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Netherlands: Legal Response to Covid-19

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Except where the text indicates the contrary, the law is as it stood on: 6 February 2022.

On 27 February 2020, the first patient tested positive for Covid-19 in the Netherlands (population 17.7 million people). This marked the beginning of three significant waves of Covid-19 infections: from March to June 2020, from September 2020 to February 2021, and from March to June 2021. According to Statistics Netherlands, 20,200 people died from Covid-19 in 2020, 19,600 in 2021, and 8,200 in 2022.¹ The Dutch public healthcare system was not equipped to deal with a protracted health crisis on a national scale, and neither was the crisis management structure. The health care system came under severe strain. The central government, in particular the Cabinet and the Ministry of Health, Welfare and Sports, the National Institute for Public Health and the Environment, the Municipal Health Services, regional and local government, care providers, and other institutions and organizations had to improvise in order to address the pandemic. The prime policy focus was on sufficient hospital capacity, especially in intensive care units, to treat vulnerable patients. There was less coordinated policy attention for the effects of the crisis on, for example, nursing homes and mental healthcare institutions, or on the wider societal impact on sectors such as education and cultural institutions.

I. Constitutional Framework

- 1.** The Netherlands is a small parliamentary democracy, with some 17 million inhabitants. It is highly affluent and densely populated. It has a ceremonial monarch as its Head of State.
- 2.** Regarding constitutional norms, two national documents stand out. On the one hand, there is the Charter of the Kingdom of the Netherlands (1954) and, on the other hand, there is the Constitution of the Kingdom of the Netherlands (*de Grondwet*), the first version of which dates back to 1814, with its last major revision in 1983. Of the two, the Charter is the less known. It regulates the relationship between the countries forming the Kingdom, namely the Netherlands, Aruba, Curaçao, and Saint Maarten—the latter three being islands situated in the Caribbean—stating that they are equal partners.
- 3.** The Dutch Parliament, which consists of two Chambers, is in The Hague and is called the States General. The so-called Second Chamber (*Tweede Kamer*), or lower house, is the more political of the two, and consists of 150 members, who are elected once every four years through a system of proportional representation—that is, if there are no new elections because of Government collapse. The fact that the Netherlands is a parliamentary democracy means, among other things, that the existence of the Government, which is formed after parliamentary elections are held, is in principle dependent upon a majority (ie the political balance of power), especially in the lower house. A minority government is however possible, and from October 2010 and April 2012 this was the case.
- 4.** The First Chamber (*Eerste Kamer*), or upper house, also informally called the Senate, consists of 75 members who are elected every four years by the members of the twelve provincial councils. Its election, however, does not coincide with elections for the lower house, but takes place three months after provincial elections. The position of Senator is a part-time one of—formally at least—one day a week, with no parliamentary assistance. Although it has more or less the same powers of governmental oversight as the lower house, (see Part III below on this), the upper house has no right of legislative initiative or

even amendment, but it nevertheless must approve legislation accepted by the lower house. It can thus veto legislation, just as the lower house.

5. The Second Chamber and the government each have their own place in the constitutional makeup of the Netherlands, but there are also relations between the two. The King and the ministers together form the government. Members of the government are appointed by the King after proposals to that end are made by the political parties participating in the government. The parliament controls the government. Ministers are accountable to parliament for their policies. During the formation of the government or cabinet (the cabinet formation), it is customary for agreements to be made about the policy to be pursued by the cabinet. Such agreements are laid down in a coalition agreement. The Second Chamber House also has a supervisory task. Severe criticism of a minister or of the entire cabinet can lead to disapproval: a cabinet minister, or the entire government, must resign if the majority of parliament no longer has 'confidence'. The 'confidence rule' is based on a solid constitutional convention, which has now become one of the most important rules for the functioning of Dutch parliamentary democracy (see also Part III below on parliamentary scrutiny of government).

6. The Netherlands is what one might call a decentralized unitary State, made up of mainly provinces and municipalities—next to the water authorities, the so-called Caribbean public bodies, and other public bodies. Article 124(1) of the Dutch Constitution stipulates that, for provinces and municipalities, the power to regulate and manage related matters is left to their governing bodies. This means that the latter have quite some autonomy and they can regulate on almost all matters within their territory, as long as this does not intervene with higher rules. Nevertheless, the central Government, pursuant to Article 124(2) of the Dutch Constitution, can demand that the municipalities and provinces implement and enforce the rules and regulations arising from national laws. As far as municipalities, who have played an important role in combatting Covid-19, are concerned: the elected municipal council is the head of the municipality. The day-to-day management is formed by the college of mayor and aldermen, consisting of aldermen elected by the council and the mayor appointed by the Crown for a six-year term. The mayor also has special duties, for example, public order and the representation of the municipality.

7. In response to the outbreak of the virus SARS-Cov-2, the Dutch government took several measures to limit the Covid-19 disease caused by this virus. These measures have their basis in laws, orders in council, temporary regulations, policy rules, and emergency ordinances affecting various policy areas, including public order and safety, public administration, and the administration of justice. Although these measures were taken to combat the impact of a health crisis, almost none of them are of an emergency nature.

8. Legislation about public health in the Netherlands has always been a national competence. However, the implementation of these laws and especially the combat of infectious diseases has traditionally been delegated to local, mainly municipal authorities. In recent times, this was reconfirmed through the Public Health Act 2008 (*Wet publieke gezondheid*), which changed significantly following the outbreak of the Covid-19 pandemic.

9. Normally, in the event of a disaster or serious fear of one arising, a mayor may on the basis of Article 175 of the Municipalities Act 1992 (*Gemeentewet*), issue all *orders* they deem necessary to maintain public order or to limit danger. The mayor also has an emergency *ordinance* power on the basis of Article 176 of the Municipalities Act 1992,

which means that they may issue general binding regulations whereby statutory regulations—not being constitutional rules—may be deviated from.

10. With regards to the Covid-19 pandemic, the situation was different, and it is necessary here to point out that the Dutch territory is divided into so-called safety regions, established by the Safety Regions Act 2010 (*Wet veiligheidsregio's*). A safety region is a joint arrangement whereby tasks and competencies regarding fire services, disaster response, crisis management, and medical assistance have been transferred to the management of the safety region in order to be able to deal with a supra-local disaster or crisis. The board of a safety region consists of the mayors of the municipalities involved and has a chairperson who is popularly known as the 'super-mayor', and who has supreme command pursuant to Article 5 of the Safety Regions Act 2010. The arrangement of the safety region has been utilized during the pandemic.

11. However, the Minister of Health Affairs, based on Article 7 of the Public Health Act 2008, can nevertheless lead the combat against the pandemic and can instruct the chairperson of the safety region as to how this combat should be organized. Indeed, the Dutch Minister of Health Affairs has, to a large extent, taken the lead, and has instructed the safety regions to issue 25 rather far-reaching emergency ordinances, dealing with safe distance, mass meetings, the closure of public places, events, etc. This changed after December 2020 (see Part IV below).

12. As far as the judiciary is concerned, in the Netherlands a distinction is made between the 'ordinary' judiciary and the courts that fall outside of it. The ordinary judiciary includes the courts referred to in Article 2 of the Judicial Organization Act (*Wet op de rechterlijke organisatie*): the Supreme Court (*Hoge Raad*), courts of appeal (*Gerechtshoven*), and tribunals (*rechtbanken*). The Dutch judiciary consists of the judges and public prosecutors, the latter forming the Public Prosecution. In addition to the ordinary judiciary, special courts are distinguished. This concerns the administrative courts: the Administrative Jurisdiction Division of the Council of State, the Central Appeals Board, the Trade and Industry Appeals Tribunal, and the Council for the Judiciary. The judiciary in the Netherlands can be seen as independent and separate from the other powers.

13. It is important to note that constitutional law in the Netherlands occupies a different position when compared to many other countries worldwide, where Acts of Parliament are generally subject to judicial constitutional review. However, Article 120 of the Dutch Constitution holds that the 'constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts'. So although the Dutch Constitution is the highest national norm, it may not be used to judicially test acts of parliament or treaties.

14. An important official role in scrutinizing legislation in the Netherlands, also about the constitutional aspects, is therefore attributed to the Dutch Council of State (*Raad van State*), as it is, next to being the highest administrative court in the Netherlands, the most important advisor for Government and Parliament regarding new legislation and policy. The Council of State, the members of which are appointed until retirement age, is constitutionally anchored in Articles 73–74 of the Dutch Constitution. The Government is obliged to ask the Council for advice on almost all legislative proposals, be they initiated by (a member of) Government or a member of Parliament. To give its advice, the Council pays attention to the policy, legal, and legislative quality of a proposal. Furthermore, the Council of State can also provide unsolicited advice to the government and parliament, ie without a concrete legislative proposal being submitted. The Council of State does not often provide unsolicited advice. Finally, at the request of the government or the Senate and the House of

Representatives, it can also provide information about general matters relating to legislation and governance.

15. The response to the pandemic has not changed the basic constitutional structure of the State, although temporary changes have been introduced (see Part III.A below).

II. Applicable Legal Framework

A. Constitutional and international law

16. During the Covid-19 pandemic, no constitutional state of emergency or exception was declared in the Netherlands. Instead, the Dutch State initially opted for responding to the pandemic under the existing framework of the Public Health Act 2008, the Safety Regions Act 2010, and the Municipality Act 1992.

17. The Dutch Constitution provides for a state of exception that allows limited derogation from constitutional law.² The Act on Coordination of States of Exception (*Coördinatiewet Uitzonderingstoestanden*) gives effect to the constitutional state of exception by acknowledging two levels of exceptions: a limited and a general state of exception. These states are applicable depending on the severity of the emergency.

18. During the limited state of exception, derogation from constitutional governmental powers of local governments is allowed.

19. In the general state of exception, derogation from classic fundamental rights such as the right to manifest one's religion and beliefs, the right to publish thoughts and opinions, and the right to association and assembly, is allowed. However, derogation from fundamental rights is limited: eg the right to life and the right of freedom from torture and slavery can never be subject to derogation.³

20. The declaration of the state of exception allows various emergency laws, emergency regulations, and emergency provisions to enter into force. Emergency laws providing for regulations derogating from constitutional law may enter into force in the context of the limited and general state of exception only and are limited in number. Only the War Act 1996 (*Oorlogswet*) and the Extraordinary Civilian Powers Act 1996 (*Wet buitengewone bevoegdheden burgerlijk gezag*) allow such derogations. However, in certain emergency situations, provisions of the War Act 1996 and the Extraordinary Civilian Powers Act 1996 may be called into force on a stand-alone basis without having to declare the state of exception. At a later stage in the pandemic, for instance, the Government used Article 8 of the Extraordinary Civilian Powers Act 1996 to enforce a curfew (see Part IV below).

21. The European Union (EU) framework impacted the Dutch State's response in various ways, however the impact of EU law on health measures has been limited, due to limited competences and fragmentation.⁴ Decisions of the European Commission regarding the flexibilization of State aid rules⁵ resulted in the Commission's approval of various Dutch rescue schemes to safeguard the Dutch economy.⁶ Various restrictive measures applied in the Netherlands following EU risk-level mapping, accompanying travel restrictions, and quarantine obligations.⁷ The European strategy regarding vaccines applies to the Netherlands.⁸

22. The Netherlands did not take measures derogating from its obligations under the European Convention of Human Rights (ECHR) or any other international convention protecting human rights.

23. The World Health Organization (WHO) International Health Regulations (IHR) (2005) were incorporated into national law through the Public Health Act 2008. The National Institute for Public Health and the Environment (*Rijksinstituut voor volksgezondheid en milieu*, RIVM) collaborates with the WHO in various ways and acts as a coordinator between the WHO and the Minister of Public Health, Welfare and Sports. The Centre of Infectious Diseases (*Centrum Infectieziektenbestrijding*) is a part of the RIVM and is responsible for the preparation of the national medical and epidemiological policy, and resorts to the Outbreak Management Team (OMT) for advice from several scientific angles. National regulations prescribing WHO standards in the course of the Covid-19 pandemic include those pertaining to wearing a face mask⁹ and keeping a distance of 1.5 metres between individuals (see Part IV below).¹⁰

B. Statutory provisions

24. No formal public health emergency was declared. The Government acted in accordance with the WHO declaration of 30 January 2020, stating that the Covid-19 virus qualifies as a public health emergency of international concern (PHEIC), thereby issuing temporary recommendations under the IHR (2005).¹¹

25. The pre-pandemic Public Health Act 2008, the Safety Regions Act 2010, and the Municipality Act 1992 form the legal heart of the pandemic crisis management structure. Mayors are assigned emergency powers to issue emergency orders and emergency regulations that allow them to intervene in case of threats to the public order and safety.¹² In case of supra-local crises, the chair of the safety region is assigned the supreme command, which includes the takeover of the mayor's emergency powers.¹³ In the case of an epidemic, the Minister of Public Health, Welfare and Sports may instruct the chair of the safety region as to how to combat crisis effects.¹⁴

26. Furthermore, the Air Traffic Act 1992 (*Wet luchtvaart*) allowed the Minister of Infrastructure and Environment to introduce a temporary and repeatedly prolonged ban on air traffic from March 2020.¹⁵

27. At first, new emergency rules were provided for by way of emergency decrees declared and executed at a regional level during the period of March to November 2020. These decrees were issued in accordance with instructions, and on the basis of a model decree of the Minister of Public Health, Safety and Sport.¹⁶ It included orders, prohibitions, and/or limitations with regards to gatherings and entrance to designated areas and locations, etc.¹⁷ However, ministerial instructions and regional decrees are not subject to parliamentary—nor municipal—control and their (possible) limitation of constitutional rights did not meet constitutional requirements regarding infringements of fundamental rights. Hence, a new law was introduced in December 2020 by means of the Covid-19 Justice and Security (Interim Measures) Act 2020 (*Tijdelijke wet maatregelen Covid-19*), replacing the emergency decrees and providing a proper legal basis for limitations of the fundamental rights involved. Contrary to its crisis management character and temporary nature, the Covid-19 Justice and Security (Interim Measures) Act 2020 does not qualify as emergency law but as additional regular law.¹⁸ This Act primarily entails a temporary and ancillary crisis management framework in the field of public health by adding a new chapter (Va) to the Public Health Act 2008, while supplementing other legislation and regulations concerning, amongst others, labour conditions, day care, and road traffic with temporary Covid-19 provisions as well. The distinction between regular and emergency law

is particularly relevant as emergency law provides for more latitude for intervention than regular law.

28. The Dutch legislative procedure does not provide for a fast-track procedure.¹⁹ Nevertheless, the Covid-19 Justice and Security (Interim Measures) Act 2020 was proposed on 13 July 2020 and adopted by the Second Chamber on 13 October 2020, ie within just three months, which is exceptional.²⁰ The Covid-19 Justice and Security (Interim Measures) Act 2020 was then adopted by the First Chamber on 27 October 2020,²¹ and entered into force on 1 December 2020.

29. Article VIII, Section 3 of the Covid-19 Justice and Security (Interim Measures) Act 2020 determines that several provisions of Covid-19 related legislation require prolongation,²² such as provisions commanding a safe distance between individuals, prohibiting gatherings, closing public places, prohibiting or limiting public events, and prescribing hygiene measures. Certain provisions concerning the investigation and sanctioning of breaches of Covid-19-related regulations, the stopping and prohibiting of the execution of works, and quality requirements of day care must be prolonged as well.²³

30. The Second and First Chamber, as well as the Council of State, must examine the necessity and proportionality of prolongation every three months.²⁴ The Covid-19 Justice and Security (Interim Measures) Act 2020 was prolonged by royal decree in February 2021 and again in May 2021.²⁵

31. Other legislation and regulations that were introduced to address the pandemic crisis effects were almost all of a temporary nature and contained sunset clauses.²⁶

32. The Covid-19 Justice and Security (Interim Measures) Act 2020 was opposed by both left and right-wing parties in the Second Chamber. The opposing parties represented 46 seats out of 74 opposition seats and voted against adoption.²⁷

33. The amendments to the proposed Covid-19 Justice and Security (Interim Measures) Act 2020 resulted in the narrowing of ministerial powers and expansion of control instruments of the Second Chamber and the municipal councils.²⁸

34. The Covid-19 Justice and Security (Interim Measures) Act 2020 was critically reflected upon by several civil society organizations, such as the Council for Jurisdiction (*Raad van de Rechtspraak*), the Netherlands Bar (*Orde van Advocaten*), and Virus Truth (*Viruswaarheid*). Those reflections mostly concerned the legality of the proposed derogation from fundamental rights and proportionality of the Covid-19 Justice and Security (Interim Measures) Act 2020, as well as the democratic control of the Parliament.²⁹

C. Executive rule-making powers

35. At the national level, administrative orders are issued by means of a royal decree that stems from the King and (one of) the Ministers³⁰ and spells out the abstract provisions of a parliamentary law³¹ in a more operative manner. A ministerial regulation can be issued if an administrative order allows the minister to provide further details on the matter involved. Both administrative orders and ministerial regulations entail generally binding provisions.

36. At the regional level, municipalities, provinces, and water authorities can issue generally binding provisions. In case of public order and safety emergencies, general local regulations can be overruled by the chair of the safety region or the Minister of Justice and Safety.³²

37. The Minister of Justice and Safety issued instructions regarding emergency decrees adopted by the safety regions and executed at regional level. Those decrees were contested in courts of law (see Part IV.A below) by civil society organization Virus Truth (*Viruswaarheid*), which opposes all Covid-19 measures in the name of democracy and the rule of law. Summary proceedings related to the emergency decrees were unsuccessfully triggered by Virus Truth (see Part IV.A below).³³

38. Until the Covid-19 Justice and Security (Interim Measures) Act 2020 entered into force, emergency decrees at regional level formed the legal backbone of the crisis management structure.³⁴ The emergency clause of the Public Health Act 2008 was used to set up a local crisis management structure with a top-down steering approach. The Minister instructed the chairs of the safety regions to issue emergency decrees in accordance with a model emergency decree that was provided for by the Safety Consultative Body (*Veiligheidsberaad*), that must be consulted by the Minister on the identification of national objectives regarding disaster and crisis management.³⁵

D. Guidance

39. The activation of the National Crisis Structure (*Nationale Crisis Structuur*) in March 2020 was the starting point for a jointly coordinated crisis management of the ministerial departments involved.³⁶ In this context, several non-binding recommendations were publicly announced, such as general hygiene measures and stay-at-home advice.³⁷ The Government's three weekly press conferences were largely based on findings and recommendations of the RIVM and addressed both soft-law guidance and legislative measures.

40. The measures were announced during press conferences and transformed into emergency orders at the same time. There were no significant divergences between official guidance/recommendations and law.

III. Institutions and Oversight

A. The role of legislatures in supervising the executive

41. Dutch Parliament, and especially its lower house, engages in its supervisory role mainly through the regular parliamentary supervisory system. Article 68 of the Dutch Constitution states that ministers and state secretaries are obliged to provide the requested information orally or in writing; an exception can only be made if the provision of information could violate the interest of the state. The weekly question time with Government ministers is also important, as are written questions and interpellations addressed to Ministers and Cabinet, and debate on Covid-19-related bills presented by the Government. The same is true for the debate in various standing committees in Parliament. In addition, Article 70 of the Dutch Constitution grants a right of inquiry (*recht van enquête*) to both Houses of Parliament: each can set up a committee for an official investigation on a certain matter. In such investigations, ministers, members of parliament, and civil servants are obliged to answer the House's questions under oath. Although the Second Chamber has regularly made use of this power, the Senate has never made use of it.

42. As far as the legislative role is concerned, Article 81 of the Dutch Constitution states that 'acts of Parliament shall be enacted jointly by the Government and the States General.' The Dutch Constitution thus gives expression to the interplay, through checks and balances,

between the government and the Parliament, more than simply stating the strict separation between government and Parliament.

43. Legislation that is enacted based on Article 81 of the Dutch Constitution implies that Government and Parliament are co-legislators. Legislation that is enacted in accordance with Article 81 can be recognized by the fact that it bears the word 'Act' in its name. The Parliament can however delegate legislative competence to lower-level regulators (Cabinet, ministers, provinces, or other regulatory entities) which, as a result, entails less or even no parliamentary involvement or scrutiny. Delegation of legislative competence usually happens when the rules concerned are considered to be of lesser importance in terms of parliamentary control (for example implementation rules), or because they deal with situations where the possibility of being able to swiftly change regulation is perceived to be a necessity.

44. While it is possible to scrutinize such delegated legislation through the aforementioned regular parliamentary scrutiny instruments, such scrutiny is often indirect and mostly takes place once the delegated regulation has been published. To prevent Parliament from losing its grip on the adoption of rules by delegation altogether, solutions have been developed, which ensure that Parliament can remain involved in the delegated adoption of generally binding rules. In many cases, this takes the form of Parliament being informed of a draft-delegated regulation in one form or another.

45. During the pandemic, the possibility for Parliament to control or scrutinize Covid-19related legislation was initially not used. The Minister of Health Affairs, based on Article 7 of the Public Health Act 2008, has led the combat against the pandemic and instructed the chairperson of the safety region as to how this combat should be organized. This competence, although it implied considerable restrictions of some fundamental rights, did not entail any involvement of Parliament. There was, as a result, considerable discussion about the possibilities for Parliament to exercise control over the measures initiated by the Minister.³⁸ Because of strong criticism regarding the aforementioned emergency ordinances, the Dutch Cabinet came up with the Covid-19 Justice and Security (Interim Measures) Act 2020, added as Chapter Va to the Public Health Act 2008, that included the emergency ordinances issued by the safety regions.

46. The idea of the Covid-19 Justice and Security (Interim Measures) Act 2020 was to make it possible to scale up or down quickly in response to the pandemic, but also to improve parliamentary control or involvement. As far as the latter is concerned, the Covid-19 Justice and Security (Interim Measures) Act 2020 contains an interesting and rather novel system of parliamentary control and involvement.

47. First, on the basis of Article 58s(1) of the Public Health Act 2008, the Minister has a duty of information. More specifically, they have to provide a monthly, reasoned overview of the measures in force and indicate the expectations regarding the continuation of the measures to the lower and upper houses.

48. Article 58b of the Public Health Act 2008 stipulates that the 'coronal powers' are applied only if such application is necessary in view of the seriousness of the threat to public health, and in accordance with the principles of the democratic constitutional State, ie, the exercise of these powers should be as limited as possible and proportionate to the objective of the coronal powers concerned.

49. Based on Article 58c(2) of the Public Health Act, the lower house of the Dutch Parliament can decide not to agree with a proposed ministerial regulation, which has either been submitted for assessment or has already entered into force—due to a very urgent circumstance in which immediate action must be taken to reduce danger, according to Article 58c(3) of the Public Health Act. As a result, the Dutch Parliament now has a veto on the measures provided by the Covid-19 Justice and Security (Interim Measures) Act 2020. In case of veto, the law expires by operation of law. In any event, the Covid-19 Justice and Security (Interim Measures) Act 2020, on which Covid-19 regulations are based, must be approved by the lower House of Parliament once every three months.

50. Article 58s(4) and (5) of the Public Health Act also includes an accountability obligation for mayors to the municipal council, and the chairperson of the safety region to the municipal councils concerned.

51. The Dutch Council of State, in an advisory opinion on the Covid-19 Justice and Security (Interim Measures) Act 2020, indicated that all this constituted a ‘new type of parliamentary involvement’.³⁹ This is because ministerial legislation in the Netherlands is usually not controlled by Parliament. If it is occasionally being controlled, it is hardly being done *before* ministerial legislation has been issued. The new procedure in the Covid-19 Justice and Security (Interim Measures) Act 2020, however, makes *ex ante* control possible, in addition to *ex post* control. Most importantly, although both houses of Parliament are provided with all relevant information regarding the ministerial legislation with respect to Covid-19, only the lower house of Parliament can use its veto power. The upper house of Parliament is explicitly excluded from this special legislative involvement mechanism. Both houses can of course use the regular scrutiny mechanisms, eg, during the weekly question time with Government ministers or by written questions and interpellations addressed to Ministers and Cabinet.

B. The functioning of the legislature where its ordinary business is disrupted

52. The Dutch Parliament has been able to meet during the Covid-19 crisis. None of the meetings of the lower house of Parliament, nor those of the upper house of Parliament, have officially been suspended, neither in plenary session nor in committee meetings. The upper house of Parliament did not meet for a brief period (from 17 March until April 2020) for neither plenary nor committee meetings.

53. Ordinary recess periods have not been lengthened because of the Covid-19 pandemic, nor has the passage of legislation been suspended since March 2020. There were also no constraints imposed on the process of voting. Many parliamentary meetings, both in plenary session as well as committee meetings, have been held digitally, either fully or in a hybrid form. There have been rules introduced for proceedings in Parliament, for example about when and how to interrupt, and on keeping distance between individuals.⁴⁰ It is nevertheless fair to say that, for those allowed to participate physically in parliamentary proceedings, there have been no substantial and abnormal constraints on the process of posing questions and offering rejoinders to answers.

54. The chairperson of the upper house has in April 2020 asked for advice from the Dutch Council of State regarding the functioning of Parliament in times of Covid-19. The Council of State, through its vice-president, concluded in an information report that a specific legislative (constitutional) basis—similar to the one that was laid down for provincial and municipal councils in the Temporary Electronic Meetings and Resolutions Act (*Tijdelijke wet digitale beraadslaging en besluitvorming provincies, gemeenten, waterschappen en openbare lichamen Bonaire, Sint Eustatius en Saba*)—is not necessary for both houses of Parliament.⁴¹ The Council of State stated that, under the exceptional circumstances, the

lower and upper houses could deliberate and decide digitally, and that mixed forms of digital and physical meetings were in accordance with the Dutch Constitution. Also, the so-called quorum requirements can, according to the Council of State, be adhered to digitally, although Article 76(1) of the Dutch Constitution stipulates that the two Houses of Parliament 'may deliberate or take decisions, either separately or in joint session, only if more than half of the members are *present*' (emphasis added). Being 'present' has traditionally been interpreted as having physically signed the list of presence and being available in the buildings of Parliament. To be sure, this constitutional provision is not applicable to committee meetings.

55. There have nevertheless been complaints, mainly by academics, about the possibility for Parliament to meet and vote digitally.⁴² The opinion of the Council of State, according to these academics, is based on a rather generous interpretation of the Dutch Constitution and constitutional values. First, because the possibility for mixed forms of digital and physical meetings creates inequality of arms between those being physically present and those being digitally present. Second, this might also result in less scrutiny by Members of Parliament. Moreover, this can lead to the undermining of the so-called free mandate of each individual Member of Parliament. As far as this last point is concerned, Article 67(3) of the Dutch Constitution states that '[t]he Members (of Parliament) shall not be bound by a mandate or instructions when casting their votes.' This implies that, under all circumstances, there must be an equal opportunity to put forward one's own opinion, both in the debate and in the vote. If the quorum requirement can be met digitally and therefore at a distance, this could, according to the critics, constitute a kind of authorization for spokespersons and/or group chairpersons to deliberate and vote on behalf of the group in the physical meeting.

C. Role of and access to courts

56. On 17 March 2020, all court buildings were closed.⁴³ On 9 April 2020, the judiciary enacted the Temporary general rules on case handling,⁴⁴ containing rules for the handling of cases during the Covid-19 pandemic. Various temporary schemes with rules specific to certain areas of law or courts coexist next to the Temporary general rules on case handling, such as Temporary rules for administrative cases, criminal cases, insolvency cases at district courts, and tax cases at appellate courts.⁴⁵ As of 25 February 2022, face masks were no longer required in court buildings. Moreover, the press and public no longer needed to register if they want to attend a hearing. The requirement for social distancing (keeping 1.5 metres distance between individuals) expired; yet walking routes, splash screens, and disinfection columns remained in use.⁴⁶ On 1 June 2023, all temporary rules on case handling expired.⁴⁷

57. From 17 March until 6 April 2020, 'highly urgent cases' were heard remotely (Phase 1).⁴⁸ These were cases that required a prompt court decision.⁴⁹ Examples include cases about pre-trial detention and searches (criminal law); suspension of payments and bankruptcy in appellate cases (civil law); custodial placements (family law); and immigration detention (administrative law).

58. In addition, from 7 April until 10 May 2020, 'urgent cases' were dealt with by video call or telephone (Phase 2). These were cases with a relatively high priority, but lower than that of the highly urgent cases.⁵⁰ Examples include cases about the extension of hospital orders (criminal law); the administration of oaths of lawyers, bailiffs, and sworn translators (civil law); divorces and maintenances (family law); and proceedings against Covid-19 measures (administrative law).

59. Moreover, courts settled a large number of cases in writing during Phases 1 and 2.

60. From 11 May 2020 onwards, the judiciary has been in Phase 3. In this phase, hearings may be conducted with participants in the proceedings being physically present.⁵¹ Physical presence is prioritized for cases concerning criminal, juvenile, or family law.⁵² Online sessions continue to take place. Courts determine whether cases are heard remotely or with participants physically present.⁵³ Criteria for determining whether cases are heard online, by phone, or in a physical setting are listed in the various temporary schemes. Relevant factors include the complexity of the case, whether there is a public interest, the impossibility of a remote hearing, the number of parties to the proceeding, and the media-sensitivity of a case.

61. The Temporary general rules on case handling also contain rules regarding digital communication via e-mail, a temporary measure to transfer documents that would usually be sent by mail or fax.⁵⁴

62. Notwithstanding the efforts made to ensure the ongoing operation of the courts, the Covid-19 pandemic has caused a significant backlog of cases. For example, in March, April, and May 2020, 16,000 crime cases were postponed due to measures relating to the pandemic. By December 2021, roughly 70% of this backlog had been eliminated.⁵⁵

63. Online proceedings have taken place in both civil and criminal proceedings, especially in the early stages of the pandemic. It is not clear how many proceedings have taken place remotely.

64. Currently, there is no conclusive evidence suggesting a digital divide. Detainees who needed to appear before a court were provided with a remote connection. However, there is evidence that the Covid-19 measures have severely impacted the (constitutionally required)⁵⁶ publicity of the administration of justice.⁵⁷ A brief survey of 11 court reporters showed grievances over video connections, as well as over contact with courts in instances of difficulty with digital communication.⁵⁸

65. Currently, there is no conclusive evidence suggesting that taking legal action was considered a risk to health and hence a barrier to access to justice.

66. There have been special provisions in relation to access to courts due to the pandemic. For example, in appellate civil summons cases, requests for postponement of procedural actions were granted in principle from 18 March until 1 July 2020.⁵⁹ Case documents for application proceedings at the Supreme Court could be digitally submitted.⁶⁰

67. Courts do not have review powers over declarations of the state of emergency or the state of exception. In Dutch emergency law, the definitions of 'state of exception' and of 'state of emergency' stem respectively from Article 103 of the Dutch Constitution and the Act on Coordination of States of Exception 1996 that gives effect to Article 103 of the Dutch Constitution. The state of emergency is declared by means of royal decree. Since such a royal decree entails generally binding provisions, it cannot be contested in court.⁶¹

D. Elections

68. The Covid-19 pandemic has not led to the suspension of any national, regional, or local election in the Netherlands.

69. The pandemic affected the procedure of the general election of March 2021, in which the 150 members of the Second Chamber (the lower House of Parliament) were elected. The most important modifications were as follows. Usually, the election is a one-day event.⁶² It was intended to take place on 17 March 2021. However, due to the Covid-19 pandemic, early voting took place on 15 and 16 March 2021, at a limited number of polling stations per municipality.⁶³ This measure was put in place for groups of voters medically vulnerable to Covid-19 specifically.

70. Moreover, the practice of proxy voting was expanded. In case a voter is unable or unwilling to vote in person, they may authorize a proxy holder. That proxy holder casts the vote for the person issuing the authorization at the same time the proxy holder casts their own vote.⁶⁴ Under normal circumstances, a proxy holder could cast the vote on behalf of two other persons.⁶⁵ However, because of Covid-19,⁶⁶ three votes could be cast by proxy.⁶⁷

71. Furthermore, voters aged 70 or older had the option to vote by mail, according to Article 7b of the Temporary law on elections Covid-19 2020 (*Tijdelijke wet verkiezingen Covid-19*). About 2.4 million people were eligible to vote by mail.⁶⁸

72. Lastly, typical Covid-19 prevention measures were in force, such as social distancing, a health check, the washing of hands at entry, and the wearing of face masks and of protective screens.

73. Of these measures, voting by mail proved to be the most controversial. In order to protect the secrecy of the vote, voters had to put their ballot with their preferred candidate in an envelope and place that envelope within a return envelope with their signed special poll card carrying personal information. This way, the ballot was separated from any information identifying the voter. However, it turned out that voters put the ballot and poll card together in the envelope intended solely for the ballot and put these in the return envelope. Thus, when officials opened the envelope no poll card was present. According to the rules, these envelopes had to be dismissed. The Minister of the Interior and Kingdom Relations stated on 10 March 2021 that approximately 2.5% of the roughly 400,000 votes that were cast by mail up to 8 March were invalid.⁶⁹ A news item of 15 March 2020 reported that a number of municipalities set aside relatively large amounts of votes by mail because they were invalid. It was reported that the percentage of invalid votes by mail ranged from 4.6 to 8.5 across the examined municipalities.⁷⁰ A remedy regulation was enacted, determining that if the special poll card was valid, the (unexamined) ballot could be put in the ballot box and counted.⁷¹ The Minister of the Interior and Kingdom Relations stated that the percentage of discarded votes by mail would likely be between 4-6%.⁷²

74. There is no conclusive evidence that the Covid-19 measures amplified or hampered electoral access to polling in any significant way. The turnout percentage of the 2021 election was 78.7%, which is 3.2% lower than that of the 2017 general election. Compared to the general elections of 2012 and 2010, the 2021 rate is 4.1% and 3.4% higher, respectively. The average turnout percentage over the 16 general elections held since 1971 (when compulsory attendance was abolished) is 80.4%.⁷³

E. Scientific advice

75. Outbreak management in the Netherlands is regulated by the Public Health Act 2008.⁷⁴ Although the Minister of Health, Welfare and Sport formally leads the campaign against Covid-19,⁷⁵ the Government relies heavily on advice from medical experts. The most important advisory board to assist the Government is the Outbreak Management Team (OMT). The members of this team are called together by the National Institute for Public Health and the Environment (RIVM).⁷⁶ The task of the OMT is loosely defined as 'to provide the best possible advice'.⁷⁷ The OMT is chaired by the director of the Centre for Infectious

Disease Control of the National Institute for Public Health and the Environment and consists of experts from various medical fields, including virology, epidemiology, (modelling of) infectious diseases, intensive care medicine, and general practice.⁷⁸

76. The OMT reports to the Administrative Consultative Committee on Infectious Diseases (*Bestuurlijk afstemmingsoverleg infectieziektebestrijding*, BOA),⁷⁹ a body composed of senior civil servants that assess the proposed measures on the grounds of executive feasibility and desirability.⁸⁰ This body reports to the Minister of Health, Welfare and Sport.⁸¹ The ratio behind this two-step approach is that, at least formally, expertise and politics are kept separate.⁸² First, expert opinion comes about independently, after which the measures proposed from a medical viewpoint are weighed against other social (for example, economic) interests.⁸³

77. Although there is no legal obligation to follow advice from medical experts, it is highly influential in practice. This was certainly the case at the beginning of the pandemic. On 16 March 2020, the Prime Minister stated in his address to the nation that expert advice ‘has guided all measures that have been taken in the Netherlands so far’ and that ‘it is important that we continue to rely on ... scientific knowledge and reliable facts.’⁸⁴ A few weeks later, the Prime Minister called the OMT’s advice ‘holy’ and stated that the Government basically adopts the advice as given.⁸⁵ However, later on in the pandemic, there have been instances in which the OMT proposed stricter measures than the Government was willing to take. For example, in November 2020, the Government rejected the OMT’s advice to close the upper classes of secondary schools for two weeks and to switch to digital education.

78. The advisory reports are published on the website of the RIVM. Up to 31 December 2022, the OMT issued about 140 advisory reports, the vast majority of which in 2020 and 2021.⁸⁶

79. The National Institute for Public Health and the Environment (NIPHE) is regulated by the RIVM Act 1996. The NIPHE falls under the Ministry of Health, Welfare and Sport and relies on this Ministry for its funding.⁸⁷ The Minister of Health, Welfare and Sport is authorized to issue instructions to the National Institute for Public Health and the Environment about the execution of its duties.⁸⁸ That being said, the NIPHE is independent with regards to its scientific operations,⁸⁹ and the Minister is prohibited by law from giving instructions regarding research methods or the reporting of results.⁹⁰

80. However, the (in)dependence of the medical advisors has been a point of contention during the Covid-19 pandemic. For example, it was reported that the Ministry of Health, Welfare and Sport was involved in drawing up certain guidelines, including on the use of mouth coverings in elderly care.⁹¹ Another example concerns the chairman of the Dutch Association for Intensive Care, Diederik Gommers, a medical expert with a high media profile. It was reported that Gommers, who regularly attends OMT meetings, was at one point pressured by a civil servant to publicly confirm that 1,600 intensive care beds would be available for Covid-19 patients within a week, while Gommers was not at all sure of this.⁹² Gommers was reportedly also instructed by the Ministry of Health about what he was allowed to say on talk shows.⁹³ In an interview of 10 July 2020 with the national newspaper *de Volkskrant*, Gommers recalls that he was one day called by a senior employee of the Ministry of Health regarding Gommers’ appearances in talk shows. According to Gommers, the Government official told him that he was not allowed to say certain things, because he was in a position of national importance.⁹⁴ Another contentious point in the relationship between the OMT and the executive branch has been the regular meetings at the Prime Minister’s official residence between the chair of the OMT and the Ministers most involved in the Covid-19 pandemic. As these meetings initially took place prior to the meetings of the OMT, multiple OMT members felt their independence was undermined by

this sequence. The *a priori* involvement of politicians upset OMT members. Ultimately, the issue was resolved by holding the OMT meetings prior to the meetings between the chair of the OMT and the government officials.⁹⁵

F. Freedom of the press and freedom of information

81. Although the work of journalists was impacted because of general measures, such as social distancing, the curfew, and limited capacity for some indoor events such as press conferences and court hearings, Dutch authorities have not implemented rules specific to the freedom of the press.

82. On 6 April 2020, the Executive Group of the Media Freedom Coalition, a ‘partnership of countries working together to advocate for media freedom and safety of journalists’ of which the Netherlands is a member, issued a statement that called on all States to continue to protect access to free media and to support the free exchange of information amidst the Covid-19 pandemic.⁹⁶

83. No freedom of information law has been suspended. However, in the early stages of the pandemic, the Ministry of Health, Welfare and Sport, due to capacity problems, suspended requests for access to Government information relating to Covid-19.⁹⁷

G. Ombuds and oversight bodies

84. According to Article 73 of the Dutch Constitution, the task of the Advisory Division of the Council of State (*Afdeling Advisering Raad van State*) is to advise the Government and Parliament on legislation. The Advisory Division conducts a policy analysis examines whether proposed legislation fits within national and international law obligations, and legal technicalities.

85. In the context of the Covid-19 pandemic, this Division has issued advisory reports on multiple proposed Covid-19 measures, including on the Covid-19 Justice and Security (Interim Measures) Act 2020 and the Temporary Act Notification App 2020 (*Tijdelijke wet notificatieapplicatie Covid-19*), which regulates the CoronaMelder, a contact tracing app.

86. Other ombuds and oversight bodies, such as the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*) and the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*) have issued opinions on Covid-19 measures as well, including on privacy during remote online education,⁹⁸ on privacy in the workplace,⁹⁹ and on privacy aspects of a contact tracing app.¹⁰⁰

87. Moreover, the Netherlands Court of Audit examines, amongst other things, the Government’s expenditure on Covid-19 measures as well as the functioning of democratic institutions. With regards to the latter, the Court of Audit observed in May 2021 that the Parliament’s information position had been compromised during the pandemic: ‘[i]n the Covid-19 year of 2020, in which ministers had to take urgent measures to combat the pandemic, the Second Chamber and the Senate were often faced with *faits accomplis*. The Minister of Health, Welfare and Sport, for instance, did not inform Parliament that agreements had been signed, the Minister of Economic Affairs and Climate Policy and the Minister of Agriculture, Nature and Food Quality that business support measures had been introduced, and the Minister of the Interior and Kingdom Relations that loans had been awarded to overcome the economic crisis following the collapse of tourism on Aruba, Curacao, and St Maarten due to the pandemic.’¹⁰¹

88. There has been no special reviewer of legislation or other public official appointed to monitor the public response to Covid-19.

IV. Public Health Measures, Enforcement and Compliance

89. On 28 February 2020, the Minister of Health, Public Health, Welfare and Sports qualified SARS-CoV-2 as an A-disease and it thus became an illness which must be reported to the Local Health Service (GGD) (Article 22 of the Public Health Act 2008). From that moment on, the Minister was in charge of the fight against the pandemic and chairs of the safety regions took over the role of the mayors (Articles 7, 6(4), and 39 of the Safety Regions Act 2010). As explained in Part II above, the Minister of Public Health, Welfare and Sports could, and did extensively, instruct the chairs of the safety regions to adopt public health measures in the form of emergency orders (Article 39 of the Safety Regions Act 2010). On 12 March 2020, the first such legally binding instructions to chairs of safety regions were given (all events with more than 100 persons cancelled; no higher education on-site; a temporary travel ban for passenger flights from countries with a Covid-19 outbreak), and many more instructions followed on such matters as public gatherings, domestic travel, and visits to care facilities.¹⁰²

90. Almost all public health measures applied nationwide.¹⁰³ The Minister of Health, Public Health, Welfare and Sports gave detailed instructions to the 25 chairs of the safety regions to adopt emergency orders, and the chairs, in turn, made extensive use of model emergency orders, which enhanced the uniformity of rules across the Netherlands.¹⁰⁴ Nonetheless, chairs of the safety regions could, and sometimes did, introduce additional measures in the emergency orders. Consequently, there was some variation during some periods in measures adopted at the regional and local level.¹⁰⁵ For example, in April 2020 almost all safety regions allowed markets but there was considerable variation as to whether non-food could be sold.¹⁰⁶ Also, some safety regions with popular destinations adopted special measures to discourage tourism (for example the closure of camping sites and public sanitary facilities).¹⁰⁷ Both measures with nationwide application and measures with regional application were challenged in court.¹⁰⁸ In one case the plaintiffs even requested the court to order the state to withdraw all public health measures.¹⁰⁹ Very few challenges were successful. Courts generally held that the measures had a sufficient legal basis and that they met the tests of subsidiarity and proportionality.

A. Public health measures

1. Individual mobility restrictions on citizens (*stay-at-home, curfews, etc*)

91. Strict stay-at-home orders—going outside was allowed only for essential shopping, taking care of others, work which could not be done at home, and getting some fresh air—were issued by the Government several times (from 23 March to 11 May 2020; from 4 November to 18 November 2020; and from 14 December 2020 to 11 January 2021). These measures did not take a legal form, they were guidance, and as such not enforced by public officials. Of course, the result of several other legal measures which were enforced (see subsections below) was such that there was little that people could do outside their homes.

92. In the autumn of 2020, the government and parliament considered a curfew but was not convinced it was necessary. That changed with the arrival of the Alpha variant of the virus.¹¹⁰ A curfew applied from 23 January to 28 April 2021 from 9 pm and as of 31 March (because of Daylight Saving Time) from 10 pm to 4.30 am. It was established in a separate Temporary Regulation National Night-Time Curfew (22 January 2021),¹¹¹ which, in turn, was based on Article 8(1) and (3) of the Extraordinary Civilian Powers Act 1996, which

gives the Minister of Justice and Security the competence to limit staying outdoors.¹¹² The curfew applied nationally.

93. The civil society organization Virus Truth (which was established in June 2020 and closed down in November 2022),¹¹³ which opposed all Covid-19 measures in the name of democracy and the rule of law and initiated dozens of cases against Covid-19 measures, sued the State of the Netherlands before the District Court in The Hague. It argued that the curfew regulation was unlawful. The court concurred in an interim proceeding on 16 February 2021: there was no sufficient ground to activate the Extraordinary Civilian Powers Act 1996, hence, the effect of Article 8 of that Act needed to be terminated immediately.¹¹⁴ The State appealed. The Court of Appeal in The Hague decided in an interim proceeding on 26 February 2021 that the curfew regulation had a proper legal basis after all.¹¹⁵

94. Pending the appeal case, and to avoid the termination of the curfew in case the appellate court, too, would decide that the ministerial regulation was unlawful, Parliament assented to a novel legal basis for the curfew on 22 February 2021: the Temporary Act Limitations on Staying Outdoors 2021, an amendment to the Public Health Act 2008.¹¹⁶

2. Restrictions on international and internal travel

95. There were no nationwide legal measures which prohibited domestic travel (except under the curfew, see Part IV.A.1 above). However, several legal measures were taken with the stated aim to significantly reduce and discourage domestic travel (see Part IV.A.3 and 4 below). In addition, several measures can be mentioned, such as temporarily limiting or closing public transport (railways, ferries, etc) and the closing of all sanitary facilities in and near holiday parks, camping grounds, recreational areas, and beaches.¹¹⁷ Some regions normally visited by large numbers of foreign and domestic tourists, such as Noord-Holland (Amsterdam and beaches), or Rijnmond and Zeeland, temporarily prohibited the use or renting of second homes (for recreational purposes), holiday homes, sailing boats, and the like for overnight stays.¹¹⁸

96. The Dutch Government implemented the EU Commission temporary ban on non-essential travel to the EU of 16 March 2020.¹¹⁹ The Government also implemented the Council Recommendation of 30 June 2020 on lifting these restrictions for travellers from countries on a regularly updated list, and subsequent amendments of this recommendation.¹²⁰ In addition, the Government issued four temporary ministerial regulations from March 2020, which banned flights from certain countries to the Netherlands altogether.¹²¹ These were based on Article 5(10) of the Aviation Act 1992.¹²² The temporary bans ended on 1 June 2021 but were replaced by an obligation for those arriving from high-risk countries to provide the result of a Nucleic Acid Amplification Test (NAAT) within a maximum of 72 hours upon arrival and to quarantine for 10 days (or five days after a negative test result taken five days after arrival).¹²³

3. Limitations on public and private gatherings and events

97. On 13 March 2020, the Minister of Health ordered the prohibition of public gatherings with more than 100 persons.¹²⁴ Less than two weeks later, on 24 March 2020, all public gatherings were prohibited, with some exceptions: for instance, not more than 30 persons could attend funerals, weddings, and religious gatherings, and not more than 100 persons could attend legally mandatory meetings (such as meetings of Parliament).¹²⁵ Groups, defined as an (un)intentional gathering of three persons or more older than 13 years of age who kept less than a 1.5 metre distance between individuals, were prohibited, again with

some exceptions, including families. These measures were gradually relaxed after the first wave and tightened again.

98. On 18 August 2020, rules were introduced for the maximum number of guests people could invite to their home on any given day (six at that time).¹²⁶ These rules became stricter over time (three guests on 29 September 2020, two on 4 November 2020, and one guest on 20 January 2021),¹²⁷ and were accompanied by a limit on the number of visitors a person could pay to others (three visitors on 14 October 2020, then one on 20 January 2021).¹²⁸

99. There is no data regarding limits on public gatherings as such, but there is data on the related guideline to avoid busy places, which was measured from September 2020 to September 2021 (see also Part IV.A.5 below). Support for this measure was 96% in late September 2020 and dropped to 79 % in September 2021.¹²⁹

4. Closure of premises and facilities (eg schools, shops, services, parks, churches, sport facilities)

100. There were three periods during which almost all premises and facilities were closed.

101. The first started on 15 March 2020, when the Minister of Health ordered the chairs of the regional safety authorities to close down, with immediate effect, all restaurants and bars, fitness and sport facilities, saunas, sex facilities, coffeeshops (soft drugs), theatres, museums, and cinemas.¹³⁰ Schools and daycare centres were closed, except for remote education and some exams. On 24 March 2020, casinos, facilities for all contact professions (barbershops, etc), public sanitary facilities, and all facilities where physical distancing measures could not be complied with were added to the list (camping grounds, beaches, parks, etc).¹³¹ From 11 May to 15 June 2020, these measures were gradually lifted under stringent conditions, including physical distancing, or, if that was impossible (eg barbers), protective measures.¹³²

102. From 4 to 18 November 2020, almost all aforementioned facilities closed again.¹³³ Bars and restaurants had already closed on 14 October 2020 and events had then been cancelled.¹³⁴ There were the usual exceptions, such as shops for food and necessities, funeral centres, but also some unusual exceptions (in contrast to the first and third periods), such as fitness and sport facilities.

103. From 15 December 2020 to 19 January 2021, almost all facilities (non-essential shops, schools, day-care centres, sport and fitness, etc) were closed again.¹³⁵ All of these measures were prolonged until 7 February 2021.¹³⁶ From 8 February 2021 onwards, measures were very slowly relaxed and lifted, starting with primary education and day-care centres on 8 February 2021, secondary schools and intermediate vocational education (MBO) on 1 March 2021, some contact professions and non-essential shops (by appointment only and with stringent limitations on numbers) on 3 March 2021, higher education on 26 April 2021, pavement cafes on 28 April 2021, and indoor fitness and sport facilities on 18 May 2021.

5. Physical distancing

104. On 15 March 2020, the Government introduced a measure imposing/recommending a physical distance between individuals of 1.5 metres.¹³⁷ On 24 March 2020, the Minister gave an order to the regional safety authority to prohibit all social interaction, if necessary by emergency regulation, where a physical distance of 1.5 metres could not be maintained, with some exceptions (hairdressers, driving instructors, medical professions, etc).¹³⁸ Thus began the so-called '1.5 metre-society'.¹³⁹

105. Since 1 December 2020, Article 58(f) of the Covid-19 Justice and Security (Interim Measures) Act 2020 stipulates that people should keep a safe distance between each other outside of their homes and that the Government determines the precise distance (by administrative order). The safe distance remains at 1.5 metres.¹⁴⁰ The sanction for a violation of the prohibition is a fine under administrative law (Article 58u of the Covid-19 Justice and Security (Interim Measures) Act 2020). Physical distancing can be regarded as the core of the Covid-19 Justice and Security (Interim Measures) Act 2020, since the rationale of many measures in the Act is to ensure that people keep a safe distance.¹⁴¹ The 1.5 metre rule was abolished on 25 February 2022.¹⁴²

6. Use of face coverings and personal protective equipment (PPE)

106. Facemasks became mandatory on public transport on 1 June 2020.¹⁴³ The fine for violating the obligation was EUR 95. Enforcement was performed by officials and persons who have the competence to enforce rules in public transport.

107. There was a long and heated debate on whether face masks should be mandatory in all indoor public spaces. On 30 September 2020, the Second Chamber finally debated and agreed to the measure.¹⁴⁴ The Government then gave citizens the urgent advice to wear non-medical face masks in public spaces.¹⁴⁵ In the absence of a proper legal basis, face masks did not become mandatory until 1 December 2020.¹⁴⁶ On 26 June 2021, the obligation to wear face masks was abolished, except in airports, public transport, secondary schools, and railway and metro stations. It was reintroduced on 6 November 2021. On 25 February 2022, face masks were only required in public transport (until 23 March 2022) and airports (until 20 May 2022).¹⁴⁷

108. Support for face masks in public indoor spaces was 82% in late October 2020 and remained around that level, with a low point of 79% in early December 2020 and a peak of 87% in late January 2021.¹⁴⁸

7. Isolation of infected individuals and quarantine of individuals suspected of infection

109. Isolation and quarantine are regulated in Chapter five of the Public Health Act 2008. Isolation means the separation of an infected person, or a person suspected on strong grounds of being infected, if necessary against their will, in a hospital designated by the Minister so as to prevent the spread of infection or contamination (Articles 31–34 of the Public Health Act 2008). Quarantine means the separation from others of healthy persons who have been in contact with infected persons or those suspected of being infected, if necessary against their will, in designated buildings, ships, or locations, or, with special permission, at home (Articles 35–36 of the Public Health Act 2008). Quarantine goes hand in hand with medical supervision (Article 35 of the Public Health Act 2008). Shirking isolation or quarantine is a crime (Article 68 of the Public Health Act 2008). The imposition of both isolation and quarantine have to meet strict substantive and procedural requirements in view of, inter alia, Article 5 ECHR. No isolation and quarantine measures pursuant to Chapter 5 of the Public Health Act 2008 have been taken in the context of Covid-19.¹⁴⁹

110. Quarantine and isolation were a matter of guidance. From the earliest days of the pandemic in March 2020, self-quarantine was advised for 14 days in cases where someone in the household had Covid-19 or had been in contact with someone with Covid-19—later on, people could be informed about such contacts through a notification in the Covid-19 app—or had returned from a high risk country—in August 2020 this was reduced to a negative test on the tenth day and on 1 December 2020 on further reduced to the fifth day.¹⁵⁰ Quarantine meant staying at home, receiving no visitors, keeping a 1.5 metre distance from family members, and getting tested. In case of a positive test or Covid-19-symptoms, an

individual had to go into isolation, which meant staying at home until Covid-19 symptoms were gone for 24 hours and seven days (later five days) had passed since the first symptoms had emerged.¹⁵¹

8. Testing, treatment, and vaccination

111. It took a long time before sufficient testing capacity was available. Initially, only people with ‘vital professions’ and patients with serious symptoms and underlying health issues could be tested. On 1 June 2020, everybody with symptoms could be tested. It was only on 1 December 2020 that everybody who had no symptoms but had been in close contact with someone infected could make an appointment for a test.¹⁵²

112. The vaccination campaign had a slow and bumpy start. It was strongly criticized by politicians, experts, health professionals, school teachers, and, in fact, by almost everyone. The reasons for the initial failure were many, including delivery problems at AstraZeneca, a wobbly and controversial policy about which groups needed to be prioritized, a lack of leadership from the Ministry of Health, Welfare and Sport, and the lack of a clear plan on administering vaccines other than AstraZeneca early on in the vaccination campaign.¹⁵³ Vaccination started with the primary series on 6 January 2021. The primary series mostly contains two vaccinations. On 31 January 2021, 349,183 people had received one dose and 2,405 were fully vaccinated—on 28 March 2021, these numbers were 1,802,744 and 667,487, and on 27 June 2021, 9,903,298 and 5,912,120, respectively. On 2 July 2021, vaccination of children of 12 years and older started.¹⁵⁴ In December 2022, 80.4 % of those aged 12 and over had completed their primary series while 62.1 % of those aged 18 years and over had received a booster vaccination.¹⁵⁵ In July 2021, the Netherlands had a population of 17,590,000.¹⁵⁶

113. As the prospect of a vaccine and vaccination became real in the autumn and winter of 2020 and early 2021, considerable legal, societal, and political debate arose about whether vaccination should be mandatory—it is voluntary, except that children between 12 and 15 years co-decide with their parents, and parents decide for children below that age.¹⁵⁷ It was fuelled by concerns that there was a significant group among professionals in health care and care facilities and ordinary citizens who would not be willing to be vaccinated as a matter of principle or out of fear or indecision. It was also a continuation of the recent debate in the Netherlands about mandatory vaccination against measles.¹⁵⁸ Concerns about Covid-19 vaccination proved to be unfounded: in June 2021, 94% were (willing to be) vaccinated, while 4% were not yet vaccinated or refused as a matter of principle, and 2% were still undecided.¹⁵⁹

9. Contact tracing procedures

114. The Public Health Act 2008 imposes an obligation on doctors and virological laboratories to immediately notify the Local Health Service (GGD) of a suspected or confirmed disease of a patient in the case of an A-disease such as Covid-19.¹⁶⁰ The National Institute for Public Health and the Environment (RIVM) is competent to process personal health data, provided the data is pseudonymized (coded).¹⁶¹ In its Covid-19 directive, the RIVM required doctors and laboratories to notify the GGD of confirmed patients only.¹⁶²

115. Notification is the starting point of source and contact tracing investigations. The Public Health Act 2008 did not provide a legal basis for such investigations when the pandemic emerged. It assigned the task to trace the source of infections to the executive of the municipal council (the mayor and aldermen) but did not attribute legal competences to carry out this task.¹⁶³ The Covid-19 directive of the RIVM assigned the task to investigate

the source and contacts to the GGD.¹⁶⁴ However, few local health services had sufficient staff to carry out this task.¹⁶⁵

116. On 6 October 2020, the Temporary Act Notification Application added provisions (Articles 6d, 64bis, and 67a) to the Public Health Act 2008, which enable the Minister of Health and Local Health Service (GGD) to deploy a digital notification application (CoronaMelder) to trace the spread of infection and warn people of possible infection.¹⁶⁶ The use of the app is voluntary. The Act prohibits making the use of the app a condition for admission to buildings or to the workplace or for participation in any form of interpersonal contact.¹⁶⁷ The Act requires compliance of the notification app with data protection law and provides legal remedies against possible violations of data protection law, as well as enforcement of the prohibition to force people to use the app.¹⁶⁸ The Temporary Act thereby aims to address fierce criticisms of the notification app by the Dutch Data Protection Authority, Members of Parliament, and the media. The main points of contention had been the effectiveness of the app and compliance with data protection law, not least because of the involvement of commercial parties in the development and operation of the app.¹⁶⁹

117. In addition, the Ministry of Health, Welfare and Sport (VWS) developed an online Coronavirus Dashboard which shows, inter alia, the spread and development of the pandemic in the Netherlands on the basis of data provided by hospitals, local health services (GGD), and the National Institute for Public Health and the Environment (RIVM).¹⁷⁰

10. Measures in long-term care facilities or homes for the elderly, restrictions on visitors, etc.

118. On 20 March 2020, the Minister of Health ordered the chairs of the safety regions to ban visitors and professions who were not essential in providing basic care from all long-term care facilities and small-scale sheltered accommodation.¹⁷¹ Exceptions could be made for dying residents, voluntary workers, and the hearing and assessing of psychogeriatric and mentally challenged patients.¹⁷² The ban was gradually lifted on 25 May and 3 June 2020, but in practice many facilities kept it intact, even though the ban no longer had a basis in emergency orders.¹⁷³ After August 2020, the Government did not impose a general visiting ban on long-term facilities for the elderly. The Covid-19 Justice and Security (Interim Measures) Act 2020 gives healthcare service providers the competence to regulate visits within legal limits.

119. The general ban on visitors did not apply to mental health care facilities; a customized approach was called for, given the detrimental effect which a ban can have on the health of residents.¹⁷⁴ However, the Association of Mental Health Care Facilities (VGN) published a regulation for visitors on 23 March 2020 (last updated 10 May 2021), which essentially stipulated that family and volunteers were not welcome, with some exceptions.¹⁷⁵ The Mental Health Service (*Geestelijke Gezondheidszorg*, GGZ) issued guidance rules on Covid-19 measures, including visitor rights on 27 March 2020.¹⁷⁶ It was revised 18 times.¹⁷⁷ The directive states that mental health facilities must make their own assessments on limiting visitors and that a complete ban is an option.¹⁷⁸ In practice, many facilities adopted a ban on visitors from March to June 2020, during the first wave of the pandemic.¹⁷⁹

120. The ban on visitors limited several fundamental rights of the elderly and mentally challenged, while a sufficient legal basis for these limitations was lacking in the Public Health Act 2008 and the Care and Compulsion Psychogeriatric and Mentally Challenged Patients Act 2018.¹⁸⁰ In addition, the freedom of movement and the right to privacy of residents were often severely curtailed (eg no shopping, no walks outside, and being forced

stay in rooms in case of infections in the facility). The measures were therefore highly controversial and led to lessons-learned reports by the Ministry of Health, Welfare and Sport with regards to the second wave of the pandemic.¹⁸¹ The Covid-19 Justice and Security (Interim Measures) Act 2020 has improved the legal position of the elderly and mentally challenged by requiring a legal basis as well as a proportionality, necessity, and subsidiarity test for measures in care facilities.

121. The directive also suggested that patients suspected of infection who refused to be separated could be forced to comply on the basis of the provision on isolation in the Public Health Act 2008 or crisis measures in the Compulsory Mental Health Care Act.¹⁸² Patients who reside in facilities on a voluntary basis could be expelled from a mental health institution. In addition, options for patients to go on leave were seriously restricted.¹⁸³

B. Enforcement and Compliance

1. Enforcement

122. There were riots in over twenty cities and towns for the first three nights of the curfew (see Part IV.A.1 above).¹⁸⁴ In total, 407 people were arrested for participating in riots and committing a total of 551 criminal acts: 281 cases were taken to court on such charges as incitement to violence, violence, and resisting police officers; and on 15 June 2021, 189 cases had been closed with 11 acquittals, 121 prison sentences, and 60 other sanctions.¹⁸⁵ The looting and destruction of a tobacco shop in the city of Den Bosch was a major news story for several days and led to a well-publicized and successful (> EUR 100,000) crowd-funding action for the shop owners. A violation of the curfew was a minor offence.¹⁸⁶ The Public Prosecution Service decided to impose a fine of EUR 95 for a violation of the curfew.¹⁸⁷ This meant that a violation did not result in a criminal record. The public prosecutor imposed 80419 criminal sanctions for violations of the curfew.¹⁸⁸

123. Enforcement of the mandate to wear face masks on public transportation (see Part IV.A.6 above) was performed by officials and persons who have the competence to enforce rules in public transport.¹⁸⁹

2. Compliance

124. Information regarding compliance with public health measures is contained in the individual sections of Part IV.A above.

125. There are two datasets which provide information on compliance with and support for the public health measures discussed in Part IV.A above. The first is a trend analysis with a cross-sectional design with different participants at different times.¹⁹⁰ It was requested by the Ministry of Health, Welfare and Sport and coordinated by the Behaviour Unit of the National Institute for Public Health and the Environment (RIVM). It started on 29 September 2020 and lasted to 11 December 2023. It had a limited scope and consisted of a questionnaire on a set of public health measures (both advice and legal rules). Participants were selected on the basis of age, sex, geographical background, and educational background. The response varied between 4,869 and 5,558. The data were collected once every three (to 4 April 2022) to four (to 12 December 2022) to six (to 11 December 2023) weeks, with an interval of four and five months between 27 June to 11 October 2022 and 17 April and 12 September 2023, respectively. There were 39 rounds in total. The data were published on the so-called Coronadashboard.¹⁹¹

126. The second dataset is a study with a longitudinal design and has a much wider scope: it was a periodic survey-based study which assessed public perception of the behavioural measures and recommendations, their impact on personal well-being, and whether people were complying.¹⁹² It also examined factors which can explain compliance, support, and well-being, such as communication and trust in the government. The Behaviour Unit of the National Institute for Public Health and the Environment (RIVM) systematically collected and analysed the data from April 2020 to September 2022. The research was carried out in cooperation with the national umbrella organisation of the Municipal Public Health Services (GGD) and Regional Medical Assistance Organisations (GHOR) and the regional GGD offices. Initially, the survey was conducted every three weeks. As of July 2020, the frequency was reduced to every six weeks, and as of January 2022 further reduced to once every three months. There were 30,000 to 65,000 respondents who participated in various rounds and there were a total of 21 rounds. According to the Behavioural Unit of the RIVM,¹⁹³ the respondents were not entirely representative of the demographic characteristics of the Dutch population, but the data provide a good indication of behaviour and support for public health measures over time. The data is published on the website of the RIVM.¹⁹⁴

127. There are some small differences in the results between these two datasets on compliance with and support for the public health measures discussed in Part IV.A above.

128. These can be explained by differences in the phrasing of the questions, research design, and measurement moments. In the discussion of public health measures below, information on compliance and support will in each case refer to the trend analysis, because it is more representative according to the RIVM.¹⁹⁵

129. Compliance with the night-time curfew (see Part IV.A.1 above) was consistently higher (94–88%) than support for this measure (76–62%).¹⁹⁶ When the night-time curfew was introduced, 94% of the Dutch population indicated that they followed the rule. When the curfew was lifted, adherence had dropped to 88%. This was a slow and steady process; compliance was never above 94% or below 88%. When the night-time curfew was introduced, 76% supported the measure. When the curfew was lifted, support was at 62%. This, too, was a gradual decline: support was never higher than at the start and never lower than at the end. There is also a clear relationship between age and support/adherence. Support and adherence were highest in the 70+ age group and lowest in the 16–24 age group. Both support and adherence decrease with every age group (70+, 55–69, 40–54, 25–39, 16–24).

130. There is no data regarding limits on public gatherings as such, but there is data on the related guideline to avoid busy places, which was measured from September 2020 to September 2021. Compliance was 62% in late September 2020 and 58% in September 2021.¹⁹⁷ Support for this measure was 96% in late September 2020 and dropped to 79% in September 2021.¹⁹⁸

131. Compliance with physical distancing (see Part IV.A.5 above) was 62% in the beginning (29 September to 5 October 2020) and 60% in February 2022 (when the measure was lifted).¹⁹⁹ Support for physical distancing was consistently considerably higher than compliance (90% in the beginning, a peak of 93% from 26 January to 1 February 2021, and 74% in February 2022, with a slow decline since then to 87% from 20–26 April 2022).²⁰⁰ Many people—the ‘vast majority’ of a total of 145,759 penalties for violations of Covid-19 measures registered on 1 January 2022, other than those related to the curfew—were fined

for violating physical distancing rules.²⁰¹ These fines were challenged unsuccessfully—as far as the legality of the fine was concerned—in several cases in court.²⁰²

132. Compliance with the measure on face masks in public indoor spaces (see Part IV.A.6 above) was 61% when the measure was introduced in early October 2020 but increased to 82% in mid-December 2020 and dropped to 68% in February 2022.²⁰³ Support for face masks on public transport was 87% in late October 2020 and dropped to 65% in February 2022. Compliance with face masks on public transport was 98% in early December 2020 and has not dropped below 97%.

133. Compliance with self-isolation (see Part IV.A.7 above) after a positive test was 70–80% from November 2020 to September 2022.²⁰⁴

134. Compliance with self-quarantine (see Part IV.A.7 above) was around 60% throughout the same period in case of contact with infected persons and around 30% after a visit to high-risk countries.²⁰⁵ The Minister of Health repeatedly noted that: compliance with self-quarantine advice was too low; that self-quarantine is unenforceable; that the procedural obstacles to the use of the provisions in Chapter 5 of the Public Health Act 2008 and in criminal law were too formidable; and that he was therefore working on a new, less cumbersome legal basis for quarantine measures, which were to be enforced through administrative law. This did not happen, except that an obligation to self-quarantine for travellers from high-risk countries was introduced on 26 May 2021 (Article 58nb of the Public Health Act 2008), and the obligation can be enforced by means of an administrative sanction (Article 58v of the Public Health Act 2008).²⁰⁶

V. Social and Employment Protection Measures

A. Social protection measures

135. Starting from March 2020, the Dutch Government has periodically introduced measures seeking to minimize the impact of the Covid-19 virus on the economy and employment. The general approach of the Dutch Government in providing social protection in response to the pandemic consists of financial support in various ways, such as support packages, sector-specific regulations, tax relief measures, and investments.

1. Social assistance

136. In 2020, the Dutch Government spent almost EUR 26 billion in total on support measures,²⁰⁷ with companies receiving a total of EUR 17.6 billion to compensate for wage costs and fixed costs during the Covid-19 pandemic.²⁰⁸ The total amount spent on Covid-19 measures over 2020–2023 is EUR 82.9 billion.²⁰⁹ The costliest year proved to be 2021, with EUR 33.2 billion in expenses.²¹⁰ The costliest relief measures will be briefly described below.

137. The Temporary Bridging Scheme for Independent Entrepreneurs (TOZO) was introduced in April 2020.²¹¹ This scheme supports independent entrepreneurs, including self-employed workers without employees (so-called ‘ZZP-ers’). The measure provides that the income of independent entrepreneurs be supplemented to the social minimum. To be eligible, the applicant’s income must fall below the social minimum as a result of the Covid-19 crisis. Those who have received financial support under this scheme are not obliged to pay it back.²¹² The total cost of this measure amounted to EUR 3.2 billion in 2020.²¹³ Costs for the TOZO scheme amounted to EUR 1.13 billion in 2021 and EUR 280 million in 2022.²¹⁴

138. Government expenditure for the TVL totalled EUR 5.46 billion in 2021 and EUR 3.49 billion in 2022.²¹⁵ As of October 2023, 463,806 applications had been filed under the TVL scheme.²¹⁶

139. In September 2020, the Government provided a scheme offering a bonus of EUR 1,000 net to professionals working in the healthcare sector who delivered an ‘exceptional performance in relation to the Covid-19 virus outbreak.’²¹⁷ These included physician assistants, (senior) house officers, nurses, janitors working in healthcare facilities, and ambulance crews.²¹⁸ Healthcare providers have applied for this grant for roughly 88% of their workforce.²¹⁹ Another healthcare bonus (of EUR 384,71 net) was provided in 2021, with some of the healthcare sectors excluded in the 2020 scheme, such as physiotherapy and obstetrics, included in the 2021 scheme.²²⁰ The cost of the healthcare bonus in 2020 amounted to EUR 2.2 billion, while the budget for the 2021 bonus was EUR 720 million, for a total cost of the healthcare bonus of almost EUR 3 billion.²²¹

140. One of the Covid-19 measures the Government imposed to combat the outbreak was the closing of childcare facilities, except for children of parents working in so-called ‘crucial sectors’, such as healthcare, public transport, and waste management.²²² Those facilities were closed during three periods, from 16 March until 7 June 2020, from 16 December 2020 until 18 April 2021, and from 21 December until 9 January 2022. The National Education Program (*Nationaal Programma Onderwijs*, NP Onderwijs) was started at the beginning of 2021 to restore Covid-19-related delays in the learning growth and development of pupils and students.²²³ A total of EUR 8.5 billion is available under this support measure.²²⁴

141. The Temporary Childcare Compensation Scheme was introduced in May 2020.²²⁵ This scheme provided compensation to parents receiving childcare allowance for their continued payment of the personal contribution to childcare. In April 2021, the Government introduced the Temporary Childcare Compensation Scheme for parents who are not entitled to Government compensation (*Tijdelijke tegemoetkomingsregeling KO zonder overheidsvergoeding*, TTKZO).²²⁶ The aim of this scheme was to compensate parents who bear the costs of childcare themselves (ie who do not receive childcare allowance) and have continued to pay for childcare facilities during the periods those facilities were closed due to Covid-19. By doing so, they contributed to the stabilization of the childcare system during and after the closing periods.²²⁷

142. During the pandemic, the number of people in need of food aid increased. The number of households requesting support from the Dutch food banks increased by 7.2% in 2020 compared to 2019.²²⁸ Multiple food banks faced problems, including a lack of experienced staff, too little supply of food, and being located at places that were no longer suitable for the issuance of food packages due to the pandemic.²²⁹ In March 2020, a one-off subsidy of EUR 4 million was made available for food banks in need of support. This subsidy served as a safety net for an already existing calamity fund. On 16 November 2020, the Government indicated that the resources in the calamity fund proved sufficient to provide the necessary support to the food banks, and that no claim has yet been made on the safety net resources made available.²³⁰ In order to strengthen the functioning of Dutch food banks in the coming years, the Government announced in April 2021 that, in the short term, it is working on a system that provides a larger influx of food to food banks in the event of an acute emergency. Moreover, the Government announced that it is working on a long-term solution to ensure an adequate food supply to the food banks, preferably together with preventing food waste.²³¹

143. During the pandemic, efforts were made to relieve pressure on renters. On 26 March 2020 the Government, having consulted various partners such as housing and relevant trade associations (who together represented roughly 80% of the rental market),²³² announced that, under certain conditions, evictions were postponed for the time being.²³³ Exceptions were ‘evident reasons’ for evictions such as criminal activity or extreme nuisance.²³⁴ The agreement was renewed on 16 October 2020²³⁵ and 25 March 2021.²³⁶ Under these agreements, landlords pledged to make every effort within their capabilities to reach tailor-made agreements (for example, temporarily suspending the rent or making a payment arrangement) with tenants who faced financial hardship, in order to prevent evictions due to rent arrears.

144. Moreover, the drinking water sector decided that no customers would be cut off from the drinking water supply and that already shut off customers could request to be reconnected to the drinking water network.²³⁷ Energy grid managers indicated that no cut offs due to payment arrears would occur. Energy providers were prepared to, in case of payment problems, enter into discussion to make individual agreements.²³⁸

145. Furthermore, a Temporary Act Renewal on Temporary Tenancy Agreements was enacted.²³⁹ Prior to this temporary Act, it was only possible to extend a temporary tenancy agreement into an agreement for an *indefinite* period. The Temporary Act made it possible to renew a temporary tenancy agreement for a definite period.²⁴⁰

146. The Temporary support for essential costs scheme (*Tijdelijke Ondersteuning Noodzakelijke Kosten*, TONK), offered financial support for people who were unable to pay essential bills, such as rent, utilities, or mortgage, due to the pandemic.²⁴¹ This measure, which ran until 30 September 2021, was a temporary scheme based on the rules on social assistance laid down in the Participation Act.²⁴² The measure, for which a total of EUR 260 million was available, was meant as a last resort, and was carried out by municipalities individually.

2. Social insurance

147. The regulations regarding benefits under the *Werkloosheidswet* (Unemployment Insurance Act)²⁴³ have not changed because of the Covid-19 pandemic, and the typical conditions for receiving unemployment benefits have remained in place. However, the pandemic led to a steep increase in unemployment and in applications for unemployment benefits—unemployment benefits are also known as WW (*Werkloosheidswet*) benefits.²⁴⁴ From the start of the pandemic until August 2020, unemployment increased by 56%.²⁴⁵ April 2020 saw a drop of 160,000 less people with a paid job. That month, 314,000 people were unemployed. This amounted to 3.4% of the Dutch workforce, up from 2.9% in March 2020. This jump from 2.9% to 3.4% constituted the largest single-month increase in the unemployment rate since 2003, the first year for which monthly figures became available. The total amount of unemployment benefits rose to 292,000 in April 2020,²⁴⁶ up from 250,000 in March²⁴⁷ and 240,000 in February.²⁴⁸ Compared to April 2019, unemployment benefits were 13.5% higher in April 2020.²⁴⁹ The number of jobless people rose to 426,000 in August 2020.²⁵⁰ By October 2021, the unemployment rate was back at pre-pandemic levels, with 2.9% of the workforce being unemployed, which was the same rate as in February 2020. The number of unemployed people stood at 277,000 in October 2021.²⁵¹ The rise in applications for benefits in the early stages of the pandemic resulted in an ‘acute, pressing capacity shortage’ at the Employee Insurance Agency, the administrative authority commissioned to implement employee insurances.²⁵² Consequently, this agency took actions that affected the implementation of the Unemployment Insurance Act. For example, the agency loosened its enforcement of the requirement to conduct a minimum of four job searching activities every four weeks. Job seekers who did not meet their

application requirement because of Covid-19 measures temporarily faced no consequences with regards to their unemployment benefits.²⁵³

148. In June 2020, the Temporary Bridging Scheme for Flexible Workers was introduced.²⁵⁴ This scheme aimed to support flexible workers, such as on-call and temporary workers, who had lost at least half of their income due to the Covid-19 crisis and who could not receive social security benefits.²⁵⁵ Under this scheme, eligible applicants could receive EUR 550 gross per month over March, April, and May 2020.²⁵⁶

149. The general rules for continued payment of salary during absence due to illness applied, meaning that employees who fell ill due to Covid-19 are entitled to 70% of their gross pay during the first two years of sick leave.²⁵⁷ In case of quarantine, employees are in principle entitled to receiving their pay, barring some 'own fault' instances, such as quarantine after travelling to high-risk areas abroad.²⁵⁸

150. Pension funds in some sectors, such as the hairdressing sector,²⁵⁹ the engineering, mechanical, and electric contracting sector,²⁶⁰ and the healthcare and social welfare sectors²⁶¹ offered payment arrangements for employers who struggled to pay their employer's pension contribution.

151. In July 2020, the basic health insurance was extended for people who fell seriously ill as a result of Covid-19. The coverage of the basic health care was extended to include various forms of paramedic recovery care (physiotherapy, occupational therapy, and dietetics) for former Covid-19 patients still suffering from the disease's consequences.²⁶²

3. Tax relief and other social measures

152. The Government provided various tax relief measures for enterprises, such as extraordinary deferral of payment of some taxes, such as corporation taxes, environmental taxes, and insurance premium taxes.²⁶³

B. Employment protection measures

1. Economic support for employers

153. Besides the aforementioned economic support measures (see Part V.A.1 above), other measures of economic relevance were introduced, among which were State guarantees for enterprises. A State guarantee mitigates credit risks for financiers (banks) and gives them an incentive to provide enterprises with credit loans. A State guarantee does not entail direct payments or payments mediated through employees and does not relate to remuneration, but instead provides the financier with payments in case the obligor fails to pay it off. The Small Credit Corona (*Klein Krediet Corona*) was inserted in Regulation on National Subsidies of Economic Affairs (*Regeling nationale EZK- en LNV- subsidies*, 'Regulation') and guarantees 95% of bridging loans between EUR 10,000–50,000 provided to small enterprises.²⁶⁴

154. The Guarantee Financing Businesses Outbreak Coronavirus (*Garantie Ondernemersfinanciering uitbraak coronavirus*) was inserted in Article 3.13b of the Regulation and covers credit loans of EUR 1.5–150 million per undertaking with a maturity of six years. The guarantee covers 80% of loans provided to large enterprises and 90% of loans provided to small and medium-sized enterprises.²⁶⁵

155. The Guarantee Small and Medium Sized Enterprise Credits (*Borgstelling MKB-kredieten*) is an extension of a regular State guarantee provided to entrepreneurs. The

guarantee expanded from 50% to 75% and applies to credit accounts, credit loans, and bridging loans.

156. The Reimbursement for Entrepreneurs in Affected Sectors Covid-19 (*Tegemoetkoming Ondernemers in Getroffen Sectoren*, TOGS) ran from 27 March 2020 until 1 January 2021, with the application window closing on 27 June 2020.²⁶⁶ The measure offered entrepreneurs in a number of specific sectors affected by Covid-19 measures a one-time, set reimbursement of EUR 4,000 tax free.²⁶⁷ Examples of businesses that qualified for this measure are hotels, restaurants and bars, dance schools, casinos, swimming pools, and gyms.²⁶⁸ The TOGS was succeeded by the Reimbursement Fixed Costs Small and Medium-sized Enterprises (TVL).²⁶⁹ This measure was designed to help small and medium-sized businesses to pay fixed costs. This measure excludes wage costs and other variable costs. This measure was succeeded by the Reimbursement Fixed Costs Covid-19.²⁷⁰ The total costs of the TOGS/TVL measures amounted to EUR 2.9 billion in 2020.²⁷¹

157. The Temporary Emergency Bridging Measure for Sustained Employment (*Tijdelijke noodmaatregel overbrugging voor behoud van werkgelegenheid*, NOW), aimed at the preservation of employment, was first introduced in March 2020.²⁷² This measure was introduced to allow employers to pay wage costs in the event of an acute drop in revenue of at least 20% during a period of three (or four) months,²⁷³ as a result of a reduction in business activity caused by extraordinary circumstances that cannot reasonably be considered part of normal entrepreneurial risk.²⁷⁴

158. Up until and including June 2021, there have been five tranches of this measure. The first tranche, also called NOW 1, concerned wage bills from March to May 2020; the second tranche, also called NOW 2, concerned wage bills from June to September 2020; while the third, fourth, and fifth tranches, also called NOW 3.1, 3.2, and 3.3, concerned wage bills from October 2020 to June 2021.²⁷⁵ The final NOW tranche (NOW 6) ran from 3 October 2022 until 2 June 2023.²⁷⁶ Although the details of some of the tranches vary—for example, compensation percentages vary across the different tranches, and range from a maximum of 80% (third tranche) to a maximum of 90% (first and second tranche) of the wage bill—the essence of the NOW scheme is to support companies in retaining their employees. Due to Covid-19 measures, many employers had no work for their employees. The Temporary Emergency Bridging Measure for Sustained Employment provided a substantial compensation for wages, with the Employee Insurance Agency (UWV) paying an advance to the employer. The combined costs of the various tranches amounted to roughly EUR 15 billion in 2020,²⁷⁷ making it the most expensive support measure.²⁷⁸ The Government spent EUR 9.7 billion and EUR 1.2 billion on NOW support in 2021²⁷⁹ and 2022,²⁸⁰ respectively. The greatest demand was for the NOW 1 scheme, with almost 121,000 companies applying for support, while roughly 24,000 companies made use of the final scheme (NOW 6).²⁸¹

159. The aforementioned support measures did not relate to labour rights as such. The NOW, TOZO, TOGS, and TVL did not modify existing statutory or contractual labour rights either.

2. Worker protection from dismissal and other contractual protections

160. There were no modifications to the freedom of employers to dismiss workers as a result of the pandemic.

161. There were no other alterations introduced that allow or restrict the variation of contractual terms as a response to the economic effects of the pandemic.

3. Other worker protections

162. In short, the largest financial support measure, the NOW, was intended for employers. Other measures, such as TOZO, supported independent entrepreneurs, including self-employed workers without employees, while the Temporary Bridging Scheme for Flexible Workers was introduced for flexible workers, such as on-call and temporary workers. These schemes varied in terms of duration and the amount of financial support.

163. In addition to the aforementioned measures, the Government made special interventions targeted at vulnerable groups in the labour market. For example, the Government acknowledged that flexible workers were in a more vulnerable position compared to employees with a fixed contract.²⁸² For this group of workers, the Government introduced the Temporary Bridging Scheme for Flexible Workers under which eligible applicants could receive EUR 550 per month over March, April, and May 2020 (see Part V.A. 2 above). Moreover, childcare facilities remained open during regular hours for children of parents working in 'crucial sectors', such as the healthcare system or emergency services.²⁸³

164. In March 2020, the Government discontinued the short-time working scheme under which employers could, in exceptional circumstances, seek financial compensation for having to limit the number of workers or working hours.²⁸⁴ That way, companies could continue to employ their workers. However, the outbreak of the Covid-19 pandemic prompted an unprecedented number of applications for the short-time working scheme.²⁸⁵ In its place, the NOW measure was implemented, to provide for the continuation of the paying of wages (see Part V.A.1 above).

4. Health and safety

165. As noted in Part II.B above, the Public Health Act 2008, which covers public health safety, was supplemented with a new Chapter (Va) that provides for a temporary and ancillary crisis management framework in the field of public health. Safety laws are numerous. Safety laws on governmental crisis management are, among others, the Safety Regions Act 2010 (*Wet veiligheidsregio's*) and the Safety Act BES (*Veiligheidswet BES*). Other safety legislation and regulations are related to crisis management in general, public order, water management, environment, terrorism, and so on.²⁸⁶ Legislation in these fields has not been modified in relation to the pandemic.

166. Unsafe or dangerous work is understood here as work that entails a chance of becoming infected with the Covid-19 virus. The Labour Conditions Act and the Civil Law Code require employers to provide a safe and healthy labour environment. Furthermore, the Dutch Civil Code provides the employee adequate protection against unreasonable instructions from the employer, such as the instruction to carry out dangerous work.²⁸⁷ However, what is considered (un)reasonable must be determined on a case-by-case basis. These protections have not been modified during the pandemic.

5. Activation

167. All tranches except the first of the NOW measure contain a re-training obligation on the part of the employer—meaning that employers are required to encourage their employees to take advice on professional development or re-training courses.²⁸⁸

6. Social partners

168. Social partners, employers' organizations (such as the Confederation of Netherlands Industry and Employers (VNO-NCW) and the Dutch Federation of Small and Medium-Sized Enterprises (MKB Nederland)), and employees' organizations (unions such as the Dutch Trade Union Confederation (FNV)) are routinely part of discussions on social and employment protection measures.²⁸⁹

7. Other legal measures

169. In May 2021, a legislative proposal was submitted by the Labour Party, aimed at amending the Labour Conditions Act (*Arbeidsomstandighedenwet*) by including an obligation for employers to talk about reachability after working hours, its rationale being that employees working from home tend to work more and longer, thereby suffering from psychological and mental health problems.²⁹⁰

VI. Human Rights and Vulnerable Groups

B. Civil liberties

170. The right to protest and freedom to demonstrate derives from the right to freedom of expression (Article 7 Dutch Constitution and Article 10 ECHR) and the right to association and assembly (Article 9 Dutch Constitution and Article 11 ECHR). The Government facilitates demonstrations and prioritizes the protection of demonstrators.²⁹¹ For demonstrations, also during the Covid-19 pandemic, the usual rules of the Public Demonstrations Act 1988 (*Wet openbare manifestaties*, WOM) apply—demonstrations are therefore not prohibited by an emergency decree. However, the powers exercised by the mayor according to the WOM are exercised by the chairman of the safety region in question (Article 39 Safety Regions Act 2010 and Article 176 Municipality Act 1992). On the basis of the Public Demonstrations Act 1988, regulations, restrictions, and—in the ultimate case—a prohibition can be imposed in order to protect health (Article 5(2c) Public Demonstrations Act 1988). Which measures are necessary must be assessed on a case-by-case basis in view of the circumstances. The risk of being infected with Covid-19 and the possibility of keeping a distance of 1.5 metres between individuals are relevant in this assessment.²⁹²

171. In April and May 2020, the judiciary decided in preliminary relief proceedings that prohibiting a demonstration in relation to the outbreak of Covid-19 and the associated risks was justified. The organizer of the demonstration could not guarantee that the participants in the demonstration would keep a sufficient physical distance. Covid-19 as such, however, is not sufficient cause to ban a demonstration. The rulings could not be appealed.²⁹³

172. A Dutch activist group, Virus Truth (*Viruswaarheid*), established in 2020, criticised the Dutch Covid-19 policies. On 23 March 2022, the court ruled that public health concerns justified the prohibition of two large-scale demonstrations (ranging from 10,000 to 50,000 participants) organised by Virus Truth in June 2020. Virus Truth failed to present a compelling argument against imposing the 1.5 metre physical distancing measure for outdoor demonstrations. During the same period, a Black Lives Matter demonstration with 2,000 to 3,000 participants was allowed to proceed, as this maximum number of demonstrators remained within the parameters of safety from a public health perspective.²⁹⁴

173. The freedom of religion or belief is entrenched in Article 6 of the Constitution. For houses of worship, a limit on the number of visitors briefly applied, varying from 100 and later to 30 visitors—this lasted from 14 March until 1 July 2020.²⁹⁵ As of 1 December 2020, religious gatherings are exempted by (formal) law from the visitors' limit (Article 58g(2), under c of the Public Health Act 2008).²⁹⁶ In addition, the obligation to wear a face mask

does not apply in houses of worship, and congregational singing is permitted during religious gatherings. These exemptions also remained intact during the lockdown that was proclaimed on 14 December 2020.

174. Religious communities have not made large-scale use of the statutory exceptions. The reason for this is that, from the beginning of the crisis, the Government made voluntary agreements with various religious umbrella organisations, which were later contained in the communiqué ‘Cautious Celebration of Faith’ (*Behoedzaam vieren van geloof*), published on the website of the Government.²⁹⁷ During increases in rates of Covid-19 infection in society, the umbrella organizations urged their members to meet online or, when physically gathering, to observe a maximum gathering of 30 people. They also urged their members to refrain from congregational singing and to wear face masks.²⁹⁸

175. The ‘unequal treatment’ of religious and secular activities has caused societal controversy. An illustrative example in this regard is the commotion that arose after a church in the municipality of Staphorst did not follow the communiqué ‘Cautious Celebration of Faith’ and received an estimated 600 visitors.²⁹⁹ In the Second Chamber, various parliamentarians critiqued the large church services. The Minister of Justice and Security, formally also the Minister of Worship, stated that the freedom of religion was at issue here and emphasised that ‘together we have to find a kind of optimum to get through the virus’.³⁰⁰ Due to a rise in Covid-19 infections in the Staphorst congregation, attendance at the church service a week later was limited.³⁰¹

176. In contrast to other countries, there have been no court judgements in the Netherlands in which Covid-19 measures were considered to conflict with the freedom of religion or belief. This is not surprising in view of the short-lived restriction on the number of visitors to places of worship.

C. Privacy

177. In the Netherlands, the EU General Data Protection Regulation (GDPR) and national legislation provide rules to apply to the processing of personal data within the context of Covid-19. The GDPR provides legal grounds to enable employers and the public health authorities to process personal data in the context of epidemics without the need to obtain the consent of the data subject. This was also emphasized by the European Data Protection Board in a statement on 16 March 2020.³⁰²

178. Personal data may be processed if this is necessary for reasons of public interest in the area of public health, provided that a legal basis is present (Articles 6(1.e) and 9(2.i) GDPR). This legal basis is included in Article 20 of the Public Health Act 2008. In January 2020, the legislator (by means of a ministerial regulation) determined that Covid-19 is a ‘group A’ virus within the meaning of the Public Health Act 2008.³⁰³ The Public Health Act 2008 includes the measures that can be taken by, for example, doctors and the Public Health Service (GGD) to contain the virus, such as carrying out medical examinations, isolating infected (or suspected of being infected) persons, and carrying out contact tracing investigations. Healthcare providers must also report suspected or confirmed Covid-19 patients and register relevant information, such as personal data, the citizen service number, the residence of the person concerned, and the first day of illness to the GGD, which in turn transmits the information to the RIVM. The data collected will be saved for five years by the GGD, after which it will be destroyed or anonymized. The GGD are responsible for the personal data when administering a Covid-19 test. The RIVM registers

data about Covid-19 vaccinations. Vaccination data may only be shared with the RIVM if the vaccinated person's consent has been obtained.³⁰⁴

179. In January 2021, it became known that personal data had been stolen and traded from the systems of the GGD. It involved trade-in data from two GGD Covid-19 systems: CoronIT, which holds the private data of Dutch citizens who have taken a Covid-19 test, and HPZone Lite, the GGD's source and contact tracing investigation system.³⁰⁵ It was the largest data breach ever recorded in the Netherlands.³⁰⁶ The Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*, AP) decided to intensify the monitoring of the GGDs. On 8 November 2021, the AP published the results of the investigation. The AP noted that some announced improvement measures had been implemented, reducing the risk of data breaches. However, the AP still identified significant risks to the security of personal data that require additional improvement measures. This concerned, in particular, risks related to the large number of parties involved in processing personal data in connection with testing, vaccination, and source and contact tracing. The AP instructed the GGDs to, among other things, improve security and make clear agreements with the partners involved. The AP did not impose a fine.³⁰⁷

180. On 6 December 2021, a collective action was announced by ICAM (*Initiatieven Collectieve Acties Massaschade*) to hold the Ministry of Health, Welfare and Sport liable for the GGD data leak. Following ICAM's formal notice, the Minister entered into discussions regarding the rectification of the data breach at the GGD and the claim exceeding EUR 3 billion that ICAM is demanding as compensation for the victims of the data breach.³⁰⁸ Subsequently, the Minister offered EUR 500 in compensation to certain victims. According to ICAM, this compensation was deemed insufficient, after which ICAM indicated that it would proceed with the collective claim.³⁰⁹ On 28 March 2023, the summons regarding the GGD data breach was served to the State and the GGDs.³¹⁰

D. Gender

181. At the time of the Covid-19 measures in spring 2020, the police and the Advice and Reporting Centre for Domestic Violence and Child Abuse (*Veilig Thuis*) stated that the measures did not increase the number of reports of domestic violence and child abuse.³¹¹ A possible explanation for this decrease is the isolation of families who had fewer contacts outside of home. Professionals who investigate domestic violence and child abuse had less contact in that period and, therefore, less insight into these forms of violence, which primarily take place behind closed doors. The Government implemented measures to report domestic abuse, such as the introduction of a chat function on the website of *Veilig Thuis* and a national publicity campaign, which called on bystanders to be alert to domestic violence and child abuse.³¹² Subsequently, *Veilig Thuis* noted a national increase in the number of requests for advice.³¹³ An increase was also observed in the number of contacts via chat rooms of the National Expertise and Treatment Centre in the field of violence in dependency relationships (*Fier*), calls to the Child Phone Line (*Kindertelefoon*), and the Centre for Sexual Violence (*Centrum Seksueel Geweld*).³¹⁴ Additionally, following the example of France and Belgium, a code word in pharmacies to report domestic violence was introduced.³¹⁵ Research into the impact of Covid-19 measures on domestic violence and child abuse throughout the entire pandemic reported similar conclusions to those found at the beginning of the pandemic: the number of reports of domestic violence to the police and *Veilig Thuis* did not increase during the pandemic. There was an increase in the number of counselling requests.³¹⁶

182. Initial reports of Covid-19 admissions stated that men had a higher risk of dying due to Covid-19.³¹⁷ After a year of Covid-19, it was noted that the patients admitted to the hospital with a Covid-19 infection were 61% male and 39% female. Of those who died from Covid-19, 55% were male and 45% female. The differences between men and women were slightly smaller in the second wave than in the first wave.³¹⁸ In 2021, 19,608 people died from Covid-19, comprising 10,792 men and 8,816 women. This corresponds to 11% of all deaths in the Netherlands in 2021.³¹⁹ In 2022, over 8200 thousand people died from Covid-19. This was considerably fewer than in the two preceding years when 19,608 in 2021 and 20,173 in 2020 individuals had Covid-19 listed as their cause of death.³²⁰

E. Ethnicity and Race

183. Since the outbreak of Covid-19, there have been multiple related reports of discrimination. Incidents have been reported in which people with an Asian appearance have been confronted with discrimination, intimidation, threats, and physical violence. In addition, the police and the Contact Point for Discrimination (*Meldpunt Discriminatie*) received thousands of reports about a discriminatory song composed by a radio DJ. Five people pressed charges.³²¹ The Public Prosecution Service decided not to prosecute because the song 'fits within the context of artistic expression'.³²² Racist incidents related to Covid-19 are not limited to people with an Asian appearance: there have also been several reports of groups of dark-skinned people being addressed or fined because of the ban on groups, while this did not occur with groups composed of white people.³²³

184. The first exploratory analysis by Statistics Netherlands into the mortality risks due to Covid-19 by migration background does not present a clear picture.³²⁴ The preliminary findings suggest that the relative risks of Covid-19 mortality were slightly higher among individuals with a migration background compared to those with a Dutch background. Particularly in the three GGD regions of Amsterdam, Haaglanden, and Rotterdam-Rijnmond, an elevated risk of Covid-19 mortality was observed for this group. In the Southeast Netherlands, where the Covid-19 pandemic originated during the Carnival festival, this was not the case.³²⁵ Additionally, differences in mortality risks were identified among various groups with a migration background. An increased risk of Covid-19 mortality was found for residents with a non-Western migration background. Residents with Turkish and Surinamese migration backgrounds, in particular, had a higher relative risk compared to residents with a Dutch background.³²⁶ The analysis emphasized that the numbers were too small to draw unequivocal conclusions.³²⁷ Following research by Statistic Netherlands, it was shown that for individuals with a Moroccan, Turkish, Surinamese, or Indonesian background, the proportion of Covid-19 in the total mortality was higher than for the overall population; for other groups, it was comparable or lower.³²⁸ A study conducted by Pharos, the Expertise Centre for Health Differences, found that people with and without a migrant background equally comply with the Covid-19 rules.³²⁹

F. Disability

185. Throughout 2020 and 2021, there were strict measures in place for institutions that provide disability care. Visitors were not allowed unless contact with the family or volunteer was considered essential for the residents. For instance, if they were actively involved in daily caregiving or if their contact is crucial for the emotional/psychological well-being of the client. In addition, the daytime activities for residents were largely discontinued, and supra-regional transport for people with mobility impairments was suspended.³³⁰ During the initial period of the Covid-19 pandemic, the allocation of protective equipment by the Regional Acute Care Chain Consultation (ROAZ) and GGD/GHOR to such facilities was scarce. The same occurred with the allocation of Covid-19 tests for employees and residents.³³¹ Being isolated and facing the loss of regularity and familiar people in the vicinity affected the physical or emotional health of the residents.³³² The Association of

Care for the Disabled (*Vereniging Gehandicaptenzorg Nederland*, VGN) was pivotal in advocating for the rights of disabled people and was expeditious in providing online forms of education, daytime activities, and physical and speech therapy.³³³

186. The Government sought to offer residents in institutions for the disabled and their loved ones some clarity by introducing a ‘roadmap’ which described when and how the (physical) visiting regime and daytime activities would resume.³³⁴ To this end, the parties involved drafted a manual containing guidelines for organizing or participating in daytime activities in the ‘new normal’.³³⁵ Residents in institutions for the disabled and in nursing homes were identified as a high priority in the Government’s vaccination strategy. In January 2021, the vaccination of people with disabilities started.³³⁶ Research indicates that there has been insufficient attention paid to the impact of the pandemic and its crisis policies on residents of group homes and individuals receiving outpatient support. It has been emphasised that it is crucial for the government to be aware of the ongoing consequences of the crisis for people with disabilities and to ensure the strengthening of their societal position.³³⁷ Furthermore, research indicates that five times more individuals with intellectual disabilities have succumbed to Covid-19 than anticipated. In 2020 and 2021, at least 785 people with intellectual disabilities died from Covid-19, whereas, based on the size and age distribution of this group, a maximum of 180 deaths were expected due to Covid-19.³³⁸

G. Elderly

187. The measures adopted to protect residents staying in nursing homes and mental health care facilities are addressed in Part IVA.10 above.

H. Children

188. As of 16 March 2020, daycare centres, schools in primary education, secondary education, and senior secondary vocational education were closed—an exception was made for children whose parents were employed in ‘crucial sectors’.³³⁹ The continuation of education was a priority, and the Ministry of Education, Culture and Science developed, in conjunction with various educational organizations, the platform ‘lesopafstand.nl’, which helped schools and teachers to organize online distance learning. Online teaching became the norm and the government allocated funding to realize this.³⁴⁰ Digital teaching materials were made available free of charge by the publishers,³⁴¹ and laptops and tablets were provided by the school to children who attended online classes but did not have a device their disposal. School boards had to submit an application for this to SIVON, the ICT cooperative in primary and secondary education.³⁴² Various educational obligations were cancelled, such as the final exams in primary school and the central exam for secondary schools.³⁴³ The binding study advice—a threshold of European Credits which first year students must meet in order to continue their bachelor’s program at their university—was postponed.³⁴⁴

189. At the municipal level, solutions were sought for children for whom online education and care at home was not a viable option. This included children staying in youth care institutions, children with psychological or behavioural problems, and children whose home situation was unsafe due to domestic violence or psychiatric problems of one of the parents. Teachers were instructed to be alert to the safety of the children’s environment. Tailor-made solutions were offered in such cases by relevant parties, such as *Veilig Thuis* and the Child Care Protection Board (*Raad voor de Kinderbescherming*). This meant that care, education, and guidance for these specific cases were offered outside their homes.³⁴⁵

190. From 11 May 2020 onwards, primary schools and childcare centres were allowed to reopen in an adapted manner. A hybrid form of education was adopted, partly at school and partly online at home. After the summer break, secondary education institutions also reopened, and subsidies were provided to schools to establish support programs to make up for educational delays among students. From 16 December 2020, schools in primary and secondary education, vocational education (MBO), and institutions for higher education were again closed.³⁴⁶ On 8 February 2021, primary schools, daycare facilities, and special (primary) education were reopened.³⁴⁷ On 1 March 2021, secondary schools followed—students were allowed to attend school at least one day a week physically.³⁴⁸ On 1 June 2020, secondary schools fully reopened, and students could now take a preventive rapid test at home twice a week.³⁴⁹ As of 26 April 2021, students may attend on-site education at a college or university approximately one day a week.³⁵⁰ From 30 August 2021, the 1.5 metre distance rule no longer applied in vocational education and institutions for higher education. However, there were still several additional conditions to ensure responsible in-person education. These included a maximum group size of 75 people and the use of face masks outside classrooms or lecture halls. The strong recommendation to use preventive self-testing also remained in place.³⁵¹ On 26 November 2021, Covid-19 measures were increased. In primary schools, children from groups 6, 7, and 8 were required to wear a face mask in the corridors and regularly conduct self-tests. In secondary schools, all students and teachers were required to wear a face mask in the corridors and regularly perform self-tests. This policy also applied to students and personnel in higher education.³⁵² On 14 December 2021, the Minister announced that due to the unfamiliarity and rapid spread of the Omicron variant, primary schools and special (primary) education schools were closed one week prior to the Christmas break.³⁵³ On 19 December 2021, all educational institutions closed.³⁵⁴ On 10 January 2022, primary and secondary education and after-school care resumed.³⁵⁵ A week later, all higher education institutions reopened, adhering to the measures that were set out in November 2021.³⁵⁶ As of 15 March 2023, the mandatory use of preventive self-tests and face masks in schools was discontinued.³⁵⁷

I. Prisoners

191. As of 14 March 2020, the Minister for Legal Protection has taken measures to prevent the risk of spreading Covid-19 within the institutions of the Custodial Institutions Agency (*Dienst Justitiële Inrichtingen*, DJI). These measures concern all penal institutions, juvenile detention centres, and detention under hospital orders (TBS clinics). The aim of these measures was to limit the number of contacts and thus the risk of infection for both staff and detainees. The measures included, inter alia, the suspension of visits and leave. In order to be able to continue contact as much as possible, more opportunities for contact via telephone and Skype were provided. The DJI has supplied tablets with a secure Skype connection. Detainees could use these devices, in addition to regular telephone contact, for video calls with family members. The penal institutions established conditions for usage and monitored the use of Skype. An exception to this measure were conversations that had to be conducted on location as part of the legal process (eg with a lawyer). During the restriction or easing of the measures, the number of visitors fluctuated between none, one, or two visitors. In low-security facilities, the detention of a group of prisoners was temporarily suspended, and the inflow of detainees was limited. New detainees were placed in quarantine upon arrival. During the first wave of the pandemic in the Netherlands, there was also limited attendance at hearings. The transport of detainees to the courts was limited unless the judge deemed it necessary for the suspect to be present at the trial. Where possible, it was facilitated for sessions to be attended via a video link. This mainly depended on the availability of such a connection between the correctional facility and the

court. The aim was that legal proceedings would continue as far as possible (see also Part III.C above).³⁵⁸

192. In accordance with the national policy, group sizes were adjusted to a maximum of 30 people inside and 40 people outside. This meant that all institutions had to organize their activities regarding the outdoors, working, visiting, and prayer services within this guideline. The use of non-medical face masks by employees and visitors of correctional institutions was first recommended but later became obligatory. For security reasons, the use of non-medical face masks by detainees was not advised; however, soon after, they became mandatory in spaces where keeping a physical distance between individuals within the institution was impossible. The DJI provided detainees with non-medical face masks. In addition, preventive testing and quarantine policies were implemented.³⁵⁹ Upon entry into the penitentiary institution, detainees were informed (in various languages) about the vaccination options. All detainees were offered one or more vaccinations.³⁶⁰ In January 2022, short-term and long-term leave for detainees was reinstated.³⁶¹

J. Non-citizens

193. As of 16 March 2020, the Minister of Justice and Security deemed it impossible to maintain the asylum process. For asylum seekers who newly applied, the asylum procedure was suspended and they were not admitted to the Central Agency for the Reception of Asylum Seekers (COA). This meant that no identification and registration took place, and hearings by the Immigration and Naturalization Service (IND) were cancelled. This also applied to return interviews conducted by the Repatriation and Departure Service (DT&V). Given the contact-intensive nature of the asylum process, an alternative was not considered justified. An emergency shelter was provided for people who could not enter the asylum process, and a strict area restriction was imposed, resulting in free movement in the municipalities not being allowed. Until the emergency shelters were completed, austere accommodation was provided. In addition, all incoming and outgoing EU Dublin Regulation transfers were temporarily suspended. This meant that no asylum seekers were transferred from the other EU Member States to the Netherlands and vice versa under the Dublin Regulation. After establishing safety protocols, the asylum procedure restarted (with the use of video call) and the emergency shelters were closed.³⁶²

194. The Government stated that the Covid-19 pandemic had a major impact on migrants and refugees. References have been made to critical reports discussing States' policies regarding Covid-19 measures and to critical warnings made by the UNHCR.³⁶³ A point of concern within the COA reception facilities was the availability of sufficient quarantine and isolation rooms at the sites. The State Secretary felt compelled to make preparations regarding so-called 'escalation possibilities' for COA. This included, inter alia, the additional use of commercial real estate, the relaxation of accommodation arrangements, easing the duty to report, and introducing a bonus for municipalities for the accelerated outflow of asylum permit holders.³⁶⁴

195. Prior to the Covid-19 measures, the IND had a considerable backlog in processing asylum applications within the legal deadlines set. Due to the fact that the statutory decision period for asylum applications has been exceeded, the Netherlands is facing a penalty. During the Covid-19 crisis, the backlog increased.³⁶⁵ On 16 December 2020, the Administrative Jurisdiction Division of the Council of State ruled that there was a *force majeure* situation: the hearing of an asylum seeker is an essential part of the asylum procedure, and the cancellation of these hearings is an abnormal and unforeseen circumstance, which is beyond the control and the risk sphere of the IND. As a result of this *force majeure* situation, the IND has rightly been able to suspend the administrative penalty payments. However, the highest administrative court ruled that the IND could suspend

penalties until 16 May 2020 and not until 19 July 2020, as was first decided by the lower court.³⁶⁶

196. On 14 April 2020, a motion was filed in which the Government was asked to investigate what measures or efforts from regulators such as the Social Affairs and Employment Inspectorate were necessary to prevent or limit the vulnerability of migrant workers.³⁶⁷ Following this, an interdepartmental team called the Team to Boost the Protection of Migrant Workers (*Aanjaagteam Bescherming Arbeidsmigranten*) was established by the Minister of Social Affairs and Employment to make proposals to improve the working and living conditions of migrant workers. The aim was to reduce the risk of Covid-19 infection for migrant workers in the short-term and to strengthen their position in the Netherlands in the longer-term.³⁶⁸

197. On 11 June 2020, the Team to Boost the Protection of Migrant Workers recommended, inter alia, a complete and up-to-date registration of migrant workers in order to get a fast grip on the situation in case of a Covid-19 outbreak. Transportation and housing also needed adjustment since the 1.5 metre physical distance rule could not be guaranteed. However, the quality of the provided housing is often substandard, and there is a shortage of good quality and available housing. The Minister of Social Affairs and Employment acknowledged that it would be challenging to attain this standard. In addition, the costs of medically necessary care are to be reimbursed to uninsured migrants. In the short term, these measures should strongly reduce the risk of Covid-19 infections among migrant workers. In addition, it was emphasized that the Netherlands has had too many abuses involving migrant workers for years.³⁶⁹ The Team to Boost the Protection of Migrant Workers therefore decided to draft a second advisory report with more structural measures.³⁷⁰ In the following period, the Cabinet started implementing the recommendations, which were closely monitored at the Parliament's request.³⁷¹

K. Indigenous peoples

198. There is no relevant information to be reported about indigenous people in the Netherlands.

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Footnotes:

¹ Statistics Netherlands, 'Far fewer COVID-19 deaths in 2022 than in 2020 and 2021' (25 April 2023).

² Dutch Constitution, art 103.

- 3** European Convention on Human Rights, art 15(2); International Covenant on Civil and Political Rights, art 4(1).
- 4** See A de Ruijter, 'EU health law and policy after Covid-19' (2020) 44(5) *Tijdschrift voor Gezondheidsrecht* 524-535.
- 5** European Commission, 'Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup' (COM(2020) 112 final) (13 March 2020); European Commission, 'Communication from the Commission on a Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak' (20 March 2020).
- 6** See, for example, State Aid SA.62867 (2021/N) - The Netherlands - COVID-19: Regulation on the financing of fixed costs for starting SMEs COVID-19 (C(2021) 3756 final) (20 March 2021); State Aid SA.62556 (2021/N) - The Netherlands - COVID-19: Soft bridge loans with subsidised interest rates (C(2021) 3192 final) (30 April 2021).
- 7** European Commission, 'A common approach to travel measures in the EU' (accessed 30 June 2021); Council Recommendation (EU) 2020/1475 on a coordinate approach to the restriction of free movement in response to the COVID-19 pandemic (13 October 2020); Council Recommendation (EU) 2020/1475 on a coordinate approach to the restriction of free movement in response to the COVID-19 pandemic (13 October 2020).
- 8** European Commission, 'Commission Decision approving the agreement with Member States on procuring Covid-19 vaccines on behalf of the Member States and related procedures' (COM(2020) 4192 final) (18 June 2020); European Commission, 'Communication from the Commission to the European Parliament and the Council, Preparedness for Covid-19 vaccination strategies and vaccine deployment' (COM(2020) 680 final) (15 October 2020).
- 9** Public Health Act 2008 (Stb 2008, 460) (9 October 2008), art 58j(1); Regulation on additional obligations regarding face masks (Stcrt 2020, 62032) (19 November 2020).
- 10** Public Health Act 2008 (Stb 2008, 460) (9 October 2008), art 58(1)-(2); Temporary decree on safe distance (Stb 2020, 475) (13 November 2020).
- 11** Minister of Health, Wellbeing and Sport, 'Letter to Parliament regarding the Covid-19 virus (1644215-201572-PG)' (31 January 2020).
- 12** Municipality Act 1992 (Stb 1993, 31) (14 February 1992), arts 175, 176.
- 13** Safety Regions Act 2010 (Stb 2010, 252) (19 June 2008), art 5.
- 14** Public Health Act 2008 (Stb 2008, 460) (9 October 2008), art 7.
- 15** Decree entailing a temporary ban on civil air traffic airspace in relation to the virus that causes the disease COVID-19 (Stcrt 2020, 16268) (13 March 2020); Decree entailing the fourth temporary ban on civil air traffic airspace in relation to the virus that causes the disease COVID-19 (Stcrt 2021, 3768) (20 January 2021).
- 16** Model Decree (Minister of Public Health, Safety and Sport) (12 June 2020).
- 17** Public Health Act 2008 (Stb 2008, 460) (9 October 2008), art 7(1), 8(1).

- 18** See J C J Dute, 'The approach of the COVID-19 epidemic: a legal interim report' (2020) 44(5) *Tijdschrift voor Gezondheidsrecht* 477; S Daniëls, 'The Constitution - Article 103 - State of Exception' in E H M Hirsch Ballin and G Leenknecht (eds), *Artikelsgewijs commentaar op de Grondwet* (web edition 2021).
- 19** See Dutch Constitution, arts 81-88; Charter for the Kingdom of the Netherlands (28 October 1954); Act on the Council of State (9 March 1962); Rules of Procedure for the Ministerial Council (2 March 1994); Rules of Procedure for the Second Chamber; Rules of Procedure for the First Chamber (6 June 1995); Rules of Procedure for the Joint Assembly of the States-General (7 July 1994); Publication Act (4 February 1988).
- 20** Second Chamber, 'Temporary provisions related to measures to combat the Covid-19 epidemic for the longer term' (2019/12, 35 526, No 1-2).
- 21** Temporary Act on Measures to Control Covid-19 (Stb 2020, 441) (28 October 2020).
- 22** Such as the Public Health Act 2008 (Stb 2008, 460) (9 October 2008); Act on Labour Conditions (Stb 1998, 184) (18 March 1999); Act on Labour Safety BES (Stb 2010, 588) (9 September 2010); Act on Childcare (Stb 2004, 455) (9 July 2004).
- 23** Public Health Act 2008, art VIII, ss 1 and 3.
- 24** Covid-19 Justice and Security (Interim Measures) Act 2020, art VIII.
- 25** Decree of 18 February 2021, extending the validity of the Temporary Act on Covid-19 Measures (Stb 2021, 93); Decree of 18 February 2021, extending the validity of the Temporary Act on Covid-19 Measures (Stb 2021, 232).
- 26** Such as the Regulation on temporary compensation for child care (6 May 2020); Temporary regulation on bridge financing for independent entrepreneurs (17 April 2020); Collective emergency law Covid-19 (*Verzamelspoedwet COVID-19*) (17 June 2020); the Second collective emergency law Covid-19 (*Tweede Verzamelspoedwet COVID-19*) (8 July 2020); Covid-19 Justice and Security (Interim Measures) Act 2020 on Covid-19 SZW and JenV (*Tijdelijke wet COVID-19 SZW en JenV*) (25 November 2020); Policy rule on compensation for entrepreneurs affected sectors Covid-19 (27 March 2020).
- 27** Second Chamber, 'Voting results of the Second Chamber on the Covid-19 Justice and Security (Interim Measures) Act 2020' (13 October 2020).
- 28** Second Chamber, 'Amendment of Members of Parliament (Second Chamber) Van Raak and Van der Staaij t v v No 6 on substituting the safety-net clause' (35 526, No 15) (15 September 2020); Second Chamber, 'Amendment of MP Groothuizen c s t v v No 5 on the initial effect of three months' (35 526, No 27) (2 October 2020); Second Chamber, 'Changed amendment of the MP Van Dam cs tvv No 18 on safeguarding the involvement of and accountability to Municipal Councils and the Board of Mayor and Aldermen and municipal councils' (35 526, No 32) (2 October 2020); Second Chamber 'Changed amendment of the MP Buitenweg cs tvv No 9 on a right of consent of the Second Chamber with respect to Ministerial Regulations' (35 526, No 48) (2 October 2020).
- 29** 'Questions on the COVID-19 Justice and Security (Interim measures) Act 2020' Orde van Advocaten (Online, 4 June 2020); Council for the Judiciary, 'Advice regarding the COVID-19 Justice and Security (Interim measures) Act 2020' (10 June 2020).
- 30** Dutch Constitution, arts 89(1), 47.

- 31** Dutch Constitution, art 81.
- 32** Safety Regions Act 2010, arts 39(1), 42(2).
- 33** Viruswaanzin, 'Summons by Jeroen Pils and Willem de Engel' (accessed 30 June 2021).
- 34** Via Public Health Act 2008, art 7(1); Safety Regions Act 2010, art 39(1); Municipality Act 1992, arts 175–176.
- 35** See Public Health Act 2008, arts 37(1), 38.
- 36** Ministry of Justice and Security, 'National Crisis Structure' (accessed 30 June 2021).
- 37** Central Government, 'Coronavirus timeline' (accessed 30 June 2021).
- 38** On this, see J C J Dute, 'De Wet publieke gezondheid als instrument voor de bestrijding van de Covid-19-Pandemie' [The Public Health Act as an instrument in the combat of the COVID-19 pandemic] (2021) *Gezondheidsrecht in tijden van crisis: de Covid-19-pandemie* 67.
- 39** Council of State, 'Letter of the Vice-President of the Council of State' (22 October 2020).
- 40** Second Chamber, 'Debating and social distancing during the Covid-19 crisis' (26 March 2020).
- 41** First Chamber, 'Functioning of the First Chamber during times of crisis' (16 April 2020).
- 42** See D J Elzinga, 'Digital meetings in politics are against our Constitution' *De Volkskrant* (Online, 27 April 2020); W Voermans, 'Parliament, put an end to this state of exception' *NRC* (Online, 23 April 2020); P Bovend'Eert, 'Meeting in parliament during the corona crisis' *Nederlands Juristenblad* (Online, 1 May 2020).
- 43** Council for the Judiciary, 'From Tuesday the courts will close, urgent cases will continue' (15 March 2020).
- 44** Temporary general rules on case handling (*Tijdelijke algemene regeling zaaksbehandeling Rechtspraak*) (24 November 2020).
- 45** Council for the Judiciary, 'Temporary rules' (*Tijdelijke regelingen*) (accessed 30 June 2021).
- 46** Council for the Judiciary, 'From Friday, face masks and advance registration will no longer be required' (*Vanaf vrijdag mondkapjes en vooraf aanmelden niet meer verplicht*) (24 February 2024).
- 47** Council for the Judiciary, 'Temporary (general) rules' (*Tijdelijke (algemene) regelingen*) (accessed 30 June 2021).
- 48** Temporary general rules on case handling (24 November 2020), preamble.
- 49** Temporary general rules on case handling (24 November 2020), [2.1]–[2.5].
- 50** Temporary general rules on case handling (24 November 2020), [3.1]–[3.6].

- 51** Temporary general rules on case handling, preamble; see also M Malsch, L van Lent, and A Smolders, 'Doet de rechter in de toekomst alleen nog online zittingen? Corona en de openbaarheid van de rechtspraak' ['Will the judge in the future only conduct online court cases? Corona and the publicity of the judiciary'] in M Winkler, J W Sap, and M Malsch, *Nooit meer dansen? De veilige stad in tijden van de pandemie* [Never dance again? The safe city in times of the pandemic] (Boom Criminologie 2021) 123-138, 129.
- 52** Temporary general rules on case handling, preamble.
- 53** Temporary general rules on case handling, [1.2].
- 54** Temporary general rules on case handling, [1.3]; Council for the Judiciary, 'Safe Mailing with the Judiciary' (accessed 30 June 2021).
- 55** See Council for the Judiciary, 'Annual report 2020', 12.
- 56** Dutch Constitution, art 121
- 57** See M Malsch, L van Lent, and A Smolders, 'Doet de rechter in de toekomst alleen nog online zittingen? Corona en de openbaarheid van de rechtspraak' in M Winkler, J W Sap, and M Malsch, *Nooit meer dansen? De veilige stad in tijden van de pandemie* (Boom Criminologie 2021) 123-138.
- 58** M Malsch, L van Lent, and A Smolders, 'Doet de rechter in de toekomst alleen nog online zittingen? Corona en de openbaarheid van de rechtspraak' in M Winkler, J W Sap, and M Malsch, *Nooit meer dansen? De veilige stad in tijden van de pandemie* (Boom Criminologie 2021) 123-138, 132-133.
- 59** Temporary deviating rules for civil summons cases at the appellate courts because of the special circumstances due to the Covid-19 crisis (25 August 2020), art 1.
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