

The Dutch state  
2006

This is a brief outline of the structure of the Dutch state. It also touches on the relationship between the Netherlands in Europe and the Netherlands Antilles and Aruba, two countries in the Caribbean which are the other parts of the Kingdom of the Netherlands.

Netherlands:

Capital city: Amsterdam

Area: 41,528 km<sup>2</sup>

Population: 16.3 million (1 January 2006; source: Statistics Netherlands)

The Dutch system of government is based on the Constitution, which lays down a number of guiding principles on:

- 1) the monarchy
- 2) representative democracy
- 3) the rule of law (including fundamental rights) and
- 4) decentralisation and unity.

What follows describes the structure of the Dutch state with reference to these headings.

## 1. Monarchical government

### 1.1. Government

The Dutch government comprises not only ministers and their state secretaries (junior ministers), but also the monarch. This makes the Netherlands unusual among West European monarchies, most of which exclude the monarch from government. The Netherlands has been a *constitutional monarchy with a parliamentary system* since the Constitution was radically revised in 1848. Constitutional monarchy means that the Constitution stipulates the powers of the hereditary monarch. It also sets out the division of powers between the monarch and other institutions of government. Ministers are accountable to Parliament for the government's actions, but the monarch has no political responsibilities and is not therefore accountable to Parliament.

- the Monarch (King or Queen)

The monarch's many official duties include delivering the annual *Speech from the Throne*, which sets out the government's legislative plans for the coming parliamentary year. This always takes place at the State Opening of Parliament on the third Tuesday in September, which is known as *Prinsjesdag*.

The monarch also plays an important role in forming new governments. After a general election, she meets with the leaders of the parliamentary parties, the speakers of both houses of parliament, and the vice-president of the Council of State. Then, acting on their advice, she appoints a senior political figure (the *informateur*) to find out, if necessary, which parties are willing to form a coalition government. No single party has ever achieved an absolute majority in the Dutch parliament. The parties intending to form a coalition draw up an agreement setting out their plans for their four-year term in office. The monarch will then appoint one of the coalition party leaders as *formateur* and instruct him or her to form a government. The *formateur* usually becomes Prime Minister. The new ministers are appointed by royal decree and sworn in by the monarch.

In addition to these formal duties, the monarch meets regularly with the Prime Minister, other ministers and state secretaries, and prominent figures in economic and cultural life.

## Heads of State since 1813

1813/1815-1840	Willem I
1840-1849	Willem II
1849-1890	Willem III
1890-1898	Emma (Queen Regent)
1898-1948	Wilhelmina
1948-1980	Juliana
1980-	Beatrix

### - Cabinet

The ministers together make up the Cabinet, which is chaired by the Prime Minister. The Cabinet's duties include the day-to-day business of government, preparing legislation and putting it into practice, overseeing local government, and maintaining international relations. The Cabinet appointed in 2003 has 16 ministers, responsible for:

- General Affairs
- Finance
- the Interior and Kingdom Relations
- Government Reform and Kingdom Relations
- Foreign Affairs
- Development Cooperation
- Justice
- Immigration and Integration
- Education, Culture and Science
- Defence
- Housing, Spatial Planning and the Environment.
- Transport, Public Works and Water Management
- Economic Affairs
- Agriculture, Nature and Food Quality
- Social Affairs and Employment
- Health, Welfare and Sport

The Ministers for Development Cooperation, Government Reform & Kingdom Relations and Immigration & Integration are ministers without portfolio. In other words, they do not head their own ministries. They are attached to the Ministry of Foreign Affairs, the Ministry of the Interior and Kingdom Relations, and the Ministry of Justice respectively.

Ministers are assisted by state secretaries (ten in 2003), who perform some ministerial duties. They do not take part in the weekly cabinet meetings, but they are members of the government. Incidentally, the term 'Minister of State' is an honorary title granted by the monarch, usually to distinguished former ministers.

## 1.2. High Councils of State

### - Council of State

The Council of State is the Netherlands' oldest High Council of State. Founded by Emperor Charles V in 1531, it is still the government's chief advisory body. The government has to seek the Council of State's advice on all proposed legislation, orders in council, and motions seeking parliamentary approval for international agreements. The Council of State may also propose legislation and administrative measures, although the government is not bound to follow its advice.

The Council of State has divisions corresponding to the various ministries. It is presided over by the monarch and also has a vice-president and up to 28 members known as State Councillors. In addition, up to 50 'Extraordinary' Councillors can be appointed. Ordinary State Councillors are persons recognised as having rendered outstanding service in public life. They are appointed by the monarch on the recommendation of the Minister of the Interior and Kingdom Relations and with the consent of the Minister of Justice. Although they are appointed for life, in practice they retire at the age of 70.

The vice-president is responsible for the day-to-day management of the Council of State. The heir to the throne takes a seat in the Council on reaching the age of 18. The Council of State exercises the royal prerogative if there is no successor or regent on the death of the monarch. It also serves as the highest administrative tribunal in the Netherlands (see 3.1.

*The judicial system*).  
[www.raadvanstate.nl](http://www.raadvanstate.nl)

#### - Court of Audit

The Court of Audit oversees the government's financial management. It audits the spending and receipts of individual ministries, semi-public enterprises and other publicly funded bodies. The provinces, municipalities and water boards fall outside its domain. The Court audits both the regularity and efficiency of financial management. It has three members, appointed for life, one of whom is designated President by the Government. The Court of Audit's annual report is submitted to the government and to parliament, after which it is published.

[www.rekenkamer.nl](http://www.rekenkamer.nl)

#### - National Ombudsman

The Office of the National Ombudsman was set up in 1982. Its remit was to meet the need for an independent body, in addition to the courts, to investigate complaints from individuals about government bodies. Any individual may ask the Office to investigate the conduct of a government body. The Office may also launch its own investigations. At the end of an investigation, the Office first sends its conclusions to the parties concerned, who then have a chance to respond. Once they have done so, the Office publishes its final report stating whether, in its opinion, the public body investigated acted improperly. The final report may also make recommendations. The National Ombudsman is appointed for six years by the House of Representatives. He is entirely independent and reports to parliament once a year.

[www.ombudsman.nl](http://www.ombudsman.nl)

## **2. Representative democracy**

### 2.1. Parliament

All Dutch nationals aged 18 or older may vote and stand in elections for the House of Representatives. Parliament, known as the States General, consists of two chambers: the Senate (the upper house), with 75 members, elected by the provincial councils; and the House of Representatives (the lower house), with 150 members. All Acts of Parliament have to be passed by both houses of parliament. The monarch, ministers and parliament all take part in the legislative process. The Constitution lays down that elections to both houses of parliament must be held every four years. They may deliberate and take decisions only if over half their members are present. Most decisions are taken by majority vote.

The primacy of parliament manifests itself in two key features of the Dutch system of government. First, parliament alone ensures that legislation is compatible with the Constitution; no court is entitled to do so. And second, the government cannot govern without parliament's support. The government has executive power but is accountable to

parliament for how it is exercised. Ministers must have the confidence of parliament if they are to govern. Once a government has been formed, the Prime Minister makes a policy statement to the House of Representatives, which then votes on it. If the government wins the vote, it can start governing. At any time in a government's term of office, the House of Representatives may pass a motion of no confidence. For its part, the government has the power to dissolve parliament and call a general election.

The two houses of parliament have four rights enabling them to check the power of the government:

- *The right to set a budget.* The government's budget, which it submits annually on *Prinsjesdag*, has to be approved by parliament before it can be implemented.
- *The right of interpellation.* If a member of the House of Representatives wants to 'interpellate', or draw a minister's attention to a subject not on the day's agenda, he must seek the House's permission. Requests for interpellation are very rarely denied.
- *The right to put questions to ministers and state secretaries.* In the Senate, members put questions in writing, and ministers respond likewise. In the House of Representatives there is a weekly 'Question Time' during which members can put questions orally and have them answered orally. The questions have to be answered. A minister may refuse to provide the information requested only if to do so would harm the interests of the state.
- *The right of inquiry.* Parliament may also launch inquiries independently of the government by setting up parliamentary commissions of inquiry. Such commissions have the power to require persons to appear before them and give evidence under oath.

In addition, parliament may adopt motions independently to express its opinion on a subject. Such a motion must be backed by at least five members to come to a vote, and even if it is adopted, the government is not obliged to implement it. A motion of no confidence, however, forces the government to resign.

The House of Representatives has two further legislative rights:

- *The right of amendment.* It may amend bills. The minister concerned may either accept an amendment or declare it unacceptable.
- *The right to propose legislation.* Members of the House of Representatives may also propose their own bills, either individually or as a group.

Members of parliament enjoy parliamentary immunity. They may not be prosecuted for anything they say in either house, in a parliamentary committee meeting, or in a document submitted to parliament.

## 2.2. Political parties

The Netherlands has many political parties, a state of affairs encouraged by the electoral system. Like all Dutch democratic bodies, the House of Representatives is elected by proportional representation, with parties having to win only 0.66% of the national vote to gain one seat.

For the current composition of the House of Representatives, go to [www.regering.nl](http://www.regering.nl)

Political parties have to fund themselves and do so mainly by charging membership fees. They may receive donations from businesses, which they have to declare. They receive government subsidies for three specific activities:

- research institutes which publish journals and organise conferences;
- training institutes, including bodies which provide training for sister parties in central and eastern Europe;
- political organisations for young people.

#### How a bill becomes law

The minister concerned consults with the other ministers on the proposed bill. If the Cabinet is in agreement, the monarch is informed of the contents of the bill, which is then sent to the Council of State. The bill, accompanied by an Explanatory Memorandum and a report to the Queen from the minister responsible, recommending that it should or should not be submitted to the House, is subsequently sent to the House of Representatives.

The relevant permanent committee of the House of Representatives issues its provisional report, to which the minister responds with a memorandum of reply. The permanent committee issues its final report. The House of Representatives then debates the bill in plenary session, proposing amendments as it sees fit. Assuming the bill is passed by the House of Representatives, it then proceeds to the Senate, where it goes through the same process. The Senate may approve or reject the bill, but may not amend it.

Once it has passed through both houses of parliament, the bill is signed by the monarch and by the relevant minister or ministers. It is then published in the Bulletin of Acts and Decrees. Acts enter into force on the first day of the second calendar month following their official publication, unless they stipulate a different date.

Acts of Parliament normally only provide a general framework. As a rule the government sets out detailed rules in orders in council.

### **3. The rule of law**

The basic principles of the rule of law can be found in the Constitution. One of them is the principle of legality: everything the government does must be based on a general rule of statute law. This applies to both procedural and substantive aspects of government acts. Another aspect of this principle is that legal provisions applying to individuals cannot have retroactive effect.

Other principles of the rule of law are the fundamental rights guaranteed by the Constitution. Article 1 says: 'All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.' The whole first chapter of the Constitution is devoted to fundamental rights. Traditional rights impose obligations on government to refrain from acting, whereas social rights impose positive obligations on government.

The principle of the separation of powers is also characteristic of a state subject to the rule of law. It has applied in the Netherlands since the Constitution was radically reformed in 1848. One of its manifestations is an independent judiciary.

#### 3.1. The judicial system

Civil and criminal justice is administered in nineteen district courts, five courts of appeal, and the Supreme Court of the Netherlands. Cases are heard first by a district court. If one or both parties appeal against the judgment, the case goes to a court of appeal. The court of last resort is the Supreme Court, which deals with appeals "in cassation", meaning that it looks not at the facts but at whether the law has been applied properly. Judges at all three levels are appointed for life to ensure their independence, but in practice they retire at the age of 70.

- Supreme Court

The Supreme Court, situated in The Hague, is the Netherlands' highest court for both civil and criminal cases. It comprises a president, six vice-presidents and twenty-five justices. It has the power to quash judgments given by lower courts if it finds that they have applied the law incorrectly, but it does not examine the facts of the cases that come before it. Its main duty is to ensure the uniform application of the law. The Supreme Court may also give judgment in cases heard in the courts of the Netherlands Antilles and Aruba. The case law established by the Supreme Court is an important source of law in the Netherlands. But the Supreme Court is not a constitutional court. It does not have the power to repeal an Act of Parliament on the grounds of incompatibility with the Constitution.

- International law

One power that the Supreme Court – like all Dutch courts – does have is that it may refuse to apply an Act of Parliament on the grounds that it conflicts with an international agreement. The Constitution was amended in 1953 to give primacy to universally binding international law. Another amendment passed in 1956 makes universally binding provisions of international agreements directly applicable in the Netherlands, that is, without the need for Dutch legislation. The Netherlands thus adheres to the doctrine of monism, whereby national and international law together form a single legal order.

- Administrative law

As well as civil and criminal courts, the Netherlands has other judicial bodies such as administrative tribunals and military courts. Administrative law provides legal protection for the individual citizen against the authorities. Administrative disputes are normally heard first in the administrative sector of a district court. Appeals in social security and public service cases are heard by the Central Appeals Tribunal, while appeals in the area of economic law are heard by the Trade and Industry Appeals Tribunal. In other cases, appeals are heard by the Administrative Jurisdiction Division of the Council of State. Only for tax disputes is there a different system. The court of appeal is the court of first instance for tax cases, after which appeals in cassation may be lodged with the Supreme Court.

The Constitution rules out jury trials and the imposition of the death penalty.

#### **4. Decentralisation and unity**

The Netherlands has three tiers of government: central, provincial and municipal. Central government concerns itself with issues of national interest. The provinces and municipalities are tiers of local government. In addition, there are water boards, responsible for local water management.

Provincial and municipal authorities are required to implement measures laid down by central government, but they also enjoy a degree of autonomy. Provinces and municipalities have the power to make their own regulations, known as ordinances, on matters that affect them directly. But these ordinances may not conflict with existing national legislation or, in the case of municipal ordinances, with ordinances issued by the province to which the municipality belongs. As well as implementing central government measures, municipalities are also obliged to implement certain measures laid down by the province to which they belong.

Provinces and municipalities have two types of income: local taxes and charges, and central government funding. Most central government funding comes in the form of special-purpose grants, with central government prescribing how they should be spent. In addition, municipalities receive block grants from the Provinces and Municipalities Funds, which they

may spend as they see fit. Their own sources of income include property tax, tourist tax, dog licences and court fees.

#### 4.1. Provinces

The Netherlands is divided into twelve provinces. Provincial authorities are responsible for areas such as environmental management, spatial planning, energy supply, social work, sport and cultural affairs.

Each provincial authority is made up of a provincial council, a provincial executive and the Queen's Commissioner. The members of the provincial council are directly elected for four years by Dutch nationals of voting age who are resident in the province. The number of members depends on the province's population. The members of the provincial council then appoint some of their number to serve the same four-year term as the provincial executive. The Queen's Commissioner, appointed by central government for a term of six years, chairs both the provincial executive and the provincial council.

#### The twelve provinces

Province	Provincial capital
Groningen	Groningen
Friesland	Leeuwarden
Drenthe	Assen
Overijssel	Zwolle
Gelderland	Arnhem
Utrecht	Utrecht
North Holland	Haarlem
South Holland	The Hague
Zeeland	Middelburg
North Brabant	's-Hertogenbosch
Limburg	Maastricht
Flevoland	Lelystad

#### 4.2. Municipalities

The Netherlands is made up of 458 municipalities. The number of municipalities has fallen over the years as part of central government's drive to improve quality and effectiveness, with many small municipalities merging or being assimilated into larger ones. Municipal authorities are responsible for such fields as water supply, traffic, housing, public-authority schools, social services, health care, sport, recreation and culture.

Each municipal authority consists of a council, a mayor and an executive (comprising the mayor and aldermen). Municipal authorities are subject to scrutiny by the province and central government, though in practice this power is used sparingly. Municipal councils are elected directly by local residents for a four-year term. Foreign nationals legally resident in the Netherlands for at least five years are also entitled to vote in municipal elections. Nationals of EU member states are entitled to vote in municipal elections as soon as they are resident in the Netherlands.

Each municipal council appoints several aldermen from among its members. The size of the council and the number of aldermen depend on the size of the population. The mayor is nominated by the Queen's Commissioner of the relevant province and appointed for a term of six years, with the option of reappointment, by central government. The mayor and the aldermen are responsible for the day-to-day administration of their municipality. The mayor

chairs both the municipal executive and the council. The executive implements decisions taken by central government and the provincial executive.

#### 4.3. Water boards

The water boards are one of the oldest democratic institutions in the Netherlands. Water management is very important, since around quarter of the Netherlands lies below sea level. Like central government, provinces and municipalities, water boards are public bodies. The water authorities are responsible for protecting the land against the water. Their work includes the construction and maintenance of dams, dykes and locks, the control of water flows and levels, and the maintenance of water quality.

Water board executive councils are elected by property owners in their localities. In recent years, other residents have also been granted the right to vote. The chairman of the executive committee, however, is appointed by the government.

### 5. The Netherlands Antilles and Aruba

Netherlands Antilles:

Area: 920 km<sup>2</sup>

Population: 212,226 (2002)

Aruba:

Area: 193 km<sup>2</sup>

Population: 70,007 (2002)

The administrative relationship between the Netherlands and the Netherlands Antilles and Aruba is governed by the Charter for the Kingdom of the Netherlands. The Charter, which was drawn up in 1954, is the highest constitutional instrument, even taking precedence over the Constitution. It states that the Netherlands, the Netherlands Antilles and Aruba are equal partners in the Kingdom, which may be regarded as a kind of federation. Each of these partners runs its own affairs, except as relates to a number of issues known as Kingdom affairs.

The areas dealt with at Kingdom level include the defence of the Kingdom and its foreign relations. Protection of human rights and fundamental freedoms, legal certainty and the quality of public administration also fall into this category. Other Kingdom affairs include citizenship and extradition. Treaties are concluded on behalf of the Kingdom as a whole, but may not necessarily apply to all three countries. The Caribbean parts of the Kingdom are only involved in the conclusion of treaties that affect them.

The monarch is the head of state of the Kingdom and of each of the three partner countries. The Netherlands Antilles (Bonaire, Curaçao, Saba, St Eustatius and St Maarten) and Aruba each have a governor representing the monarch. The Dutch cabinet and the ministers plenipotentiary for the Caribbean countries form the Council of Ministers for the Kingdom. Kingdom-wide legislation is proposed by the government of the Kingdom (consisting of the monarch and the Council of Ministers for the Kingdom) and passed by the Dutch parliament (the States General). The Caribbean countries may each appoint one member of the Council of State for the Kingdom, which gives advice on Kingdom legislation.

In civil and criminal cases, the Supreme Court is the highest court not only for the Netherlands but also for the Netherlands Antilles and Aruba. It hands down decisions on cases heard in the Caribbean countries by the judicial authorities there.

The Charter provides that the constitutions of the Netherlands, Aruba and the Netherlands Antilles must serve as the basis for their respective systems of government.

### **Further information**

This factsheet was compiled by the Ministry of Foreign Affairs in association with the Ministry of the Interior and Kingdom Relations.

Further information is available from Dutch embassies and consulates. You can find their addresses on the internet: <http://www.mfa.nl>.

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