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STRUCTURE AND OPERATION OF LOCAL AND REGIONAL DEMOCRACY

Netherlands

Netherlands
Territorial set-up

Provincial (12) and Municipal (443) divisions of the Netherlands on 1 January 2007

STRUCTURE AND OPERATION OF LOCAL AND REGIONAL DEMOCRACY

Netherlands

Situation in 2008

Report prepared in co-operation with the Ministry of the Interior and Kingdom Relations, adopted by the European Committee on Local and Regional Democracy on 28 November 2008

French edition:

Structure et fonctionnement de la démocratie locale et régionale : Pays-Bas

Studies appearing in the series "Structure and operation of local and regional democracy":

1st edition
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Printed at the Council of Europe

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1. LEGAL BASIS

1.1. Constitutional provisions relating to local/regional authorities

The Constitution of the Kingdom of the Netherlands lays down the foundations for public authorities at a decentralised level (see chapter 7 of the Constitution). It outlines their structure and contains provisions for the election and appointment of municipal and provincial office holders. This chapter of the Constitution[1] also describes the subjects relating to municipal and provincial government for which regulation by Act of Parliament is required.

The main articles of the Constitution in this connection are Articles 123 (paragraph 1), 124 and 125 (paragraph 1):

- Article 123, paragraph 1 states: “Provinces and municipalities may be dissolved and new ones established by Act of Parliament”.

- Article 124, paragraph 1 states: “The powers of provinces and municipalities to regulate and administer their own internal affairs shall be delegated to their administrative organs”. In addition to regulating the autonomy of provinces and municipalities in relation to their own internal affairs, Article 124 also provides a basis for directing municipal and provincial authorities to take measures.

- Article 124, paragraph 2 states: “Provincial and municipal administrative organs may be required by or pursuant to an Act of Parliament to provide regulation and administration”.

- Article 125, paragraph 1 stipulates the type of the administrative organs for heading the provinces and municipalities. In both cases, they are to be democratically elected bodies: provincial and municipal councils. “The provinces and municipalities shall be headed by provincial and municipal councils respectively. Their meetings shall be public except in cases provided for by Act of Parliament”.

Chapter 7 of the Constitution also contains provisions governing the water boards. Article 133, paragraph 1 states: “Insofar as it is not otherwise provided by or pursuant to an Act of Parliament, the establishment or dissolution of water boards (*waterschappen*), the regulation of their duties and organisation together with the composition of their administrative organs shall be effected by provincial ordinance according to rules laid down by Act of Parliament”.

The water boards are largely responsible for the essential elements of water management. Nowadays this means more than constructing dikes and building pumping stations. Unlike provinces and municipalities, water boards have no general responsibilities in relation to their geographical area, but only specific responsibilities primarily concerned with water management and water quality. In fulfilling these responsibilities, they work with central government, local authorities and other stakeholders.

[1] In Dutch: *Grondwet*.

This report is mainly concerned with the provinces and municipalities, which come under the Ministry of the Interior and Kingdom Relations. At various points, however, it discusses the role and position of the water boards, which fall under the Ministry of Transport, Public Works and Water Management.

1.2. Main legislative texts concerning local/regional authorities

The new Provinces Act[2] and Municipalities Act[3] came into force in 2003 and 2002, respectively. Both are known as "framework Acts" – Acts from which other Acts may deviate only in highly exceptional circumstances. This is expressed in section 113 of the Provinces Act and section 115 of the Municipalities Act which state: "An Act in which provincial/municipal bodies are required to provide regulation and administration or in which duties and powers of provincial/municipal administrative bodies are significantly changed shall not differ from the provisions of this Act except insofar as this must be deemed specially necessary for the representation of the public interest thus served".

In the course of 2007 the Water Boards Act[4] was to be replaced by new legislation, the Water Boards (Modernisation) Act[5], and this had not yet entered into force at the time of writing (May 2007). The provisions of the new Act will become effective on a date to be determined by Royal Decree. The date may vary for different parts of the Act.

Finally it should be noted that the Netherlands ratified the European Charter of Local Self-Government (CETS 122) in 1990. The approval act was published in the Bulletin of Acts and Decrees (no. 546) on 15 November 1990. The instrument of acceptance was presented to the Secretary General of the Council of Europe on 20 March 1991. The Charter for the Netherlands became effective on 1 July 1991.

In the Netherlands, the Charter applies to municipalities and provinces; in other words, it does not apply to water boards.

The Netherlands has made reservations in respect of four provisions of the Charter.

These are specifically:

- Article 7, paragraph 2: concerning guarantees for persons elected as local administrators;

- Article 8, paragraph 2: relating to the supervision of local authorities by other levels of government;

- Article 9, paragraph 5: concerning freedom of action for municipalities in receipt of temporary, supplementary financial support from central government at the expense of the other municipalities;

- Article 11: concerning the right of local authorities to have recourse to legal remedies for safeguarding the independent exercise of their powers and respect for the principles of local self-government.

These reservations are discussed in more detail in sections 5.4., 8.2.3. and 9.1.

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[2] In Dutch: *Provinciewet.*
[3] In Dutch: *Gemeentewet.*
[4] In Dutch: *Waterschapswet.*
[5] In Dutch: *Wet modernisering waterschapsbestel.*

2. STRUCTURE OF LOCAL/REGIONAL AUTHORITIES

2.1. Main subdivisions

The Netherlands has three tiers of government: central, provincial, and municipal. In addition, it has 26 water boards, which operate under the supervision of the provinces. The water boards are responsible for water management throughout the Netherlands. They are devolved authorities provided for in Article 133 of the Constitution. In this report, we give only a limited account of water boards.

The European Union can be regarded as a fourth tier of government. EU legislation is having a growing impact on central, provincial, and municipal government, on water boards, and on the relations between them (see also sections 8.2.3 and 9.3).

2.2. Statistical data

2.2.1. Number of units

The number of provinces remains stable at twelve. But for several decades, successive governments have pursued a gradual policy of merging municipalities. In 1994, there were 574 municipalities; in 2006, there were 458; and in 2007, there are 443. Water boards have also been merged for rationalisation purposes: the country is now divided into 26 water boards, compared to 129 in 1990 and 1 007 in 1970.

Number of territorial units

	Provinces	Municipalities	Water boards
2007*	12	443	26
1950	11	1 015	2 500

* Position on 1 January 2007

2.2.2. Area and population

Area and population of provinces

Province	Area (km^2) [a]	Population
Groningen	2 960	574 041
Fryslân [b]	5 725	643 189
Drenthe	2 681	487 893
Overijssel	3 450	1 119 906
Flevoland [e]	2 412	378 651
Gelderland	5 154	1 983 779
Utrecht [c]	1 451	1 201 310
North Holland	4 318	2 626 375
South Holland [d]	3 807	3 460 194
Zeeland	2 569	380 647
North Brabant	5 098	2 424 562
Limburg	2 216	1 123 735
Total	**41 841**	**16 404 282**
Average area and population of provinces	3 487	1 367 023

Sources : Population - Statistics Netherlands (CBS), 2008 - Position on 1 January 2007
Area – Staatsalmanak 2008.

a Comprises both land and water area
b Largest area
c Smallest area
d Largest population
e Smallest population

Municipalities

	Area (km²)	Population
Largest	674.0 [a]	743 104 [c]
Smallest	1.8 [b]	947 [d]

Position on 1 January 2007
a Terschelling, of which 585.9 km² water area
b Bennebroek
c Amsterdam
d Schiermonnikoog

Number of municipalities per province

Province	Number of municipalities
Groningen	25
Fryslân	31
Drenthe	12
Overijssel	25
Flevoland	6
Gelderland	56
Utrecht	29
North Holland	61
South Holland	77
Zeeland	13
North Brabant	68
Limburg	40
Total	443

Position on 1 January 2007

Number of municipalities and average population per municipality

Year	National population (x 1 000)	Number of municipalities	Average population
1960	11 417	994	11 485
1962	11 721	980	11 960
1966	12 377	957	12 933
1970	12 958	913	14 192
1974	13 491	843	16 003
1978	13 898	833	16 684
1982	14 286	774	18 457
1986	14 529	714	20 348
1990	14 893	672	22 162
1994	15 342	636	24 122
1998	15 654	548	28 565
2002	16 105	496	32 469
2006	16 335	458	35 666
2007	16 357	443	36 923

Sources : Ministry of the Interior, State of Local Government 2006 (Table 1.1) and Statistics Netherlands 2007 (CBS)

In 1900, 1.1 million people lived in Amsterdam, The Hague, Rotterdam, and Utrecht. This was 22% of the national population. A century later, the four major cities had a total population of 2.1 million: 13% of the national population.

Number of municipalities per size of municipality

Population	Number of municipalities	Percentage of total
Under 5 000	9	2.0
5 000-20 000	203	44.3
20 000-50 000	181	39.5
50 000-100 000	40	8.7
100 000-250 000	21	4.6
Over 250 000	4	0.9
Total	**458**	**100.0**

Source: Ministry of the Interior, State of Local Government 2006 (p. 10)
Position on 1 January 2006

2.3. Special structures for particular localities

The structure of local government is evolving. The Joint Arrangements Act[6] enables municipalities to co-operate with one another or with the provinces and/or the water boards in order to serve a particular public interest. But previous arrangements have failed to serve the needs of the major cities.

On 1 January 2006, the seven existing urban regional bodies were given a legal basis under the Joint Arrangements Act (*Wgr*) so as to continue providing a framework for local co-operation in the conurbations around Amsterdam, Rotterdam, The Hague, Utrecht, Eindhoven/Helmond, Enschede/Hengelo, and Arnhem/Nijmegen. Up to then, co-operation in these localities had been based on the 1994 Government in Transition Framework Act.[7] In the 1990s, policymakers still mooted the idea of turning certain conurbations into metropolitan provinces, a hybrid between a province and a municipality. Under the Framework Act, which has now lapsed, a number of regional public bodies were created, intended as a basis for eventual metropolitan provinces. Currently, this idea has been abandoned.

The Framework Act has now been replaced by a number of provisions in the Joint Arrangements Act concerning co-operation in these urban regions. Such a region takes the form of a public body consisting of the municipalities in a conurbation and charged with statutory duties. The seven urban regional bodies mentioned above were established in order to solve local co-ordination problems in the fields of housing, employment, and transport. The old administrative organs created by the Framework Act are now governed by the Joint Arrangements Act.

The Minister of the Interior and Kingdom Relations is obliged to maintain a register of regional bodies in order to keep track centrally of those in existence and their duties and powers. The register for *plusregio's*, as these urban regions are nowadays called, can be found on the website of the Dutch Ministry of the Interior and Kingdom Relations.[8]

The seven regions that formerly fell under the 1994 Framework Act remain operational and have been listed in the register. Any new urban regional bodies (*plusregio's*) first have to be listed in the register before they become operational, and the Minister has to announce their creation in the Government Gazette. An example of such a new regional body is "Parkstad Limburg" in the Province of Limburg. The Ministry is not responsible for the information in the register. Regional bodies have to report any changes to the Ministry.

[6] In Dutch: *Wgr*, which is short for: *Wet gemeenschappelijke regelingen*.
[7] In Dutch: *Kaderwet bestuur in verandering*.
[8] http://www.minbzk.nl/onderwerpen/openbaar-bestuur/lokaal-bestuur/plusregios-op-basis/register-plusregio's

2.4. Regulations governing changes in structures

The Local Government Boundary Reform (General Regulations) Act,[9] the Municipalities Act and the Provinces Act all contain provisions for altering municipal and provincial divisions and boundaries. A municipal redivision occurs when a municipality is established or abolished or when a change to a municipal boundary is expected to affect at least 10% of the population of one of the municipalities concerned. A municipal redivision may be effected only by Act of Parliament, for which the Minister of the Interior and Kingdom Relations is responsible. The provinces and municipalities themselves decide on boundary changes. The Local Government Boundary Reform (General Regulations) Act also provides rules for the election of the new representative body to be created and the legal status of the personnel of municipalities and provinces affected by a redivision.

The provinces play a major part in both municipal redivisions and boundary changes. A province may, for example, initiate a municipal redivision or boundary change. In the case of municipal redivisions, the province invites the municipalities concerned for consultations. The executive of each municipality must be given the opportunity to consult with the provincial executive, and everyone who so wishes must be able to inform the provincial executive of their views on the municipal redivision. Only then may the province send the Minister of the Interior and Kingdom Relations a draft scheme, which serves as the basis for the necessary Act of Parliament. A municipal executive may feel that the public consultation procedures or the considerations underlying the provincial executive's proposal have failed to do justice to the municipality's interests. If so, the municipal executive may ask the Minister of the Interior and Kingdom Relations to decide on the redivision. The Minister will then set up a committee of independent experts to help him or her make his or her decision. In such circumstances, the provincial executive must suspend the decision-making procedure until the Minister announces his or her decision. In doing so, the Minister will also publish the text of the opinion he or she has received from his or her committee of independent experts.

In November 1998, the Government adopted a policy framework on municipal redivision. The policy framework does not put forward a fixed minimum population for municipalities. Instead, it stresses the importance of strengthening the position of municipalities by increasing their size. Municipalities in both urban and rural regions need to be strengthened if they are to perform adequately in areas like public safety, quality of life, preventive youth policy and fighting unemployment. The basic premise in determining the desirable size of a municipality is that the range of local responsibilities will grow over time. Proposals for municipal redivisions are partly aimed at scaling back certain forms of co-operation between municipalities so that they can carry out more tasks independently. Municipalities must be in a position to serve their citizens by providing the whole array of local government services. This can be done most effectively if the locality is a coherent entity and the local authority has enough social and economic vigour and support. Municipal redivisions make an essential contribution to meeting these preconditions for effective local government.

2.5. Water boards

Water management has significantly affected the appearance of the Netherlands, which is largely a man-made country. Around a quarter of the country lies below sea level. Without dunes and dikes, which protect the country from the sea and rivers, more than half the country would be flooded. Supervised by the provinces, 26 water boards are now in operation, charged with water management and flood defences.

[9] In Dutch: *Wet Arhi*, which is short for: *Wet algemene regels herindeling*.

Their tasks include managing the quantity and quality of water, roads and waterways, and water purification. Some water boards in the provinces of North and South Holland and Zeeland, for instance, manage rural roads – in total almost 7 000 kilometres. This is equivalent to almost half the roads outside the built-up localities in these three provinces. The water boards' responsibilities for waterways include maintaining their depth, reinforcing their banks and operating locks for vessels.

All tiers of government have some responsibility for water management. Their roles are distributed roughly as follows:

- the water boards are responsible for surface water management in both rural and urban localities;
- the provincial authorities are responsible for groundwater management;
- the municipalities are responsible for managing sewerage;
- the water companies are responsible for clean water supply;
- the Directorate-General for Public Works and Water Management[10] (see section 2.6) is responsible for managing the major rivers and canals.

Water boards can set rules with which citizens must comply. The water boards are largely self-supporting and finance their work via their own taxes (see chapter 8). An important difference between the water boards and the other tiers of government is that their tasks relate only to water management. The administrative structure of water boards may vary. A water board must at least have an elected assembly, an executive board and a chair (see section 3.12).

2.6. General units of state administration at local/regional level and their relationship with local/regional authorities

The Netherlands has a large number of central government agencies that operate at local/regional level. They are largely independent units that exercise certain powers of central government and thus maintain a link with the central government. One of the main reasons for the decentralisation of these administrative units is the expected gain in effectiveness and efficiency. Examples of such units are the Tax and Customs Administration, the Spatial Planning Inspectorates, and the Directorate-General for Public Works and Water Management (see also section 2.5).

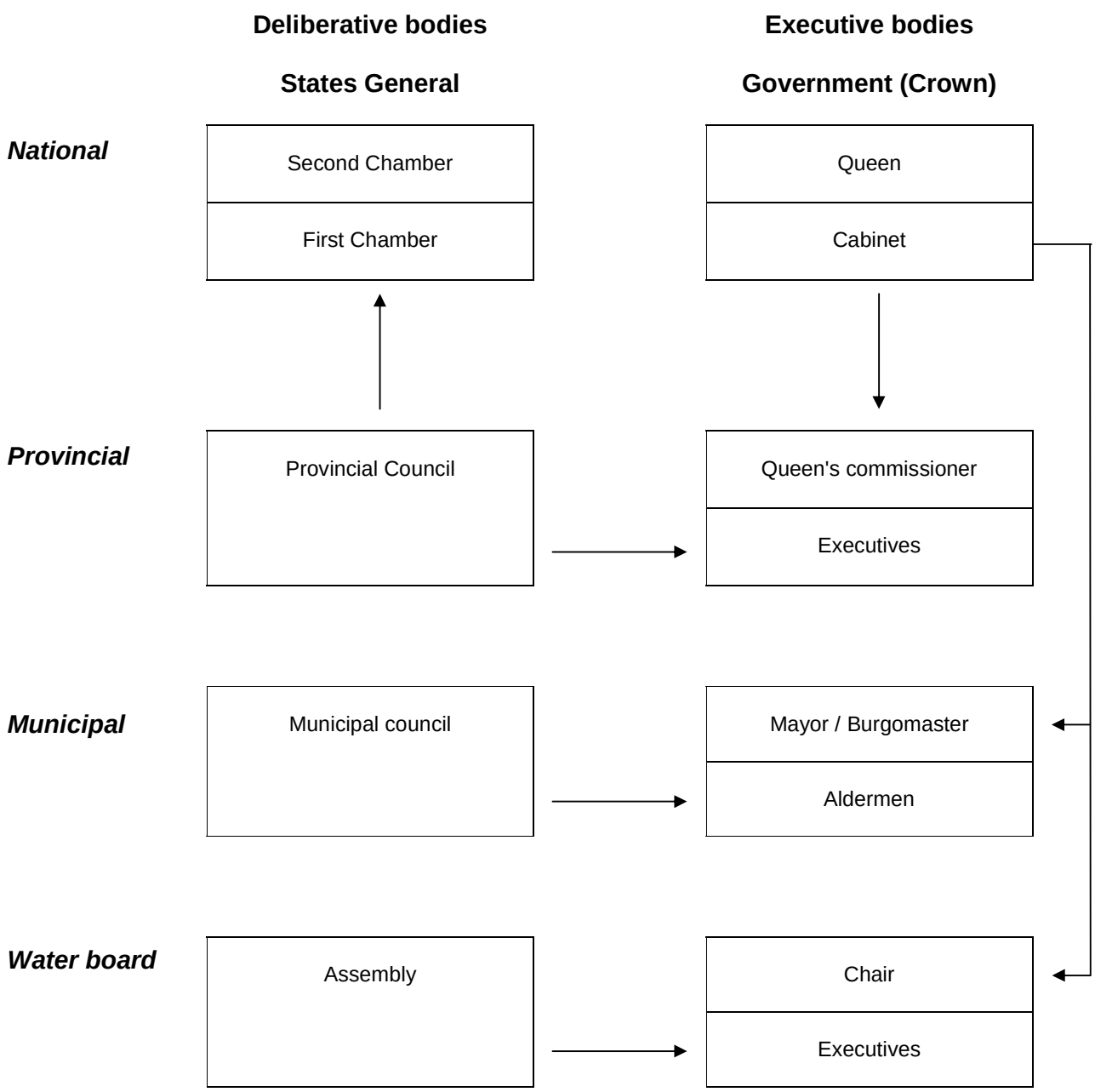
The staff of these units have a special status. An inspector of taxes, for example, determines tax assessments, something his or her hierarchical superior – the Minister of Finance – is unable to do.

The central government agencies and the provinces and municipalities interact in the following ways:

- deliberation between central government agencies and municipal and provincial authorities concerning the implementation of municipal and provincial policy;
- prior scrutiny (i.e. approval of decisions) of municipal and provincial policy by the central government agencies. Approval cannot be refused until the municipal or provincial authority has been consulted;
- appeal by the central government agencies against decisions of municipal or provincial authorities. Decisions may be quashed as a result of such appeals. Before a decision is quashed, the municipal or provincial authority has to be consulted.

[10] In Dutch: *Rijkswaterstaat.*

Organisational chart



3. ORGANS OF EACH CATEGORY OF LOCAL/REGIONAL AUTHORITIES

3.1. Municipal deliberative bodies

3.1.1. Title and composition

A municipality is headed by its representative assembly: the municipal council. The municipal council represents the entire population of a municipality. It always has an odd number of councillors. The larger the municipality, the larger the number of councillors (see table below). For example, a municipality with 3 000 inhabitants has a nine-member council and the council of a municipality with a population of over 200 000 has 45 members. The council is chaired by a mayor (burgomaster), who may not vote and acts only in an advisory capacity during council meetings. Council meetings are normally held in public. The Municipalities Act lists various offices, such as government minister or member of a provincial executive, that are incompatible with membership of a municipal council.

The municipal council is responsible for regulating and administering municipal affairs that lie outside the power of the mayor or the executive. It adopts bylaws and takes the main decisions. The council determines the budget and sets out policy for the following budgetary year.

The primary functions of the council in relation to the executive are to set standards in advance and evaluate after the event. The council therefore establishes frameworks, scrutinises performance and represents the population. To carry out these tasks it has the right of investigation, the right of initiative and the right of amendment. The council may conduct investigations itself or delegate them to a third party. Amendments may be submitted by individual councillors. For this purpose, the council is entitled to assistance from policy officers within the municipal administrative apparatus.

Since 2002, municipalities have been obliged to appoint a clerk of the council (see also section 3.11.). The post of clerk of the council should not be confused with that of municipal secretary (see section 3.4.). By law, the two posts may not be held by the same person. The clerk works only for the council and not for the executive. He or she acts as secretary to the council and the council committees. The clerk also organises and assists investigations initiated or conducted by the council. The clerk attends council meetings, and countersigns all documents issued by the council.

Number of residents represented per municipal councillor

Population	Number of councillors	Number of inhabitants per councillor
Under 3 001	9	< 333
3 001-6 000	11	272-545
6 001-10 000	13	461-769
10 001-15 000	15	666-1 000
15 001-20 000	17	882-1 176
20 001-25 000	19	1 052-1 315
25 001-30 000	21	1 190-1 428
30 001-35 000	23	1 304-1 521
35 001-40 000	25	1 400-1 600
45 001-50 000	27	1 666-1 851
50 001-60 000	29	1 724-2 068
60 001-70 000	31	1 935-2 258
70 001-80 000	33	2 121-2 424
80 001-100 000	35	2 285-2 857
100 001-200 000	39	2 564-5 128
Over 200 000	45	> 4 444

Source: Ministry of the Interior, State of Local Government 2006 (Table 1.3).

3.1.2. Electoral system

A municipal council is elected every four years by the residents of the municipality who have reached the age of 18 and are not disqualified from voting. Dutch nationality is not a requirement. But foreign nationals who are not citizens of a European Union member state must have lived legally and continuously for at least five years in the Netherlands. This acts in accordance with Article 6 of the Council of Europe's Convention on the Participation of Foreigners in Public Life at Local Level (CETS 144), which the Netherlands ratified in 1997.

Like members of parliament and provincial councillors, municipal councillors are elected by proportional representation. National political parties are represented in most municipal councils. In addition, some council seats in many municipalities are held by local parties. The number of municipal councillors belonging to local parties has been increasing, especially since the 1994 municipal elections. In the past 15 years, as local parties have grown in number, they have also become more evenly spread around the country.

Percentage of votes cast for local parties in municipal elections per province, 1974-2006

Votes	1974	1978	1982	1986	1990	1994	1998	2002	2006
Groningen	5.1	5.0	6.5	5.7	5.9	6.0	6.5	14.3	14.1
Fryslân	10.5	9.2	9.9	9.2	12.7	20.4	20.0	24.4	13.7
Drenthe	8.5	8.9	9.3	9.1	12.0	17.4	*	23.1	19.7
Overijssel	10.6	6.5	6.6	6.1	9.4	14.8	13.4	18.9	19.8
Flevoland	6.3	4.7	2.8	5.2	5.7	7.7	11.8	27.2	21.2
Gelderland	16.7	13.0	11.2	10.4	12.1	14.5	16.8	22.7	23.0
Utrecht	5.3	3.2	3.1	3.7	4.9	6.9	14.8	21.4	19.7
North Holland	6.4	4.9	6.4	6.8	7.9	11.8	13.9	22.2	18.3
South Holland	4.7	3.3	4.6	4.5	4.6	8.1	11.7	23.6	22.8
Zeeland	15.8	13.2	11.4	9.0	10.7	10.4	16.6	16.6	21.3
North Brabant	51.3	37.0	31.7	28.1	30.0	33.6	35.8	42.0	37.2
Limburg	71.8	61.9	41.0	36.1	34.2	34.7	36.7	38.2	33.5
The Netherlands	18.9	14.8	13.0	12.0	13.3	16.4	17.7	26.3	23.7

Source: Ministry of the Interior, State of Local Government 2006 (Table 9.3)
** No figures available for this year*

3.2. Municipal executive bodies

3.2.1. Title and composition

A municipal executive, consisting of the mayor (burgomaster) and aldermen, has overall responsibility for governing the municipality. It is also responsible for continuously monitoring all matters affecting the municipality. The executive is the competent authority for the municipality's administrative apparatus. It appoints, suspends and dismisses local public servants (except for the clerk of the council and his or her staff and the municipal auditor).

The executive prepares all business that comes before the council. It implements council bylaws and decisions. In practice, individual executive members – called 'aldermen' – are responsible for particular policy fields. The mayor chairs the municipal executive. In the executive, his or her vote is sometimes decisive. The mayor and aldermen are collectively and individually responsible to the council for their actions. They must provide information on request and, if required, account for their activities. If the council is dissatisfied with how the executive is carrying out its tasks, it may pass a motion of no confidence in one or more aldermen, thereby obliging them to resign. For a motion of no-confidence in a mayor, see section 3.3.3.

The number of aldermen depends on the size of the municipality. It may not exceed 20% of the number of councillors, and the minimum is two. In municipalities where the office of alderman is a full-time job, the council may decide that one or more posts should be divided among part-time aldermen. If the council takes such a decision, the number of aldermen may not exceed 25% of the number of councillors.

3.2.2. Method of electing or appointing aldermen

Traditionally, the aldermen are chosen by the council from among councillors. They serve for a period of four years. Since 2002, aldermen have no longer been permitted to belong to the council after their appointment, and the council has been permitted to appoint aldermen from outside the council. This has improved the quality of the members of executives. In practice, the municipal executive can be formed in many different ways. One of the most common is that after the municipal elections and prior to the election of the aldermen, the representatives of the new parties in the council negotiate a programme for the municipal executive for this four-year time of office.

The number of women aldermen in proportion to the size of municipalities fell from 1998 to 2005. This is noteworthy because the percentage of female councillors rose slightly to 23.6% in 2005. The table shows that the smallest and the largest municipalities have the highest percentages of women aldermen (20.7% and 23.3%).

The proportion of women aldermen per size of municipality (%)

Municipality size (in terms of population)	**1998**	**2002**	**2005**
Under 10 000	20.0	17.2	20.7
10 000-20 000	14.4	13.8	14.7
20 000-50 000	19.8	15.5	16.6
50 000-100 000	13.0	15.3	13.3
Over 100 000	24.0	24.7	23.3
Total	**18.0**	**16.6**	**16.7**

Source: Ministry of the Interior, State of Local Government 2006 (Table 1.16)

3.3. Political heads of local authorities

3.3.1. Title

The mayor (burgomaster) symbolises the municipality, even though he or she is not formally its head. He or she represents the municipality at law and otherwise. The mayor stands above the political parties represented in the municipal council.

3.3.2. Function and relationship with the deliberative body

The mayor is not the same as the executive, whose members are appointed by the municipal council. The mayor is a member of the executive and chairs it (with voting rights), but he or she also chairs the municipal council (without voting rights). He or she is accountable only to the municipal council. The mayor's role is confined exclusively to the municipality, and he or she has no superiors in the provincial or national hierarchy. The mayor is entrusted by law with many duties. For example, he or she is responsible for implementing certain decisions of the municipal council. He or she is also charged with supervising the activities of the council and the municipal executive. If he or she considers that a decision taken by one of these bodies is unlawful or contrary to the public interest, he or she refers it via the provincial executive to the Crown for it to be suspended or quashed. Pending a ruling, the decision is not implemented.

As well as representing the municipality at law and otherwise as referred to above, the mayor has independent powers, mainly connected with public order. A consequence of this is the existence of the municipal emergency power to deviate from national law in exceptional circumstances where the interests of the state would otherwise be jeopardised. In such cases, the municipal council plays only a backseat role. The Police Act 1993[11] grants the mayor direct authority over the police's duties to maintain public order and provide assistance. The management of the police force, which is organised on a regional basis, is entrusted to the mayor of the municipality designated as the central municipality of the police region. The mayor also has overall command of the fire brigade's fire-fighting and accident-response tasks.

Since 2002, the mayor is obliged to publish a citizens' annual report, accounting forhis or her performance ofhis or her duty of care concerning relations between the authority and citizens. The report will always include an account of the quality of municipal services and of citizen participation procedures. This includes referendums and municipal citizens' initiatives. The mayor, who determines most of the report's content personally, is obliged to submit the report to the municipal council and actively publicise it.

3.3.3. Method of electing or appointing mayors

The mayor is appointed (or dismissed) by Royal Decree. This power of appointment is exercised on the basis of a recommendation by the municipal council, drawn up in consultation with the Queen's Commissioner.

The Minister of the Interior and Kingdom Relations is bound by this recommendation, which may be supported by a consultative referendum. The legal basis for the municipal council's right to hold this referendum is provided in section 61, paragraph 1, and section 61e of the Municipalities Act (amended in 2002). The referendum result may be disregarded only on the basis of a decision supported by arguments. The council may withdraw its confidence from the mayor and recommend that the Crown dismiss him or her. The Crown may not decide independently to dismiss a mayor, unless the mayor is ill or the municipality ceases to exist.

[11] In Dutch: *Politiewet 1993.*

Ratio of men to women mayors*

Political party	Men		Women	
	Number	%	Number	%
CDA (Christian Democrats)	114	85.7	19	14.3
PvdA (Social Democrats)	83	74.8	28	25.2
VVD (Liberal Democrats)	86	78.2	24	21.8
D66 (Social-Liberal Party)	20	76.9	6	23.1
CU (ChristianUnion)	7	100.0	0	0.0
Groen Links (Green Left Alliance)	3	42.9	4	57.1
SGP (Reformed Political Party)	5	100.0	0	0.0
FNP (Frisian National Party)	1	100.0	0	0.0
No political affiliation	1	100.0	0	0.0
Total	**320**	**79.8**	**81**	**20.2**

Source: Ministry of the Interior, State of Local Government 2006 (Table 1.19)
Position: middle of 2006

** These figures only refer to mayors appointed permanently (i.e.,at the time, in 401 municipalities). In the remaining municipalities acting mayors have been appointed ad interim.*

3.4. Head of municipal administration

The municipal secretary is the head of the municipal administrative apparatus, and is appointed by the executive.

The secretary assists the municipal executive, the mayor, and any committees appointed by them in the performance of their duties. The secretary attends meetings of the executive. The executive makes the rules governing the duties and powers of the municipal secretary, who also countersigns documents emanating from the executive.

As local bureaucracy has increased, the position of the municipal secretary has become more complicated. Not all information is now channelled via the secretary, certainly not in municipalities where each alderman is responsible for a particular policy field. Until 7 March 2002, the municipal secretary also served as the clerk of the council (see section 3.1.1).

3.5. Provincial deliberative bodies

3.5.1. Title and composition

A province is headed by its representative assembly: the provincial council. The provincial council is the general deliberative body of the province and has the power to pass bylaws. It represents the entire population of the province and always has an odd number of members. The number of members varies according to the size of the province's population.

Since 2003, members of the provincial executive have no longer been permitted to belong to the provincial council. The council seats released by this change are now occupied by new councillors. The effect of this has been corrected in 2007 (see section 3.11.2). The provincial council is chaired by the Queen's Commissioner, who attends council meetings only in an advisory capacity. Council meetings are normally held in public.

The Provinces Act lists various offices, such as minister or provincial public servant, that are incompatible with council membership. Being a member of a provincial council is not a profession but a part-time activity. Most provincial councillors have other jobs. They receive remuneration and an expense allowance. In their day-to-day activities, they may not accrue any personal benefit from their membership of the provincial council.

The primary functions of the provincial council in relation to the executive are to set standards in advance and evaluate after the event. The provincial council therefore establishes frameworks, scrutinises performance and represents the population. To carry out these tasks the provincial council has the right of investigation, the right of initiative and the right of amendment. A provincial council may conduct investigations itself or delegate them to third parties. Amendments may be submitted by individual provincial councillors. For this purpose, provincial councils are entitled to assistance – i.e. assistance from policy officers within the provincial administrative apparatus.

Since 12 March 2003, provinces have been obliged to appoint a clerk of the council. The office of clerk should not be confused with that of provincial secretary (see section 3.8). By law, the two posts may not be held by the same person. The clerk works only for the provincial council and not for the provincial executive. He or she acts as secretary to the provincial council and the committees it establishes. He or she also organises and assists investigations launched or conducted by the provincial council. The clerk attends meetings of the provincial council and countersigns all documents issued by the council.

3.5.2. Electoral system

The provincial council is elected every four years from and by Dutch nationals residing in the province who have reached the age of 18 and are not disqualified from voting. Like political office holders at national and municipal level, provincial councillors are elected by proportional representation. National political parties are represented in provincial councils. In addition, some council seats in a few provinces are held by provincial parties such as the Frisian National Party (FNP) in Fryslân.

3.6. Provincial executive bodies

3.6.1. Title and composition

The administration of provincial affairs is the responsibility of the provincial executive, which consists of the Queen's Commissioner and at least three and no more than nine members. The Queen's Commissioner chairs the provincial executive and – as a member– has the right to vote. Being a member of a provincial executive is normally a full-time post, although one or more of such positions may be part time if a decision to this effect is taken by the provincial council. In such a case, the maximum number of provincial executive members will be eleven.

Each provincial executive member is responsible for a certain policy field, such as spatial planning. Provincial executive members are charged with preparing and implementing the decisions of provincial councils, implementing the decisions of central government in the province, and supervising the municipal executives. Provincial executive members are accountable to the provincial council. They are obliged to provide information about their policy field to the provincial council unless this is contrary to the public interest.

3.6.2. Method of electing or appointing provincial executive members

Traditionally, members of the provincial executive are chosen by the provincial council from among its own members. They serve for a period of four years. Once appointed, provincial executive members cease to be provincial councillors as a result of the dualism reform introduced in 2003 (see section 3.11). Since the 2003 reform, the provincial council may also appoint executive members from outside its own number, which should improve the quality of the members of provincial executives.

In practice, the provincial executive can be formed in many different ways. One of the most common is that after the provincial elections and prior to the election of the executive members, the representatives of the new parties in the council negotiate a programme for the provincial executive for this four-year time of office.

Provincial executive members retire at the same time as the members of the council. They may be dismissed by the council if they cease to enjoy its confidence.

3.6.3 Ratio of men to women among provincial executive members per province

In 1999, the proportion of women provincial executive members rose by more than 5% to 21%. After the election in 2003, it fell again to 17%. After the election in 2007, however, the landscape changed. The percentage of women in provincial executives rose to 31%.

Ratio of men to women among provincial executive members by province

	1999				2007			
Province	**members**		**percentage**		**members**		**percentage**	
	M	**F**	**M%**	**F%**	**M**	**F**	**M%**	**F%**
Groningen	4	2	67	33	4	1	80	20
Fryslân	5	0	100	0	2	3	40	60
Drenthe	4	2	67	33	4	2	67	33
Overijssel	4	2	67	33	5	1	83	17
Flevoland	3	1	75	25	3	1	75	25
Gelderland	6	0	100	0	4	2	67	33
Utrecht	4	3	57	43	4	2	67	33
North Holland	5	2	71	29	5	2	71	29
South Holland	5	3	62	38	4	3	57	43
Zeeland	6	0	100	0	5	0	100	0
North Brabant	6	1	86	14	3	3	50	50
Limburg	8	0	100	0	4	1	80	20
Total	**60**	**16**	**79**	**21**	**47**	**21**	**69**	**31**

Sources:
For 1999: Ministry of the Interior, State of Local Government 2006 (Table 2.9)
For 2007: Provincial websites - Position on 1 June 2007

3.7. Political heads of provincial authorities

3.7.1. Title

The Queen's Commissioner represents his or her province at law and otherwise and is responsible for ensuring that the interests of the province and its residents are properly represented. In 2007, there were two women Commissioners out of twelve.

3.7.2. Function and relationship with the deliberative body

A Queen's Commissioner generally acts in a representative or co-ordinating capacity.

The Provinces Act stipulates that a Queen's Commissioner must disclose any secondary offices or jobs that are unconnected with his or her office. The aim of this provision is to avoid even the semblance of a conflict of interests in the case of people holding the office of Queen's Commissioner.

The Queen's Commissioner is a member of the executive, which he or she chairs (with voting rights). He or she also chairs the provincial council (without voting rights). The Queen's Commissioner is accountable to the provincial council for his or her management of the affairs of the province. But the council does not have the power to dismiss the Queen's Commissioner. However, the council may withdraw its confidence from the Queen's Commissioner, as a result of which the Crown may dismiss him or her.

The Queen's Commissioner is free to decide how he or she will perform his or her duty of care with regard to relations between the provincial executive and citizens. Since 2003, he or she is obliged to submit a citizens' annual report to the provincial council. The Queen's Commissioner may largely determine the content of this report, but he or she must at least include his or her findings on the quality of provincial services and public participation. He or she may also deal with other matters, such as policy on ethical standards in the province, although he or she is not obliged to do so.

The citizens' annual report has to be published at the same time as the provincial annual accounts, annual report and auditor's report. This has the advantage that the provincial council can call the provincial executive to account in connection with all these documents and itself make proposals for improvement in such matters as the degree of citizen-centredness in the various stages of provincial decision-making. Since a citizens' annual report relates to relations between citizens and the executive, it must be actively publicised and made publicly available.

3.7.3. Method of electing or appointing Queen's Commissioners

A Queen's Commissioner is appointed by Royal Decree by the Crown (i.e. by the Queen and her ministers) for a term of six years. After this term, he or she may be reappointed. Before nominating a candidate, the Minister of the Interior and Kingdom Relations invites the provincial council to state the qualities it considers necessary for the post. The provincial council may appoint a confidential committee from among its members to assess the nominees. Such a committee then reports confidentially to the Minister. In practice, the Government departs from the committee's recommendation only in exceptional circumstances. Only the Crown can dismiss a Queen's Commissioner (see also section 3.7.2).

3.7.4. Functions exercised on behalf of the state

Article 126 of the Constitution enables the Queen's Commissioner to be charged with duties on behalf of central government. The Government may issue the Queen's Commissioner with official instructions charging him or her with the discharge of certain duties. In accordance with these instructions, he or she must, for example, regularly visit the municipalities in his or her province and make recommendations to the Minister of the Interior and Kingdom Relations on the appointment of mayors in his or her province (see also section 3.3.3.).

In addition, the Queen's Commissioner is required to promote co-operation between central government bodies working in his or her province and the provincial/municipal authorities. A duty exercised on behalf of central government must always be based not only on official instructions but also on an Act of Parliament. Another important task of the Queen's Commissioner is to co-ordinate disaster response activities.

When a Queen's Commissioner is acting on behalf of central government, he or she is not accountable to the provincial council and need not provide the council with information.

3.8. Head of provincial administration

The provincial secretary is the head of the provincial administrative apparatus. He or she is appointed by the provincial executive, which draws up further rules in an instruction on the secretary's tasks and powers. The secretary assists the provincial executive, the Queen's Commissioner, and the committees established by the provincial executive in the exercise of their tasks. To this end, he or she has to attend the meetings of the provincial executive. The secretary countersigns documents issued by the executive. The provincial executive may suspend or dismiss the secretary.

3.9. Division of powers between the various organs of local/regional government

Municipal and provincial councils are both responsible for regulating and administering municipal/provincial affairs that fall outside the powers of the mayor/Queen's Commissioner or the municipal/provincial executive. The councils adopt bylaws and take the main decisions. They also determine local/provincial budgets and set out policy for the budgetary year to come.

Municipal and provincial executives have overall responsibility for administration in the municipality/province. They are also responsible for continuously monitoring all matters affecting the municipality/province. They prepare all business that comes before the councils and implement bylaws and council decisions. In practice, individual members of the executive are responsible for particular policy fields. The mayor/Queen's Commissioner and the executive are collectively and individually responsible to the council for their actions. They must provide information and, if required, account for their activities.

The Municipalities Act and the Provinces Act oblige the executive to provide the council with information proactively. This obligation is worded in general terms. The Acts stipulate, for instance, that the executive must provide any information that the council requires to perform its tasks.

As well as this general obligation to provide information, the Municipalities Act contains a specific obligation, which has not been incorporated into the Provinces Act and therefore applies only to municipalities. The general obligation to supply information proactively mentioned above applies to all powers of the municipal/provincial executive, while the specific obligation to supply information relates to the exercise of four powers of the municipal executive only:

- the power to decide on legal acts under private law to be performed by the municipality;
- the power to institute legal proceedings, objection procedures or applications for administrative review on behalf of the municipality or the municipal executive or to take action to prepare for such proceedings and procedures;
- the power to take preparatory action for civil defence;
- the power to establish, abolish, or make changes to annual fairs.

The specific obligation to provide information means that the municipal executive and each of its members are individually obliged to provide information in advance about the exercise of the powers mentioned above:

1. if the council requests it;
2. if the exercise of these powers may seriously affect the municipality.

If the municipal/provincial council is not satisfied with the way in which the executive has performed its duties, it may pass a motion of no confidence in one or more members of the executive, thereby obliging them to resign.

3.10. Legal provisions concerning the internal structures of local/regional authorities

The Municipalities Act and the Provinces Act both contain rules governing the internal structure of municipalities/provinces. In particular, they regulate the composition and powers of the administrative organs. Each municipality and province is required to have the three organs of municipal/provincial government already mentioned: the council, the executive and the mayor/Queen's Commissioner. In addition, the Acts grant councils the power to appoint committees for specific functions or policy fields. A committee may be granted both advisory and decision-making powers.

3.11. Dualism Reform in municipalities and provinces

The Municipal Authorities (Separation of Powers) Act[12] of 7 March 2002 and the Provincial Authorities (Separation of Powers) Act[13] of 12 March 2003 introduced a major reform known as dualism. Dualism is the separation of the powers of the council and the executive. Both their composition and functions have been separated. An alderman or a member of the provincial executive may no longer serve simultaneously as a councillor. Executive powers are concentrated in the municipal/provincial executive. At the same time, the amendments have strengthened the powers of the council to set frameworks and monitor performance as well as stressing the council's representative function. Since the introduction of dualism, the secretary of the executive may no longer also serve as clerk of the council (see sections 3.4 and 3.8).

The clear-cut separation of powers between the council and the executive is also designed to increase the accountability of the executive, which implements a budget drawing a clearer distinction between budget items according to the activities to be conducted and related commitments, revenues and results. This has improved the assessment of the executive's management, in both municipal/provincial matters and in terms of statutory tasks.

According to various surveys, dualism has created a more lively political debate at local level and has led to a greater investment by councillors in contacts with the public. In this sense, dualism has succeeded in achieving its aims: to re-establish the council as a political forum, to strengthen its representative function, and to make local government more recognisable to citizens.

[12] In Dutch: *Wet dualisering gemeentebestuur.*
[13] In Dutch: *Wet dualisering provinciebestuur.*

But the operation is not yet complete. In many municipalities, for instance, the council and the executive are still seeking the best way to fulfil their respective roles. Researchers and the persons involved agree that it will take another four to eight years until the new system and the intended culture change are fully in place. The recent changing of the guard following the local elections of March 2006 will certainly speed up the process of culture change, with the departure of many councillors and executive members who worked under the old monistic system. It remains to be seen whether the provincial elections of March 2007 will have a similar effect.

3.11.1. Audit office

The audit office or audit function is a new instrument introduced in both the Municipal Authorities (Separation of Powers) Act and the Provincial Authorities (Separation of Powers) Act. Since the beginning of 2005, every municipality has been obliged to establish an independent local audit office; and since the beginning of 2006, every province has been obliged to establish a regional audit office. If municipalities and provinces fail to do so, they are obliged to provide for the audit function in another way. Municipalities or provinces may co-operate with each other. The task remains the same. Members of councils may also be members of local/regional audit offices.

The audit function means conducting structural audits of the efficiency, effectiveness and regularity of the policies pursued by the municipality/province. Such regularity audits should incidentally not be confused with the regularity audits of the annual accounts conducted by the auditor. The audit function is about auditing specific policy areas. An annual report has to be submitted to the council. These reports are publicly available. On the basis of their findings, the audit offices may make recommendations to the council and executive.

Municipalities are increasingly choosing to staff their audit offices with external personnel: 39% of the audit offices consist exclusively of external personnel; and another 39% consist of a mixture of councillors, external members, and an internal or external chair. Only 8% of the audit offices consist entirely of persons from within the muncipal authority. In addition, the audit offices are increasingly working together. Most of the municipalities (91%) have opted for the audit function by way of legal form.

Types of audit function chosen by municipalities (%)

Type	2005	2004
Director model	3	0
Entirely external audit committee	39	13
Entirely internal audit committee	8	29
Councillors with an external chair	10	10
Councillors and external members with an external chair	34	31
Councillors and external members with a councillor as chair	5	15
Other	1	1
Total	**100**	**100**

Source: Ministry of the Interior, State of Local Government 2006 (Table 1.27)

Almost all the provinces have chosen to co-operate with each other to establish regional audit offices. The Northern Regional Audit Office serves the provinces of Drenthe, Fryslân, and Groningen. The Eastern Regional Audit Office serves the provinces of Gelderland and Overijssel. The Southern Regional Audit Office serves the provinces of North Brabant and Limburg. The Randstad Regional Audit Office serves the provinces of North and South Holland, Utrecht, and Flevoland. Only Zeeland has its own audit office.

3.11.2. Further adjustments caused by dualism

Since the introduction of dualism, members of municipal/provincial executives have no longer been members of councils. The council seats released by this change are now occupied by new councillors. This has increased the total number of political office holders in municipalities and provinces. A bill to correct this effect of dualism in provinces has been adopted in 2006. The correction for provinces came into force on 15 March 2007, after the provincial elections in March 2007 (see section 3.5).

The tables below set out the figures before and after the adjustment.

A proposal to correct this effect of dualism in municipalities has been withdrawn. Originally, a similar adjustment at municipal level would have reduced the number of local councillors by around 1 500 at the next municipal elections in 2010. Nevertheless, this adjustment will not be implemented.

Number of provincial councillors per number of residents until 14 March 2007

Provincial population	Number of provincial councillors
Under 200 001	39
200 001-300 000	43
300 001-400 000	47
400 001-500 000	51
500 001-750 000	55
750 001-1 000 000	59
1 000 001-1 250 000	63
1 250 001-1 500 000	67
1 500 001-1 750 000	71
1 750 001-2 000 000	75
2 000 001-2 500 000	79
Over 2 500 000	83

Since 15 March 2007

Provincial population	Number of provincial councillors
Under 400 001	39
400 001-500 000	41
500 001-750 000	43
750 001-1 000 000	45
1 000 001-1 250 000	47
1 250 001-1 500 000	49
1 500 001-1 750 000	51

3.12. Water boards

The administrative structure of water boards may vary. Each water board must at least have an assembly, an executive board and a chair.

3.12.1. The water board assembly

The water board assembly consists of representatives of various stakeholders: landowners, home owners, owners and users of commercial premises and residents. These groups are represented in the assembly in proportion to their importance and financial contribution to the water board. The members of the assemby are elected for four years. The rules for their election are laid down in the Water Boards Act. Further details are determined by the provincial councils in electoral rules of procedure. Members are elected in their personal capacity, not as representatives of a political party. Candidates have to be over 17 years old and not disqualified from voting. When they take up office, they must be over 18 years old.

3.12.2. The executive board

The executive board is elected by the water board assembly from among its own members. The chair of a water board – often called a *dijkgraaf* – is appointed by the Crown for six years. In the field of water management, the executive board may draw up binding regulations (in the form of bylaws and statutes or *keuren*). Some decisions have to be approved by the province (prior scrutiny). In certain circumstances, decisions already taken may be suspended or quashed by the province (retroactive scrutiny).

4. DIRECT CITIZEN PARTICIPATION IN DECISION-MAKING

4.1. Local/regional referendums

Local and regional authorities are trying in various ways to increase the involvement of citizens in governance, because citizens want to take part in running society in ways other than 'traditional' political participation. As well as the formal ways of participating, various other forms have arisen.

The referendum has become more important at local level in recent years. It has gradually come to be accepted that the holding of consultative referendums is not barred by the Constitution or the Municipalities Act, provided that the result of the referendum is not seen as binding *de facto* on the representative assembly (e.g. the municipal council). This would be contrary to the principle of the primacy of representative assemblies, as laid down in the Constitution.

Various municipalities have introduced bylaws regulating the holding of referendums. Since 1990, 74 municipal referendums have been held in more than 60 municipalities. The number of referendums varies from year to year: in 1995 and 2001, there were 13, while in 1993 not a single one was held. The number of referendums has not increased over the years. No referendums have yet been held at provincial level.

A bill for a constitutional amendment to allow the holding of 'corrective' referendums has been considered by Parliament. This would also have allowed the population at local/regional level to indicate whether it agreed or disagreed with decisions containing generally binding regulations taken by the municipal or provincial council. The outcome of such a referendum would have been binding. But the bill failed to gain the required two thirds majority on its second reading in the House of Representatives.

4.2. Other forms of direct participation

Participation in the sense of having a right to be consulted is less far-reaching than the holding of a referendum. The Municipalities Act obliges municipal councils to regulate this form of participation in a bylaw. The bylaw is intended to regulate how the inhabitants of a municipality – natural persons and legal entities – with an interest in municipal policies can be involved in their preparation. The bylaw should, in any event, lay down how policy proposals in which citizens are to have a say will be made public. It must also regulate how citizens may indicate their views and how participation and its results will be reported. Finally, the bylaw sets out how complaints may be made about the implementation of participation.

The General Administrative Law Act[14] came into force in 1994. This Act codifies a number of principles of proper administration that were previously mostly unwritten. One of its aims is to increase the transparency of government decision-making. It does so, for example, by ensuring that citizens with an interest in a decision are involved in the decision-making process at an early stage. If an administrative authority intends, for example, to refuse an application for a decision, it must in principle first 'hear' the applicant. In the case of some orders, a public preparatory procedure (sometimes extensive) must be followed, in which interested parties can express their opinion.

Citizens may also be appointed to certain committees established by the municipal council under the General Administrative Law Act. The Act says nothing about the composition of the committees. The council may therefore directly appoint whomever it wishes – even persons not residing in the municipality – and may give organisations the right of nomination or appointment. The council may also decide that committee members should be elected directly. This occurs mainly in the case of committees for particular areas, for example neighbourhood councils and sub-municipal councils.

However, committees with a particular function may also include ordinary citizens. Examples are committees in the fields of sport and culture. Such committees usually sit only in an advisory capacity. Committees are sometimes established to give effect to the concept of public-private partnership, where some members of the committee are appointed by the municipal council and the rest by civil society organisations.

One instrument designed to get citizens more politically involved is the citizen's initiative. This permits citizens to put a new subject or proposal on the agenda of the municipal council. The council then has to take a decision on it. The citizen's initiative not only enables councillors to translate signals from society into action, it also enables citizens themselves to submit proposals to the municipal council concerning subjects not yet dealt with by the council. Citizen's initiatives always receive a response, because the council is obliged to put the subject on its agenda. The citizen's initiative supplements representative democracy with participative elements. Once a citizen's initiative has been submitted, the council will decide on it in the customary manner. But an essential element of the citizen's initiative is that its initiators remain its 'intellectual owners'.

[14] In Dutch: *Awb,* which is short for: *Algemene wet bestuursrecht.*

The municipal authority plays a facilitating role. It is not possible for political office holders to amend a proposal or change it unrecognisably without the initiators' permission. This ensures that citizens will still recognise their own idea.

Citizens also become involved interactively in making and implementing policy. Examples are:

- the right to speak: citizens may speak in or prior to council or committee meetings and thus voice criticism of municipal policy or ask questions about it;
- guest-in-the-council projects: citizens can observe the municipal authority at close quarters at the invitation and under a councillor's responsability; this promotes understanding and the will to participate;
- the establishment of citizens' panels, village and neighbourhood councils, focus groups, and platforms;
- the involvement of specific interest groups, such as senior citizens and young people;
- debates on the future.

But decision-making is ultimately still reserved for the elected bodies.

5. STATUS OF LOCAL ELECTED REPRESENTATIVES

5.1. Eligibility and term of office

The contents of this chapter apply *mutatis mutandis* to provincial councillors.

To stand for election for a municipal council, candidates must have reached the age of 18, reside in the municipality concerned, and not be disqualified from voting. Disqualification may occur where a person is under a judicial guardianship order (for example, owing to mental illness) or as an additional penalty for a criminal offence specifically designated by law. Unlike the situation at national and provincial level, eligibility to stand in municipal elections is not restricted to Dutch nationals. Citizens of other member states of the European Union may also stand. The same is true of foreigners who are not EU citizens provided that they have a valid residence permit and have lived continuously in the Netherlands for five years prior to the date on which they stand for election. The right of foreign nationals to stand for election was introduced at local level, because it is in the municipalities that the interests of the electorate are most directly represented. Foreign nationals gain their first close ties with the Netherlands at municipal level.

Foreign nationals who are in the service of their own state may not stand for election to the municipal council, even if they otherwise meet the relevant conditions. In practice, this exception applies mainly to embassy and consulate staff and members of their households.

Central government provides no subsidies for election campaigns or for putting up candidates at local elections. The costs incurred in mounting election campaigns and putting up candidates must be borne by the parties from their own funds or from membership contributions. Central government does subsidise institutions and organisations associated with political parties, such as research agencies, training and educational institutes, and youth organisations.

The term of office of a municipal councillor is four years.

5.2. Incompatibility and responsibilities

Section 13 of the Municipalities Act lists a number of offices that are incompatible with membership of a municipal council: government minister or state secretary, member of the Council of State, member of the Court of Audit, member of the Office of the National Ombudsman, Queen's Commissioner, member of a provincial executive, provincial clerk or secretary, local government officer, mayor, member of a municipal executive, member of a local/regional audit office, and member of a local ombudsman's office. Teachers, registrars of births, deaths and marriages, and personnel of the emergency services are, however, all allowed to stand for municipal councils.

Councillors are also obliged to disclose what other positions they hold as well as membership of the council. This is done by depositing a list of these positions at the town hall for public inspection. To prevent any conflict of interest (or even the semblance of such a conflict), the Municipalities Act stipulates that a councillor is, in principle, barred from certain activities ('prohibited acts'), such as supplying goods or services to the municipality.

A councillor may not vote in the municipal council on matters that directly or indirectly concern him or her personally or in which he or she is involved as a representative. Nor may he or she vote on the adoption or approval of the accounts of a body for which he or she owes a duty of accountability or on whose board he or she sits.

The Elections Act[15] specifies the sanctions to be applied if a councillor holds a position incompatible withhis or her public office or performs prohibited acts. In the former case, his or her membership of the council ends automatically by law. Section 1, subsection 1 of the Elections Act states: "Once it has been definitely established that a member of a representative body does not satisfy one of the requirements for membership or has a position which is incompatible with membership, he or she shall cease to be a member". This section also applies if a councillor no longer meets the membership criteria, for example if he or she moves to another municipality or is disqualified from the franchise (owing to a a guardianship order or disqualification as a secondary penalty). The councillor is required to inform the council personally that his or her membership has ended and state the reasons. If he or she fails to do so, the municipal executive may serve a written warning on him or her. The councillor may submit this warning to the council for its opinion.

[15] In Dutch: *Kieswet*.

In the event of a warning, the councillor may be suspended by the municipal executive. The executive then refers the matter for decision to the council at its next meeting. The council may declare that the councillor's membership is terminated, provided that it has given the councillor the opportunity to defend him or herself orally. The council may also terminate the suspension. The operation of a decision to declare membership terminated is suspended until the period for appeal has elapsed or, if an appeal has been instituted, until a decision has been taken on the appeal.

A municipal councillor may resign at any time. To do so, he or she gives written notice to the mayor. Resignation with retrospective effect is not possible. Once a resignation has been submitted, it cannot be retracted. There are no specific activities that a municipal councillor may not perform after the end of his or her term of office.

A municipal councillor may be a member of a provincial council or a member of Parliament at the same time.

5.3. Working conditions

The volume of work entailed by membership of the council varies greatly from council to council. Being a councillor in a large municipality generally entails more work than in a small one. The number of council meetings varies. Under the Municipalities Act, the council meets as often as it wishes. There is no statutory minimum or maximum. In practice, the minimum is once a month and there are sometimes extra meetings in the budget period (the autumn). The frequency of the meetings increases with the size of the municipality: once every two or three weeks and sometimes even weekly.

Membership of the council is not a full-time position. The majority of councillors have jobs (which can be either as a public servant or with the private industry) in addition to their membership of the council. After they cease to be members, they do not receive assistance in finding other work. A public servant who becomes a member of the municipal executive (mostly a full-time post) remains a public servant. His or her office of executive member is regarded as a temporary discharge from his or her duties as a public servant. Whether an executive member who is not a public servant can return to his or her former job after the end of his or her term of office as an executive member depends on his or her contract of employment with his or her employer or on the collective agreement applicable in the sector concerned.

No training or information programme is provided by the authorities for councillors or prospective councillors. It is customary for political parties themselves to arrange for the training of their elected candidates.

Councillors who are public servants are allowed to take extraordinary leave in order to attend council meetings and perform activities resulting from their councillorship. The financial allowance that they receive for this purpose is deducted from their salary. This deduction may not exceed the amount that the councillor is deemed to have received as fixed remuneration for the period corresponding to the leave from the occupation in question (section 125c, subsection 2, of the Central and Local Government Personnel Act[16] and article 33a of the General Civil Service Regulations[17]).

Councillors who are not public servants but have a contract of employment are entitled to unpaid leave to attend council or committee meetings (book 7, article 643 of the Civil Code[18]).

[16] In Dutch: *Ambtenarenwet.*
[17] In Dutch: *Algemeen Rijksambtenarenreglement (ARAR).*
[18] In Dutch: *Burgerlijk Wetboek (BW).*

5.4. Remuneration

Councillors receive an 'allowance' and a 'contribution towards their expenses'. The amount is determined by a council bylaw, but councils are subject to maximums determined by order in council.[19]

Salaries tax is deducted from the allowances received by councillors. For tax purposes, the allowance is treated as earned income. Tax and social security contributions are deducted from the allowance at source. No special pension scheme exists for councillors. Municipalities usually arrange a group insurance policy for their councillors with a pension insurer (under article 10 of the Decree of 22 March 1994 governing the legal status of councillors and committee members[20]). For this purpose, councils may stipulate in a bylaw that the municipal executive will conclude one or more collective insurance policies for the councillors, providing for the accrual of retirement pensions and financial provision in case of disability or death.

In addition, and pursuant to Article 9 from the same decree, the municipal council can stipulate in a bylaw that a member of the council will receive an allowance throughout a period not exceeding two years with effect from the date of his or her retirement. In the first year, the allowance will amount to no more than 80% of the remuneration paid for work, and in the second year to no more than 70% of that remuneration. In all cases, the allowance terminates once the person concerned reaches the age of 65. Within the aforementioned confines of the aforementioned decree, the making of such arrangements comes under a local authority's own responsibilities. In other words, there are no national and statutory prescriptions for pension and social security provisions with regard to municipal councillors.

The Netherlands has made a reservation for Article 7, paragraph 2, of the European Charter of Local Self-Government given that Dutch legislation does not include any mandatory social security provisions for municipal councillors. The Charter states specifically that appropriate provisions should be in place for elected local representatives. These appropriate provisions must also include social security provisions in such cases as arise.

5.5. Representation of the sexes

Although the position of the government since 1992 has been that there should be more women in politics and public administration, women are still under-represented.

5.5.1. Municipalities

After the introduction of votes for women in 1919, it took a long time before the proportion of women in municipal councils exceeded 5%. In 1962, they were still only 4.3% of the municipal councillors. Since then, the proportion of women municipal councillors has grown rapidly. It rose especially steeply between 1970 and 1990: from 7.2% to 21.6%. The growth then flattened out. Between 1994 and 1998, there was even a slight fall in the proportion of women councillors. But the trend has turned up again in recent years: in 2006 26% of municipal councillors are women.

[19] Order in council is an instrument of secondary legislation by central government. In Dutch: *algemene maatregel van bestuur (amvb).*
[20] In Dutch: *Rechtspositiebesluit raads- en commissieleden.*

Percentage of women municipal councillors

Year	%	Year	%
1962	4	1994	22
1966	5	1997	20
1970	7	1998	22
1978	13	2002	23
1982	16	2004	24
1986	19	2006	26
1990	22		

Source: Ministry of the Interior, State of Local Government 2006 (Table 1.6)

For the ratio of men to women in mayoral posts, see section 3.3.3. For the ratio of men to women in municipal executives, see section 3.2.2.

5.5.2. Provinces

The ratio of men to women has remained stable in recent decades: around 30% of current provincial councillors are women.

Ratio of men to women provincial councillors by province

	1999				2007			
Province	**seats**		**percentage**		**seats**		**percentage**	
	M	**F**	**M%**	**F%**	**M**	**F**	**M%**	**F%**
Groningen	37	18	67	33	29	14	67	33
Fryslân	39	16	71	29	25	18	58	42
Drenthe	34	17	67	33	28	13	68	32
Overijssel	48	15	76	24	31	16	66	34
Flevoland	35	12	74	26	28	11	72	28
Gelderland	54	20	73	27	32	21	60	40
Utrecht	41	22	65	35	26	21	55	45
North Holland	52	27	66	34	34	21	62	38
South Holland	54	29	65	35	38	17	69	31
Zeeland	34	11	76	24	27	12	69	31
North Brabant	56	23	71	29	30	25	55	45
Limburg	48	15	76	24	33	14	70	30
Total	**532**	**225**	**70**	**30**	**361**	**203**	**64**	**36**

Sources:
For 1999: Ministry of the Interior, State of Local Government 2006 (Table 2.5)
For 2007: Provincial websites - Position on 1 August 2007

For the ratio of men to women in Queen's Commissioner's posts, see section 3.7.1. For the ratio of men to women in provincial executives, see section 3.6.3.

6. DISTRIBUTION OF POWERS BETWEEN THE VARIOUS CATEGORIES OF LOCAL AND REGIONAL AUTHORITIES

6.1. Principles governing the distribution of powers

Article 124, paragraph 1 of the Constitution states: “The powers of provinces and municipalities to regulate and administer their own internal affairs shall be delegated to their administrative organs”. Paragraph 2 states: “Provincial and municipal administrative organs may be required by or pursuant to an Act of Parliament to provide regulation and administration”. Similar provisions are contained in the Provinces Act and the Municipalities Act.

Paragraph 1 concerns the autonomous powers of provinces and municipalities, i.e. the general powers to adopt general rules (bylaws) and perform the administrative acts that the provincial or municipal administration considers necessary for the community concerned and that do not result from higher law. The majority of autonomous powers are vested in provincial and municipal councils under the Provinces Act and the Municipalities Act respectively. However, some autonomous powers are also exercised by other administrative bodies. For example, mayors are responsible for maintaining public order.

Paragraph 2 refers to the duties and powers of provinces and municipalities entailed by joint government. This concerns regulation and administration required pursuant to Acts of Parliament other than the Provinces Act or the Municipalities Act. The joint government duties and powers are divided among all three bodies of provincial and municipal government. Powers to make bylaws or to adopt plans are generally vested in provincial or municipal councils.

6.2. Powers of local and regional authorities in their own right

See table on pages 31, 32 and 33.

When powers in a particular sector of government exist at more than one level, responsibilities are usually divided as follows:

- central government is usually responsible for legislation and funding in the sector concerned; in other instances central government is responsible for quality;
- the province is usually responsible for co-ordinating the activities of municipalities or planning activities in the sector concerned; sometimes the province itself is responsible for exercising a power;
- the municipality is usually responsible for exercising powers in the sector concerned.

6.3. Participation of local/regional authorities in national, economic and spatial planning

Central government alone is responsible for national economic policy. Municipalities and provinces have no influence in this policy field.

With regard to spatial planning, central government, the provinces and the municipalities, each have their own role. The present Spatial Planning Act[21] originated in 1965 and has been revised many times since then. Consequently, the act has become overly complex. Work commenced on drafting a new Spatial Planning Act in 1999. A new Spatial Planning Bill was adopted in 2006, and is expected to come into effect on 1 July 2008.

Once implemented, it will simplify and accelerate procedures, including appeals. It will also lead to stricter enforcement, by improving supervisory and enforcement powers, expanding the instruments available, linking planning to criminal law, and introducing the power to intervene if municipalities perform their duties inadequately. The changes are expected to be carried out in 2008, once the new act has come into effect.

Once implemented, the new act is intended to make the responsibilities of each level of government clearer. In addition, the intention is for municipal land-use plans to be brought up-to-date, and from then on municipalities will have to supervise spatial developments (enforcement). Finally, the act must be more accessible, legible and thus simpler.

Central government, provinces and municipalities will later be drafting a structure plan. This is a strategic policy document on spatial developments in a particular area. Policy objectives from the structure plan will be realised in the land-use plan. In theory, a municipality will draft the land-use plan. Central government and the province can provide municipalities with general rules that municipalities will have to observe. If central government and the province feel that they should bear responsibility for a particular development or area, they can establish the land-use plan themselves.

The position of the land-use plan is reinforced by means of factors such as those that follow below:

- land-use plans will be mandatory for the entire territory of a municipality;
- the land-use plan procedure will be reduced from over a year to approximately 26 weeks;
- digitalisation of the land-use plan will be mandatory.

Enforcement is also to be improved. For example, a municipality will soon be able to impose a default fine and penalties or enforce an administrative order if this is what is required to combat activities conflicting with the land-use plan. Officials charged with enforcement will also be given more powers.

The aim of this new act is to create a coherent package of rules for spatial planning. The act provides a new system with which to make it possible to create and standardise policy for a sustainable environment. The new Spatial Planning Act contributes towards a simplification and acceleration of procedures and professional practice.

[21] In Dutch: *Wet ruimtelijke ordening* (*Wro*).

6.4. Tasks delegated to local or regional authorities acting as agents of the central authority

No tasks are delegated to local or regional authorities acting as agents of central government with the exception of Queen's Commissioners. Provincial and municipal authorities are often required to implement Acts of Parliament. Many of their powers impose a duty to co-operate in implementing what has been regulated by a higher authority. It should be noted, however, that provinces and municipalities have an element of discretion in such implementation.

The degree of policy freedom enjoyed by municipalities resulting from the introduction of central government legislation varies markedly according to the area of policy concerned. The objective of the Decentralisation Impetus set in motion by the government in 2007 is to increase such policy freedom. This has materialised in particular in the adjustments to financial arrangements and related accountability commitments. Specific purpose grants will be accommodated in the Municipalities Fund (see section 8.2.2).

6.5. Proposals leading to change in the distribution of powers

The Netherlands is a decentralised unitary state. This means that provinces and municipalities have relatively far-reaching powers with regard to their own internal affairs. The twelve provinces and 443 municipalities can cause difficulties for central government if they consider it necessary. The Association of Netherlands Municipalities (VNG) and the Association of Provincial Authorities (IPO) represent the interests of municipalities and provinces in relation to central government. The idea behind the decentralised unitary state is that it is the best way to safeguard the rights of the citizen. Conversely, it allows a certain measure of central government supervision of the affairs of local government.

There is a tradition in the Netherlands that the functions and powers of central government should be delegated as far as possible to the level closest to the citizen. As a result of the advent of the welfare state in the early 20th century, central government gradually assumed more and more functions and powers. In recent years, however, things have started to change. The present government is an advocate of decentralisation and strong municipalities. In practice, however, this position has not by any means always resulted in less central government interference in the affairs of provinces and municipalities.

The government taking office in 2007 has formulated the principle that it is desirable for only two levels of government to be involved in a policy area (and, therefore, not three). By incorporating duties, powers and responsibilities among fewer levels of government, the responsibilities of each party will be clarified and institutional complexity will be avoided. In the near future, attempts will be made in a number of policy areas to make adjustments to the existing administrative alignment, thus bringing them in line with this two-level principle of government.

Pursuant to the Decentralisation Impetus and the attempt to reduce institutional complexity, the policy objective is to reduce the administrative burden within the administrative column. Reducing the number of specific purpose grants, as well as streamlining sector-based supervision arrangements, and reducing the number of central government monitors, fits in with this objective.

The competences of local and regional authorities ***Netherlands***

Function	Competent authority			Type of competence				Exercise of the competence				Remarks
	Central Government	Intermediate	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	
Central administration												
Security, police	●		●		●	●		●		●	●	
Fire protection		●	●		●	●		●		●		
Civil protection	●		●		●	●		●		●		
Justice	●			●		●		●		●		
Civil status register			●	●		●		●		●	●	
Statistical office	●			●		●		●		●	●	
Electoral register	●			●		●		●		●	●	
Education												
Pre-school education	●		●		●	●		●		●		
Primary education	●		●		●	●		●		●		
Secondary education	●		●		●	●		●		●		
Vocational and technical	●		●		●	●		●		●		
Higher education	●			●		●		●		●		
Adult education			●		●	●		●		●		
Other												
Public health												
Hospitals	●		●		●	●		●		●		
Health protection	●		●		●	●		●		●		

The competences of local and regional authorities ***Netherlands***

Function	Competent authority			Type of competence				Exercise of the competence				Remarks
	Central Government	Intermediate	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	
Social welfare												
Kindergarten and nursery			●	●			●	●		●		
Family welfare services	●		●		●	●		●		●		
Welfare homes		●	●		●	●		●		●		
Social security	●		●		●	●		●		●		
Other												
Housing and town planning												
Housing	●	●	●		●	●		●		●		
Town planning	●	●	●		●	●		●		●		
Regional/spatial planning	●	●	●		●	●		●		●		
Environment, public sanitation												
Water & sewage	●	●	●		●	●		●		●		
Refuse collection & disposal		●	●		●	●		●		●		
Cemeteries & crematoria			●	●		●		●		●		
Slaughterhouses		●		●		●		●		●		
Environmental protection	●	●	●		●	●		●		●		
Consumer protection	●			●		●		●		●		
Culture, leisure & sports												
Theatres & concerts	●	●	●		●		●	●		●		
Museums & libraries	●	●	●		●		●	●		●		
Parks & open spaces	●	●	●		●		●	●		●		
Sports & leisure	●	●	●		●		●	●		●		

The competences of local and regional authorities ***Netherlands***

Function	Competent authority			Type of competence				Exercise of the competence				Remarks
	Central Government	Intermediate	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	
Religious facilities	●		●		●		●	●		●		
Other cultural facilities	●	●	●		●		●	●		●		
Traffic, transport												
Roads	●	●	●		●	●		●		●		
Transport	●	●	●		●	●		●		●		
Urban road transport		●	●		●	●		●		●		
Urban rail transport			●	●			●	●		●		
Ports	●	●	●		●	●	●	●		●		
Airports	●	●			●	●	●	●		●		
Other traffic & transport												
Economic services												
Gas	●	●	●		●	●	●	●		●		
District heating			●	●			●	●		●		
Water supply			●	●		●		●		●		
Agriculture, forests, fishing	●			●		●		●		●		
Electricity	●			●		●		●		●		
Economic promotion	●	●	●		●		●	●		●		
Trade & industry	●	●	●		●		●	●		●		
Tourism	●	●	●		●		●	●		●		
Other economic services	●	●	●		●		●	●		●		
Other functions												

7. CO-OPERATION AND OTHER TYPES OF LINKAGE BETWEEN LOCAL/REGIONAL AUTHORITIES

7.1. Institutionalised co-operation (consortia) for the performance of tasks of common interest

7.1.1. Legal framework

The statutory basis for co-operation between municipalities and provinces is the Joint Arrangements Act.[22]

In addition to this type of co-operation on the basis of public law, co-operation can also be on a private-law basis if such co-operation is considered particularly appropriate for promoting the public interest that it is meant to serve. The statutory basis for this type of co-operation is vested in the Municipalities Act and Provinces Act. Co-operation on a private-law basis can be done by means of creating or participating in a foundation, a company limited by shares,[23] a private company with limited liability[24] or an association, or else by concluding a contract or an administrative agreement.

With regard to the police force, the municipalities are divided into police regions having legal personality. This is a form of co-operation under the Police Act 1993, not under the Joint Arrangements Act.

For the purposes of contingency planning and crisis management, the Netherlands has been divided into 25 safety regions. The council of ministers submitted the legislative proposal regulating this – the Safety Regions Act – to parliament in July 2007.

7.1.2. Nature of consortia or joint authorities (voluntary/compulsory, single/multi-purpose, etc.)

Under the Joint Arrangements Act, municipalities, provinces, water boards, and other public bodies and legal entities may co-operate with one another. This generally takes place on a voluntary basis. However, if the executives of one or more municipalities request it and if required by a compelling public interest, a provincial executive may oblige municipalities to co-operate within the meaning of the Act. A minister, in consultation with the Minister of the Interior and Kingdom Relations, may also invite members of a provincial executive – or in an extreme case, instruct the municipalities concerned – to co-operate. Such obligatory co-operation is seldom the case.

Since 2006, the Joint Arrangements Act (*Wgr*) has also contained a chapter concerning co-operation in seven urban regions, operating as public bodies based on the Joint Arrangements Act. They are successors to the Framework Act areas that have existed since 1994. At the joint request of municipalities in such an area, new urban regions may also be established under the *Wgr* (see also section 2.3).

[22] In Dutch: *Wgr,* which is short for: *Wet gemeenschappelijke regelingen.*
[23] In Dutch: *NV,* which is short for*: naamloze vennootschap.*
[24] In Dutch: *BV*, which is short for: *besloten vennootschap*.

Co-operation between authorities on a private-law basis is always voluntary and arises on the initiative of the local authorities concerned. However, prior consent must be requested before initiating this type of co-operation. When a municipality or province decides to create or participate in a legal form governed by private law, approval is required for this from, respectively, the province or central government pursuant to the Municipalities Act and the Provinces Act. This approval can be withheld only if there is a conflict with the law or the public interest. In 2008, central government formally announced in a letter to Parliament, that it wishes to abolish the system of prior consent in the near future.

7.1.3. Purposes for which consortia or joint authorities are most often established

Co-operation under the Joint Arrangements Act generally involves the most far-reaching form of co-operation: the establishment of a public body (see section 7.1.4). The most common areas of co-operation under the Act are fire-fighting, disaster contingency plans, the provision of ambulance services, and social work. A typical small-scale scheme under the Act would be the establishment and operation of a district music school.

Central municipality arrangements are mainly established to perform special functions that can thus be carried out more effectively or cheaply. They include joint building and housing inspectorates and joint agencies for research and statistics.

Co-operation based on private law is employed for many purposes: ranging from economic development to effecting 'inter municipal shared services'.

Private-law and public-law co-operation between authorities, as well as with the business sector when necessary, also arises frequently. It has been estimated from a survey carried out in 2005 that, on average, a municipality participates in 27 types of co-operative arrangements: of these 13 are public and 14 private. Regarding this, it has emerged that the total number of co-operative arrangements in which a municipality participates is not dependent on a municipality's size.

7.1.4. Organisational forms, relations with member authorities, and operating methods

The Joint Arrangements Act provides for four different forms of co-operation between parties. The first and least far-reaching of these is an arrangement which is not a legal entity (the entity cannot therefore perform legal acts independently).[25] It is intended mainly to establish an administrative, not a legal link. The duties and powers of the participants are not transferred. To create joint policy, all the participants must be in agreement with one another. A characteristic of this first form of co-operation is the lack of engagement of the participants with one another. In practice, such arrangements mainly serve to record agreements that the participants wish to make with one another voluntarily. The agreements are usually intended to provide co-ordination and consultation on a limited number of subjects and are comparable to a covenant.

[25] In Dutch: *administratieve afspraak.*

The second type of arrangement involves the designation of central municipalities.[26] Once again, such arrangements do not involve the establishment of a legal entity. Instead, a single municipality – the central municipality – exercises the powers described in the joint arrangement on behalf of the other participants. The role of the central municipality can also be fulfilled by the province. The participants retain their existing powers. Only the exercise of the powers described in the arrangement is left to the central municipality or province.

The third type of arrangement involves the establishment of a joint agency.[27] Such a body has no legal personality. But with the consent of the participants, some duties and powers can be transferred to the joint agency. An arrangement of this kind must include provisions concerning the supply of information, accountability, and the approval of budgets and accounts. Such arrangements are not common in practice.

The fourth and last type of joint arrangement involves the establishment of a public body.[28] This form of co-operation, which is the most far-reaching of the variants under the Joint Arrangements Act, is also the most common. The public body is a legal entity and can therefore perform legal acts independently. In principle, all the duties and powers of the participants are transferred to the public body. Many safeguards are incorporated into the arrangement. They include the obligatory establishment of a general management board, an executive and a chairperson in accordance with the procedures of the Joint Arrangements Act. If a member of the general management board no longer enjoys the confidence of the participating organisations, he or she may be dismissed.

7.1.5. Other features

The policy of the present Government is designed to ensure that municipalities have sufficient administrative powers. The government is trying to achieve this primarily by means of municipal redivisions increasing the size of municipalities. This will enable various areas of co-operation under the Joint Arrangements Act to be 'dismantled' and more functions to be assigned or returned to the municipal authorities. The advantage is that municipal councils – as democratically elected bodies – will be directly involved in matters that were previously covered by an arrangement under the Joint Arrangements Act.

7.2. Associations of local and regional authorities at national level

The Dutch municipalities are united in the Association of Netherlands Municipalities (VNG)[29] and the Dutch provinces in the Association of Provincial Authorities (IPO).[30] Both are covered by the law of associations contained in the Civil Code. No separate statutory arrangements exist for them.

Under the Municipalities Act and the Provinces Act, the minister concerned (and, in the Municipalities Act, the provincial authority as well) is obliged to seek the opinion on draft legislation of the municipal or provincial authorities and the Associations that represent them. In addition, administrative agreements concluded by central government with the Associations contain rules regulating dealings between them.

[26] In Dutch: *centrumgemeente.*
[27] In Dutch: *gemeenschappelijk orgaan.*
[28] In Dutch: *openbaar lichaam*.
[29] In Dutch: *Vereniging van Nederlandse Gemeenten (VNG).*
[30] In Dutch: *Interprovinciaal Overleg (IPO).*

The VNG promotes the interests of all municipalities in other tiers of government. It has close contacts with the House of Representatives, the Government, and civil society organisations. It also advises its members proactively on current developments and makes recommendations at the request of individual members. The VNG performs a platform function via its committees, provincial branches, conferences, workshops, and consultations with members. VNG management and staff hold regular discussions with policy officers in ministries and provinces.

Protecting the members' interests extends to the decision-making process in central government and the provinces. The VNG initiates administrative consultations in which delegations of its executive officers and senior managers negotiate on behalf of the municipalities with ministers and state secretaries. Protecting its members' interests also extends to the House of Representatives, the Senate and major civil society organisations.

The Dutch provinces are united in the Association of Provincial Authorities (IPO). The IPO's objective is to improve the conditions in which the provinces operate and to promote innovative processes that coincide with societal developments. For this purpose, the IPO promotes the interests of the provinces vis-à-vis central government and Parliament, the EU, other tiers of government, and civil society organisations. It aims to offer a platform to the provinces to exchange knowledge and experience, decide on joint standpoints, and develop new initiatives.

The Dutch water boards are united in the Association of Water Boards (UvW),[31] which promotes the interest of the water boards, at national and international level, in effective water management within the water board system. The UvW represents the water boards in relations with Parliament, central government, and organisations such as the IPO and the VNG. It takes part in the deliberations of many consultative and advisory bodies and helps develop central government policy, legislation, and policy documents on water management. It also takes the initiative to put subjects on the political agenda.

7.3. Co-operation between local/regional authorities at international level

International co-operation between local and regional authorities and those in other countries is becoming increasingly commonplace. This is happening for various reasons:

- idealism (development co-operation, humanitarian aid, solidarity, contributions to democratic local government in foreign countries, European citizenship, etc.);
- economics (economic co-operation and city marketing);
- administrative management and performance (the exchange of information and experience concerning local/regional governance; co-operation within Euregions);
- the promotion of social cohesion (including integration) within municipalities;
- sustainable development within municipalities and across borders.

[31] In Dutch: *Unie van Waterschappen (UvW).*

Municipalities active in municipal international co-operation

Municipality size (in terms of population)	**Yes (%)**	**No (%)**
Under 10 000	58	42
10 000-20 000	62	38
20 000-50 000	74	26
50 000-100 000	96	4
Over 100 000	100	0
Total	**72**	**28**

Source: Ministry of the Interior, State of Local Government 2006 (Table 4.1)

The focus of central government policy is to enable municipalities and provinces to work in close co-operation with other local and regional authorities in Germany and Belgium in border areas. For that reason, the Netherlands has concluded agreements to facilitate that co-operation with Germany and the other two Benelux countries (see sections 7.3.1-7.3.3).

Additionally, Dutch policy also focuses on facilitating co-operation at the local and regional level beyond its own border areas. Consequently, the Netherlands is a party to the Council of Europe's three conventions that make this possible: the Madrid Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and the two related protocols (CETS 106, 159 and 169).

7.3.1. Cross-border co-operation

An important and special form of international co-operation is that between local and regional authorities in border areas. Municipalities and provinces engage in this type of co-operation in order to promote local development and the quality of life of their citizens. The policy fields in which co-operation takes place are very diverse: from employment, education, transport, and recreation to tourism, waste processing, and the environment. Co-operation often manifests itself in agreements between municipalities and provinces and their counterparts across the border.

A special part is being played by Euregions, which enable consultation and harmonisation of policy between their Dutch and German and/or Belgian members. They also provide information and advice to citizens and businesses. The Euregions also support cross-border projects under EU structural funds (such as INTERREG and, from 2007, the Objective 3 programmes). Euregions are now operational from the most northerly point of the Dutch border with Germany to where the border with Belgium meets the sea. Individual municipalities either side of the border also co-operate in such public bodies as Eurode (linking the Dutch municipality of Kerkrade with its German counterpart Herzogenrath) and Baarle (linking the Dutch municipality of Baarle-Nassau with its Belgian counterpart Baarle-Hertog).

7.3.2. The Anholt Treaty (1991)

Dutch provinces and municipalities co-operate with German partners in various legal forms. An important legal basis for Dutch-German co-operation is the Anholt Treaty, an agreement between the Kingdom of the Netherlands, the Federal Republic of Germany, and the German federal states of Lower Saxony and North Rhine-Westphalia. The Treaty was concluded in Isselburg-Anholt in 1991, and came into force in 1993. It enables local and regional authorities to co-operate on a public law basis. The Anholt Treaty provides for three forms of inter-municipal and inter-regional co-operation: the administrative agreement, the joint body, and the public body. The Anholt Treaty also makes it possible for non-governmental organisations to take part in the activities of cross-border public bodies.

Regions and municipalities also co-operate across the border under the Border Treaty between the Netherlands and Germany 1960 and via private legal entities, such as a non-profit organisation (*stichting*).

7.3.3. The Benelux Convention (1986)

Most co-operative ties between Dutch and Belgian local authorities – unlike those between Dutch and German ones – have their origin in the Benelux Convention, which also provides for three forms of cross-border co-operation on a public law basis between territorial co-operative organisations or authorities. The Benelux Convention was signed in 1986 and came into force in 1991. The Benelux Convention does not provide for private organisations belonging to cross-border public bodies.

7.3.4. Cross-border co-operation in the Maastricht-Hasselt-Liège-Eupen-Aachen area

No international agreement yet exists to provide for public law co-operation between local and regional authorities in all three countries – the Netherlands, Belgium, and Germany, but there is a private law co-operative body linking the three countries: the Maas-Rhine Euregion.

7.3.5. The EGTC Regulation (2006)

Another instrument providing for such co-operation is the EU Regulation establishing the European Grouping of Territorial Co-operation (EGTC) (no. 1082/2006), which came into force on 1 August 2006. This regulation gives the EU member states one year to take enabling measures for its effective application. A Community instrument for trans-European co-operation, it may be used by local and regional authorities to implement Objective Three ‘European territorial co-operation’ arrangements during the 2007-2013 European programming period. Given the regulation’s administrative and legal complexity, the Netherlands considers the Anholt Treaty and the Benelux Convention as less complex legal instruments aimed at facilitating in a more simple way cross-border and inter-regional co-operation of sub-national authorities in the Netherlands with the equivalent authorities in Germany or in Belgium and Luxembourg.

8. FINANCE

By far the largest part of the income of municipal and most of the provincial authorities comes from central government in the form of general and specific grants. These cash flows are included in central government's national and economic plans.

The revenues of local and regional authorities consist of:

- income from authorities' own taxes and charges;
- income from the Municipalities Fund or the Provinces Fund;
- income from specific grants from central government.

In 2006, the revenues of Dutch municipalities were as follows (broken down into the above sources of income):

Total income for municipalities by source of income

Source of income	In millions of euros	Percentage of total
Property tax	2 563	8.0
Other taxes and charges	3 969	12.3
Municipalities Fund	13 458	41.9
Specific grants	12 143	37.8
Total	**32 133**	**100.0**

The figures for the provinces in 2006 were as follows:

Total income for provinces by source of income

Source of income	In millions of euros	Percentage of total
Taxes and charges	1 132	30.4
Provinces Fund	1 084	29.1
Specific grants	1 505	40.5
Total	**3 721**	**100.0**

Source: see tables below in this chapter

8.1. Taxes

8.1.1. Local and regional authorities' own taxes

Municipalities levy all municipal taxes, the total proceeds of which accrue to the municipality.

Municipal taxes in 2006

	In millions of euros	Percentage of total
Property (real estate) tax [32]	2 563	78.6
Parking tax	416	12.7
Tourist tax	110	3.4
Tax on encroachments over public land [33]	83	2.5
Other municipal taxes	90	2.8
Total	**3 262**	**100.0**

Source: Statistics Netherlands 2007 (CBS), Opbrengsten gemeentelijke heffingen stijgen met bijna 7 procent

[32] In Dutch: *Onroerende zaakbelasting (ozb)*.
[33] In Dutch: *Precariobelasting*.

Provinces levy provincial taxes, the total revenues from which accrue to the province.

Provincial taxes in 2006

	In millions of euros	Percentage of total
Surcharge on motor vehicle tax	1 119	98.9
Groundwater tax	13	1.1
Total	**1 132**	**100.0**

Source: Annexe Ministry of Interior budget 2007

Water boards may also collect their own levies. The total income from these levies accrues to the boards themselves. Unlike in the case of municipalities and provinces, no provision has been made for a financial relationship with central government (see also paragraph 8.2). The water boards are therefore entirely dependent financially on the proceeds of their levies.

Water board levies in 2006

	In millions of euros	Percentage of total
Levies on water pollution	1 226	60.4
Apportionment levies (built-up and non-built up area)	803	39.6
Total	**2 029**	**100.0**

Source: Annexe Ministry of Interior budget 2007

8.1.2. Taxes levied by addition to national taxes

The provinces levy a surcharge on the motor vehicle tax collected by central government (see table in section 8.1.1).

Municipalities and water boards are not allowed to levy any surchages on taxes or fees collected by central government.

8.1.3. Decision on taxes

Provinces and municipalities cannot introduce new taxes on their own initiative. The provincial and municipal taxes that may be levied are listed exhaustively in Acts of Parliament, especially in the Provinces Act and the Municipalities Act. Under these Acts, the provinces and municipalities themselves decide which of the permitted taxes they will levy and how high the rates will be, within the limits fixed by the law.

Municipalities lay down the rates of the taxes they levy in tax bylaws. The amount a taxpayer pays shall not depend onhis or her income, profits or assets. In the case of the main municipal tax – the property tax – the municipality sets the rate for every € 2 500 of a property's value.

A bill was introduced in 2007 with a view to abolishing the limit on the annual rise in property tax as from 2008. The system of limiting the property tax had targeted individual municipalities. The government and the Association of Netherlands Municipalities (VNG) were in agreement that abolition of the limit should not be allowed to result in a disproportionate increase in the collective tax burden. In the event that the macro-standard is exceeded, central government can intervene by means of correcting the volume of the Municipalities Fund. This arrangement is to be evaluated in 2010. In addition, the government and the Association of Netherlands Municipalities (VNG) have agreed to

continue consultations on possible changes to the type of taxes that may be levied at local level.

The maximum rate that provinces may charge as a surcharge on motor vehicle tax is fixed annually by central government.

8.2. Grants from higher authorities

8.2.1. List of grants allocated by higher authorities

Each year, municipalities and provinces receive a given amount in the form of a general grant from the Municipalities and Provinces Funds respectively. The general grant is the main channel of funding for local and provincial authorities. There are no restrictions on what it can be spent on. In other words, central government makes the general grant available without imposing conditions on the recipient authorities. This is not the case with specific grants, which municipalities and provinces receive for specific purposes.

General and specific grants to municipalities and provinces

	In millions of euros		Percentage of total
	2005	2006	2006
General grant			
* Municipalities Fund	11 899	13 458	52.6
* Provinces Fund	998	1 084	41.9
Specific grants			
* to municipalities	15 240	12 143	47.4
* to provinces	1 508	1 505	58.1
* to Joint Arrangement Act areas[34] (including *plusregio's*; see section 2.3 of this report)	1 507	1 482	100.0
Total			
* from central government to municipalities	27 139	25 601	100.0
* from central government to provinces	2 506	2 589	100.0

Sources:
General grants: Parliamentary Documents, 2006-2007, 31 031 B, nr. 1, pp. 12-14 (overview 2002-2006)
Specific grants: Ministry of the Interior, Overview of specific grants 2007 (Table 4.3)

8.2.2. Grants conditioned by financial participation of the local/regional authorities

Specific grants are the largest source of income for provinces. Until 2006, specific grants were also the largest source of income for municipalities. Cutbacks have caused a drastic reduction in the number of specific grants, from 514 in 1983 to 134 in 2006. The main specific grants are for the fulfilment of statutory duties in relation to social assistance, education, urban regeneration, and sheltered employment.

In line with this trend, the number of specific grants has continued to decline since 2006. From 2007 to 2008, the number of specific grants decreased by 33. Consequently, only 101 still remain and the aim is to retain no more than 45 specific grants by the end of the government's term of office (2011). This substantial reduction in the number of specific grants forms part of the government's objectives to widen the scope for municipal and provincial policymaking freedom and to reduce the administrative burden. Other significant contributions to those objectives are the introduction of a new system of accountability and the reduction of and creation of uniformity in the rules and conditions for specific grants.

[34] In Dutch: Wgr-gebieden en Wgr+-regio's.

Since 2007, the introduction of the system of accountability according to the principle of 'single information and single audit' has applied to virtually all of the specific grants. Single information and single audit is a simplified system of accountability and auditing for specific grants that is linked to the decentralised authorities' own regular annual accounts cycle. This means that there are no longer any separate accounting and auditors' reports for each specific grant. The (audited) annual accounts of provincial or local authorities are sufficient. The introduction in 2006 of the single information and single audit has met with favourable reports. The system has been put in place and appears to operate well.

8.2.3. Decision on grants

The existing Grants to Local Government Act[35] came into force on 1 January 1997. Section 2 states: "If the policy intentions of central government lead to a change in the exercise of tasks or activities by provinces or municipalities, the financial consequences of this change for the provinces or municipalities will be substantiated and supported with quantitative information in a separate part of the accompanying explanatory note". In the explanatory note, central government must also indicate the funding method by which the provinces or municipalities can absorb the financial consequences. On the above issues, timely consultations must take place with the Minister of the Interior and Kingdom Relations and the Minister of Finance. The same procedure applies to policy intentions of the European Union. The EU Services Directive, for instance, was also reviewed between central government and local and provincial authorities in the light of section 2 of the Grants to Local Government Act.

The Grants to Local Government Act and the accompanying orders provide rules for the current system of apportioning the general grant. The system of apportionment is based on two principles: it must take into account differences in the costs incurred by municipalities and provinces. In addition, attention is to be paid to the taxation capacity of local authorities, any regional centre function as fulfilled by some municipalities and the social and financial structure of municipalities in particular. If a municipality is structurally unable to budget for its expenditure, it may obtain an additional grant for a limited period of time subject to certain conditions. Such a temporary additional grant is paid only if the general resources of the municipality are significantly and permanently lower than the level needed to meet its needs, and if the municipality's own income is at a reasonable level.

Municipalities that receive a temporary additional grant are placed under the preventive supervision of central government. They are required to make an effort to improve their financial position (see also section 8.6).

The apportionment criteria may be altered by an order in council (an instrument of secondary legislation by central government) on the basis of the provisions of the Grants to Local Government Act. Under current legislation, alterations to the apportionment criteria do not have to be regulated by means of legislation, which is sometimes a protracted procedure. They may be altered by an order in council (an instrument of secondary legislation by central government) pursuant to the provisions in the Grants to Local Government Act. This enables developments requiring alterations to the apportionment criteria to be taken into account quickly and effectively.

[35] In Dutch: *Financiële-verhoudingswet.*

8.3. Arrangements for financial equalisation

The effect of the Grants to Local Government Act is to apportion the general grant among municipalities and provinces as fairly as possible. Allowance is made for various apportionment criteria, such as taxation capacity, population, land area, and built-up area. Municipalities and provinces have a large degree of autonomy in relation to their own income. The income that the municipalities receive from levying their own taxes and charges accounts for only a small part of the total amount of their income. Municipal autonomy does mean that the burden of local taxation on individuals and businesses varies from one municipality to another.

8.4. Other sources of income

8.4.1. Fees and charges paid by users of local/regional authority services

The difference between taxes and charges is that taxes do not involve any direct service by the authority in exchange for payment. The proceeds of taxes accrue to the general resources of the authority concerned, whereas charges are levied as a payment for the provision of a particular service.

Municipal charges in 2006

	In millions of euros	Percentage of total
Refuse collection charges [36]	1 652	50.5
Sewerage charges [37]	1 006	30.8
Building fees [38]	406	12.4
Administrative fees [39]	206	6.3
Total	**3 270**	**100.0**

Source: Statistics Netherlands 2007 (CBS), Opbrengsten gemeentelijke heffingen stijgen met bijna 7 procent

As to the amount of charges, the estimated revenues may not exceed the estimated expenditure.

8.4.2. Rent etc.

Local authorities may also possess land, securities, and other capital. The income from such capital ('other own resources') may be rent, interest, dividend, or interest imputed on account of the use of that capital. The amounts received by the provinces may fluctuate from year to year.

[36] In Dutch: *Reinigingsheffingen.*
[37] In Dutch: *Rioolrechten.*
[38] In Dutch: *Leges voor bouwvergunningen.*
[39] In Dutch: *Secretarieleges.*

Overview of local authorities' income from 'other own resources'

Year	(amounts x € 1 000)
1997	119 220
1998	93 975
1999	91 266
2000	143 259
2001	303 548
2002	239 427
2003	241 016
2004	366 770

Source: Ministry of Finance, (Annual) Monitoring of revenues from local taxation, 1998-2005

8.4.3. Other

In addition to taxes and charges, local authorities may also levy payment for the use of public facilities. These include charges for cultural facilities (museums), sports facilities, outdoor recreational facilities (campsites), and social services (childcare). Local and regional authorities often also own businesses that produce goods and deliver services for which individuals and businesses pay. Examples include municipal utility companies and provincial electricity companies. Insofar as these businesses make a profit, they are a source of income for the authorities concerned.

8.5. Borrowing

For microeconomic reasons, central government aims to control levels of floating debt (i.e. debt with a maturity of less than one year) per municipality. Limiting the extent of such debt is one of the objectives of the Local Government Finance Act of 14 December 2000.[40]

Excessive floating debt can cause refinancing problems. The Act contains rules governing financing for municipalities, provinces, water boards and joint arrangements. If the net floating debt of a local authority exceeds its short-term borrowing limit, it may not take decisions to budget for new capital expenditure. The short-term borrowing limit restricts the interest rate risk of short-term loans for municipalities and provinces. In addition, there is also a statutory standard for fixed loans for one year or longer, referred to as the interest rate risk standard. The purpose of this standard is to restrict the interest rate risk of fixed loans for one year or longer and to accomplish this by means of spreading the refinancing of loans and interest rate reviews over several years.

In 2004, the provinces owed a total of € 0.5 billion in outstanding long-term loans, and the municipalities a total of € 28.8 billion.

[40] In Dutch: *Wet financiering decentrale overheden (Wet Fido).*

Local authorities may borrow on the money and capital markets and from institutional investors (e.g. pension funds) and banks. The Netherlands Municipalities Bank[41] is specially geared to the municipalities, and there is a similar bank for water boards, the *Nederlandse Waterschapsbank*.

8.6. Financial control exercised by higher authorities

The budget of income and expenditure of municipalities and provinces must be set out in accordance with the rules prescribed by the Minister of the Interior and Kingdom Relations. These rules are contained in the Provinces and Municipalities (Budgets and Accounts) Decree of 17January 2003.[42]

The Municipalities Act and the Provinces Act contain rules governing the financial supervision of provinces and municipalities. The Provincial Executive of each of the twelve provinces functions as supervisor for the municipalities within its own province. The provinces themselves come under the financial supervision of the Minister of the Interior and Kingdom Relations. Until 1994, the financial supervision of municipalities was of a preventive nature, taking the form of prior scrutiny. In principle, it has been replaced by a system of retrospective supervision. In addition, supervision is also aimed at assisting municipalities and provinces to stay solvent.

The idea behind this setup is to promote a healthy financial situation within provinces and municipalities, in other words a situation in which a municipality is always able to survive without recourse to a supplementary grant from the Municipalities Fund. The present financial supervision philosophy has operated in this form since 1994, on the basis that municipalities and/or provinces are skilled and capable enough to take responsibility in ensuring a healthy financial policy. Additional principles include ‘proceeding on a basis of trust, but staying alert to financial problems’ and ‘checks on information quality’. As the financial supervision is now exercised retrospectively, the municipal or provincial budget no longer requires the supervisor’s approval. Retrospective supervision is the rule, preventive supervision is the exception.

Preventive supervision must, however, be applied, if a budget deficit for the year ‘t’ is of such volume that, according to the long-range forecast, it is no longer conceivable to the supervisor that a financial balance can be achieved again within the period to which the forecast applies (t+3). In such situation, a municipality may be eligible for an additional grant from the Municipalities Fund. If one municipality receives such a temporary supplementary grant, it means fewer financial resources for the other municipalities. Supplementary grants to municipalities are provided for in section 12 of the Grants to Local Government Act.[43] Whenever municipalities receive a temporary additional grant from the Munipalities Fund, the Minister of the Interior and Kingdom Relations and the Minister of Finance can prescribe precise rules of preventive financial supervision (see also section 8.2.3).

For that reason, the Netherlands has made a reservation to Article 9, paragraph 5, of the European Charter of Local Self-Government. The fact is that, although Article 12 of the Grants to Local Government Act contains a provision to grant temporary, supplementary financial support to municipalities at the expense of the other municipalities, this goes hand-in-hand with the possibility of also temporarily tightening supervision, which would restrict municipalities’ freedom of action.

[41] In Dutch: *Bank Nederlandse Gemeenten (BNG)*
[42] In Dutch: *Besluit begroting en verantwoording provincies en gemeenten (BBV).*
[43] There is at present no statutory provision for supplementary grants to provinces.

Section 12 of the Grants to Local Government Act is in line with the Charter from a material point of view, because the aim of increased supervision is to ease the municipality concerned out of its financial difficulties, thus also guaranteeing the interests of the other municipalities. While the possibility of additional supervision, coupled with financial support, conflicts with the letter of Article 9, paragraph 5, of the Charter, it is in the interest of all municipalities to operate with such a financial safety net.

In addition to imperative financial supervision, optional financial supervision is possible in the event of a failure to comply with the statutory submission periods for the budget and accounts to the supervisor and/or an account deficit.

9. CONTROLS OVER LOCAL/REGIONAL AUTHORITIES

9.1. Authorities responsible for general administrative supervision

Article 132 of the Constitution stipulates that supervision of the administrative organs of provinces and municipalities must be regulated by Act of Parliament. Only in cases specified by or pursuant to an Act of Parliament may decisions of an administrative organ be subject to prior scrutiny. This is because prior scrutiny is a major infringement of the autonomy of local and regional authorities. Supervision of municipal or provincial authorities may be exercised by a minister and the Government. Municipal authorities may also be supervised by the provincial executive. But this is possible only where a statutory regulation makes provision for it. Provincial authorities have no inherent power over municipal authorities.

The main purpose of supervision is to monitor the uniformity of regulation and administration. But the watchword is restraint. It is necessary to strike a balance between the interests of autonomous municipal and provincial government on the one hand and the interests of uniformity of regulation and administration at national and provincial level on the other.

The Netherlands is of the opinion that the existing supervision system must remain in force, whereby the appropriateness of local authorities' actions in areas of autonomy can also be assessed. However, Article 8, paragraph 2, of the Charter allows for such an assessment only with regard to duties that have been delegated to local authorities to exercise. The Netherlands endorses this in principle. The government, therefore, approaches the means for assessing the appropriateness of autonomous powers with the utmost reticence. Nevertheless, it may be that this proves desirable in exceptional cases and, therefore, the Netherlands has made a reservation to this provision in the Charter, because it has been worded in too stringent a manner in respect of the Dutch situation.

9.2. Measures of administrative supervision

If a decision of a provincial or municipal authority is unlawful or against the public interest, the Government may quash the decision by Royal Decree. While the Government is examining whether to quash a decision by a provincial or municipal authority, it may suspend that decision. The suspension is ordered by Royal Decree. The Government's power to suspend and quash decisions is of a general nature, because it may be exercised in all policy fields.

In addition to this generic administrative supervision, there are also types of specific administrative supervision for which provision is made in acts other than the Municipalities Act and the Provinces Act. Since this specific supervision signifies a(n) (excessively) far-reaching effect on the execution of duties by sub-national levels of government, policy has focussed on driving back this specific administrative supervision. The intention behind the slimming down of specific supervision is to do greater justice to the principle that local and regional authorities are permitted to have, and must have, a certain freedom of action in the execution of their duties and that that freedom may not be restricted by specific interventions from central government.

Municipal and provincial budgets may be subject to the approval of the provincial executive and the Minister of the Interior and Kingdom Relations respectively (see section 8.6 for further details). Approval requirements are also contained in acts other than the Municipalities Act and the Provinces Act, such as the Joint Arrangements Act (for most joint arrangements) and the Spatial Planning Act (under which local plans adopted by municipal councils require the approval of the provincial executive). The power of approval must be contained in the relevant legislation. It is not of a general nature.

If the deliberative body of a municipality or province fails to take certain decisions that it is obliged to take by law (nonfeasance), 'positive supervision' is exercised in the first instance by the executive of that municipality or province. A given course of action may be imposed 'from above' by means of instructions. If a municipal or provincial executive fails to take certain measures, the Minister of the Interior and Kingdom Relations may do so.

9.3. Measures of administrative co-operation in order to comply with EU law

Vis-à-vis the European Commission, the Netherlands as an EU member state – in practice its central government – is responsible for ensuring that not only the State but also all sub-national levels of government and all bodies governed by public law comply with EU law. In practice, within the Netherlands, municipalities, provinces, and water boards are themselves responsible for ensuring that their activities comply with EU law. The same is true for bodies governed by public law, for associations formed by one or several such authorities or one or several such bodies governed by public law.

In order to ensure that all such authorities and bodies governed by public law, as well as their associations, fulfil this obligation, the Minister of the Interior and Kingdom Relations is currently (i.e. 2008) preparing a European Legislation Compliance Bill targeted at sub-national authorities and public-law bodies,[44] containing a number of supervisory instruments such as the special instruction and a right of recovery. It should be noted that the following categories also fall within the scope of the legislative proposal: the bodies governed by public law, within the meaning of the EU Procurement Directive 2004/18/EC, as well as associations formed by one or several sub-national authorities or several such bodies governed by public law.

Subject to the agreement with the minister concerned at all times, these supervisory instruments can be applied only on sub-national authorities or the above-mentioned categories if the central government policy instruments, such as the obligation to provide information and to consult at official and executive level, have not resulted in complying with EU law. These measures can be implemented only once there has been a failure to comply correctly with implementation of the instruments to provide information, special instructions and to consult (at official and executive level). This procedure guarantees proper interadministrative relationships.

[44] In Dutch: *Wet NErmo,* which is short for: *Wet Naleving Europese regelgeving medeoverheden.*

The European Legislation Compliance Act for sub-national authorities and public-law bodies will contain the following instruments:

- the power of the minister responsible to give special instructions to a government body if a national or European court, or the European Commission, should establish that a Dutch government body has violated EU law;
- a right of recovery, whereby central government can recover from administrative authorities any lump sum or penalty payment payable under article 228 of the EC Treaty should central government be held liable for the failure by such authorities to fulfil or to fulfil correctly an obligation under EU law;
- the power to issue an instruction to report the intended State Aid to the European Commission if the European Commission has provided a reason for this.

In order to provide publicly accessible information on EU law, the Ministry of the Interior and Kingdom Relations, the Association of Netherlands Municipalities (VNG), the Association of Provincial Authorities (IPO), and the Association of Water Boards (UvW) have established the Europe and Local Government Knowledge Centre.[45]

In addition, the State Aid Co-ordination Centre (belonging to the Ministry of the Interior and Kingdom Relations) conveys provincial and municipal reports and notifications of central government support to the European Commission. This complies with article 87 of the EC Treaty. The number of such reports and notifications in recent years (ten in 2003, 18 in 2004, and 35 in 2005) indicates that local government is becoming increasingly familiar with the EU's legislation on state aid.

Finally, the umbrella organisations VNG, the IPO and the UvW can take part in interministerial discussions on EU affairs. Headed by the Ministry of the Interior and Kingdom Relations, officials of ministries and these umbrella organisations hold monthly European consultations on internal governance.

9.4. Remedies for local/regional authorities against the improper exercise of administrative controls

Remedies against any form of supervision may be sought before an independent court. A municipality may apply to the administrative sector of a district court for judicial review of approval decisions and then appeal to the Administrative Jurisdiction Division of the Council of State. To challenge decisions to suspend or quash an act, an appeal may be brought before the Administrative Jurisdiction Division of the Council of State.

Further to this, it may be noted that, on ratifying the European Charter of Local Self-Government, the Netherlands made a reservation, among others, to Article 11 of the Charter. This article provides for local authorities having the right to take recourse to legal remedies to safeguard the independent exercise of their powers and to respect the principles of local autonomy. This provision entails that there must be an independent judicial body to which municipalities can appeal. It was the case in the Netherlands at the time of ratification that, as a last resort, municipalities and provinces were at liberty to appeal to the Crown against decisions in many fields made by other authorities. In actuality, an appeal to the Crown amounts to an appeal to central government. As of 1 January 1994, appeals to the Crown regarding disputes about decisions among administrative bodies were (also) replaced by a judicial process pertaining to administrative law which, as noted above, ends with the Council of State's Administrative Jurisdiction Division.

[45] In Dutch: *Kenniscentrum Europa decentraal.*

9.5. Other forms of control over local/regional authorities

In addition to the suspension, quashing and approval of acts, a number of other forms of supervision exist in law. For example, legislation sometimes requires consultation before a decision is taken to quash an act or issue an instruction. If the parties reach agreement during consultation, more far-reaching forms of supervision need not be exercised. Where important interests are at stake, the law may also impose a duty of notification: i.e. the duty to report certain decisions to a higher body. The main purpose of the duty of notification is to draw the attention of the higher body concerned to the decision taken. If reasons exist for quashing it, the necessary measures can then be taken in good time.

10. REMEDIES FOR INDIVIDUALS AGAINST DECISIONS OF LOCAL/REGIONAL AUTHORITIES

The basic principle underlying the protection of citizens against the decisions of local/regional authorities is that recourse must always be possible to an independent court. The main item of legislation in this connection is the General Administrative Law Act,[46] which came into force in 1994. In addition to rules governing the establishment of orders, the Act contains rules providing legal protection against the orders of administrative authorities.

If an interested party disagrees with an order (*besluit*) made by an administrative authority, he or she may submit a notice of objection within six weeks. The term 'order' is defined broadly. It includes decisions (i.e. individual, concrete decisions) and orders of a general nature (e.g. plans). Under the Act, objections and applications for review may not be submitted against legislation (i.e. provincial or municipal bylaws).

In the case of individual decisions, the interested party must sendhis or her notice of objection to the body that made the decision. This body then reconsiders its decision. The party submitting the notice of objection is given the opportunity to explain it. The decision is reviewed in terms of its legality and effectiveness. The administrative authority then decides on the notice of objection.

It is sometimes necessary to apply for administrative review to an administrative authority rather than submit an objection. This means that the body reviewing the *besluit* is not the one that made it originally, but another body in the administrative hierarchy. The body deciding on an application of this kind is itself competent to make a new order if the application is well-founded.

If the interested party disagrees with the decision taken on the objection or on the application for administrative review, he or she may apply to the administrative law sector of the district court for judicial review. He or she must submit his or her application within six weeks of the decision on the objection. The administrative court reviews the legality of the disputed decision. It may quash the decision, but it does not have the power to substitute a new one. After the court has ruled on the application for review, appeal can be brought before the Administrative Jurisdiction Division of the Council of State.[47]

[46] In Dutch: *Awb,* which is short for: *Algemene wet bestuursrecht.* See for further information about this Act also section 4.2 of this report.
[47] In Dutch: *Afdeling Bestuursrechtspraak van de Raad van State.*

The General Administrative Law Act stipulates how individuals should be protected against decisions of government authorities. Specific Acts of Parliament sometimes provide for different (or slightly different) legal procedures. Special administrative courts have powers to hear cases in certain fields. This is true, for example, in the case of social security legislation (the Central Appeals Court for Public Service and Social Security Matters[48]), legislation relating to public servants, and industrial organisation and socioeconomic legislation (the Administrative Court for Trade and Industry[49]).

If the administrative court is not competent to hear a case, it is tried by the ordinary civil courts. The civil courts consider that they are competent to hear a case involving an alleged tort by an administrative authority if there is or has been no possibility of recourse to an administrative court. The civil courts have a role to play, for example, when an individual wishes to challenge de facto administrative action, as this does not fall within the definition of 'order', which forms the basis for the legal protection afforded by the administrative courts.

10.1 Handling citizens' complaints in respect of government: the ombudsman function

In addition, the handling of citizens' complaints in respect of government is vested in a variety of acts. The National Ombudsman Act came into effect on 4 February 1981. The institution of the National Ombudsman has existed on those grounds in the Netherlands since 1982. In 1999, the National Ombudsman was vested in the Constitution as follows: "The National Ombudsman shall investigate, on request or ofhis or her own accord, actions taken by central government administrative authorities and other administrative authorities designated by or pursuant to Act of Parliament" (Article 78a, paragraph 1, the Constitution).

Initially, the work of the National Ombudsman related chiefly to central government and police administrative authorities. However, the administrative authorities for provinces, municipalities, water boards and joint schemes could also be brought under the operations of the National Ombudsman by ministerial decree. All provinces employed this option at the end of the last century. However, the number of municipalities affiliated to the National Ombudsman was limited.

In 1999, a motion was tabled in the House of Representatives with overwhelming support whereby the government was requested "to further every municipality being furnished with an ombudsman function with appropriate guarantees by 1 January 2002, either with or without the assistance of statutory regulation". Statutory regulation was decided upon in the end, whereby the following system was chosen in relation to sub-national levels of government. The National Ombudsman has jurisdiction in respect of the administrative authorities for municipalities, provinces, water boards and joint schemes, unless specific provision for an ombudsman or ombudsman committee has been made on the grounds of, respectively, the Municipalities Act, the Provinces Act, the Water Boards Act or the Joint Arrangements Act. However, if a local or regional authority opts for its own ombudsman provision, that level of government is free to choose the form that this is to take. It is important for an administrative authority's own ombudsman to comply with the requirements of independence and neutrality as laid down in law. This may involve its own ombudsman or ombudsman committee or else a joint ombudsman or joint ombudsman committee – i.e. held jointly with other sub-national levels of government. It is also possible for such a level of government to employ the services of the ombudsman from another local authority. For example, the municipality of Almere is affiliated to the ombudsman for Amsterdam. It was by this means that, with the approval of Right of Complaint (External Authority) Act, a system of external complaints provision with national coverage was brought into effect in 2005.

[48] In Dutch: *Centrale Raad van Beroep (CRvB)*.
[49] In Dutch: *College van Beroep voor het bedrijfsleven (CBb).*

11. LOCAL/REGIONAL ADMINISTRATIVE PERSONNEL

The personnel of local and regional authorities are mainly public servants. As such, they may be appointed on a permanent or temporary basis. These authorities also employ persons under contracts of employment governed by civil law. A growing number of municipal and provincial personnel work part time.

Provinces and municipalities are themselves responsible for the administrative status and appointment of their personnel. The salaries of provincial and municipal personnel (including those with contracts of employment) are paid by the province or municipality.

The Minister of the Interior and Kingdom Relations co-ordinates and to a certain extent develops the conditions of service applying to all public sector employees. It has been government policy for a number of years to co-ordinate terms of employment and conditions of service in the public sector with those in the private sector (e.g. the establishment of works councils and privatisation of pension funds). The Central and Local Government Personnel Act applies to all personnel of central government and other government bodies.

The following shows the number of public servants and persons with contracts of employment under civil law. Trainees and temporary personnel are not included.

Level	Persons	Total number of public sector personnel (%)
Municipalities	192 545	20.1
Provinces	13 282	1.4
Water boards	10 526	1.1
Joint arrangements	19 608	2.0
Total	**235 961**	**24.6**

Source: Public sector personnel data, 2004

12. REFORMS ENVISAGED OR IN PROGRESS

12.1. Digital technology and government

Municipalities and provinces can use the Internet to help improve public services. Electronic public services range from the issue of building permits by email to online applications and payment for licences (similar to internet banking), and online requests for personal details from the municipal personal records database.[50]

By the end of 2007, the Government wants to be able to provide 65% of all public services via the internet. An important principle in improving services is that of one-off information provision. This means that individual citizens, businesses, and institutions no longer need provide government with information it already possesses. The entire public sector has reached agreements aimed at achieving two goals: one-off information provision and 65% of all services online.

[50] In Dutch: *Gemeentelijke basisadministratie (GBA).*

Electronic services to citizens and business (%)

Municipality size (in terms of population)	2000	2001	2002	2003	2004	2005
For citizens						
Under 25 000	4	9	23	35	37	43
25 000-50 000	9	13	24	34	38	44
50 000-100 000	13	12	26	34	42	48
Over 100 000	27	30	26	40	55	65
Total for citizens	13	18	25	36	44	51
For businesses						
Under 100 000	6	6	16	34	32	47
Over 100 000	19	21	21	62	71	63
Total for businesses	11	12	18	43	44	52
Policy target score			**25**	**35**	**45**	**55**

Source: Ministry of the Interior, State of Local Government 2006 (Table 6.5)

12.2. Further reforms

With the formation of a new Council of Ministers in 2007, two policy developments took centre stage with regard to inter administrative relationships. Firstly, the new Council of Ministers set about expanding municipalities' freedom to decide policy, also referred to as the Decentralisation Impetus. In addition, the new government took the principle that only two levels of government could be actively engaged in each area of policy in the future. Sections 6.4 and 6.5 discuss these developments in more detail.

Policy intended to expand municipalities' freedom to decide policy and to reduce the administrative burden will be also be continued in respect of central government's financial resources for decentralised authorities (see section 8.2.2). An amendment to the Grants to Municipal Authorities Act, anticipated to come into effect from 2009, will support these objectives. The new Act embeds the single information and single audit within legislation and introduces new tools, such as the decentralisation grant and the amalgamated specific grant.

The decentralisation grant[51] is not a specific grant but is instead part of the Municipalities and Provinces Funds. This will give local and provincial authorities greater scope with regard to spending these resources. In line with the system for the Municipalities and Provinces Funds, the decentralisation grant tool can be implemented for structural resources. Furthermore, this tool may also be employed for a temporary flow of funds directed from central government towards sub-national authorities.

The amalgamated specific grant[52] needs to be viewed as a special type of specific grant. It coalesces grants that are small-scale in financial terms per ministry. Only a limited number of conditions may apply to each amalgamated specific grant. Moreover, accountability is exclusively financial in nature. This causes a reduction in the administrative burden incurred by municipalities and provinces, while increasing their financial policymaking freedom.

As stated above (see section 8.1.3), the types of taxes that may be levied at local level are the subject of continuing talks between the government and the VNG. It was not known at the time of writing what direction these talks were to take.

[51] In Dutch: *decentralisatie-uitkering*.
[52] In Dutch: *verzameluitkering.*

As stated above (see section 9.3), central government is responsible for ensuring that the activities of local and provincial authorities, waterboards and bodies governed by public law, including associations formed by one or several such authorities or one or several such bodies governed by public law, comply with EU law.

Within the Netherlands itself, sub-national authorities and the bodies governed by public law, as well the associations of one or several such authorities or bodies, are themselves responsible for ensuring that their activities comply with EU law. In order to ensure that they fulfil this obligation, the Minister of the Interior and Kingdom Relations has been preparing a European Legislation Compliance Bill for sub-national authorities and public-law bodies, containing a number of supervisory instruments such as the special instruction and a right of recovery. Bodies governed by public law, as well as associations formed by one or several such sub-national authorities or one or several such bodies governed by public law, fall within the scope of the act.

These supervisory instruments will be applied only if other central government instruments – especially the obligations to provide information and to consult at official and executive level – have not resulted in a sub-national authority or in an independent administrative agency complying with EU law. It is expected that this bill will be submitted before Parliament before the end of 2008.

Since 1986, the Kingdom of the Netherlands has consisted of three separate countries: the Netherlands, the Netherlands Antilles and Aruba. At present, the Netherlands is preparing a new political relationship with its overseas territories in the Caribbean. This relates to five island areas and the current State of the Netherlands Antilles. The aim is for this State to be disbanded on a date to be specified later.[53] From that date onwards, Curaçao and Sint Maarten will become associated States within the kingdom. This has been the case for Aruba since 1986, which signifies a high degree of autonomy. Bonaire, Sint Eustatius and Saba will become public bodies within the Dutch administrative structure, roughly equivalent to Dutch municipalities.

All six islands will retain their status as Countries and Territories Overseas[54] within the European Union in accordance with Article 299, paragraph 3, of the EC Treaty. This means that although Bonaire, Sint Eustatius and Saba will become a part of the Netherlands following the dissolution of the State of the Netherlands Antilles, they will not become part of the European Union.

However, a study is being conducted into the consequences arising from possible Ultra Peripheral Region status[55] for the three islands, which are to become part of the State of the Netherlands in the form of public bodies.

This option is provided by Article 299, paragraph 2, of the EC Treaty. This status as an ultra peripheral region already applies to French overseas departments, the Azores, Madeira and the Canary Islands.[56]

The precise format for the new administrative structure of Bonaire, Sint Eustatius and Saba is being investigated, as is the division of responsibilities between these three islands on the one hand and the Netherlands on the other. The aim is to achieve greater clarity on this matter in the course of 2008.

[53] Originally, the date of disbandment was set on 15 December 2008. This date turned out to be not realistic.
[54] In Dutch: *LGO-status (Landen en Gebieden Overzee)*.
[55] In Dutch: *UPG-status (Ultraperifere Gebieden)*.
[56] Once the Treaty of Lisbon comes into effect, its provisions will form part of Article 349 of the Treaty on the Functioning of the European Union.