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## **2015 Protocol on working arrangements between the Netherlands Authority for Consumers and Markets, and ministers**

*[published in the Dutch Government Gazette No 41918 on August 24, 2016]*

### **Introduction**

Under Section 2 of the Establishment Act of the Netherlands Authority for Consumers and Markets, the Netherlands Authority for Consumers and Markets enforces compliance with a number of laws concerning market oversight, which fall under the responsibility of the Minister of Economic Affairs or the Minister of Infrastructure and the Environment. The working arrangements below are a more detailed interpretation of the way these ministers and ACM wish to interpret their relationships, insofar such have not already been regulated by law. The basic principle in the interpretation of the relationships is that the Minister of Economic Affairs is responsible for competition policy, consumer protection policy, and sector-specific policy regarding telecommunications, postal services, and energy, and that the Minister of Infrastructure and the Environment is responsible for sector-specific policy regarding transport and drinking water, and the Netherlands Authority for Consumers and Markets for the execution of the statutory tasks that it has been charged with. This protocol on working arrangements reflects the idea that good interaction between the ministers and the Netherlands Authority for Consumers and Markets promotes effective execution of their tasks and responsibilities.

## **CHAPTER 1 GENERAL**

### **Article 1 Definitions**

In this protocol on working arrangements, the following definitions are used:

- a. *ACM*: the Netherlands Authority for Consumers and Markets, as referred to in Section 2 of the Establishment Act of the Netherlands Authority for Consumers and Markets;
- b. *ACM-organization*: the organization of the staff as referred to in Section 5, paragraph 1 of the Establishment Act of the Authority for Consumers and Markets;
- c. *Ministers*: the Minister of Economic Affairs, and the Minister of Infrastructure and the Environment;
- d. *EZ*: the Ministry of Economic Affairs;
- e. *IenM*: the Ministry of Infrastructure and the Environment;
- f. *Framework Act*: the Framework Act on Autonomous Administrative Authorities;

- g. *Establishment Act*: the Establishment Act of the Netherlands Authority for Consumers and Markets;
- h. *Regulation*: the Regulation on the exchange of information between the Netherlands Authority for Consumers and ministers;
- i. *Instructions on external interactions*: Instructions on external interactions of central-government employees with regard to functional contacts with the States General and with individual MPs (Dutch Government Gazette 1998, 104);
- j. *Guidelines on external contacts*: Guidelines for applying the Instructions on external contacts of central-government employees with regard to functional meetings with the States General and with individual MPs (Parliamentary Papers II 2006/07, 29 283, no. 46);

## **CHAPTER 2 ORGANIZATIONAL RELATION**

### ***Section 1 Planning and control cycle, and staff***

#### **Article 2 Finances, planning and control, staffing management**

1. The ACM-organization takes part in the regular budgeting and accountability cycle, the management cycle (management arrangements, and two progress reports that follow the budgeting cycle milestones, which are the spring budget memo and the fall budget memo), the oversight and control cycle of EZ, and the corporate-services meetings of EZ.
2. The Secretary-General of EZ sets the budget and the organization and staffing plans (or any changes thereto) of the ACM-organization. Within these boundaries, and within those of the Civil Servants' Pay Decree (BBRA 1984) and the job classification system of the Dutch central government (Fuwasys), ACM designs its organization, and manages its staffing structure.
3. The Director of Corporate Services at EZ may periodically review the staffing structure of the ACM-organization in order to evaluate the staffing management performance.

#### **Article 3 Provision of information**

Considering Article 2 of the Regulation, the Director of Corporate Services of the ACM-organization, the Directors of Corporate Services of EZ and of IenM, and the Directors of Financial Economic Affairs of EZ and of IenM provide, if so requested, all the information they need for the performance of their jobs.

#### **Article 4 Special provision concerning transport regulation**

1. The Telecommunication, Transport and Postal Services Department and the Energy Department of the ACM-organization respectively, carry out the activities ensuing from legislation concerning transport (which are the Dutch Passenger Transport Act 2000, the Dutch Railway Act, the Dutch Aviation Act, and the Dutch Pilotage Act) and drinking water (which are the Drinking Water Act and the Drinking Water Regulation) on lenM's account. Once a year, the costs for the current year are settled between lenM and EZ by way of a budget transfer in the fall budget memo.
2. In view of the first paragraph, the ACM budget gives insight into the costs per act that are to be passed on to lenM with regard to transport and drinking water. These costs are annually set by the Director-General for Mobility and Transport of lenM. In that context, lenM sends ACM a letter with a copy to EZ for approval of these costs.
3. In case of any differences compared with the ACM budget of the current calendar year with regard to transport, these are to be discussed with lenM. With regard to assignments concerning transport and drinking water that have not been included in the ACM budget, ACM makes financial arrangements in advance. For these costs, budgetary funds are made available separately by lenM.
4. Differences between projected costs and actual costs in any given year are included in the Amendment to the Budget of EZ (XIII) belonging to the budget of EZ of that year (Final Act).
5. Administrative fines that are imposed by ACM on the basis of the transport acts are demanded and collected by ACM. The collected amount is transferred to lenM's account as soon as possible so that the fine collection can be accounted for in lenM's budget. Any refunds, in case of reduction of the administrative fines following objections and/or appeals, are also paid by ACM, after which lenM transfers the funds to ACM's account as soon as possible.

#### **Article 5 Progress reports**

The progress reports as part of the management cycle give insight into the costs per act that fall under the responsibility of lenM, and into the differences in these costs compared with the ACM budget. Insofar these progress reports concern activities of the Telecommunication, Transport and Postal Services Department or the Energy Department of the ACM-organization respectively with regard to transport and drinking water, the member of ACM appointed by ACM for those fields discusses these with the Director-General for Mobility and Transport of lenM, before discussing these with the Secretary-General of EZ.

## ***Section 2 Staff-related provisions***

### **Article 6 ACM's powers with regard to staff and legal positions**

1. When exercising the powers with regard to staff and legal positions that have been granted to ACM under the Decision on mandate, authority and authorization of ACM, the EZ-specific staffing regulations as well as the staff-related policy applicable to public employees at EZ apply, unless stipulated otherwise.
2. IenM is not involved in the staff-related policy with regard to the Telecommunication, Transport and Postal Services Department of the ACM-organization.

### **Article 7 Management-development policy**

1. ACM has a say in the management-development policy of EZ insofar it concerns an appointment of an employee of the ACM-organization in a position with pay grade 14 or higher of the BBRA 1984, and whose position concerns the execution of corporate-services tasks.
2. ACM informs the management-development consultation group of EZ about appointments (or the procedure thereof) of employees of the ACM-organization in a position with pay grade 14 or higher of the BBRA 1984, which is different from appointments as referred to in paragraph 1.
3. ACM informs IenM about the appointment (or the procedure thereof) of the Director of the Telecommunication, Transport and Postal Services Department of the ACM-organization.

### **Article 8 Employee participation**

ACM creates a works council for the staff of the ACM-organization.

## ***Section 3 Recruitment of Members of ACM***

### **Article 9 Procedure for the recruitment and appointment of Members of ACM**

1. Without prejudice to Section 3 of the Establishment Act, the recruitment, selection and appointment of a new Chairman and new other Members of ACM take place in accordance with the procedure listed in the annex of this protocol on working arrangements.

2. When recruiting, selecting and appointing Members of ACM, it is to be taken into account that at least one of the Members possesses professional competence in and relevant experience of the rail sector or other network industries.
3. The Minister of EZ and ACM can jointly decide to deviate from the procedure listed in the annex, with the exception of the requirement as referred to in paragraph 2.

## **CHAPTER 3 POLICY-BASED RELATION**

### ***Section 1 General arrangements***

#### **Article 10 General**

In their activities and in the external communication thereof, the Ministers and ACM are mindful of the responsibility for policy, legislation and regulations, and the responsibility for the execution of the statutory tasks that ACM has been charged with, respectively, and relate with one another, both internally and externally, within their thereto-intended roles and positions.

#### **Article 11 Confidentiality**

In their policy-based relation with each other, the Ministers on the one hand, and ACM and the ACM-organization on the other hand, maintain confidentiality insofar such follows from legislation, regulations or the nature of things.

#### **Article 12 Knowledge management**

1. For the promotion of substantive knowledge of competition, sector-specific regulation, consumer protection, oversight and enforcement by EZ, IenM and ACM, the Ministers and ACM organize as often as mutually desired panel discussions in which such knowledge is exchanged. If possible, internal activities, too, such as development courses and seminars are made available to each other's employees.
2. The Minister of EZ and ACM promote the temporary exchange of employees between ACM and EZ.

## **Section 2 Regular meetings**

### **Article 13 Relationship managers EZ, lenM and ACM**

1. Within the responsible policy departments of EZ and lenM, relationship managers are appointed for the various work areas of ACM. For the departments in question, these relationship managers are the first point of contact in policy matters at an operational level.
2. ACM appoints relationship managers for the various work areas. For EZ and lenM, these relationship managers are the first point of contact in policy matters at an operational level.

### **Article 14 Regular meetings between EZ and ACM**

1. Four times a year, a meeting takes place between the Minister of EZ and ACM about developments with regard to the statutory tasks that ACM has been charged with.
2. Four times a year, a meeting takes place between the Secretary-General of EZ and the Chairman of the Board of ACM about topics that relate to the ACM-organization.
3. Four times a year, a meeting takes place between the Director-General Energy, Telecom and Competition of EZ, and the thereto-appointed Member of ACM about political, strategic and policy matters related to fields handled by EZ.
4. If such is desired by EZ or ACM, an interim meeting takes place without prejudice to the previous paragraphs.

### **Article 15 Regular meetings between lenM and ACM**

1. Twice a year, a meeting takes place between the Director-General for Mobility and Transport of lenM, and the thereto-appointed Member of ACM about political, strategic and policy matters related to fields handled by lenM.
2. If such is desired by lenM or ACM, an interim meeting takes place without prejudice to the previous paragraphs.

### **Article 16 Requests for information**

ACM consults with the Minister or the Minister of lenM about requests from third parties for providing information as referred to in Articles 3, 6 and 7 of the Regulation or similar information that has not been published yet.

## **Article 17 Notification**

If a decision of ACM contains rules that, pursuant to European regulations or other treaty obligations, must be notified of, ACM will take care of such notifications in accordance with the instructions that apply to the Ministries in such an event.

## **Section 3 Functioning of ACM**

### **Article 18 Negligence**

1. If the Minister of EZ is of the opinion that ACM neglects its tasks, the Minister of EZ will inform ACM thereof (except for emergency situations) in writing and supported with reasons.
2. If the Minister of lenM is of the opinion that ACM neglects its tasks with regard to transport, he will consult with the Minister of EZ about this. If the ministers conclude that ACM has neglected its task, the Minister of EZ will inform ACM thereof (except for emergency situations) in writing and supported with reasons.
3. The term as referred to in Section 23, paragraph 2 of the Framework Act, is at least four weeks.

### **Article 19 Assessment by third parties**

If the Minister of EZ or the Minister of lenM, as part of their oversight of the functioning of ACM, appoints a third party to assess a task of ACM to be determined by the relevant Minister or to assess ACM's performance in its entirety, ACM will provide this third party with the information that is relevant to such an assessment, in a reasonable manner to be determined by that third party.

### **Article 20 Five-year evaluation**

1. Prior to the evaluation for the purpose of a report as referred to in Section 39, paragraph 1 of the Framework Act, the Minister of EZ and ACM make arrangements about the contents and approach of the evaluation, and about the information to be provided.
2. The Minister of EZ informs ACM of the report before it is sent to the States General by them. ACM is asked to respond to this report within a certain period that is set by the Minister in their request.

3. The Minister of EZ responds to ACM's response to the report, and indicates therein, in any case, to what extent that response has been taken into account in the final assessment.

#### **Article 21 Complaints about the functioning of ACM**

1. ACM will be notified as soon as possible of any complaints addressed to the Minister of EZ or to the Minister of IenM about the way ACM or an employee of the ACM-organization has behaved vis-à-vis a third party.
2. The minister involved and ACM mutually decide how complaints are handled, and who handles them.

### ***Section 4 Policy-based relation: ACM Agenda and annual report***

#### **Article 22 ACM Agenda**

1. ACM consults with stakeholders about the planned key priorities for the next year or the next two years. To that end, it draws up a consultation document. ACM sends the consultation document to stakeholders.
2. Prior to the launch of the consultation with stakeholders, EZ and IenM are given the opportunity to comment on the planned key priorities.
3. Taking into consideration the responses in the consultation, ACM suggests a draft Agenda, and submits it to EZ and IenM in order for them to comment on its contents.
4. If so desired, a meeting takes place between ACM and EZ and/or IenM about the draft Agenda, before ACM finalizes and publishes the final version of the ACM Agenda. The final version of the Agenda includes an overview of the budgeted resources for the calendar year in question.
5. If ACM decides to set the ACM Agenda not for one year but for two years, it will publish the final version of the Agenda with the overview as referred to in the previous paragraph relating to the first calendar year. Prior to the second calendar year to which the Agenda relates, ACM publishes an overview of the budgeted resources for that calendar year.

## Article 23 Annual Report

1. Without prejudice to Section 18, paragraph lid, of the Framework Act, and Section 6, paragraph 1 of the Establishment Act, the annual report includes at least the following key figures, each accompanied by a short explanation:
  - a. The annual accounts;
  - b. The cost realization of the regulatory tasks the costs of which can be passed on to market participants;
  - c. The realization of the proceeds from market participants per market category as referred to in the Decision on passing on costs of ACM;
  - d. the staffing structure (fte);
  - e. the ratio between direct and indirect costs;
  - f. the ratio between central-government-financed costs and market-financed costs per category;
  - g. Budget expenditures;
  - h. the number of fining decisions, orders subject to periodic penalty payments, binding instructions, binding codes of conduct, and commitments decisions;
  - i. The number of received and handled requests for information or requests for assistance from authorities in other member states that, like ACM, are charged with the enforcement of Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ 2004, L 364);
  - j. The number and the results of handled objections and appeals;
  - k. The percentage of handled objections within the applicable statutory term limit;
  - l. The number of handled complaints within the meaning of Section 9:1, paragraph 1 of the Dutch General Administrative Law Act;
  - m. The number of complaints filed with the National Ombudsman;
  - n. The nature and number of reports filed with ConsuWijzer and spamklacht.nl;
  - o. The results of customer satisfaction surveys.
  
2. The annual report also contains general information about the following:
  - a. The execution of ACM's statutory tasks, as referred to in Section 2 of the Establishment Act, as well as the staffing structure that is used for that purpose, and the expenses that are made in connection therewith;
  - b. The policy that has been pursued regarding quality protection, staff, provision of information, organization, risk control, automation, and housing, as well as the staffing structure that is used for these purposes, and the expenses that are made in connection therewith;
  - c. The degree to which the statutory lead times for completed cases have been complied with, as well as their actual lead times.

## **Section 5 External contacts of ACM**

### **Article 24 Contacts of ACM with the States-General**

1. The Instructions on external contacts and the Guidelines on external contacts apply *mutatis mutandis* to ACM and the staff of the ACM-organization.
2. Prior to any formal contacts within the meaning of the first paragraph, ACM informs the minister involved as soon as possible about such contacts, and asks for approval of the minister involved, in cases where such is required under the Instructions on external contacts or the Guidelines on external contacts. It will be mutually determined on a case-by-case basis whether or not the presence or involvement of a representative of the ministry involved is required.
3. If necessary, consultations are held between the minister involved and ACM about contacts as referred to in the first paragraph.
4. ACM informs the minister involved as soon as possible about contacts as referred to in the first paragraph as soon as they have finished if it suspects that this is necessary with an eye to the execution of the minister involved's tasks.

### **Article 25 International contacts**

In European or any other international meetings, the ministers can be assisted by or be represented by ACM.

### **Article 26 Relevant international organizations**

The following organizations are, in any case, considered to be relevant international organizations (or meetings thereof) within the meaning of Article 4, paragraph 1 of the Regulation:

- a) An advisory committee as referred to in Section 5b, paragraph 2 of the Dutch Competition Act;
- b) The Communications Committee (COCOM) as referred to in Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (OJ 2002, L 108);
- c) The Consumer Protection Cooperation (CPC) Committee as referred to in Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ 2004, L 364);

- d) The European Competition Network (ECN) as referred to in Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003, L 1);
- e) The Body of European Regulators for Electronic Communications (BEREC) as referred to in Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (OJ 2009, L 337);
- f) The Organization for Economic Cooperation and Development (OECD);
- g) Council preparatory bodies under Article 19, paragraph 3 of the Rules of procedure of the Council of the European Union with regard to areas that are directly related to the tasks that ACM has been charged with.

## **Section 7 Other provisions**

### **Article 27 Repeal**

The 2013 Protocol on working arrangements between ACM and ministers is repealed.

### **Article 28 Entry into force**

This protocol on working arrangements enters into force the day after the date of publication of the Dutch Government Gazette in which it is published.

### **Article 29 Official title**

This protocol on working arrangements is cited as: 2015 Protocol on working arrangements between ACM and Ministers

This protocol will be published in the Dutch Government Gazette.

*The Hague, July 1, 2016*

*The Minister of Economic Affairs,  
H.G.J. Kamp*

*The Hague, July 26, 2015*

*The Minister of Infrastructure and the Environment,  
On their behalf,  
L. Ongerling*

*The Hague, November 20, 2015*

*The Netherlands Authority for Consumers and Markets,*

*On its behalf*

*C.A. Fonteijn*

## ***Annex: Process of recruitment, selection and appointment of Members of ACM***

### **Step 1. Profile**

1. A committee consisting of, at the most, two individuals appointed by ACM, and, at the most, two individuals appointed by the Secretary-General of EZ (one from the Competition and Consumers Department and one from the Corporate Services / MD Department of EZ) draw up a draft profile.
2. After a Member of ACM, the Secretary-General of EZ, and the Director-General for the Energy, Telecommunications and Competition Department of EZ have approved the profile, a member of ACM asks the Works Council of the ACM-organization to provide its views on the draft profile (not a formal request for advice). The draft profile states that integrity requirements are applicable for the purpose of a successful performance of the duties.
3. Taking the views of the Works Council into account, the draft profile is submitted to the Minister of EZ for finalization. The Minister of EZ finalizes the profile, and the profile will be a guiding factor in the selection process.

### **Step 2. Recruitment**

1. The committee invites the Senior Civil Service (ABD) to see, based on the profile, whether there are any potential candidates in the candidate database.
2. In addition, the committee searches, if necessary, for a sufficient number of candidates through different channels, such as:
  - a. recruitment advertisements;
  - b. a headhunter.
3. During the recruitment process, the rules concerning integrity (confidentiality, other activities, financial interests, possible incompatibility with future positions) and the background checks shall be pointed out to the potential candidates.

### **Step 3. Selection**

1. On the basis of the written documents (letters, CVs, and suchlike), the Secretary-General of EZ and a Member of ACM, supported by the committee, jointly make an initial selection.
2. All candidates that have passed the initial selection are invited for an interview, which will be conducted jointly by:
  - a. the Director-General of the Energy, Telecommunications and Competition Department of EZ or the Director of the Competition and Consumers Department of EZ;
  - b. a Member of ACM or an individual to be appointed by ACM; and
  - c. an MD adviser.

3. In this interview, the integrity requirements are discussed, and an assessment is carried out to see whether any problems exist.
4. The individuals, as referred to under 2. a. and b., who conducted the interview, jointly decide which candidates proceed to the final selection round (with a maximum of four candidates).
5. The final selection round consists of interviews conducted jointly by the Secretary-General of EZ and a Member of ACM (preferably a different member than the one referred to under 2.). The Secretary-General of EZ and the Member of ACM jointly decide which candidate they propose to the Minister.
6. The integrity officers of EZ and the ACM-organization carry out an interview with the proposed candidate about the relevant integrity rules. In addition, they assess whether the candidate has any other activities, and/or whether there are any financial interests that require an exemption under the Integrity Regulation of EZ. They report to the Secretary-General of EZ through the committee.

#### **Step 4. Nomination to the Minister of EZ**

1. The committee draws up a draft nomination of the candidate for the Minister of EZ. Subsequently, the Secretary-General of EZ and a Member of ACM jointly nominate the candidate to the Minister of EZ.
2. If so desired, the Minister of EZ conducts an interview with the candidate.
3. The nomination is submitted by a Member of ACM to the Works Council of the ACM organization for advice (a formal request for advice). At the same time, the proposed candidate is introduced to said Works Council, and they are given the opportunity to arrange a meeting.

#### **Step 5. Conditions of employment and exemptions from integrity**

1. Parallel to step 4, the Corporate Services / MD Department of EZ schedules a meeting with the candidate to discuss the conditions of employment, and launches a background check. The Secretary-General of EZ carries out this meeting with the candidate, and makes arrangements about financial interests, other activities, and possible future positions. The MD adviser draws up a letter with the conditions of employment, which is subsequently signed by the Secretary-General of EZ, and is sent to the candidate and enters into force as soon as the appointment has been finalized.
2. Together with the letter with the conditions of employment, the integrity officer of the ACM-organization prepares any exemptions reflecting the arrangements the Secretary-General of EZ has made with the candidate with regard to integrity. The integrity officer of EZ ensures that these exemptions are signed by the Secretary-General of EZ together with the letter with the conditions of employment.

### **Step 6. Appointment by Minister of EZ**

In the appointment, as referred to in Section 12 of the Framework Act, the Minister of EZ takes into account the recommendations of the Works Council of ACM. He notifies the Dutch Cabinet of his intention to appoint the candidate.