties in with their acquired experience and competences. These measures could impact on the entitlement of a member of government to a benefit payment ('redundancy pay'). In further elaborating the measures, this will have to be considered as a point for attention, as will the existing obligation to accept suitable employment.

2. The heart of the new measures

In specific terms, this letter presents a package comprising three new proposals for the integrity policy for former members of government. These proposals must be considered together:

- a. Extending the prohibition on lobbying: The already existing prohibition on lobbying with regard to former members of government will be extended to include related policy fields with which the former member of government was actively involved during their period of office. To date, the prohibition on lobbying was restricted to the policy field of their own Ministry. As the case arises, the Secretary General may grant an exemption and an independent committee is available to advise both the SG and the former member of government on these issues.

- b. Introduction of a revolving door prohibition: The revolving door prohibition means that former members of government are not permitted to enter the service of their former Ministry, within two years following the end of their period of office. They are also not permitted to accept any paid, commercial assignments from their former Ministry. As the case arises, the Secretary General may grant an exemption from the revolving door prohibition. An independent committee is available to advise both the SG and the former member of government on these issues.
- c. A cooling-off period, with mandatory advice: For a period of two years, before accepting a new position, former members of government must request advice from an independent committee, on the admissibility of their new position. This advisory committee has three options: no objection, new position possible under further conditions, or the new position is not possible because of (an excessive risk of) conflict of interests.

These three measures will reinforce one another and, as a combined package, are in line with the recommendation issued to the Dutch Cabinet by GRECO. According to GRECO, as yet, sufficient measures have not been taken in the Netherlands for former members of government to tackle the problem of conflict of interests in accepting a new position. They refer to the absence of general rules, advice, supervision and enforcement following resignation or dismissal of members of government. GRECO views the existing prohibition on lobbying for former members of government, in their own policy field, as a positive step, but recommends also taking additional measures. For example, GRECO recommended the issuing of authoritative and independent advice to a former member of government on the desirability of a new position.

These measures are further explained and elaborated in the sections below.

By way of a useful guide, a description is given as an appendix to this letter of the set of rules for (former) members of government, in preparing to accept a new position. An indication is given of which rules were already in place, and which are new.

3. Context of this letter

Following on from the evaluation by GRECO, the Cabinet announced (Parliamentary Papers II 2018-2019, 35 000 VII, no. 91) that measures are to be introduced for former members of government who are looking for new employment and/or are about to accept such a position. An undertaking was also recently made to House of Representatives that the Cabinet is working on further measures following the departure of members of government. This undertaking was issued both in writing (Parliamentary Papers II, 2020-2021, 25 570 VII, no. 107) in response to Parliamentary Questions by Van Baarle and Sneller (13 July 2021), verbally by the Prime Minister in a debate with your House on 8 September 2021 regarding the appointment of three members of Parliament as State Secretary in the outgoing Cabinet and in a letter preceding the budgetary debate for the Minister of the Interior and Kingdom Relations (Parliamentary Papers II, 2021-2022 35 925 VII, no. 15). In the debate with your House on 28 October 2021, concerning the

Budget of the ministry, I confirmed that I would be sending this letter, in the near future; various fractions (once again) expressed their support.

During the abovementioned debate with the Prime Minister, Member of Parliament Dassen submitted a motion which was subsequently accepted and which calls upon the Cabinet to introduce a cooling-off period of two years, and to appoint an independent committee of examination (Parliamentary Papers II 2020-2021, 35 896, no. 11). Part of the purpose of this letter is to respond to that motion. Other points that were raised in this connection during the debate will also be dealt with in this letter.

Furthermore, in the Order of Business for 7 September last, the House of Representatives requested letter, prior to the still to be planned thirty-members debate concerning the switch by a member of government to a lobbying organisation. By means of this letter, the Cabinet hereby also satisfies that request.

GRECO in fact also issued recommendations to the Dutch Cabinet relating to the integrity policy *during* the period of office of a member of government, such as the recommendation to develop a code of conduct which among others regulates the handling of gifts, external activities and contacts with third parties (lobbyists). In the above mentioned letter to the House regarding the evaluation by GRECO, it was announced that the actual elaboration of the GRECO recommendations regarding integrity policy *during* the period of office of members of government will be left to the new Cabinet - also with a view to the internalisation and ownership of that policy. This undertaking was repeated verbally by the Prime Minister in the House Debate of 8 September 2021. In drawing up this code of conduct, the Van Baarle-Leijten motion about enforcing and/or imposing sanctions on the code of conduct will be include (Parliamentary Papers II 2021-2022, 32 925, III, no. 11).

4. Measure for extending the prohibition on lobbying

The rule to date is that former members of government are not permitted for a period of two years to lobby with their former Ministry in the policy field for which the member of government in question was responsible. The Cabinet is now extending the prohibition on lobbying following the resignation of members of government as concerns the scope, to include the member's own Ministry and related policy fields with which the former member of government was actively involved, during the period of office.

During their period of office, members of government are sometimes also active in policy making, management and decision making in policy fields that are formally the responsibility of a fellow member of government. Active involvement assumes more than merely participating in the consultations and decision making in the Council of Ministers and sub councils; there is no intention to introduce a government-wide prohibition on lobbying. Active involvement occurs if, in setting policy in a particular policy field, the member of government has maintained frequent and intensive official contact outside his or her own Ministry. This could relate to policy fields at the interface between multiple members of government, for example climate, migration, cybersecurity, youth care or the approach to the COVID-19 pandemic. In other words, the prohibition on lobbying does not extend to the *entire* Ministry responsible for the related policy field.

The constant expansion of policy integration also plays a role in this respect. It is common for a member of government to have occupied a position in a number of different portfolios, and on that basis to be called upon to replace a fellow member of government. Extending the prohibition on lobbying as it has existed thus far is therefore entirely logical. The extended prohibition on lobbying also applies for a period of two years following the moment of departure of the member of government, irrespective of the length of the period within which the person in question held the position of Minister or State Secretary (as replacement).

For a period of two years, former members of government are not permitted to act on behalf of a business, semi-public organisation or lobbying organisation, as mediator, lobbyist or intermediary, in commercial contacts with their own Ministry or with related policy fields with which the member in question was actively involved during the period of office. In real terms this means that the affected employees of Ministries are not permitted, from their official position, to maintain any commercial contacts of whatever kind with a former member of government for a period of two years following the departure of the member of government. The term 'commercial contacts' must be interpreted broadly: not only live discussions, but for example also emails, telephone conversations, other forms of telecommunication or membership of a commercial delegation.

The prohibition on lobbying is not a prohibition on *accepting* a particular new position; it is not a 'job prohibition'. In other words, a former member of government is permitted to enter service with a lobbying organisation, but he or she may not lobby his or her own Ministry or another Ministry in as much as that Ministry is responsible for related policy fields with which the member of government in question was actively involved, during their period of office. Advice from an independent committee as described in section 6 can mean that specific subsequent lobbying positions in the former policy field of the member of government are only admissible subject to specific conditions.

When the Code of Conduct for Integrity in the Central Public Administration (GIR) is next updated, the amendment to the prohibition on lobbying will be included. Communication will also be issued about the extension of the prohibition on lobbying for civil servants in another, appropriate form.

For former members of government, the extended prohibition on lobbying will be included in the Handbook for Ministers and State Secretaries and in the letter about the rights and obligations issued to all departing members of government from the Minister of the Interior and Kingdom Relations, shortly following their departure.

As is the case with the current prohibition on lobbying, the Secretary General of the Ministry in question can grant an exemption from the prohibition on lobbying, as the case arises, if there are grounds for doing so. Factors that can be considered are for example: the period of exercising the position of member of government (and as a consequence the authority relationship), the degree of proximity of the policy field, the amount of time that has passed, the circle of contact persons, the nature of the new post (commercial or semi-public sector) and the position. In all these respects, openness concerning the contact can contribute to mitigating potential risks.

Moreover, an independent committee, as further described in section 6 of this letter, can issue advice to the Secretary General and the former member of government regarding any potential exemption (subject to conditions).

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5. Measure for the introduction of revolving door prohibition

A revolving door policy prevents organisations from awarding paid assignments to a former employee, during a specified period following the termination of employment. The introduction of a revolving door prohibition for former members of government is aimed at preventing members of government from performing paid, commercial tasks for their own Ministry, after stepping down from that Ministry. This avoids the risk of a conflict of personal and professional interests.

The regulation will ensure that employees of a Ministry are not permitted to award any paid, commercial assignments to a former member of government, from their own Ministry, for a period of two years following departure. Also during this same period, a former member of government is not permitted to enter into a contract of employment with their own Ministry. This will be embedded in law.

Exceptions to this rule are possible. Former members of government are often called upon to act as chair or member of an advisory body given their expertise in a particular policy field. A revolving door prohibition does not exclude the specific deployment of former members of government. No contract of employment is required for participation in an advisory body. It is a one-sided appointment. The appointment of a former member of government to an advisory body established on the basis of the Advisory Bodies Framework Act is therefore not subject to the intended revolving door prohibition.

It will also be specified that the SG will have the option to deviate from the revolving door prohibition (for example in the case of appointing a government commissioner). As is the case with the prohibition on lobbying, here too, an independent committee as further described in section 6 of this letter will be able to issue a recommendation to the SG and the former member of government on possible exemption. They can also judge that exemption subject to further conditions is not objectionable.

6. Measure for a cooling-off period and mandatory advice

It is important that following a period of office, a member of government is able to continue its career, by accepting an appropriate position.

An appropriate position assumes that after stepping down or dismissal, the member of government accepts a position that generates no risk of conflict of interests. This is already the underlying principle for the personal consideration of the former member of government.

A cooling-off period will be introduced to prevent a public officer in office already taking into account the interests of his/her (intended) future employer in an

inadmissible manner, in conducting business or reaching decisions in his or her own policy field. In the initiative memorandum '*Lobby in Daglicht: luisteren en laten zien*' ('Lobby in Daylight: show and tell') dated December 2015 (Parliamentary Papers II 2015/16 34376, no. 2), Members of Parliament Bouwmeester and Oosenbrug (both PvdA) called for a cooling-off period that prevents former members of government from accepting employment in a field in which they bore political responsibility, for a specified period. GRECO also recommends a cooling-off period, and as mentioned above, the House of Representatives recently adopted the Dassen motion on this issue.

A cooling-off period must be considered in relation to the constitutional freedom of contract in principle enjoyed by all employees and employers, and which can only be restricted by or in accordance with the law. Any such restriction must be necessary and proportional. In other words, this is not a measure that can be adopted lightly.

At the same time, the Cabinet recognises that integrity issues cannot always be viewed in black and white. General rules from which no deviation is possible offer sometimes necessary clarity. In the case of a cooling-off period following the period of office of a member of government, the Cabinet believes that in specific cases, different considerations may apply, such as the carefully considered possibility of following a social career, after a period of office. In other words, this is not a 'job prohibition'.

There must be sufficient leeway for arriving at a well-argued position on the question of whether, in the light of the facts and circumstances, a particular new position is acceptable, for the person in question. This certainly is the case if there is no evidence of (an excessive risk of) conflict of interests.

With that in mind, the Cabinet proposes to prepare a Bill that, for a period of two years following their departure, requires former members of government to request mandatory advice from an independent advisory committee on the admissibility of taking up a new position. The precise scope of this obligation will be elaborated, in legislative form. Members of the advisory committee must be authoritative, and must be able to form their judgement impartially and with supporting arguments. The chairperson must be qualified to independently issue a legal judgement and may have no political background. According to the submitted information, the independent committee will assess whether the new position will generate (an excessive risk of) conflict of interests. There are three possible outcomes of this assessment: no objection, permissible subject to conditions or not permissible. This approach offers sufficient leeway for a nuanced assessment of new positions, and custom solutions, depending on the specific case. The committee will be equipped in such a way that it is capable of issuing advice on any case submitted to it, within a very short timeframe.

A similar committee already exists for the European Commission and in the United Kingdom. The approach and the consideration framework of the independent committee proposed by the Cabinet can be based on a similar set of ideas. It is in other words conceivable in the Dutch situation that the former member of government provides the committee with information about the future employer, the relationship with the employer during the period of office,

the tasks arising from the new position and the connection with the former office. In its advice, the committee will at least consider the confidentiality obligation, the appearance of impropriety during the period of office and any incorrect use of information since the period of office. It will balance this information against the desirability of former members of government being able to continue their social career. In its advice, the committee may impose conditions according to which a position may be accepted. It will be determined whether the advice of the committee can be made public.

The intention is to entrust the above described tasks to the Advisory Body on the Legal Position of Political Office Holders. On the basis of the Advisory Body on the Legal Position of Political Office Holders Act, this advisory body will issue broad advice on employment conditions for political office holders, such as members of government.

In summary, therefore, a cooling-off period of two years will be introduced, within which an independent committee can issue advice on the admissibility of a position for former members of government. The introduction of this measure ties in with the Dassen motion. The appointment of this committee will be regulated in law, as will the obligation upon former members of government to call upon the committee to issue advice, and the scope of the obligation. In respect of the latter, the question will be considered whether, and if yes to what extent, the committee must be authorised in respect of both private, semi-public and public new positions.

The consequence of a legal regulation is that a future Cabinet will still have to consider the tasks and authorities of the independent committee, the consequences for the system of benefit payments, the job application obligation, the term 'suitable employment' in the General Pensions (Holders of Political Office) Act and the legal consequences of the advice. The current Cabinet certainly feels itself bound by the principle that by accepting a new position, there must be no appearance of impropriety during the former member of government's period of office. The same applies for the principle that during the exercising of the new position, no appearance is created that he or she has made inappropriate use of knowledge acquired during the period of office as a member of government.

7. In conclusion

The extension of the prohibition on lobbying announced in this letter shall come into force with immediate effect. The same does not apply to the revolving door prohibition or the cooling-off period with mandatory advice. These measures represent a restriction of the constitutional free choice of employment that can only be regulated by or pursuant to the law. Preparations for these legal rulings will be taken up as quickly as possible.

The totality of available measures and the further measures outlined in this letter will satisfy the wishes of GRECO and the House of Representatives to improve the integrity policy. The package of measures is appropriate and perfectly implementable in the Dutch context. It nonetheless remains important to realise that integrity is a living reality that cannot be dealt with one hundred percent by rules on paper. The basis lies in personal responsibility, a moral compass and continuing to engage in open dialogue about dilemmas.

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Nonetheless, rules are needed in order to create clear frameworks. The additional legislation and regulations announced in this letter therefore represent a necessary next step.

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The Minister of the Interior and Kingdom Relations,

K.H. Ollongren

Appendix: Overview of integrity policy for former members of government

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Introduction

In the past, in two letters, rules of conduct for former members of government were shared with your House (Parliamentary Papers II 2002/03 28754, no. 1 and Parliamentary Papers II 2010/11 32500 VII, no. 102). To ensure a clear overview, the proposed elements of the letter are once again presented below, in the already existing policy for new positions. The text not in italics relates to already existing measures. The text in italics relates to new policy. By presenting existing and new measures together, the Cabinet will satisfy the wish of GRECO to establish an integrated consideration framework that offers a clear overview of the rules for accepting new positions by (former) members of government.

Acceptance of new positions during the period of office

Members of government may not promote their future prospects of a new position by giving preferential treatment to potential future employers, during the fulfilment of their office.

Any intention to enter into discussions regarding a future post must first be submitted to the Prime Minister, for approval, by any members of government still in office.

Upon accepting a new position following the period of office

When taking up a new post, the responsibility in the first place lies with the former member of government to diligently separate specific interests.

Upon accepting a position following the end of his period of office, a member of government must act in such a way that no appearance is created that during his period of office, he acted with impropriety, or incorrectly dealt with knowledge acquired during that period.

New: For a period of two years following their departure, former members of government must request advice from an independent committee about the acceptability of accepting a new position.

During the new position

(Former) members of government make no use of confidential and internal information acquired by them during their period of office.

Former members of government are subject to confidentiality obligations in respect of state secrets and official secrets. Violation of these obligations will be sanctioned in the Dutch Criminal Code (Article 98 et seq. and Article 272 respectively).

For government employees, for a period of two years following their departure, former members of government are not acceptable as lobbyists on behalf of a business, a semi-public organisation (for example a housing association, a public broadcasting corporation or a healthcare institution) or a lobby organisation (including a non-governmental organisation). *This applies for their own policy field and for related policy fields with which the former member of government was actively involved during the period of office.*

In real terms, this means that employees *of the affected Ministries* may not maintain any commercial contacts of whatever kind, in their official position, with a former member of government for a period of two years following their departure. The term 'commercial contacts' must be interpreted broadly: not only live discussions but for example also emails, telephone conversations, other forms of telecommunication or participating in a company delegation. The SG is authorised to allow exceptions to these rules. *An independent committee can advise the SG and the former member of government on these issues.*

New: For a period of two years following departure, the former Ministry will not award any paid, commercial assignments to a former member of government, at their own Ministry. During this same period, a former member of government is not permitted to enter the service of their own Ministry. The SG has the authority to deviate from this rule, for example when appointing a government commissioner. An independent committee can advise the SG and the former member of government on these issues. The exception is the appointment to an advisory body appointed on the basis of the *Advisory Bodies Framework Act*.

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