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A STRUCTURAL PROBLEM IN THE SHADOWS

Lobbying by banks in the Netherlands



Colophon

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The Centre for Research on Multinational Corporations (SOMO) is an independent, not-for-profit research and network organisation working on social, ecological and economic issues related to sustainable development. The organisation has been investigating multinational corporations and the consequences of their activities for people and the environment around the world since 1973.



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Preface

WHY LOBBYING THE FINANCIAL LEGISLATIVE PROCESS IS OF CONCERN

Regulatory capture and the financial crisis

deregulation resulting from lobbying

Much of the 2007-2008 financial crisis that impacted so negatively on the economy, jobs and society, was attributed to the effects of so-called 'light touch' laws that resulted in deregulation of the financial sector. These laws and regulations, developed and decided by policy makers and financial authorities, promoted the huge profit-making and corporate interests of banks above the financial stability of the economy and the interests of society as a whole. The deregulation was the end result of intensive lobbying by representatives of the financial sector working in concert with a small circle of legislators, regulators and policy makers, away from public scrutiny. When lobbying such as this takes place in a non-transparent way by industry representatives and succeeds in influencing how that industry is regulated so that it serves its narrow or private corporate interests, this is known as regulatory capture.¹

Too-big-to-regulate

too little change

Following the 'crash' there emerged a political will to reform the sector by introducing tighter, enforceable laws and regulations. Many experts suggest², however, that financial reforms introduced post-2008 have not significantly changed either the financial sector or the behaviour of those who work in it. The total Dutch banks' balance sheet for example, still accounts for four times the economy of the Netherlands³ while the so-called 'too-big-to-fail' banks still cause financial instability within Europe. Lobbying by the large banks has also continued and may even have increased, and the decision-making process regarding financial legislation has stayed more or less the same, with little public involvement. Unsurprisingly, perhaps, public trust in the Dutch financial sector remains very low.⁴

reforms prevented by lobbying

Because the financial sector is complex, legislators are dependent on expertise of the financial industry to help develop reforms but this leaves them vulnerable to prioritising the interests of the sector at the expense of the public interest. The former Director of the Dutch Financial Markets Authority (AFM) admitted that the government gave the Dutch Banking Association (De Nederlandse Vereniging van Banken) too much influence over the decision-making process on financial reform.⁵ The sector is still highly concentrated and complex, able to generate large incomes and profits and is regulated in a way that is not open to public scrutiny – all conditions and characteristics conducive to regulatory capture.

Attempts at improving transparency and accountability

no adequate scrutiny

While financial law makers might value the expertise and lobbying of those working in, and on behalf of, the financial sector, throughout the legislative process, the communications between the two parties are not always transparent. Without real openness the public may fear that their interests are being compromised in favour of those in the financial industry who have privileged influence and access to those in power. Indeed, media coverage has highlighted incidents where direct lobbying by banks has unduly influenced Dutch legislation.⁶ Despite such reports and coverage, the decision-making process on financial reform in the Netherlands is still not adequately scrutinised and analysed.

more transparency needed

In 2010, the parliamentary *Commissie De Wit* found, during its investigations into the financial crisis, that more transparency was required to avoid a repeat of regulatory capture.⁷ It was not until August 2016, however, that the Minister of Finance issued concrete guidelines and policies which applied to the Ministry of Finance and the external contacts with which it works.⁸

legislation on lobbying

Lobbying activity in other countries is covered by legislation (Austria, France and the US, for example) and institutions with the power of enforcement (Canada⁹). No laws or binding regulations apply to lobbying activities in the Netherlands; the only official requirement is that just one person per company or organisation is allowed to register for an access pass to parliament.

Dutch proposals on lobbying

At the end of 2015, two members of parliament (MPs), Bouwmeester and Oosenbrug, proposed that lobbying and the legislative decision-making process be more transparent and accountable in order to avoid undue influence being exerted by those with privileged access to decision-makers. These safeguards would, they argued, protect the interests of citizens and ensure their views were represented.¹⁰ This proposal to develop rules and guidelines – not necessarily laws – was followed by a parliamentary motion¹¹ requiring the government to introduce a legislative footprint (*lobby paragraaf*) which would be attached to all legislative proposals. The current government has indicated that it will make changes to the way legislative proposals are presented but did not publish an official response before end of October 2016.

EU rules to increase transparency

There have been heated discussions at EU level on the legislation required to both protect the public interest (e.g. health, climate change, etc.), and control undue lobbying and privileged access to decision-makers, thereby preventing a situation conducive to regulatory capture. As a result, attempts have been made to increase transparency: lobbyists and organisations intervening at EU institutions are asked to register and submit information to the European Transparency Register and agree a code of conduct. In addition, from September 2016 onwards, those wishing to have access to high level policy makers have to subscribe to the Transparency Register.¹² The diaries of all Commissioners and the Director-Generals are also being published and include information on who has been met and regarding what issue.

aim of this report

This report focuses on financial legislative processes in the Netherlands and whether measures should be – or have been – taken to improve the transparency and accountability of the lobbying processes, so as to prevent regulatory capture and guarantee that financial law making is democratic, open, balanced and in the public interest.

Notes

- 1 R. van Tilburg, I. Römgens, Taking Lobbying Public - The Transparency of Dutch Banks Lobbying Activities, SOMO, December 2013, <https://www.somo.nl/nl/taking-lobbying-public/> (last viewed 17 September 2016).
- 2 See for instance: J. Ferreira, C. Gómez, and J. Landeta, 'Impacts of Financialisation on Society, Environment and Economy - A Delphi study on the future of finance', presented at FESSUD Annual Conference 2015 Lisbon, 15-17 October 2015, http://fessud.eu/wp-content/uploads/2015/11/FESSUD_DelphiStudy_Lisbon-2015.pdf (viewed 28 September 2016): gives a survey of opinions of 49 leading experts.
- 3 DBA/NVB, Catshuisberaad banken, 23 May 2016, p.7: it was six times the Dutch economy before the financial crisis.
- 4 DBA/NVB, 'Vertrouwensmonitor banken: vertrouwen in sector stabiel maar laag, in eigen bank hoger; klantbelang meer gediend', press release, 3 October 2016, <https://www.nvb.nl/nieuws/2016/6507/vertrouwensmonitor-banken-vertrouwen-in-sector-stabiel-maar-laag-in-eigen-bank-hoger-klantbelang-meer-gediend.html> (viewed 7 October 2016).
- 5 R. van Tilburg, I. Römgens, Taking Lobbying Public, SOMO, December 2013, p. 24.
- 6 See for instance: C. Driessen, 'De bank vraagt, de minister draait - Minister reserveerde met hulp van ING fiscaal voordeel voor alleen banken', NRC Handelsblad, 3 November 2015, <https://www.nrc.nl/nieuws/2015/11/03/de-bank-vraagt-de-minister-draait-a1405681> (viewed 4 November 2016); 'DNB en banken te innig', Trouw, 4 February 2013, <http://www.trouw.nl/tr/nl/4504/Economie/article-detail/3388095/2013/02/04/DNB-en-banken-te-innig.dhtml> (viewed 17 September 2016).

- 7 Tweede Kamer, Parlementair onderzoek financieel stelsel - Rapport, 10 May 2010, <https://zoek.officielebekendmakingen.nl/kst-31980-4.html> (last viewed 17 September 2016); Recommendation nr. 18: 'De commissie beveelt de Kamer aan om de mogelijkheden te onderzoeken om de invloed van belanghebbenden op de inhoud en totstandkoming van wet- en regelgeving transparanter te maken. In dat verband zou een systeem van «legislative footprint», een systeem waarbij de wetgever aangeeft welke actoren op welke wijze betrokken zijn geweest bij de opstelling van regulering, kunnen worden onderzocht.' In responding to the recommendations, the government stressed the importance of involving society in the development of new laws and regulations.
- 8 Ministerie van Financiën, Gedragslijn Externe contacten, 29 August 2016, <https://www.rijksoverheid.nl/documenten/richtlijnen/2016/08/29/gedragslijn-externe-contacten-ministerie-van-financien> (viewed 30 August).
- 9 Office of the Commissioner of Canada, https://lobbycanada.gc.ca/eic/site/O12.nsf/eng/h_00000.html (last viewed 10 October 2016); R. Van Tilburg, I. Römgens, Taking Lobbying Public, SOMO, December 2013, p. 36.
- 10 Tweede Kamer, Initiatiefnota van de leden Bouwmeester en Oosenbrug: "Lobby in daglicht: luisteren en laten zien", Kamerstuk 34376, blg-650569, 24 December 2015, <https://zoek.officielebekendmakingen.nl/kst-34376-2.html> (last viewed 10 October 2016).
- 11 Tweede Kamer, Gewijzigde motie van de leden Van Gerven en Oosenbrug (t.v.v. 32637, nr. 229) over toevoegen van een lobbyparagraaf, Kamerstuk 32 637, Nr. 232, 1 March 2016, <https://www.tweedekamer.nl/kamerstukken/moties/detail?id=2016Z04139&did=2016D08601> (last viewed 7 October 2016).
- 12 European Commission, Proposal for a Interinstitutional Agreement on a mandatory Transparency Register, COM (2016) 627 final and Annexes, 28 September 2016, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-627-EN-F1-1.PDF> (viewed 30 September 2016).

Introduction

HOW THIS REPORT CAME ABOUT

Contents of the report

six Dutch banks

This SOMO report examines particular aspects of how lobbying works in the banking sector in the Netherlands, how transparent and accountable it is for example, and whether it affects the public interest. It focuses specifically on decision-making processes for new or reviewed financial laws and related interactions between the Dutch Ministry of Finance and six Dutch banks: ABN AMRO, ING, Rabobank, Triodos Bank, SNS Bank and its subsidiary ASN Bank¹.

- Chapter one examines how transparent the Ministry of Finance is to citizens wishing to know about, and influence, upcoming financial legislation.
- Chapter two provides an insight into the interaction between the Ministry and Dutch banks regarding financial legislative proposals, and related lobbying by the banks.
- Chapter three explains how the banks operationalise their lobbying activities.
- Chapter four highlights how multiple memberships of industry associations is not well managed by the banks.

Focus and aim of this report

decision-making on proposals for law

The focus of this report is the decision-making process on upcoming financial laws from the viewpoints of both by Ministry of Finance, and six Dutch banks including an examination of their lobbying activities. This report builds on a previous SOMO report published in 2013 which assessed the transparency of six Dutch banks – ABN AMRO, ING, Rabobank, Triodos Bank, SNS Bank and the then independent ASN Bank. It builds on 2015 research undertaken by Transparency International Nederland that concluded that political decision-making processes in the Netherlands at the time had little protection against the risks of undue influence from stakeholders and corruption.

financial and banking laws

For this report, SOMO investigated how Dutch banks structure and organise themselves to interact and lobby with the Ministry of Finance while financial legislative proposals are being discussed and decided. The broad range of financial laws is not the focus of this report but legislative processes referred to in this report are those to reform the financial sector following the 2008 crisis. These include legal requirements on banks to hold higher robust capital buffers to better withstand financial crises, regulations for integer management of investment funds offered by banks, and obligations that prevent misleading information given to clients on complex and risky financial products.

assessing transparency

The report assesses whether transparency about lobbying activities compared to how it was following the publication of the 2013 SOMO report on bank lobbying, and whether conditions still prevail for a repeat of regulatory capture.

different aspects of this report

Specifically throughout this report processes and practices by the Ministry of Finance and the six banks are examined and assessed and reviewed with regard to:

- Transparency. Are they transparent enough to protect the right to know?
- Openness to citizen input. Are there sufficient opportunities for citizens to provide input into the financial legislative process to protect their right to be heard?
- Equality of access. How is the bank lobbying organised and does it result in privileged access to legislators and undue influence over the financial legislative process? Is there still equality of access for citizens and civil society that protects the integrity of the democratic process?

- Balance and public interest. How are the interests of citizens and the interests of the financial sector weighed by the Ministry of Finance and the banks? Is it done in a way that protects the public interest?
- Accountability. Is there information and debates about decisions made by the Minister of Finance to protect the right to democratic processes? Who makes the final decision in banks on lobbying positions and activities? How accountable are the banks for their lobbying and positions?

Methodology used for this report

qualitative research

The research for this report has been qualitative and was mainly conducted through desk research and interviews with staff in the public affairs units, or other bank representatives, at ABN AMRO, ING, Rabobank, Triodos Bank, SNS Bank and its subsidiary, ASN Bank. Since there is very little written about how the banks organise their lobbying internally, the lobbying operations were examined with regard to:

- How they were organised;
- Whether they were transparent;
- Whether they were subject to policy and/or codes of conduct;
- Who took the final decision and was accountable for the lobbying;
- How they interacted with the Ministry of Finance.

details per bank in annexes

The research and interviews with each of the banks is reflected in the annexes that are attached separately to this report on SOMO's website (<https://www.somo.nl/topic/financial-sector>). An interview was also conducted with the Dutch Banking Association/Nederlandse Vereniging van Banken (DBA/NVB).

only written answers

The Ministry of Finance did not accord an interview but gave written answers to questions submitted, in writing, by SOMO. All the banks as well as the DBA/NVB replied when given the opportunity to review the research findings but the report and its conclusions remain SOMO's responsibility. The Ministry of Finance had no capacity to review chapters 1 and 2 submitted to it.²

no Wob information

No specific access to information requests ('Wob' request in Dutch) were made to the Ministry of Finance but some of the previous information made available through such requests was used.

case study on securitisation

As a case study to examine the lobbying activities of banks and the decision making process at the Ministry of Finance, this report uses the EU legislative proposal for simple, transparent and standardised (STS) securitisation; the decision-making on this issue began in 2015. The securitisation of loans was at the heart of the 2007/2008 financial crisis and was subject to corporate capture in the Netherlands before the crisis.³

limitations of this report

Due to limited resources, not all aspects about lobbying could be investigated. This report does therefore not deal with:

- Decision making at parliament level which is also subject to lobbying and external inputs, and influences the proposals made by the Ministry of Finance;
- Interaction with, and lobbying of, the Dutch Central Bank and other Dutch supervisors who enforce adopted laws, but can be active at international level to initiate standards for financial legislation;
- Lobbying by banks of the other Dutch Ministries;
- 'Revolving doors', i.e. job switching between the financial sector, the lobbying industry and the ministries or the parliament;
- Payments to political parties;
- Informal, personal, private encounters and networks.

Defining lobbying

influencing Although there are many different definitions, meanings and explanations of the term 'lobbying'⁴ (even amongst industry associations of lobbying), the term is used in this report to describe all methods used to influence political decision-makers about particular issues of interest to banks. This includes responding to official consultations on future legislative proposals.

interaction This report also refers to 'interaction' between government officials and bank staff/management because lobbying activities or access to legislators is easier if there has been previous interaction. It means, for example, that lobbyists or representatives of the bank know the right person to contact on a particular issue, are able to monitor upcoming legislation and share expertise on the banks operation and interests with government officials.

Notes

- 1 Note: ASN Bank is part of SNS Bank and discussed separately in this report as it acts independently regarding lobbying and has an independent bank permit. From January 2017 onwards, ASN Bank and SNS Bank are part of de *Volksbank N.V.* with one banking permit.
- 2 C. Gelinck, Spokesperson Ministry of Finance, email to M. Vander Stichele, Senior Researcher SOMO, 12 October 2016.
- 3 R. van Tilburg, I. Römgers, Taking Lobbying Public, SOMO, December 2013, p. 24.
- 4 Transparency international uses the following definition: 'Any direct or indirect communication with public officials, political decision-makers or representatives for the purposes of influencing public decision-making carried out by or on behalf of any organised group.' (Source: Transparency International - Nederland, Lifting the lid on lobbying – Enhancing the trust in public decision-making in the Netherlands, 2015, p. 11, <http://www.transparency.nl/wp-content/uploads/2015/04/Lifting-the-Lid-on-Lobbying-Enhancing-Trust-in-Public-Decision-making-in-the-Netherlands.pdf> (last viewed 10 October 2016)).

Frequently used abbreviations

IAK: guidelines for the Dutch government how to identify, balance and weigh different stakeholders when writing proposals for legislation. In Dutch: *Integraal afwegingskader voor beleid en regelgeving*.

BNC-fiche: briefing paper by the Dutch government in a standard format that informs and assesses new (legislative) proposals by the European commission. In Dutch: *Beoordeling Nieuwe Commissievoorstellen*.

DBA/NVB: Dutch Banking Association/Nederlandse Vereniging van Banken

DG FISMA: Directorate-General for Financial Stability, Financial Services and Capital Markets Union of the European Commission

EC: European Commission

ECOFIN: Council of the Ministers of Finance of the European Union

EP: European Parliament (EP)

MPs: members of parliament

Web request: request for access to government information according to a process that is based on the open government act, in Dutch: *Wet Openbaarheid van Bestuur* (1991).

STS securitisation: simple, transparent and standardised securitisation.

Clarifications

Memorie van Toelichting: a standardised document that accompanies legislative proposals from government, which explains different aspects of the proposed legislation according to existing guidelines.

Chapter 1

A CITIZEN'S PERSPECTIVE
ABOUT TRANSPARENCY **AT**
THE MINISTRY OF FINANCE



Introduction

Why citizens should be involved

impact on society

Financial legislation that regulates banks affects not only how the banks operate but also how they impact on the economy, society and individual citizens. If citizens and civil society groups are informed and able to provide input into banking and financial legislation initiated by the Ministry of Finance, they can argue in favour of the public interest and citizens' interests, which may be contrary to the arguments put forward by the banks which promote their interests. Such public scrutiny and input diminishes the potential for regulatory capture at the Ministry, a process that precludes public interests from being integrated into financial laws.

a citizen's perspective

To start with, a citizen has to know the national and EU financial legislative decision-making processes with which the Ministry is involved. Based on that information, a citizen can hold, or develop, an opinion that he/she wants to communicate to the Ministry, or perhaps start a public debate. In order to be able to provide input at the right time, citizens must know the stages and the timings of the decision making processes and what access channels are open to him/her to provide input to the Ministry. In addition, in order to assess the fairness of the Ministry's decision-making, a citizen must know what opinions have been provided by other parties, such as the financial sector lobby, and how accountable the minister is to parliament on what interests have been taken into account.

questions to be asked

This chapter therefore examines from a citizen perspective:

- What open public information is available for citizens from the Ministry about the decision-making process on national and EU legislation in which the Ministry of Finance is involved?
- What are the official channels and possibilities for citizens to provide an input?
- What information is available about external parties providing input to, and lobbying, the Ministry?
- How transparent is the Ministry about the weighing and balancing of inputs and interests, and how the interests of citizens and the public interest have been protected or prioritised?

The Ministry's mandate and decision-making process

Dutch and EU laws

Following the financial crisis of 2008, many current national laws to reform the financial sector are based on EU laws which are either EU "directives" that need to be integrated into national law through the parliament, or EU "regulations" that are decided at EU level and directly applicable to member states.

Minister's responsibility

The responsibilities of the Ministry of Finance regarding financial legislation differ from national level to EU level. On European legislation, the Dutch Minister of Finance co-decides at the EU Council of Ministers of Finance (ECOFIN), after the European Commission has exercised its mandate to initiate legislation. The ECOFIN chair then negotiates a final text with the European Parliament which has also co-decision making power (see box). At the Dutch level¹, the Ministry can propose to parliament new Dutch financial legislation and changes to existing laws, or submit EU 'directives', which become law after being presented and approved by both the Lower House (*Tweede Kamer*) and the Senate (*Eerste Kamer*).

When these national and EU decision-making process are transparent, it enables citizens to judge whether the Ministry is representing the interests of all stakeholders - including the public interest.

EUROPEAN FINANCIAL LEGISLATION - THE DECISION MAKING PROCESS

Only the European Commission (EC) – specifically at the responsibility of the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) - has the mandate to initiate financial legislation.

The EU Council of Ministers of Finance (ECOFIN), which includes the Dutch Minister of Finance, as well as the European Parliament (EP) can only request the EC to initiate policies or laws.

The EC (DG FISMA) consults before deciding on new financial legislative proposals via the public internet consultations, public hearings and informal contacts. The Dutch Ministry of Finance sometimes responds to the EC's internet consultations.

The EC presents final legislative proposals to ECOFIN and the EP, who respond and make decisions on amendments separately. Each Minister of Finance has weighed co-decision making power at ECOFIN about these amendments to the EC proposals. The Dutch Minister of Finance consults and discusses with the Dutch parliament about the content and outcomes of ECOFIN meetings and decisions on legislative proposals.

The proposed amendments are then discussed behind closed doors by the presidency of the ECOFIN and the EP. Following these discussions, the text – usually a compromise between the EP and the ECOFIN - becomes law after it is approved by the EP and the EU Council of Ministers and is published in the official EU journal.

Lobbying can take place at all stages of the decision-making process.

Governmental frameworks and guidelines for transparency

What rights do Dutch citizens have when the Ministry of Finance develops and decides on financial legislative proposals? A few overall governmental policies, guidelines, rules and laws encourage transparency and access for citizens, and balanced legislation by Ministries. In addition, there are specific policies and rules applicable to the Ministry of Finance, designed to protect the public interest.

Overall government policy and obligations

Specific guidelines and policies on openness of information and balancing of interests with regard to legislation apply to all Ministries:

- The Dutch Constitution embeds in Article 110 the right to access to information by stating that 'government bodies shall observe the right of public access to information in accordance with rules to be prescribed by an act of parliament.'²
- The Public Access to Government Information Act (*Wet openbaarheid bestuur* (Wob)) established in 1991, aims to implement Article 110 and open up public administration by allowing anyone to apply for information from Ministries on specific issues.³ A ministry must reply to all requests, and – if no limitations apply – release documents or information, redacted or in full.⁴
- Several governmental guidelines instruct how ministries should write legislative proposals.⁵ According to such an official instruction (*Aanwijzingen voor de Regelgeving*⁶), an explanatory document - *Memorie van Toelichting* - has to accompany each legislative proposal sent to parliament. In a standard format, the document should explain different aspects of the legislation, including

its potential impact on businesses and citizens. It should explain how the guidelines (*Integraal afwegingskader beleid en regelgeving* (IAK)) on identifying, balancing and weighing the interests and powers (*krachtveldanalyse*) of different stakeholders have been implemented and contain information on what advice and consultations have taken place.⁷ If a Ministry concludes that the rights and duties of citizens, companies and institutions will be significantly affected by legislation, a draft legislative proposal should be presented for public (internet) consultation via the government's website and have a document that explains how the IAK guidelines have been applied.⁸ When a final legislative proposal is sent to the parliament, the 'consultation paragraph'⁹ in the *Memorie van Toelichting* should explain, in general terms, how the Ministry has weighed the consultation responses and whether they were integrated into the legislative proposal.¹⁰

- The policy of the cabinet of ministers headed by Prime Minister Rutte is for more open government, including transparent decision-making, active distribution of information, and openness to input and initiatives from the public.¹¹
- All civil servants in contact with external persons are subject to guidelines¹² on integrity, as summarised in the *Gedragcode Integriteit Rijk* (2015). These guidelines advise on avoiding conflicts of interest, participating in seminars and conferences, and handling information and external communications.

implementation of right to know

The aforementioned policies, guidelines and laws are in place to ensure that citizens have the right to access information, including through public internet consultation, and to achieve good quality and balanced legislation. How these guidelines are implemented should be transparent in the *Memorie van Toelichting* that complements the legislative proposal. There are, however, no specific guidelines on transparency about lobbying or for civil servants dealing with lobbyists.

proposal for improved openness

In order to improve openness and accountability about lobbying and how lobby interests are weighed compared to those of citizens, two members of parliament (see Preface: *Initiatiefnota Lobby in daglicht*)¹³ made a proposal in December 2015, supported by parliament. As at end October 2016, the government's only response has been to indicate it wants to adapt the *Aanwijzingen voor de Regelgeving* so that the *Memorie of Toelichting* be expanded and cover more explicitly what inputs have been received from lobbyists and public consultations, and how these have been dealt with in the legislative proposal.¹⁴

Additional guidelines and policies influencing the Ministry of Finance

post crisis recommendation

The parliamentary investigation into the causes of the 2008 financial crisis (*Commissie De Wit*) recommended in 2010 that the Ministry of Finance be more transparent about influence exerted from interested parties (*belanghebbenden*). It also proposed the development of a so-called 'legislative footprint' to identify which external parties have been involved in what way in the legislative process.¹⁵

new guidelines by Ministry of Finance

Only in August 2016 did the Minister issue 'guidelines on external contacts'¹⁶ covering for example procedures on how civil servants should deal with lobbyists. The guidelines instruct that all draft legislative proposals which affect the financial sector should be subject to internet consultation and that industry associations responding to such consultations should be encouraged not to respond anonymously. They also make it mandatory that a 'legislative footprint' (*lobby paragraaf*) be added to all kind of legislation and governmental measures for their execution. The legislative footprint should give details about inputs received, also outside the official internet consultation.

policy and responsibility

The Minister of Finance, Mr. Jeroen Dijsselbloem, has stated he is in favour of openness about the financial legislative process and his own activities.¹⁷ He values external input into the legislative decision making process as a contribution to both the viability and effectiveness of implementation.¹⁸ He recognises that the Minister has to take responsibility for assessing how the public interest is best served in legislative proposals.¹⁹

So how transparent are the processes to propose financial laws for citizens?

website not very helpful

The Ministry of Finance's website is not particularly helpful or informative for citizens searching for information on upcoming legislation aimed at reforming and regulating the financial sector. It gives an overview of general topics²⁰ such as 'financial reforms'²¹ but does not provide an overview of the issues currently being legislated. Nevertheless, citizens can use other government websites as well as the Ministry's own site – both are fully interconnected – to search for all documents issued by the Ministry, which are immediately made publically accessible. By using a range of search filters, information on upcoming financial legislation should be found on several specific governmental website²² but, in practice the websites provide only a partial²³ overview of national and EU financial legislation currently being prepared, open for consultation or ready to be implemented in the near future.

searching the right documents

Since information about upcoming financial legislation is not easily found on the Ministry's website, citizens have to know what national and/or EU financial legislation is being developed and proposed. Using search filters with key terms of a particular future law, however, all related documents issued by the Ministry of Finance are publicly accessible to citizens via government websites. If a draft legislative proposal is published for an internet consultation, an opportunity is provided to scrutinise a draft text that is already quite developed. Each new EU legislative proposal from the EC, on which the Minister of Finance has to co-decide at ECOFIN, is presented and explained in a so-called 'BNC-fiche'²⁴ (*Beoordeling Nieuwe Commissievoorstellen*). It includes a short impact assessment of the financial and juridical consequences, as well as the impact on businesses and citizens, of such legislation. This BNC-fiche is the Ministry of Finance's starting point for future discussions in Brussels and briefly clarifies the Ministry's position to the domestic parliament, though it does not contain any information on the external inputs or lobby positions received. This BNC-fiche is, however, not easy to find among the many documents sent to parliament, and is not updated.

parliamentary documents

All documents sent from the Minister of Finance to the Dutch parliament are published, including written Q&As, and letters which announce new legislation and explain how it will be developed²⁵ (*Aankondiging van de voorgenomen maatregel*²⁶). Citizens can consult the parliament's website for reports on discussions between members of parliament (MPs) and the Minister of Finance, which might, for example, clarify how the Minister weighed the different interests in forming a conclusion on a legislative proposal.

social media

The aforementioned documents, debates in the Dutch parliament, press conferences and other events are also announced through press releases, automatic email announcements²⁷, social media (i.e. the twitter accounts of the Minister @J_Dijsselbloem and the Ministry @Financien), and other social media which are not found on the Ministry's website²⁸ or which require the user to have a personal account (e.g. LinkedIn). Some, but not all²⁹, official speeches of the Minister of Finance can be found through formal search filters on the government website. Speeches can provide citizens with some insight into the Ministers' opinions or contacts with the financial sector (e.g. when giving speeches at a conference organised by a financial industry association).

skills for analysis

Citizens need quite some skill to find and monitor all the available documentation on a particular legislative issue and the related decision making by the Ministry of Finance. Keeping up with the analysis of a particular legislative proposal that is discussed in different documents – many of which are lengthy and technical – can be time consuming. Moreover, the availability of such material depends on the Ministry providing parliament with full information in a timely fashion.³⁰

Wob request

In order to have more information, a citizen can submit an access to information (Wob) request or search the government's website (filter 'Wob-verzoek'³¹) for information released through a Wob request. Correspondence by the Ministry of Finance, made available in this way is the most informative compared to other public documents (even if some details, such as names, are redacted) about discussions held with external parties and how banks, financial industry associations etc. are lobbying for a particular position.

How and when can citizens give input on future financial laws?

- diversity of stakeholders** According to the governmental guidelines on writing legislative proposals, the Ministry of Finance has to take into account the interests of different stakeholders. Because citizens will be impacted by financial laws, there should be opportunities available for citizens and civil society organisations to give their perspective on future financial laws and provide arguments in favour of the public interest.
- official consultation** The main official channel for input that citizens can use is the public internet consultations issued by the Ministry of Finance (these did not happen routinely until the September 2016 new guidelines issued by the Ministry). There are no announcements of such consultations that can be easily found on the Ministry's website. Citizens have to proactively search for official internet consultations using a range of filters (via: www.internetconsultatie.nl) or monitoring press releases, or be already subscribed to alerts about internet consultations (www.internetconsultatie.nl/voorkeuring-abonnement) to find out when a financial legislative proposal can be commented on by the public. The Ministry does not seem to attempt to reach out to affected citizens or informed civil society organisations. Such public internet consultations invite comments on drafted, new or reviewed national legislation, some of which might integrate EU directives that allow for flexibility in national interpretation and implementation. No particular questions are addressed to citizens.
- informal consultations** The consultation documents contain a rather elaborate draft law and the *Memorie van Toelichting* includes quite technical explanations about different aspects and impacts of the future law. It does not contain information about who has already given input or been consulted prior to the official internet consultation.
- lack of access channels** Citizens can also give their opinions using other official access formats (via internet) although there is no guarantee whether they will be taken into account. It is not transparent whether there are other consultation mechanisms, such as advisory groups to which, for instance, civil society organisations promoting the public interest could be invited.

Finding out about input and lobbying by the banks and others

- counterbalancing the banking sector** Citizens who are informed about the range of comments and arguments given to the Ministry by other interested parties on future financial legislation, can better put forward arguments that counterbalance positions that unduly favour the financial sector. Additionally, by finding out when and how the financial sector and others influence and lobby, citizens can assess whether they are given equal opportunities to put forward their positions.
- responses to consultations** The Ministry of Finance does not publicise any information about external inputs, lobbying or advice it requested and received prior to the public internet consultation. The first opportunity for citizens to see such information is when the responses to the consultations are published on the Ministry's website. Even then, this is only if the party concerned is willing to have its response published, though this is now encouraged by the Ministry. Such responses already start to be made public during the consultation period.³²
- paragraph on consultation and advice** The most public and standardised information by the Ministry about external views given during the development of a legislative process, is the particular paragraph (*consultatie en advies*) which, according to governmental guidelines, needs to be included in the *Memorie van toelichting* that accompanies the final legislative proposal. This means such information about external influence is only made public once the legislative proposal is finalised and submitted to parliament. Moreover, the information provided is brief and limited, often focussing on responses received via the official internet consultation. From September 2016 onwards, this paragraph is to be expanded by the

Ministry of Finance to become a more comprehensive so-called 'legislative footprint'³³ with information about the various contacts with external parties.

beyond formal consultations There are several circumstances in which external influences on the legislative process are hardly or not transparent to citizens, namely when no consultations are issued, the *Memorie van toelichting* provides little information, or the BNC-fiche lacks such information, which is for instance the case for EU proposals for a 'regulation'. Other information channels can be used to find out whether and how the Minister might have been influenced such as his public diary³⁴ and his tweets, which publicise his contacts and appointments outside the Ministry, though they give no information on the persons met or the content of meetings.

transparency not adequate So far, only information received from access to information (Wob) requests provide a detailed and thorough insight into the various formal and informal contacts that different staff members of the Ministry have with external parties and how lobbying takes place (see also chapter 2).³⁵ This means that the information made available in standardised ways by the Ministry is not adequate for citizens to monitor whether excessive lobbying or regulatory capture take place.

Can citizens know how their interests are being fairly taken into account?

political choices Even if the Ministry of Finance receives a great deal of external inputs, influencing and lobbying, what matters for citizens is whether the choices made during the decision-making process result in a balanced final legislative proposal that integrates or gives priority to the public interest and citizens' concerns. The Minister of Finance is the one who is accountable for the decisions taken based on external input.³⁶

weighing of diverse interests According to existing guidelines and practices, the main formal document issued routinely by the Ministry which makes transparent how external inputs have been weighed and balanced in financial legislative proposals is the *Memorie of Toelichting*. The paragraph included in the *Memorie of Toelichting* about consultation and advice gives a short explanation of how input from official internet consultations has or has not been integrated. The paragraph on how the Ministry judges the impact of a potential law on citizens, as well as businesses, should give citizens an indication whether and how the Ministry has applied the governmental guidelines for balanced and integer legislative processes (*Integraal afwegingskader beleid en regelgeving*, IAK: explained above). Until now the *Memorie of Toelichting* did not much clarify the methodology used or what the public interest might mean in the context of the new law. Reports and documents about the Ministers responses to parliamentary questions on the issue are able to publicise more information on these issues.

no guarantee Citizens therefore have neither comprehensive information nor an explicit guarantee that their positions are being properly heard and weighed, let alone balanced or given priority over corporate interests.

Testing transparency: the case study about STS securitisation

example for testing In order to judge the means for citizen information and participation, this reports uses a concrete example of a new law proposed at EU level, on which the Minister of Finance had to co-decide. Once the whole decision-making process is over, the EU law on STS securitisation will become Dutch law. This case will look at how the above mentioned information channels will inform citizens about the decision-making process on this legislative proposal.

Introducing STS securitisation and the EU decision-making process

EU legislative proposal

In September 2015, the EC proposed an EU law to allow and regulate simple, transparent and standardised (STS) securitisation (see box). This proposal was launched at the same time as the *Action Plan to create a Capital Markets Union (CMU)*. Prior to this launch, a written internet consultation had been opened between 18 February and 13 May 2015.³⁷ By mid December 2015, ECOFIN had decided its position on the legislative proposal³⁸ but by end October 2016 the proposal was still being disputed at the Economic and Monetary Affairs Committee (ECON) in the European Parliament and no amendments to the legal proposals were yet decided.³⁹ Once ECON finalises its amendments, negotiations between ECON and ECOFIN will begin. The final compromised legal text is therefore not expected in 2016. This final law will be an EU 'regulation' that is directly applicable in Dutch law.

box 2

WHAT IS SECURITISATION AND WHY IS IT MADE SIMPLE, TRANSPARENT AND STANDARDISED (STS)?

Securitisation means that loans provided by banks or other financial institutions can be packaged and transformed into financial products, such as investment funds. Investors can buy shares in these funds. Such securitisation allows banks to take the packaged loans off their balance sheet and make new loans.

Those who buy securitised products should receive income from these loans; in case the borrower is unable to pay, collateral should be available. The 2007 US financial crisis - that spilled into the EU in 2008 - was caused by securitised bad or even fraudulent sub-prime mortgage loans that could not be repaid and the value of the houses mortgaged returned insufficient collateral. Consequently, the securitised products became worthless and globally interconnected banks also holding such securitised products had payment problems; the resulting lack of trust in the large banks triggered a credit crisis and a financial crisis.

To avoid the problems caused by securitised sub-prime mortgages it is argued that securitised products be kept simple, transparent and standardised (STS). It is claimed that this will encourage finances to flow to small businesses and the economy. Nevertheless, introducing STS securitisation has been criticised, e.g. for re-introducing risks into the financial system, and it is questioned whether the EU law will simplify, standardise and make the securitised financial products transparent.

How can citizens know about the legislative process on STS securitisation?

availability of documents

Since the Ministry of Finance website has no heading on STS securitisation and upcoming EU legislation, citizens have to know about this issue and try out different search terms on the webpages of the Ministry/government and the Dutch parliament to find out about the Ministry's decision-making process. Such a search results in quite technical and lengthy documents that often also cover other topics. They include the Ministry of Finance's response to the EC consultation and questions by Dutch parliamentarians, the BNC-fiche introducing the EC proposed legislation on STS securitisation and the Minister's position, and research documents to which the Ministry refers (the one of the Dutch Central Bank was made public after ECOFIN had already made a decision). The public diary (not available in 2015) and the speeches of the Minister do not provide any further information.

position on the EU process

There is little information about the decision-making process within the ECOFIN and the Minister's position during the different stages of the EU deliberations. The BNC-fiche gives no update on the Ministry's position and whether it has changed through parliamentary debates, ECOFIN meetings, or lobbying, etc. From the available documents it is clear that the Ministry of Finance is in favour

of the STS securitisation proposals, believing it will have a positive effect, and only has a few critical observations (e.g. that more attention needs to be paid to how supervision will be organised). Overall, there is no simplified information that allows citizens to be easily aware about this potential EU regulation.

What possibilities do citizens have to influence legislation on STS securitisation?

no citizen's input

There has been no formal public internet consultation by the Ministry of Finance before it submitted its response to the EC consultation nor before the Minister took a co-decision on amendments at ECOFIN in December 2015. The reason might be that the final EU legal text on STS securitisation will be a 'regulation', which will become Dutch law without changes by the Dutch parliament.

no alert to citizens

There was also very little public indication by the Ministry that there was an EC public internet consultation on the future STS securitisation law. It was only mentioned in documents provided to the Dutch Parliament in March 2015⁴⁰ in which the Minister announced that the Ministry itself would respond.

other communication

The only route left for citizens to communicate concerns to the Ministry about this EU legislation is through the standardised official contact point⁴¹ or other formal (e.g. a letter) or informal (e.g. participating in public debates attended by the Minister or Ministry officials) channels. There is, of course, no guarantee that the Ministry would respond positively to such contact and input.⁴²

Did external parties give input to the Ministry?

source of inspiration

Citizens can find out from available information that the Ministry based its position on STS securitisation on documents from the EC, the European Banking Authority (EBA), the European Central Bank, international financial institutions (such as the Bank of International Settlements) and perhaps on academic research.⁴³ There is no information available to citizens on what input was given by the private sector or whether lobbying took place.

Overall, there is not sufficient clear information for citizens to assess if, how and when the Ministry was influenced.

How has the Ministry of Finance weighed and protected the public interest?

risks for citizens ignored

In the case of STS securitisation, the instruments available to safeguard the interests of the public and citizens resulted in very little information being made available by the Ministry. The BNC-fiche states that there will be no financial impact or extra regulatory burdens for citizens.⁴⁴ It does not, however, explain how this judgement was made. The mapping of interests and powers (*krachtenveld*) in the BNC-fiche gives no information on how far citizens and households are able to be informed or respond to the proposal, for example to protect them against the risks of new STS securitisation. The main argument by the Ministry, that varied forms of access to finance will benefit the economy in general along with small and medium sized enterprises (SMEs), is little substantiated.⁴⁵ Rather, in its response to the EC consultation on STS securitisation, the Ministry urged that more attention be paid to removing impediments of STS securitisation loans to SMEs.⁴⁶

From this example, the lack of input possibilities for citizens appears to have resulted in their interests and concerns being barely taken into account, if not altogether ignored.

Conclusions from a citizen's perspective

For citizens who want to know about new financial legislation that regulates and reforms the financial sector, be heard, and ensure that the public interest is protected from undue influences exerted on the Ministry of Finance, the following can be concluded.

Poor transparency for citizens does not respect the right to know

Although citizens have the constitutional right to have access to information about the decision-making process on financial legislative proposals, the information made available by the Ministry of Finance is difficult to find and mostly too technical to monitor or analyse. Instruments of transparency, such as the *Memorie van toelichting* that goes with national legislative proposals, are not sufficiently comprehensive about the potential impacts of legislation on citizens or about external inputs received into the decision-making process, such as lobbying. Though the Minister of Finance is one of the few Dutch ministers who makes his diary ('agenda') public, it does not disclose all meetings or subjects covered in meetings. Documents released after a request for access to information (Wob) provide the most informative insight on the decision-making process. Making a Wob request, however, is a lengthy procedure not always appropriate for citizens.

Being knowledgeable about upcoming financial legislation at EU level is even more difficult for citizens. EU laws are very important to Dutch citizens because they include major reforms that will become Dutch law directly (in the case of 'regulations') or after voting in the Dutch parliament (in the case of directives). The Minister of Finance co-decides on EU laws but accessible up to date information about his position is not provided by the Ministry.

The current inadequate transparency about legislative processes means that citizens can in practice hardly monitor or raise public and political debates in time before final decisions are taken.

The right to be heard mainly limited to consultations on national laws

The main standardised way for citizens to provide input to draft legislative proposals is through website consultations. However, not all draft laws have so far been subject to consultation. Citizens have to be acquainted with the Ministry's websites to be alerted to consultations, and the relevant documents are quite technical. Since these consultations come at a stage when legislative text is already quite advanced, it is difficult for citizens to question more fundamentally the purpose and need for particular financial legislation.

Because no internet consultations are issued by the Dutch Ministry for citizens wishing to comment on draft EU legislation, citizens and civil society organisations have little formal ways to influence directly the Dutch Ministry's position on these important decisions.

There are some other channels of access to the Ministry but there are no guarantees that citizens' opinions will be heard and taken into account.

Transparency about lobbying is scarce

Information by the Ministry of Finance about its external contacts is scarce. Social media provides more openness about the Minister's meetings and encounters but gives no details of either the issues discussed, the Ministry staff involved or the form of contact. The publication of responses to public consultations and the disclosure in the *Memorie van toelichting* about input received, do not provide a full insight on contacts, influences and lobbying at the Ministry. Consequently, it is impossible for citizens, civil society and also parliamentarians to know the extent of lobbying by banks or influence from external bodies, and therefore challenge positions that might damage the public interest.

Is the public interest taken into account?

Up till end of August 2016, the guidelines on integrity of civil servants were not specific about how to deal with lobbyists and how to protect the public interest. The explanations in the *Memorie van toelichting* that clarify how the external inputs have been taken into account are limited and not sufficient to expose whether informal contacts and influences have been taken into account.

Importantly, information about the weighing of interests and the accountability regarding upcoming EU financial legislation is inadequate. Because transparency is lacking before final decisions are taken, it is difficult for Dutch citizens and civil society to be able to raise their voice when public interests are being ignored.

Notes

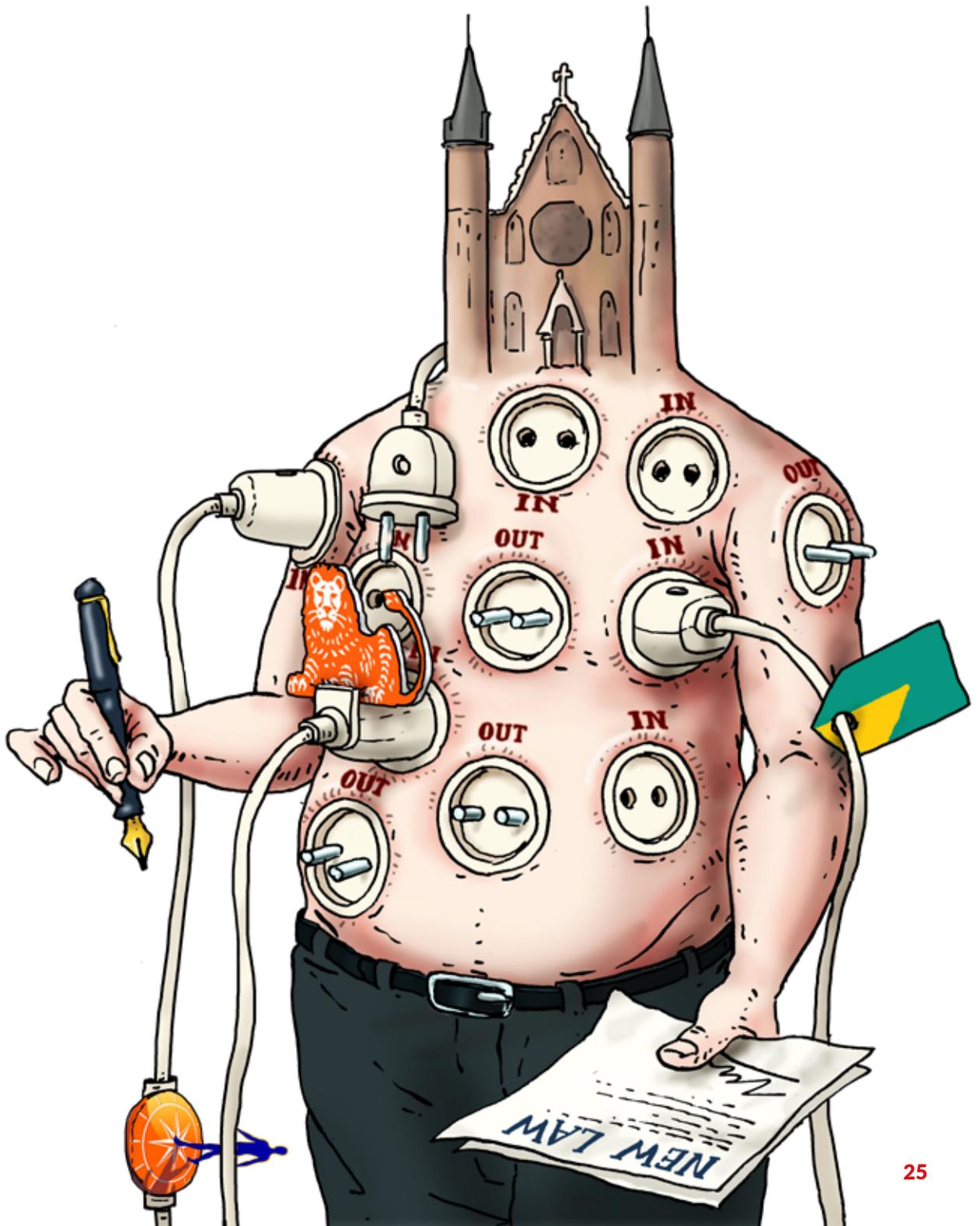
- 1 See for more details: Transparency International - Nederland, Lifting the lid on lobbying – Enhancing the trust in public decision-making in the Netherlands, 2015, p. 48.
- 2 Minister of the Interior and Kingdom Relations, The constitution of the Kingdom of the Netherlands 2008, Article 110, www.government.nl/documents-and-publications/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008.html (viewed 29 March 2015).
- 3 Wet openbaarheid van bestuur (Geldend van 01-10-2016 t/m heden), 1991, <http://wetten.overheid.nl/BWBR0005252/2016-10-01> (last viewed 10 October 2016).
- 4 For more information and comments, see: Transparency International - Nederland. Lifting the lid on lobbying – Enhancing the trust in public decision-making in the Netherlands, 2015, p. 48-49: Certain limitations can apply, for example when information gives a personal opinion on a policy (*Persoonlijke beleidsopvattingen*).
- 5 For a full overview, see: <https://www.kcwj.nl/> (viewed 7 September 2016).
- 6 Aanwijzingen voor de regelgeving (Geldend van 11-05-2011 t/m heden), 18 November 1992, <http://wetten.overheid.nl/BWBR0005730/2011-05-11> (last viewed 6 September 2016).
- 7 Kenniscentrum Wetgeving en Juridische zaken, Integraal Afwegingskader beleid en regelgeving, www.kcwj.nl/kennisbank/integraal-afwegingskader-beleid-en-regelgeving; also to be found through www.naarhetiak.nl (last viewed 17 September 2016); Tweede Kamer, Verslag van een schriftelijk overleg, Kamerstuk 32 637, Nr. 243, 21 June 2016. 'Integraal afwegingskader voor beleid en regelgeving (IAK) is een openbaar afwegingskader. Het is voor een ieder toegankelijk via www.naarhetiak.nl en www.kcwj.nl. Ook de uitkomsten van de afweging die in een concreet dossier plaatsvindt op grond van het IAK zijn openbaar: bij internetconsultatie wordt een apart document gepubliceerd waarin de zeven vragen van het IAK worden beantwoord, en in de memorie van toelichting dient zichtbaar antwoord te worden gegeven op diezelfde zeven vragen. Dit is ook opgenomen in de Interdepartementale schrijfwijzer memorie van toelichting'.
- 8 Kenniscentrum Wetgeving en Juridische zaken, Draaiboek voor regelgeving - Nr. 9a (Internetconsultatie), (date unknown) <https://www.kcwj.nl/kennisbank/draaiboek-voor-de-regelgeving/hoofdstuk-2-formele-wetten-op-voorstel-van-de-regering-n-19> (last viewed 17 September 2016); 'In welke gevallen vindt internetconsultatie plaats?'
- 9 The paragraph is titled in Dutch 'Consultatie' or 'Consultatie en advies'.
- 10 Ministry of Finance, Antwoorden schriftelijke vragen coco's, 16 November 2015, p. 18, <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2015/11/16/antwoorden-schriftelijke-vragen-coco%E2%80%99s/antwoorden-schriftelijke-vragen-coco%E2%80%99s.pdf> (last viewed 17 September 2016); 'In de toelichting bij de regelgeving wordt vervolgens vermeld wat de reacties op hoofdlijnen waren en wat hiermee is gedaan in het voorstel. Dit gebeurt vrijwel altijd in een aparte paragraaf van de toelichting die daarmee kan worden beschouwd als een "lobbyparagraaf"'; Kenniscentrum Wetgeving en Juridische zaken, Draaiboek voor regelgeving - Nr. 9a (Internetconsultatie).
- 11 Actieplan open overheid 2016/2017: attached to the letter to Parliament by the Minister of Interior and Kingdom Relations, Toepassing van de Wet openbaarheid van bestuur, Kamerstuk 32 802, nr. 21, 15 December 2015, <https://zoek.officielebekendmakingen.nl/kst-32802-21.html> (last viewed 17 September 2016); Ministry of Finance, Response to questions for SOMO research regarding transparency and weighing of interests related to financial legislative processes and lobbying by banks, email received by SOMO on 19 July 2016: Response to question nr. 2.
- 12 Rijksoverheid, Gedragscode Integriteit Rijk, 24 September 2015, <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2015/09/24/gedragscode-integriteit-rijk/gedragscode-integriteit-rijk.pdf> (viewed 13 September 2016).
- 13 Tweede Kamer, Initiatiefnota van de leden Bouwmeester en Oosenbrug: "Lobby in daglicht: luisteren en laten zien",

- Kamerstuk 34 376, blg-650569, 24 December 2015.
- 14 Ministry of Economic Affairs, Brief van de Minister van Economische Zaken aan de Voorzitter van de Tweede Kamer der Staten-Generaal, Brief nr. 238, Kamerstuk 32 637, 11 April 2016.
 - 15 Tweede Kamer, Parlementair onderzoek financieel stelsel - Rapport, 10 May 2010, <https://zoek.officielebekendmakingen.nl/kst-31980-4.html>: Recommendation nr. 18: *'De commissie beveelt de Kamer aan om de mogelijkheden te onderzoeken om de invloed van belanghebbenden op de inhoud en totstandkoming van wet- en regelgeving transparanter te maken. In dat verband zou een systeem van «legislative footprint», een systeem waarbij de wetgever aangeeft welke actoren op welke wijze betrokken zijn geweest bij de opstelling van regulering, kunnen worden onderzocht'.*
 - 16 Ministry of Finance, Gedragslijn Externe contacten, 29 August 2016, <https://www.rijksoverheid.nl/documenten/richtlijnen/2016/08/29/gedragslijn-externe-contacten-ministerie-van-financien> (last viewed 7 October 2016).
 - 17 See for example: Tweede Kamer, Vragen van de leden Nijboer en Bouwmeester (beiden PvdA) aan de Ministers van Financiën en van Binnenlandse Zaken en Koninkrijksrelaties over de transparantie van de lobbypraktijken van Nederlandse banken (ingezonden december 2013), Vergaderjaar 2013-2014, Aanhangsnummer 1142, 7 February 2014 (viewed 10 February 2014): Responding In February 2014 to SOMO's report 'Taking lobbying public', Minister Dijsselbloem agreed that transparency about how different interests are weighed in decision making is important. He referred to the specific paragraph in the *Memorie van toelichting* which details public responses to the internet consultation and how these are considered by the Ministry. This was a 'lobby footprint' according to the Minister.
 - 18 See for instance: Ministry of Finance, Antwoorden schriftelijke vragen coco's, 16 November 2015, p. 1: *'De inbreng van externe partijen is van groot belang bij de opstelling van wet- en regelgeving. Dit draagt bij aan de vormgeving en uitvoerbaarheid van de wetgeving'.* Idem, p. 15.
 - 19 Ministry of Finance, Idem, p. 1: *'Hoewel het kabinet veel waarde hecht aan die inbreng, maakt het kabinet een eigenstandige afweging waarmee het algemene belang het beste is gediend. Het kabinet is derhalve als politiek verantwoordelijk steeds penvoerder, zelfs als concrete tekstsuggesties worden overgenomen.'*
 - 20 <https://www.rijksoverheid.nl/ministeries/ministerie-van-financien/onderwerpen> (viewed 5 September 2016).
 - 21 <https://www.rijksoverheid.nl/onderwerpen/hervorming-financiele-sector> (viewed 5 September 2016).
 - 22 Ministry of Finance, Response to questions for SOMO research regarding transparency and weighing of interests related to financial legislative processes and lobbying by banks, email received by SOMO on 19 July 2016: <https://wetgevingskalender.overheid.nl/>.
 - 23 As tested, for example, for this report on 5 September 2016: of the two consultations that were still open for responses, namely the 'Wijzigingswet financiële markten 2018' (consultation open until 8 September 2016: <https://www.internetconsultatie.nl/wijzigingswetfm2018>) and 'Wijzigingswet financiële markten 2017' (consultation open until 8 September 2016: <https://www.internetconsultatie.nl/wijzigingsbesluitfm2017>), only the former was mentioned on the overview of upcoming legislation (<https://wetgevingskalender.overheid.nl/>) with search terms in Dutch: Ministry of Finance, law and 'financiën / financieel toezicht' (term European affairs did not succeed in providing a result).
 - 24 For a good explanation in Dutch and overview of the contents/format of the BNC-fiche, see: https://www.europa-nu.nl/id/vh8es07d69yp/bnc_fiche?ksel=n3 (viewed 5 September 2016).
 - 25 See for instance the letter on 7 April 2016 by the Minister to the parliament about the change of a major national bank law, (Kamerstuk 34 208, nr.13, <https://zoek.officielebekendmakingen.nl/dossier/34208/kst-34208-13?resultIndex=0&sorttype=1&sortorder=4> (viewed 2 September 2016).
 - 26 See for instance: Ministry of Finance, Antwoorden schriftelijke vragen coco's, 16 November 2015, p. 18.
 - 27 <https://www.rijksoverheid.nl/ministeries/ministerie-van-financien> or <https://www.rijksoverheid.nl/ministeries/ministerie-van-financien/nieuws> : see *'Blijf op de hoogte'* (viewed 5 September 2016).
 - 28 For instance, the twitter accounts of the spokespersons of the Ministry are not mentioned on the Ministry's website, see <https://www.rijksoverheid.nl/ministeries/ministerie-van-financien/inhoud/contact/woordvoerders-ministerie-van-financien> (last viewed 7 October 2016).
 - 29 Ministry of Finance, Response to questions for SOMO research regarding transparency and weighing of interests related to financial legislative processes and lobbying by banks, email received by SOMO on 19 July 2016: Response to question nr. 6: According to the Ministry, all formal written speeches should be online, but research for this report found that not all full speeches are on the website of the Ministry/government.
 - 30 Ministry of Finance, Antwoorden schriftelijke vragen coco's, 16 November 2015, p. 11: The ministry endeavours to inform the parliament timely and fully as possible.
 - 31 <https://www.rijksoverheid.nl/documenten?trekwoord=Wob-verzoek&periode-van=&periode-tot=&onderdeel=Ministerie+van+Financi%C3%ABn&type=Alle+documenten> (search on 6 September 2016 and previous dates).
 - 32 See particular consultations at www.internetconsultatie.nl using the search term 'Ministry of Finance'.

- 33 Ministry of Finance, Gedraglijn Externe contacten, 29 August 2016.
- 34 Ministry of Finance, Response to questions for SOMO research regarding transparency and weighing of interests related to financial legislative processes and lobbying by banks, email received by SOMO on 19 July 2016: Response to question nr. 6: These give an overview of the appointments made by the Minister outside the Ministry. The diary is announced weekly but any last minute changes are not incorporated onto the website. The appointments include a short explanation with a link to further information if available. The diary of the Minister of Finance can be found at: <https://www.rijksoverheid.nl/regering/inhoud/bewindspersonen/jeroen-dijsselbloem/agenda-test> and <https://www.rijksoverheid.nl/regering/inhoud/bewindspersonen/jeroen-dijsselbloem/agenda-test/archief-agenda-2016>.
- 35 See for instance the documents released through the following Wob requests: Regarding the EU legislation MiFID II <https://www.rijksoverheid.nl/ministeries/ministerie-van-financien/documenten/wob-verzoeken/2013/09/19/besluit-wob-verzoek-over-de-totstandkoming-van-mifidii-richtlijn-markten-voor-financiele-instrumenten> (last viewed 17 September 2016), and regarding tax deductibility of CoCo's (see below box 4) <https://www.rijksoverheid.nl/documenten/wob-verzoeken/2015/10/07/besluit-wob-verzoek-inzake-beleid-coco-s> (last viewed 17 September 2016).
- 36 Ministry of Finance, Antwoorden schriftelijke vragen coco's, 16 November 2015.
- 37 European Commission, Consultation document - An EU framework for simple, transparent and standardised securitisation, 18 February 2015, http://ec.europa.eu/finance/consultations/2015/securitisation/docs/consultation-document_en.pdf (last viewed 9 September 2016).
- 38 See for a short mentioning: <http://data.consilium.europa.eu/doc/document/ST-14922-2015-INIT/en/pdf> (viewed 6 September 2016) and <http://data.consilium.europa.eu/doc/document/st-14701-2015-rev-1/en/pdf> (last viewed 7 October 2016).
- 39 To monitor the European Parliament decision-making on the legislative proposal for STS securitisation, see: [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2015/0226\(COD\)&l=en#tab-0](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2015/0226(COD)&l=en#tab-0).
- 40 Ministry of Finance, Nieuwe Commissievoorstellen en initiatieven van de lidstaten van de Europese Unie, Kamerstuk 22 112, Brief Nr 1950, 17 March 2015.
- 41 This can be found on the website: <https://www.rijksoverheid.nl/ministeries/ministerie-van-financien/inhoud/contact>.
- 42 Experience by the author (asking for information and a meeting) by writing letters, contacts through the standardised web contact point and via the spokespersons has been difficult or has taken a very long time before a response was given.
- 43 Ministry of Finance, Antwoorden vragen Eerste Kamer aanpassing richtlijn Solvabiliteit II en securisatie voorstellen, 17 December 2015, p. 7, note 3, https://www.google.nl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKewjf-vCUmfjPAhWBvRoKH-fa4DZMQFggcMAA&url=https%3A%2F%2Fwww.rijksoverheid.nl%2Fbinaries%2Frijksoverheid%2Fdocumenten%2Fkamerstukken%2F2015%2F12%2F17%2Fantwoorden-vragen-eerste-kamer-aanpassing-richtlijn-solvabiliteit-ii-en-securisatievoorstellen%2Fantwoorden-vragen-eerste-kamer-aanpassing-richtlijn-solvabiliteit-ii-en-securisatievoorstellen.pdf&usq=AFQjCNFb0_gQfmOg1UJOM2bvdgQtUS-KIQ&bvm=bv.136593572,d.d2s&cad=rja (last viewed 7 October 2016): The Ministry provided Parliament (in response to a question) with a list of academic literature to support its positive assessment of STS securitisation. It is not clear from the answer, however, how this list was used or weighed in the Ministry's decision.
- 44 Ministry of Foreign Affairs, [BNC-]Fiche 1: *Verordeningen tot invoering van een Europees kader voor eenvoudige, transparante en gestandaardiseerde securitisaties*, 6 November 2015, paragr. 5, c: https://www.google.nl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKewiy7O7In_jPAhUCExoKHdG_A-AQFggcMAA&url=https%3A%2F%2Fwww.rijksoverheid.nl%2Fbinaries%2Frijksoverheid%2Fdocumenten%2Fkamerstukken%2F2015%2F11%2F06%2Fbijlagen-bij-kamerbrief-informatievoorziening-over-nieuwe-commissievoorstellen%2F628730die-bijlage-2.pdf&usq=AFQjCNHGDEwIWBG8uRfQsTjVWZ15xg-GXFG&bvm=bv.136593572,d.d2s&cad=rja (last viewed 7 October 2016): *'De voorstellen leidt niet tot financiële kosten voor burgers.'*
- 45 Ministry of Finance, Antwoorden op de vragen van de vaste commissie voor Financiën van 26 november jl. over de Verordeningen tot invoering van een Europees kader voor eenvoudige, transparante en gestandaardiseerde securitisaties, 1 December 2015, p. 5 (note 3), 8, <https://www.rijksoverheid.nl/documenten/kamerstukken/2015/12/01/antwoorden-op-kamervragen-over-securisatievoorstellen> (viewed 15 April 2016): In response to questions from MPs on how much financing for SMEs will take place through STS securitisation, the Minister acknowledged that it was impossible to predict but that the EC had estimated EUR100-150 bn, and that current securitisation was mainly for mortgages.
- 46 Ministry of Finance, Kabinetsreactie groenboek kapitaalmarktunie en consultatiedocumenten over securitisaties en herziening van prospectusrichtlijn, 17 March 2015, p. 7, <https://www.rijksoverheid.nl/documenten/kamerstukken/2015/03/17/kabinetsreactie-groenboek-kapitaalmarktunie-en-consultatiedocumenten-over-securitisaties-en-herziening-van-prospectusrichtlijn> (viewed 15 April 2016).

Chapter 2

THE INVISIBLE THREADS LINKING BANKS **AND THE MINISTRY OF FINANCE**



Introduction

a more comprehensive picture

Chapter one examined the difficulties encountered by citizens wishing to give input to the Ministry of Finance on legislative proposals, because of a lack of accessible public information and hard-to-find methods of consultation. It also revealed that there was little information published about the lobbying activities of Dutch banks towards the Ministry of Finance or other interactions with the Ministry which could influence upcoming financial legislation. A more comprehensive picture of contacts, influences and lobbying at the Ministry of Finance could only be established through research for this report (see also introduction and Annexes on SOMO's website).¹

formal or informal contact and lobbying

This chapter provides an insight into the relationship between the Ministry of Finance and six Dutch banks (ABN AMRO, ASN Bank (independent but 100% owned by SNS Bank), ING, Rabobank, SNS Bank and Triodos Bank). It focuses on interaction that takes place between them throughout the domestic and EU legislative process and exposes the influence exerted by the banking sector through formal or informal contact and lobbying. Information about the different kind of contacts between the banks and the Ministry is mostly not publically available. Consequently, it is not open to scrutiny from the public or even parliament, which makes it vulnerable for regulatory capture. For information on how lobbying is organised within banks and the industry associations which lobby on behalf of banks, see chapters three and four, respectively.

The formal and informal consultation processes

Internet consultation – The limits

the main formal instrument

The Ministry of Finance uses the public internet consultation as the main formal instrument for receiving feedback on forthcoming legislation from relevant stakeholders, including citizens (see chapter one).² At the same time, it is a way of publicly disseminating information about potential new financial laws. The Dutch Banking Association/Nederlandse Vereniging van Banken (DBA/NVB) considers the internet consultation as one of its preferred channels to comment on draft national financial regulation on behalf of its member banks³ though it also uses other means.⁴ (For more information on the relationship between Dutch banks and the DBA/NVB see box 3 and chapter 3.) While the banks prefer the DBA/NVB to respond to consultations on their behalf, large banks such as ABN AMRO, ING and Rabobank might also respond individually in order to reflect the concerns of the worldwide operations of their banking group.⁵ SNS Bank responds only via DBA/NVB⁶, and its subsidiary ASN Bank does not take part in the lobbying activities of the DBA/NVB related to financial legislation but only participates in the sustainable platform of the DBA/NVB.⁷ All formal responses from banks and the DBA/NVB to consultations are published on the Ministry of Finance's website, and the banks and the DBA/NVB insist that is the case, while only the DBA/NVB also publishes its positions on its own website.⁸

prior to the internet consultation

Research for this report has found, as explained below, that significant contact between banks and the Ministry has usually already taken place at the beginning of the legislative process, and prior to the internet consultation, often at the request of the Ministry. Because of the limited time available to respond to consultations, the DBA/NVB prefers to be informed of topics being covered in legislative proposals before the consultation is opened to the public.⁹

The *Memorie van toelichting* (the explanatory document attached to legislative proposals sent to parliament) does not include much, if any, information on informal contacts and lobbying by external industry sources and other stakeholders outside of the public internet consultation process, although it should detail how the Ministry has responded to input received.

THE ROLE OF THE DBA/NVB IN RELATION TO THE MINISTRY OF FINANCE

There are many conversations and contacts between DBA/NVB staff (and member representatives), and civil servants about domestic, EU and international financial regulatory issues under consideration by the Ministry of Finance. This happens as many times at the request of the Ministry as it does at the request of the sector.¹⁰

The banks prefer to organise much of their lobby activity, and the information sharing that takes place prior to lobbying, through the DBA/NVB. By working together the banks have a stronger voice and their positions are considered more legitimate by the Ministry of Finance.¹¹

The DBA/NVB develops its positions towards upcoming financial legislative and regulatory processes in specific committees and working groups¹² that include experts, lobbyists and higher management from member banks. In a hierarchical process, the bank representatives discuss and develop compromise positions on which to lobby. Topics of significant importance are discussed and decided on at DBA/NVB board level following discussions in a committee and/or working group.¹³ The board of the DBA/NVB includes the chairs and members of the management boards of ABN AMRO, ING and Rabobank (two members each) and SNS Bank and Triodos Bank (one member each; Triodos Bank representing the smaller banks).¹⁴

The DBA/NVB also responds to demands for contacts and expert advice from the Ministry of Finance and other governmental bodies. The Ministry often contacts the DBA/NVB as an efficient way to ensure a good representation of the banking sector in the Netherlands. It is the vision of the DBA/NVB that serving the interests of banks usually consists in providing factual and well-informed information to the Ministry.¹⁵

(For more information, see also chapter 3)

Out of the public eye – The multiple communication channels

range of contacts

Numerous formal and informal contacts take place in different forms between the Ministry of Finance and banks on upcoming national and EU legislation. These contacts range from exchanging information, to lobbying on specific issues, and take place between all levels of personnel – from experts and civil servants, to (incidentally) CEOs and the Minister. It can be initiated by either banks or the Ministry, take a variety of forms and be ad hoc or through more standard meetings.

little public information

Information about these various interactions and the detailed subjects that are being discussed is not publically available, yet they are typical for lobbying to be effective and regulatory capture to occur. On the other hand, openness by the Ministry to expertise and knowledge sharing promotes an understanding of the functioning and challenges stakeholders face. However, without adequate transparency and accountability about what is being discussed, it remains difficult to know if and how the interests of the banks have been taken into account regarding legislation and whether interests of other stakeholders have been ignored or side-lined.

different formats

Research for this report found that the following kind of meetings and interaction might take place between the Ministry and the Dutch banks:

- 'Technical' conversations and meetings between civil servants and industry associations such as the DBA/NVB, banking experts or bank representatives about the impact of upcoming legislation on banks;¹⁶
- Quarterly meetings (known as *kennis sessies*) between civil servants and bank experts in which information and expertise are exchanged;¹⁷

- Technical working groups made up of bank experts which provide civil servants with information and opinion. Technical working groups are often formed because a civil servant needs particular information or wants to hear the opinions of the banks as part of a broader survey among different stakeholders;¹⁸
- Briefings to share technical information;¹⁹
- Letters, emails and other forms of correspondence.

Bilateral contacts initiated by the Ministry itself occur regularly. Civil servants may require specific factual information from a bank to enable, for example, the Minister to respond to a parliamentary question. In these instances, the bank's lobby unit may put the civil servant in touch with the banking staff member with appropriate expertise. Most contact regarding financial legislation/reforms is between civil servants from the Financial Markets Department and bank representatives, who at times communicate on a first-name basis. Civil servants may also visit the bank to discuss important issues.²⁰ Legal experts in the Ministry are often familiar with their banking counterparts and may (sometimes) liaise directly on upcoming legislation.²¹

Bilateral contact initiated by the banks includes meetings with the Ministry to find out about upcoming policies and legislation, and to give the bank's expertise, perspective, difficulties, wishes and objections to such policies and legislation. ING, for example, has a lobby unit called 'Regulatory and International Affairs Department' and aims, according to its website, to 'influence regulatory developments for an outcome compatible with the interests of ING's business, its stakeholders and the banking industry as a whole'. Bilateral contacts – whether through emails, informal and formal meetings, or telephone calls – can be frequent and intensive, especially when future legislation is being discussed. Lobbying positions can include suggested changes and amendments to proposed regulations, presentations of calculated negative impacts and position papers.²²

undue
lobbying un-
surprising

Given these close and frequent contacts behind closed doors, it is perhaps unsurprising that there are examples of undue or excessive lobbying. In the case of 'CoCo gate' (see box), the Minister was willing to rule in favour of the competitiveness of the banks, for example, at the expense of the treasury, i.e. the public interest of the tax payers. This was exposed by the media as regulatory capture.

box 4

'COCO-GATE' (IN BRIEF)

Legal proposals by the Ministry of Finance sent to the Dutch Parliament in 2014 covered, amongst other things, the non-taxation of contingent convertible bonds (CoCos). CoCos are a financial instrument to boost banks' capital buffers. They are mostly bonds issued by banks and sold to investors. In times of crisis, these bonds become shares and the bank is exempted from repaying investors. The Minister of Finance proposed that Dutch banks pay no tax on CoCos, arguing that such taxation would disadvantage Dutch banks since CoCos issued by banks in other EU countries were seen as not being taxed.

Investigations conducted by the newspaper NRC Handelsblad²³ revealed that, while developing these proposals, the Minister of Finance ignored warnings by the Ministry's civil servants that such exemptions would be regarded by the EU as state aid. This risk was also not apparent in the legislative proposal presented to parliament. In addition it was revealed that suggested amendments to the text of the legislation were made by representatives of the financial sector and were directly copied into the proposals sent to parliament before other external parties and stakeholders had considered them.

Many informal contacts were shown to have taken place between the banks and Ministry of Finance before the legislative proposal was sent to parliament, in addition to formal meetings that took place between bank CEOs and the Minister of Finance. Documents released following an access to documents (Wob) request show that specific arguments made through lobbying and the

need for urgency²⁴ were communicated to the Ministry in emails, letters, telephone conversations and meetings.²⁵ A draft of the legislative proposal was also sent to the DBA/NVB for consultation.²⁶

Note that the aim of CoCos is to increase the bank's capital buffers and provide a new way of dealing with financial crises. By not paying taxes, the bank should be able to build up more capital – which is not always easy to do. However, rather than keeping such profits to build up its capital buffers, ING for example, paid out a dividend of € 471 million to its shareholders for the year 2014.²⁷ By contrast, it is estimated that, as a result of this legislation, the treasury/tax payer lost €350 million.²⁸

When this behaviour was exposed by the Dutch media, it was considered a scandal. Many saw it as evidence of the influence exerted by the large Dutch banks and the DBA/NVB on the Ministry of Finance to make the fiscal deductibility of CoCos legally clear as soon as possible because investors were at that time enthusiastic to buy CoCos.

In subsequent parliamentary discussions, the Minister claimed sole responsibility for the tax deduction proposal and its wording.²⁹

Lobbying at the top level: contacting the Minister of Finance

final responsibility The Minister of Finance's responsibility for both weighing of diverse stakeholders' interests and making the final decision on legislative proposals, makes him a key target for lobbyists.

top level lobbying The Minister meets those at the highest level of the banks, i.e. the chairs and other members of the managing boards. These meetings are prepared by top civil servants in the Ministry of Finance and senior members of staff at the bank, such as the head of the lobby unit.³⁰ There are established appointments as well as ad hoc meetings, which might be as follows according to research for this report³¹:

- Regular meetings (*regulier overleg*)³² of the Ministry with the CEOs/chairs of the managing boards of the largest Dutch banks, on average 4 times a year.
- Meetings on average once a year between the Minister and DBA/NVB board members³³, i.e. the chair and/or other members of the banks' management boards.
- Occasional individual bilateral meetings or contacts between some CEOs and board members of large Dutch banks on particular issues.³⁴

In addition, there are occasionally informal contact between the Minister and the top ranking representatives of the banks or DBA/NVB through phone calls³⁵ or even text messages.³⁶

events The Minister regularly speaks at, or attends, conferences and events organised by financial industry associations of which some Dutch banks are a member.³⁷ At such events, different informal contacts take place and positions are exchanged.

substantial but imbalanced interaction From documents released by access to information requests, information drawn from the Minister's diary, and the above overview of meetings exposed through research for this report, it is clear that there is substantial interaction at the highest level between the banking sector and the Minister related to financial legislation and policy. These high level contacts appear to create an imbalanced influence on a key decision-maker, the Minister, as there is no such level or amount of similar contact with individuals or organisations representing the public interest. The Minister's diary includes very few encounters with non-financial actors and if he does, engagement with students seems to be preferred.

The different interests at stake

The Ministry's choice for contacts³⁸

criteria Civil servants at the Ministry who prepare legislative proposals arrange external contacts to share expertise about particular issues. The criteria they use³⁹ to invite and interact with such external contacts - experts, representatives and lobbyists from banks, etc. - include expertise required to discuss such legislation, the interests at stake in the proposals, and diversity of stakeholders affected. These invitation criteria are important if balanced interaction and influence at the Ministry is to be ensured.

banks' experts In practice, it seems that more consideration is given to inviting the financial sector. The DBA/NVB is easily contacted to bring together various bank representatives. The staff in the lobby units of the large banks is well known to the Ministry along with the banks' experts and can also be easily contacted should particular information be required. The Ministry argues that input from banks⁴⁰ provides useful information and feedback on the possible practical impact of proposed legislation. The Ministry also formally consults with financial authorities such as the Dutch Central Bank and the financial market authority (AFM)⁴¹, as well as getting advice from the *Raad van State*.

DBA/NVB input The Ministry prefers to deal with banks via the DBA/NVB. It assumes the position taken by the DBA/NVB on upcoming legislation, as for example expressed in official internet consultations, is the position of its members⁴². The position of the DBA/NVB is frequently a compromise, based on discussions by working groups and committees and, for important issues, decisions made by DBA/NVB board members.⁴³ The banks do not consider the positions of industry associations to be fully identical with their own positions.⁴⁴ The CEO of Triodos Bank also participates in board decisions as a representative of the small banks, not as Triodos Bank.⁴⁵

How does the Ministry weigh differing interests?

little insight The presentation of a legislative proposal for a public internet consultation should include a document on how government guidelines on integrity and weighing of interests (IAK guidelines) have been applied, but it is usually only accompanied by the *Memorie van toelichting*. This explanatory note does not include details of input already submitted, discussions and meetings held, and contacts made prior to the time of the internet consultation.⁴⁶ Only when the final national legislative proposal is sent to parliament does the Ministry explain how inputs - mainly the internet responses - have been taken into account while giving little insight about how it has integrated the other interactions and influences received.

no analytical overview So far, there has been little reaction to internet consultations outside the financial sector.⁴⁷ Responses to the consultation can be published on the website, although responses can remain anonymous or unpublished if so requested. There is no analytical overview of the types of stakeholders who have responded though the Ministry declares that it will take account of the range of stakeholders who have provided input.⁴⁸

Following consultations, meetings and discussions - and after weighing the stakeholders' interests, the general public interest, the interests of the Dutch economy and financial sector - the Ministry makes a decision paying particular attention to the applicability of the law and political acceptability.⁴⁹

the Ministry's knowledgeable understanding The DBA/NVB and the large Dutch banks - ABN AMRO, ING and Rabobank - consider that⁵⁰ the Ministry of Finance makes independent decisions on proposed financial legislation based on a knowledgeable understanding of the relevant issues. They believe that it is no more receptive to positions put forward by the banks than it is to those offered by other stakeholders. In fact, they do not always see their positions recognised and find the Ministry less protective of its domestic banking industry than other EU countries such as Germany or France where the links between the financial sector and policy makers is even stronger.

imbalance in practice

The overall outcome seems to be that the Ministry makes attempts to take independent decisions on banking legislative proposals but in practice it receives major input from the banking sector and little from citizens, civil society or public interest groups. In these conditions, balancing the diverse interests of the banking sector and how it operates, and prioritising public interests becomes difficult if not questionable.

box 5

THE CASE STUDY OF STS SECURITISATION: HOW DID THE MINISTRY PREPARE ITS POSITION?

Chapter one (1) explained that citizens had little knowledge or ability to comment on the 2015 European Commission legislative proposal on simple, transparent and standardised (STS) securitisation as part of the creation of a Capital Markets Union (CMU). The Ministry of Finance responded in May 2015 to the consultation issued by the EC prior to its publication of the final EU legislative proposal. Only once it had responded was the Ministry's position on STS securitisation transparent.

In order to prepare its position - according to papers available to the public - the Ministry mainly consulted documents from financial authorities (as explained in chapter 1). Although these documents are subject to influence from lobbying, the Ministry stated to SOMO that it trusted that there were proper rules and processes in place at these institutions for controlling lobbying input.⁵¹ The Minister also referred to academic papers but it is not clear how they informed his decision.

Before the consultation, however, the Ministry had also consulted representatives of banks, insurance companies, pension funds and 'other relevant parties' according to information from the Ministry to SOMO.⁵² Research for this report also revealed that the Dutch Securitisation Association (DSA) - a Dutch industry association of which ABN AMRO, ING, Rabobank and SNS Bank are member - developed a position on STS securitisation and responded to the EC consultation.⁵³ It is not clear which banks, insurance companies, pension funds or 'other relevant parties' the Ministry met, nor whether it met the DSA, and whether they influenced the Ministry's position.

Note that the Netherlands has one of the highest volume of securitisation of residential mortgages in the EU.⁵⁴

Neither the banks nor the DBA/NVB claim to have been consulted about the Ministry's response to the EC consultation on STS securitisation and had not seen it until it was sent to the EC consultation website. The DBA/NVB finds that the Ministry of Finance makes its own choices on who to contact and when.⁵⁵

(1) For more background information, see chapter 1.

Comments and conclusions on the multiple consultations

Lack of transparency on range of interactions

There is very little information available on the informal and formal contacts the Ministry of Finance and the banks have with each other, which include meetings and interactions on a range of issues. The *Memorie van toelichting* that accompanies the final legislative proposal when it is presented to parliament, does not include specifics about all these external contacts that have taken place during the development of the legislative proposal. These external contacts range from civil servants directly contacting experts from banks, to the Minister of Finance meeting the chairs of the managing boards of banks. Such contacts can be initiated by the Ministry or the banks. While the Minister's diary, social media accounts and speeches make the Ministry of Finance somewhat more transparent than other Ministries, the content of the meetings mentioned in the Minister's diary is not clear. There is no public information when and on what (senior) civil servants meet with external contacts.

Unbalanced and privileged access

Compared to citizens, banks have privileged and easy access both to the Ministry of Finance and the Minister. This access allows the financial sector, for example, to discuss issues regarding upcoming legislation prior to an official public consultation, while citizens only see the first proposal of a new national law when the Ministry opens an internet consultation. Advanced knowledge of domestic and EU legislation that is being developed, enables the banks to better prepare their input. The many various informal contacts by the banking sector also result in the Ministry being fully aware with the operations, interests and positions of the banks while citizens and non-financial sector stakeholders have no equivalent way of promoting their positions and interests. Nevertheless, the effectiveness of such contacts, inputs and lobbying by the banks is not clear to the banks themselves.

There is hardly any public opportunity to comment on the position of the Ministry in ECOFIN, though it is here that the Minister co-decides on future EU laws. Once decided, EU laws become most visible to Dutch citizens when implemented at national level while the large banks might already have taken many chances to comment on such legislation beforehand.

An organised lobby with access to the final political decision-maker

The DBA/NVB plays an important role in facilitating contacts with, and lobbying towards, the Ministry. This industry association has sufficient means, resources, expertise and political clout through its own organisation and its member banks, to influence who the Ministry interacts with. It should be noted that the DBA/NVB's lobbying position is often a compromise between the positions of its member banks, some of whom are more involved in preparing the position than others. The top managers of the banks, being the board members of the DBA/NVB, have easy access to the Minister of Finance. The ability and capacity of the large banks to monitor legislative developments as well as promote their lobbying interests, allows them to influence – at the right time – civil servants at the Ministry as well as the Minister who is the final decision-maker at Dutch level for financial legislative proposals. Citizens and non-profit civil society organisations do not have such means to monitor, develop analysis and positions, and/or present their viewpoints to the Minister.

Impact on the weighing of interests by the Ministry and accountability regarding lobbying

The DBA/NVB and the large banks consider that the Ministry takes informed, independent and balanced decisions that reflect the views of different stakeholders. The official consultations, the public diary and social media accounts of the Minister, as well as the many formal or informal interactions with bank representatives revealed for this report, though, show that the majority of contact is with the financial sector. Upcoming financial legislation is barely discussed with citizens, civil society organisations, consumers, etc. 'CoCo-gate' exposed by the media as a scandal of regulatory capture, showed the risks of the existing network of close contacts and lobbying on legislation, and the scale of influence the financial sector can wield in this context at the expense of the tax payer. The *Memorie van toelichting* that accompanies national legislative proposals does not have extensive explanations as to how the different interests are balanced and how the impact and risks for citizens and the public interest is weighed.

How the Ministry arrives at its position to co-decide on future EU laws is not well substantiated and lobbying inputs into that process are not made public, as the case of STS securitisation shows.

Notes

- 1 This chapter is mainly based on: 1) interviews with, and desk research about, six Dutch banks (ABN AMRO, ING, Rabobank, Triodos Bank, SNS Bank and its subsidiary ASN Bank) <https://www.somo.nl/topic/financial-sector/>; 2) an interview with the DBA/NVB (Aleid Van Der Zwan, supported by Bart van Leeuwen) by SOMO (Myriam Vander Stichele supported by Sam van Dijck) on 22 June 2016; 3) Ministry of Finance, [written] Response to questions for SOMO research regarding transparency and weighing of interests related to financial legislative processes and lobbying by banks, email received by SOMO on 19 July 2016.
- 2 Ministry of Finance, Response to questions for SOMO research regarding transparency and weighing of interests related to financial legislative processes and lobbying by banks, email received by SOMO on 19 July 2016: Response to question nr. 9.
- 3 See annexes of ABN AMRO, ING, Rabobank and SNS Bank; A. van der Zwan, Head Public Affairs, DBA/NVB, interview with SOMO, 22 June 2016.
- 4 A. van der Zwan, Head Public Affairs, DBA/NVB, interview with SOMO, 22 June 2016.
- 5 Annex ING, paragr. 1.1.
- 6 Annex SNS Bank, paragr. 1.1.
- 7 Annex ASN Bank, paragr. 1.
- 8 See: <https://www.nvb.nl/publicaties-standpunten/100/publicaties.html>
- 9 A. van der Zwan, Head Public Affairs, DBA/NVB, interview with SOMO, 22 June 2016.
- 10 A. van der Zwan, Head Public Affairs, DBA/NVB, interview with SOMO, 22 June 2016.
- 11 Ministry of Finance, Gedragslijn Externe contacten, 29 August 2016.
- 12 See for instance: <https://www.nvb.nl/vereniging/122/bureau.html> (viewed 16 August 2016).
- 13 A. van der Zwan, Head Public Affairs, DBA/NVB, interview with SOMO, 22 June 2016.
- 14 See: <https://www.nvb.nl/vereniging/3877/bestuur.html> (last viewed 7 October 2016).
- 15 A. van der Zwan, Head Public Affairs, DBA/NVB, interview with SOMO, 22 June 2016.
- 16 Ministry of Finance, Response to questions for SOMO research regarding transparency and weighing of interests related to financial legislative processes and lobbying by banks, email received by SOMO on 19 July 2016: Response to question nr. 10; See also: Tweede Kamer, Verslag van een schriftelijk overleg, document 32 637, Nr. 243, Vastgesteld 21 juni 2016: Dutch Ministries are organising formal and informal/non-public expert meetings and round tables to consult stakeholders of policy issues and upcoming legislation. It is not clear how much that is the case at the Ministry of Finance.
- 17 Annex ABN AMRO, paragr. 5.1.
- 18 Annex Rabobank, paragr. 5.1.
- 19 Annex ABN AMRO, paragr. 5.2.
- 20 Annex Rabobank, paragr. 5.1.
- 21 Annex ABN AMRO, paragr. 5.1.
- 22 See the letter from Euroclear commenting on draft legislative amendments discussed at the EU Council of Ministers of Finance (<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/wob-verzoeken/2013/09/19/bijlagen-bij-besluit-wob-verzoek-over-de-totstandkoming-van-mifdii-richtlijn-markten-voor-financiele-instrumenten/wob-mails-euroclear-def.pdf>) and different other emails of correspondence (<https://www.rijksoverheid.nl/ministeries/ministerie-van-financien/documenten/wob-verzoeken/2013/09/19/besluit-wob-verzoek-over-de-totstandkoming-van-mifdii-richtlijn-markten-voor-financiele-instrumenten>) (last viewed 17 September 2016).
- 23 C. Driessen, 'De bank vraagt, de minister draait - Minister reserveerde met hulp van ING fiscaal voordeel voor alleen banken', NRC Handelsblad, 3 November 2015.
- 24 <https://www.rijksoverheid.nl/documenten/publicaties/2015/10/07/bijlage-4-bij-besluit-wob-verzoek-in-zake-beleid-coco-s>: see *Notitie* of 16 April 2014; See also handwritten note on internal draft legal proposal (6 June 2014) for fiscal issues in 2014 submitted to the Minister mentioning 'op aandringen van de banken'.
- 25 See the published files of the access to information request (<https://www.rijksoverheid.nl/documenten/wob-verzoeken/2015/10/07/besluit-wob-verzoek-inzake-beleid-coco-s>); See in attachment 3 of the published files, email of 4 June 2014: <https://www.rijksoverheid.nl/documenten/publicaties/2015/10/07/bijlage-3-bij-besluit-wob-verzoek-inzake-beleid-coco-s>.
- 26 Ministry of Finance, Antwoorden schriftelijke vragen coco's, 16 November 2015, p. 16-17.
- 27 <http://www.ing.com/Newsroom/Nieuws/Persberichten/ING-noteert-onderliggende-nettowinst-over-2014-van-EUR-3.424-miljoen-dividend-hervat-met-EUR-012-per-gewoon-aandeel.htm> (viewed 10 November 2015): In other words, the lobby had paid off for ING's shareholders, not for the public interest of the tax payers.
- 28 <https://www.rijksoverheid.nl/documenten/publicaties/2015/10/07/bijlage-4-bij-besluit-wob-verzoek-inzake-beleid-coco-s>, p. 90: *Notitie*, 20 April 2016.
- 29 Ministry of Finance, Antwoorden schriftelijke vragen coco's, 16 November 2015, p. 17.
- 30 Annex ABN AMRO, paragr. 5.1.
- 31 The Ministry of Finance was requested to review the draft text of this chapter but did not review due to lack of capacity (C. Gelinck, Spokesperson, Ministry of Finance, email to M. Vander Stichele, Senior Researcher, SOMO, 12 October 2016).
- 32 <https://www.rijksoverheid.nl/documenten/publica->

- [ties/2015/10/07/bijlage-4-bij-besluit-wob-verzoek-inzake-beleid-coco-s](#): See Notitie of 17 April 2014: 'het reguliere overleg met de CEO's van de banken'.
- 33 Ministry of Finance, Antwoorden schriftelijke vragen coco's, 16 November 2015, p. 14.
- 34 ING Annex, 5.1; Ministry of Finance, Antwoorden schriftelijke vragen coco's, 16 November 2015, p.14.
- 35 See for instance: C. Driessen, P. de Witt Wijnen, 'Rabobank doet toch mee aan compensatie derivaten', NRC Handelsblad, 7 juli 2016, <https://www.nrc.nl/nieuws/2016/07/07/rabobank-doet-toch-mee-aan-compensatie-derivaten-3137204-a1509376> (last viewed 7 October 2016).
- 36 P. de Witt Wijnen, 'Financiële sector: geïrriteerd en verbaasd over Dijsselbloem', NRC Handelsblad, 19 januari 2015, <http://www.nrc.nl/nieuws/2015/01/19/financiele-sector-geirriteerd-en-verbaasd-over-dijsselbloem> (viewed 20 January 2015).
- 37 See @J_Dijsselbloem, @Financiën; See: <https://www.rijksoverheid.nl/regering/inhoud/bewindspersonen/jeroen-dijsselbloem/documenten>; For instance, the Minister gave the keynote speech on 21 April 2016 in Amsterdam at gala dinner of the EUROFI High Level seminar, sponsored by ING and other internationally operating banks (<https://www.rijksoverheid.nl/regering/inhoud/bewindspersonen/jeroen-dijsselbloem/agenda-test/archief-agenda-2016>); the speech is available on the Eurofi website (<http://amsterdam2016.eurofi.net/sessions/gala-dinner/?t=s>) and is one of the few speeches available on governmental website: <https://www.rijksoverheid.nl/documenten/toespraken/2016/04/22/galadiner-eurofi-seminar-in-amsterdam> (last viewed search 20 September 2016).
- 38 Ministry of Finance, Response to questions for SOMO research regarding transparency and weighing of interests related to financial legislative processes and lobbying by banks, email received by SOMO on 19 July 2016: Response to question nr. 4.
- 39 Ministry of Finance, *Ibidem*.
- 40 See amongst others: Ministry of Finance, *Idem*: Response to question nr. 2; See also the Minister's answers during the debate at the Parliament about the 'CoCo-gate' (see box).
- 41 Ministry of Finance, *Idem*: Response to question nr. 15.
- 42 Ministry of Finance, *Idem*: Response to question nr. 10: *'leden van koepelorganisaties zijn bekend. Wanneer een koepelorganisatie een reactie op consultatie van voorgenomen wet- of regelgeving geeft, dan wordt dat gezien als een reactie van die koepelorganisatie namens al diens leden tenzij er een reden is om hier anders over te denken. De koepelorganisatie vertegenwoordigt immers haar leden.'*
- 43 Annex ING, paragraph 1.2; Annex SNS, paragraph 1.2.
- 44 See for instance: Annex, ING, paragr. 1.1; ING Group, Regulation and supervision, web page, <https://www.ing.com/ING-in-Society/Sustainability/Stakeholder-engagement/Regulation-and-Supervision.htm> (last viewed 29 September): 'Insofar these [industry and business] organisations engage in legislative processes or in the public and political debate around banking, they generally do so on behalf of all their member organisations, but not always based on their full consent. As a consequence, their views and standpoints do not necessarily reflect the individual positions taken by ING.'
- 45 Annex Triodos Bank.
- 46 See also chapter 1 for more explanations; Tweede Kamer, Verslag van een schriftelijk overleg, document 32 637, Nr. 243, Vastgesteld 21 juni 2016.
- 47 See for instance the consultation about changes of the main Dutch financial law in 2016: <https://www.internetconsultatie.nl/wijzigingswetfm2016/reacties> (viewed 19 September 2016): 9 reactions of which one from a citizen.
- 48 Ministry of Finance, Response to questions for SOMO research regarding transparency and weighing of interests related to financial legislative processes and lobbying by banks, email received by SOMO on 19 July 2016: Response to question nr. 4 and 9.
- 49 Ministry of Finance, *Idem*: Response to questions nr. 4, 13; Annex Rabobank, paragr. 5.1.; A. van der Zwan, Head Public Affairs, DBA/NVB, interview with SOMO, 22 June 2016.
- 50 Annex ABN AMRO, Annex ING, Annex Rabobank: paragr. 5.2.
- 51 Ministry of Finance, Response to questions for SOMO research regarding transparency and weighing of interests related to financial legislative processes and lobbying by banks, email received by SOMO on 19 July 2016: Response to question nr. 15.
- 52 Ministry of Finance, *Idem*: Response to question nr.16.
- 53 <https://www.dutchsecuritisation.nl/sites/default/files/documents/DSA%20responses%20to%20EC%20consultation%20on%20STS%20securitisation%20%28final%29.pdf> (last viewed 7 October 2016).
- 54 DSA, General overview of a typical Dutch true sale securitisation - May 2015, <https://www.dutchsecuritisation.nl/sites/default/files/documents/offering/General%20overview%20of%20a%20typical%20Dutch%20true%20sale%20securitisation%20May%202015%2095046-3-12353%20v2%200.pdf> (Viewed 7 October 2017).
- 55 A. van der Zwan, Head Public Affairs, DBA/NVB, interview with SOMO, 22 June 2016.

Chapter 3

HOW ARE DUTCH BANKS
ORGANISING **THEIR INFLUENCE**
ON BANK REFORMS?



Introduction¹: Why do we need to know what the banks are doing?

awareness raising for change

More open information by Dutch banks about how they lobby and what contacts they have at the Ministry of Finance can – along with information from the Ministry itself - provide a comprehensive picture on the legislative decision-making process and whether or not decisions have been unduly influenced. It offers opportunities for awareness raising, future discussion and debate on issues such as transparency and accountability of lobbying by, amongst others, the banks themselves. It can lead to changes in practices of interaction and lobbying where need be. So far in the Netherlands, there is little research and discussion about how and why banks should be more transparent and whether they should be subject to legally binding rules on their lobbying.

facilitation and responsibility

This chapter examines the transparency provided by six Dutch banks researched for this report about their contacts, interaction, influence and lobbying at the Ministry of Finance related to upcoming banking and financial laws. It also analyses how the banks are internally organised to facilitate such lobbying and who bears responsibility for their lobbying positions and dealings with policy makers.

This report attempts to go beyond the well-publicised incidents and media attention of lobbying malpractice, to investigate how these situations arose and whether they could arise again.

Transparency and public reporting on lobbying

How open are Dutch banks about their lobbying?

less transparent

The Dutch banks featured in this report use their websites and annual reports to publish overviews of new financial laws and regulations which might impact their operations. However, their 2015 annual reports did not provide information about which financial authorities they have been approaching at the time these laws were legislated and what lobbying positions they were taking. The banks report according to the Global Reporting Initiative (GRI), a voluntary reporting guide², which has removed since June 2014 the indicators requiring banks to give details about their lobbying and interactions with authorities or policy makers.³ Overall, the research for this report, as explained hereafter, reveal that banks are now less transparent about their lobbying activities and positions than in 2014 and at the time of the previous SOMO report in 2013.⁴

own structure not published

All six banks do not publish themselves information about their internal structure and staff members responsible for lobbying or, as is the case for SNS Bank, whether they do not organise lobbying themselves. Banks are, additionally, members of industry associations that may represent their members' interests through lobbying. The banks mention – apart from Triodos Bank⁵ and ASN Bank – that they are members of the DBA/NVB but do not provide a comprehensive list of all the other financial industry associations to which they belong (as explained in chapter 4). The banks also do not publish whether their staff is active in any of the industry associations, e.g. in developing the lobby position of that organisation.

Little transparency on lobbying positions

responses to consultations

None of the six banks covered in this report clearly specify whether or when they do respond to official consultations on upcoming national or EU legislation. However, the large Dutch banks do engage with some of these consultations, while the smaller ones tend not to. The banks do not publish their full responses on their own website, except for a few available on Rabobank's website⁶. They ensure though that their submissions are publically available on the consultation websites.⁷ When the DBA/NVB reacts on behalf of its member banks to national, EU or international financial consultations, it uses its website to publish the full responses, often introduced by a short summary. None of the six banks nor the DBA/NVB publish the submissions that are made via the

industry associations of which they are member (see also chapter 4). Given that the memberships are not fully transparent, it is hard to track and link the banks with the lobbying positions of the industry associations.

briefings on positions

A few banks publish positions in broad terms regarding a small number of topics and legislations. Rabobank publishes some general position papers on its website – though these are not easy to find.⁸ In response to stakeholders wishing to have easy, accessible information, ING now publishes ‘viewpoints’ on its website; these are short general briefings on issues with which it is actively involved. These viewpoints and position papers, however, do not cover all the issues on which the bank lobbies nor the details that can be found in their consultation responses.⁹ None of the banks, for instance, published their (direct or indirect) position on STS securitisation (see also chapter 4).

more details

In contrast to the positions on the websites or annual reports, the responses submitted to consultations contain precise recommendations supported by detailed data along with assessments of the possible negative impacts on the banks of upcoming regulations. Publication of all such submissions by the banks themselves would significantly increase transparency about the banks’ lobbying positions on upcoming legislation since many citizens and stakeholders are not aware when and on what issues official consultations are being held. It would also allow analyses to be made of the impact of the banks’ positions on the banks’ stakeholders and society.

Do banks and their lobbyists need to register?

Dutch registration

Lobbying undertaken by the banking sector would be more transparent if official registration of representation and lobbying were required. For Dutch banks, there are hardly any official registration requirements. In the Netherlands, as is the case for any company, only one person per bank can be registered with the Dutch parliament and receive a permanent pass that allows him/her easy access to parliament.¹⁰

EU registration

At EU level, four Dutch banks as well as the DBA/NVB¹¹ are registered on the EU’s Transparency Register; ASN Bank and SNS Bank do not lobby at that level. The EU Transparency Register¹² is, however, voluntary and no organisation is legally obliged so far to give complete and correct information.¹³ When registering, companies and organisations are asked to provide: information on what kind of policies they are reacting to, the names of those lobbying and/or accredited for access to the European Parliament, details of memberships of industry associations, the costs of lobbying and representation, etc. The information provided to the Register by ING Group, Rabobank, ABN AMRO, Triodos Bank and DBA/NVB is either not fully accurate, not complete or not up to date.¹⁴

How much do banks spend on lobbying?

no information available

Following on from chapter 2, it is evident that the banking sector has a well-resourced capacity to monitor, interact and lobby the Ministry of Finance. In their public accounts, the banks give no figure for the overall cost and expenditure of lobbying, let alone specifying how much is spent on lobbying the Dutch Ministry of Finance. There is also no breakdown of the operational costs (staffing costs etc.) of the unit within the bank responsible for lobbying and relations with governments, and no details of the fees paid to industry associations that lobby on their members’ behalf. Many different bank units and divisions contribute to developing and advocating lobbying positions, including board members with their own budgets. Lobbying also takes place in the different countries where the bank operates and is paid for by managers and staff out of their local budgets. In some of these countries, the cost of national bank industry associations is estimated to be moderate.

It became apparent to SOMO during the interviews for this report that an overview of all these costs is not known even to those in the bank responsible for government liaison and lobbying. This means that no one - including the banks and the Ministry of Finance - is fully aware of the financial capacity of Dutch banks’ lobbying.

The DBA/NVB also does not publish information about its expenditure on lobbying. In 2012, its

total budget was estimated to be approximately €14 million with the three major banks paying the majority of costs.¹⁵ ING alone pays an annual membership fee of approximately €3 million.¹⁶

rough estimates

The EU's Transparency Register asks registered banks to estimate how much they spend on representation and lobbying EU institutions. This offers some transparency. ABN AMRO, ING and Rabobank reported that in 2015 they each spent between €400,000 and €499,999.¹⁷ Triodos Bank reported to the register that it spent between €10,000 and €24,999 on such activities in 2014¹⁸ and a consultant mentioned that Triodos was a client paying between €50,000 and €99,999¹⁹. Representatives from these banks admit that these figures are only very rough estimates.²⁰ The DBA/NVB estimated its costs at EU level are between €700,000 and €799,999 in 2014.²¹

How the banks internally operationalise their lobbying

Do Dutch banks have a policy on lobbying?

not comprehensive

Dutch banks do not have a comprehensive policy on lobbying that is publically available. A comprehensive lobbying policy would encompass aspects such as: a vision and definition of lobbying, transparency of lobbying activities and positions, the integrity of the in-house lobbyists and the lobbyists of the associations they belong to, the choice of membership of industry associations, the weighing of interests when developing a lobbying position, whether lobbying is part of the CSR policy, how lobbying by staff and board members is coordinated, the costs of, lobbying and the person(s) finally responsible and accountable for all lobbying strategies and positions.

own vision

The large banks' own visions on lobbying guides their activities. Rabobank believes that lobbying is legitimate, an opportunity and necessary to inform decision-makers and policymakers about the impact of new legislative and/or policy proposals so that such proposals are effective, efficient and feasible.²² ING describes lobbying as 'public advocacy'²³ and associates it not only with influencing regulation but also with initiating discussions. ASN Bank²⁴ defines lobbying as each activity that seeks to direct policy and decisions by a public authority or institution towards a particular objective or result. It considers lobbying on legislative proposals a top-down approach that it does not want to take. ASN Bank only very occasionally lobbies to promote those sustainability issues which are its focus (human rights, bio-diversity, climate). Its investment policy prohibits to invest in companies that lobby against the sustainability issues ASN Bank supports.

own principles

Most Dutch banks do, however, incorporate parts of their other policies and principles into their lobbying activities, as described below. After an update of its website, ING explained such policies and principles of its 'public advocacy' as part of its approach to transparency, relationship with authorities and civil society, membership of industry associations, and codes of conduct related to lobbying.²⁵

How do banks safeguard the integrity of their lobbyists?

non-legally binding codes of conduct

One way to avoid unwarranted lobbying and undue influence is to apply codes of conduct. In the Netherlands, there is no legally binding code of conduct which guarantees the integrity of lobbyists. None of the banks have their own code of conduct on lobbying and representation. Bank lobbyists are subject to codes of conduct applicable to all staff of the bank, such as national guidelines on bank behaviour, the Dutch voluntary bankers' oath²⁶, and their own behaviour guidelines on dealing with visitors, participating in events, etc. Some lobbyists of the large Dutch banks belong to the Dutch²⁷ or European²⁸ industry associations for lobbyists. These associations have developed their own code of conduct and want their members to apply it, though this is self-regulated and self-enforced. It is not clear whether banks require that all in-house lobbyists adhere to any of these voluntary codes. The banks' many experts and its board members do not subscribe to these industry codes.

EU code

The three biggest Dutch banks, Triodos Bank and the DBA/NVB have at least one lobbyist regis-

tered on the European Transparency Register, which automatically means a commitment to adhere to the Register's code of conduct.²⁹

How are banks organised internally?

How the six banks covered in this report operationalise the organisation of their lobbying should provide some insight into the method they lobby and the effectiveness of their interactions with, and lobbying of, the Ministry of Finance.

diverse internal organisation The six Dutch banks are all organised differently with regard to lobbying. ABN AMRO has a Governmental Affairs Unit which includes two lobbyists and is part of its Regulatory Office.³⁰ Rabobank employs four in-house lobbyists in its Public Affairs office and has six persons who are registered at the BVPA, the Dutch association for lobbyists.³¹ ING has a 'Regulatory and International Affairs' department with 17 staff members in the Netherlands, Germany, Belgium and Brussels (EU institutions).³² SNS Bank abolished its lobby unit at the beginning of 2016, mainly because of lack of capacity; it now mainly lobbies via the DBA/NVB.³³ ASN Bank (which is part of SNS Bank) does not have a lobby unit. Triodos Bank has itself no capacity to lobby but has hired a consultant to lobby at EU level. The CEO of Triodos Bank, Peter Blom, represents the small banks and not Triodos Bank within the DBA/NVB board.³⁴

no full coordination The lobbying units of the three largest banks – ABN AMRO, ING and Rabobank – do not decide on their bank's lobbying positions but coordinate their development within the bank, organise their distribution, and ensure bank representatives meet the appropriate decision-makers at ministerial or parliamentary level. They are not the only ones involved in lobbying since other staff and experts from within (and outside) the bank also monitor, analyse and assess the impact of upcoming regulation, and advise on possible lobbying positions. The banks' experts sometimes have direct contact with the Ministry of Finance. The chairs of management boards and/or CEOs of the banks, for example, sometimes communicate directly with the Minister of Finance. Not all these activities, however, are in practice fully coordinated and overseen by the lobbying units of the banks.

internal variations Moreover, the subsidiaries of banks that operate globally – such as ABN AMRO, ING and Rabobank – may be part of a domestic lobby group which takes positions that the lobby unit at the bank's headquarters might be unaware of. In case lobbying positions differ from country to country, the bank must decide on a position that reflects its international operation and that of all its subsidiaries.

strategies Once a final position is decided, the bank staff of governmental affairs or lobby units may engage in networking, monitoring, information exchange and all kind of lobbying through all available communication channels.

How do other organisations lobby on behalf of the banks in the Netherlands?

DBA/NVB One of the channels through which banks organise their lobby in the Netherlands – not just the Ministry of Finance – is the DBA/NVB. This banking association plays an important role in liaising between the banking sector and the Ministry of Finance and in presenting a joint position on upcoming financial regulation.

Dutch coordination ... Dutch banks prefer to state their position, respond to official internet consultations and engage in lobbying on legislation towards the Ministry of Finance via the DBA/NVB because its compromise positions gives them more legitimacy. In coming to a position, the DBA/NVB weighs up the various interests of its members and stakeholders. It spends roughly estimated about 60 per cent of its work in contacting and coordinating members³⁵ through different working groups and in supporting decision-making at the board.

... not fully Rabobank believes its principle opinions are, generally speaking, reflected by the position of industry associations.³⁶ ING has however stated that even though it has contributed to discussions with-

in industry associations to which it belongs, the final position does not always reflect its position.³⁷ SNS Bank is only represented through the DBA/NVB although it might not always fully agree with the position taken.³⁸ Since ING and Rabobank operate in many countries, they may also present their views separately so as to reflect the wider interests of their international operations.

position lobbying

Once a position has been decided, lobbyists at the member banks, DBA/NVB staff and perhaps even board members from the member banks, begin expressing this position and lobbying the Ministry of Finance (see chapter 2). DBA/NVB lobbyists and in-house lobbyists from its member banks meet every six to eight weeks in their own working group.³⁹

other lobbying organisations

For specific issues, the Dutch banks can use other channels to influence the Ministry of Finance. The banks are, for example, members of other Dutch financial industry associations, such as the Dutch Fund and Asset Management Association (DUFAS: Triodos Bank, ASN Bank), the Dutch Securitisation Association (DSA: ABN AMRO, ING, SNS Bank, Rabobank) and the Dutch Association of Covered Bonds Issuers (DACB: ABN AMRO, ING, SNS Bank) which lobby directly or indirectly on their behalf. Bank representatives may be on the association's board or in their working groups. For example, an ING representative is Treasurer on the Dutch Securitisation Association's board of directors.⁴⁰

Who makes the final decision on lobbying?

accountability

Given the many persons involved in lobbying and the many lobbying channels used, it is important to identify who is finally responsible at each bank for lobbying positions and activities. This person would also be accountable for cases of undue lobbying should they come to public attention.

different levels

At the large Dutch banks, decisions on important lobbying positions are taken at management board level, supported by the lobby units as well as experts and managers responsible for the topics covered. Sometimes, the decision is taken at the level of the experts at the bank, or by the board member responsible for that particular issue. For instance, at SNS Bank, the experts might develop and promote a position, while at ING, specific committees with support from the bank's lobby unit, advise the board prior to it taking a decision.

the CEO

All the banks involved in this report confirmed that the ultimate responsibility for all decisions lies with the chair of the management board (also referred to as the CEO). At ING, the Supervisory Board is consulted before official regulatory positions are communicated externally.

DBA/NVB board

At the DBA/NVB, a committee of experts sometimes decides a lobbying position. When the issue is particularly important, the findings of the committee or working group are presented to the board of directors who take the final decision. The chair of the management board of each of the five banks discussed in this report sits on the DBA/NVB board (see box 3 on page 27).⁴¹

not full awareness

In principle, chairs from the management board of the six banks are responsible and accountable for the positions taken by bank industry associations of which they are a member. Given, however, the lack of awareness among the banks of their membership of these organisations (see chapter 4), it is unlikely that the chairs are familiar with all the positions taken and their responsibility to be accountable for these decisions.

Weighing of interests: Is lobbying considered a corporate social responsibility (CSR)?

impact and potentially harmful

The lobbying process by banks can influence law making bodies and, therefore, the laws that regulate bank behaviour in the economy and in society. Lobbying should therefore, be considered a corporate social responsibility issue and a sustainability issue.⁴² For instance, could bank lobbying prevent regulations prohibiting the financing of environmentally harmful activities? Excessive lob-

bying that results in regulatory capture and prioritises the interests of banks above those of the society can have disruptive and damaging consequences for citizens and the public interest. If lobbying were considered as a CSR policy, any lobbying that harmed the public interest, the economy, the environment, society and individual citizens would be prevented.

little policy and reporting

Lobbying and interaction with legislators is, however, not included in the public information issued by most Dutch banks on their CSR policies and work, although they all report on their CSR activities and how important they are. The exception is ASN Bank, which mentions that lobbying is a CSR issue and that disproportionate lobbying can have disruptive effects. It expects the companies it invests in not to lobby against the sustainability criteria it focuses on, e.g. not be part of the anti-climate lobby. ASN Bank also wants companies to be transparent about how much they spend on lobbying and/or political contributions.⁴³ Triodos Bank considers all its policies and activities to be socially responsible, including lobbying without explicitly mentioning so.⁴⁴

stakeholders' interests

While ABN AMRO, ING, Rabobank, and SNS Bank do not explicitly consider lobbying as a CSR issue and have no explicit CSR policy related to it, they claim to take into account CSR interests when developing a lobbying position. ING states that the interests of its stakeholders 'invariably serve as our guideline in determining our positions with regard to regulatory and supervisory developments.'⁴⁵ For Rabobank, lobbying and influencing the regulatory processes is a regular staff function that deals with issues resulting from political decision making processes, public policy processes and public debates.⁴⁶ ABN AMRO admits that its positions are influenced by its remit of profit making and strengthening its capital buffers.⁴⁷ SNS Bank insists, at the DBA/NVB, that the banks' positions promote the clients' interests.⁴⁸

weighing of interests

It is not clear how in practice the different perspectives of bank stakeholders are weighed by the banks and by the industry associations. It is also uncertain whether conflicts of interest between the profit making remit of the bank and the best interests of its stakeholders are really being properly resolved: Do the lobby units and CSR units of the banks always align their positions? ING states that it carefully weighs up the interests of all parties concerned and aligns its business processes and strategy as best as it can with the expectations of its stakeholders.⁴⁹ All the banks know quite well that slanting information in their interest, provided by staff or experts to policy makers, will undermine their credibility and potential future influence.

How banks organise their lobbying - Conclusions

Failing transparency

For the public and for stakeholders in the six Dutch banks, there is scant published information by the banks about their lobbying activities and the many formal and informal interactions they have with the Ministry of Finance related to upcoming financial legislative proposals. There are no reporting standards or binding official obligations for the banks to make such information public. While the voluntary EU Transparency register makes some information public, it is incomplete. Consequently, it is difficult to have a full picture of the banks' activities and make an assessment of whether interaction and lobbying has influenced the Ministry of Finance and if the interests of the banks have been prioritised over other (public) interests. This is especially relevant in the context of EU financial legislative proposals on which the Minister of Finance co-decides but does not hold official consultations.

Furthermore, the banks themselves do not publish their own detailed position papers and/or lobbying documents such as their responses to official consultations (Rabobank is the exception as it publishes a few). In contrast the DBA/NVB consultation responses are accessible on its website.⁵⁰ Publishing consultation submissions would allow banks to be directly transparent about what legislative processes they are involved in and what interests they perceive to be at stake. The currently publicly available position briefings or viewpoints by ING and Rabobank do not sufficiently cover the range of issues on which the banks are lobbying.

Significant lobbying apparatus at the disposal of large banks

The extent of the lobbying capacity of the banks is currently not made transparent. The amount they spend on interacting with, and lobbying, policy decision-makers - let alone the Ministry of Finance - is not even known to the banks themselves, apart from a few figures and these are estimates.

Research for this report revealed that the three large Dutch banks (ABN AMRO, ING and Rabobank) have special dedicated units, with different levels of capacity, which develop relationships with policy-makers and coordinate part of the lobbying positions and activities. In addition, many in-house experts, sometimes at top management level, can be involved in lobbying. The banks' lobbying activity is strongly reinforced by their membership of the DBA/NVB. SNS Bank and Triodos Bank have no units with in-house lobbyists and undertake hardly any activity around financial legislative proposals but mainly participate through the DBA/NVB, so their views on sustainability issues are less heard.

Full transparency about the human and financial resources available to banks which allow them to network and lobby, as well as monitor and assess upcoming legislation would raise awareness at the Ministry of Finance and in society, as well as at the banks, about the differing abilities of stakeholders to give inputs, and the consequent imbalances. Such awareness might encourage measures to be taken that would promote better democratic decision-making (see also recommendations at the end of this report).

Lobbying policies and responsibilities not well-defined

None of the banks covered in this report has a public and comprehensive policy on lobbying. ING has clarified its principles and approach to 'public advocacy', but there is still no information on lobbying expenditure and responsibility for lobbying positions.

Despite the effects of financial regulation on the economy and society the large banks have no corporate social responsibility (CSR) policy on lobbying. They do state, however, that they take into account and balance the interests of their stakeholders (including shareholders) with the interests of the bank, where possible. How that is done, and how the conflicts of interests with their profit-making remit are being dealt with, are not always clear from the position papers published on official consultation websites.

Some of those who lobby on behalf of banks are subject to specific codes of conduct that should safeguard the integrity of their lobbying, but these codes are voluntary and do not apply to all bank lobbyists.

Lastly, it is clear that the final decision-making power and responsibility for the bank's lobbying positions and activities lies with the chair of the bank's board (also often referred to as the CEO). This person is, therefore, also accountable for excessive and irresponsible lobbying or lobbying that harms society and the public interest in case it would occur. However not all lobbying positions are decided at CEO level, lobby activities and positions in diverse countries are often not fully coordinated and the CEO does not know all the lobbying that is undertaken by the industry associations of which the bank is a member. This results in the responsibility and accountability of lobbying being badly managed, and in a lack of control of the banking lobbying apparatus.

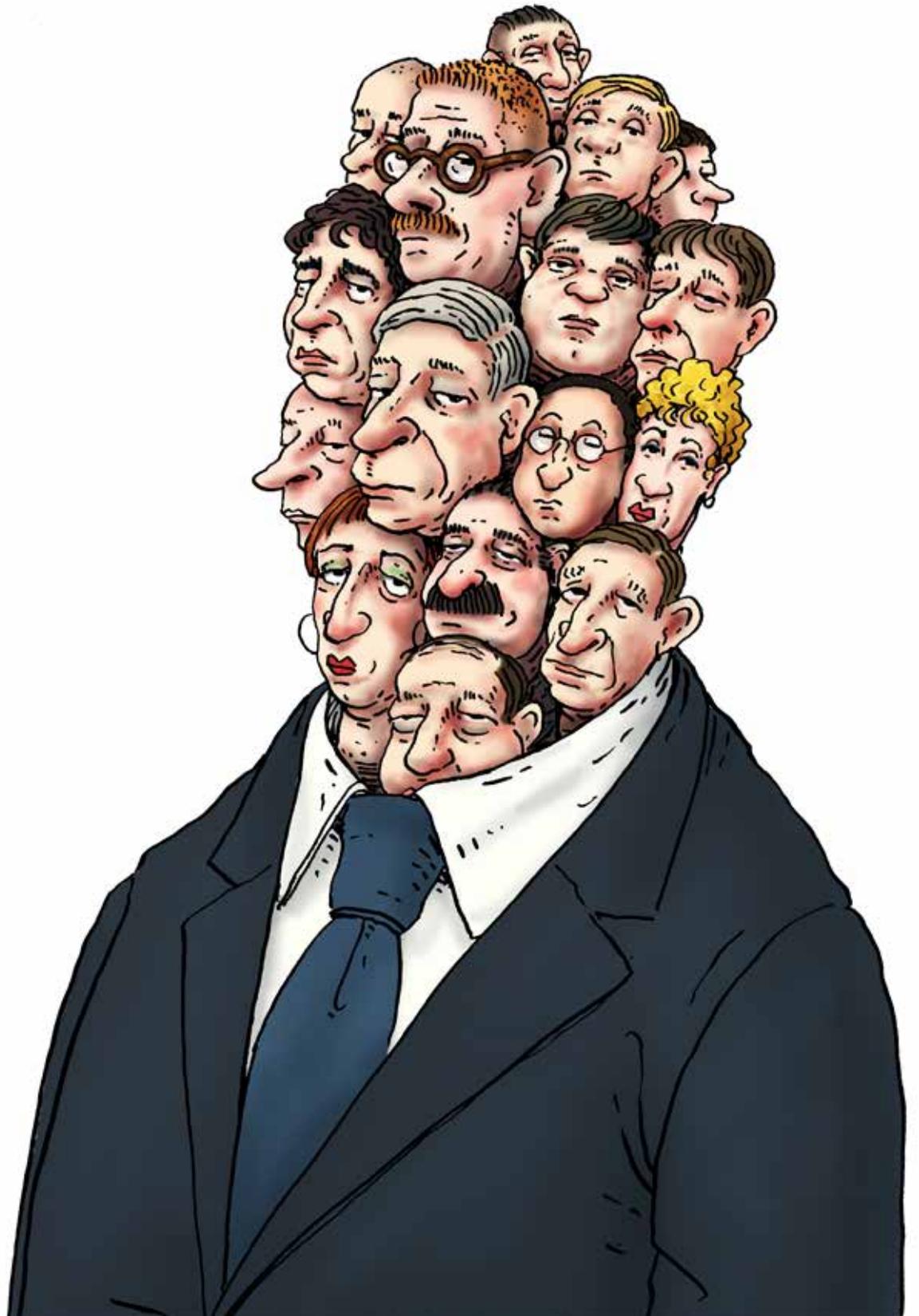
Notes

- 1 If not mentioned otherwise, the information of this chapter is based on research per bank (ABN AMRO, ING, Rabobank, Triodos Bank, SNS Bank and its subsidiary ASN Bank) summarised in the Annexes on the SOMO website accompanying this report, and on an interview with the DBA/NVB.
- 2 Global Reporting Initiative (GRI), G4 Sustainability Reporting Guidelines, 2013 and updated August 2015, <https://www.globalreporting.org/information/g4/Pages/default.aspx> (last viewed 7 October 2016).
- 3 Global Reporting Initiative (GRI), G4 Sustainability Reporting Guidelines – Implementation Manual, August 2016, p. 209, <https://www.globalreporting.org/resource/library/GRIG4-Part2-Implementation-Manual.pdf> (viewed 7 October 2016): only the manual still makes some requirement to report 'the participation in public policy development and lobbying'.
- 4 R. van Tilburg, I. Römgens, Taking Lobbying Public, SOMO, December 2013: see pages 45-48, 55, appendix II; See also the Annexes to this report on each of the banks published on the SOMO website.
- 5 <https://www.triodos.com/en/about-triodos-bank/who-we-are/networks-and-partners/> (viewed 10 October 2015).
- 6 <https://www.rabobank.com/en/about-rabobank/in-society/principles/index.html> (viewed 6 October 2016): it is not clear whether this provides a full overview.
- 7 ING Annex, paragr. 2.3., Rabobank Annex, paragr. 2.1.
- 8 <https://www.rabobank.com/en/about-rabobank/in-society/principles/index.html> (viewed 6 October 2016): these are not easy to find and it is not clear whether this provides a full overview of all positions submitted.
- 9 ING Annex, paragr. 2.1., 2.3.; ING Group N.V., Regulation and Supervision, website page <https://www.ing.com/ING-in-Society/Sustainability/Stakeholder-engagement/Regulation-and-Supervision.htm> (last viewed 7 October 2016).
- 10 https://www.tweedekamer.nl/over_de_tweede_kamer/lobbyistenregister (last viewed 23 September 2016).
- 11 <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=51894741860-19> (last viewed 7 October 2016): Dutch Banking Association.
- 12 See the EU Transparency website for more information: <http://ec.europa.eu/transparencyregister/public/HomePage.do?redir=false&locale=en> (viewed 23 September 2016).
- 13 See amongst others Corporate Europe Observatory's different articles on the EU transparency register at <https://corporateeurope.org/tags/transparency-register>; Transparency International's information about EU lobbying and the EU Transparency Register: http://www.transparencyinternational.eu/focus_areas/lobbying-the-eu/?gclid=CJ_67I34rM8CFYkyOwod_ywlxw (viewed 23 September 2016).
- 14 See for instance the register of ING (<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=12112965774-95> (viewed 23 September 2016)), Rabobank (<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=006687715492-92> (viewed 23 September 2016)), and DBA/NVB (<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=51894741860-19>).
- 15 F. de Bruijn, 'NVB: conflict bankens is binnenbrandje', BNR (website), 4 October 2012, <http://www.bnr.nl/nieuws/beurs/10127295/nvb-conflict-banken-is-binnenbrandje> (viewed 20 August 2016).
- 16 Annex ING, paragr. 1.4.
- 17 Transparency Register: ABN AMRO (<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=469301912859-01>), ING (<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=12112965774-95>), and Rabobank (<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=006687715492-92>).
- 18 <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=543556311400-69> (viewed 23 September 2016): no information was given for 2015.
- 19 <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=785976617848-15> (viewed 23 September 2016).
- 20 See Annex ING, paragr. 1.4.; Annex ABN AMRO, paragr. 1.4.
- 21 <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=51894741860-19>: The Dutch Banking Association.
- 22 Annex Rabobank, paragr. 4.1.
- 23 See website: <https://www.ing.com/ING-in-Society/Sustainability/Stakeholder-engagement/Regulation-and-Supervision.htm>
- 24 ASN Bank, Beleid over goed bestuur en ethisch handelen van ondernemingen - Goedgekeurd 23 juni 2015, June 2015, p. 10-11, <http://www.asnbank.nl/algemeen/duurzaamheid/duurzaamheidsbeleid/beleidsdocumenten.html> (viewed 7 October 2016).
- 25 See: <https://www.ing.com/ING-in-Society/Sustainability/Stakeholder-engagement/Regulation-and-Supervision.htm> (last viewed 7 October 2016).
- 26 See for an overview of the codes: <https://www.nvb.nl/thema-s/bank-maatschappij/4819/cultuur-en-gedrag.html> and <https://www.nvb.nl/publicaties-standpunten/publicaties/1623/code-banken-banking-code.html> (last viewed 23 September 2016).
- 27 For more information, see: www.bvpa.nl: Beroepsvereniging voor Public Affairs (BVPA), i.e. industry association for public affairs.

- 28 For more information see: www.seap.be : Society of European Affairs Professionals (SEAP).
- 29 The code of conduct of the Transparency Register can be viewed at: <http://ec.europa.eu/transparencyregister/public/homePage.do> (last viewed 23 September 2016).
- 30 Annex ABN AMRO, paragr. 1.1.
- 31 Annex Rabobank, paragr. 1.
- 32 Annex ING, paragr. 1.1.
- 33 Annex SNS Bank, paragr. 1.1.
- 34 Annex Triodos bank, paragr. 1.
- 35 A. van der Zwan, Head Public Affairs, DBA/NVB, interview with SOMO, 22 June 2016.
- 36 Annex Rabobank, paragr. 1.2.
- 37 Annex ING, paragr. 1.2.
- 38 Annex SNS Bank, paragr. 1.1.
- 39 Annex ABN AMRO, paragr. 3.2.
- 40 Annex ING, paragr. 3.2.
- 41 <https://www.nvb.nl/vereniging/118/bestuur.html> or <https://www.nvb.nl/en/association/274/board.html> (viewed 21 July 2016).
- 42 See also: R. van Tilburg, I. Römgens, Taking Lobbying Public, SOMO, December 2013. P. 30-31, 52.
- 43 ASN Bank, Beleid over goed bestuur en ethisch handelen van ondernemingen - Goedgekeurd 23 juni 2015, June 2015, p. 10-11.
- 44 Annex Triodos Bank.
- 45 <https://www.ing.com/ING-in-Society/Sustainability/Stakeholder-engagement/Regulation-and-Supervision.htm>; see also: <http://www.ing.com/ING-in-Society/Sustainability/Our-Stance/Transparency.htm> (last viewed 10 October 2016): in all countries we do business in ING aims to improve supervision and regulation 'in a way that supports the interests of our stakeholders (including customers) to the fullest extent possible'.
- 46 Annex Rabobank, paragr. 4.1.
- 47 Annex ABN AMRO, paragr. 4.2.
- 48 Annex SNS Bank, paragr. 3
- 49 <https://www.ing.com/ING-in-Society/Sustainability/Stakeholder-engagement/Regulation-and-Supervision.htm>.
- 50 <https://www.nvb.nl/publicaties-standpunten/100/publicaties.html>

Chapter 4

UNAWARENESS ABOUT BANKS'
MEMBERSHIP **OF MULTIPLE IN-
DUSTRY ASSOCIATIONS**



Introduction¹: The importance of EU financial laws on national legislation

international and EU decisions National financial legislation in the Netherlands is often first shaped at international level and then legislated at EU level. The Basel Committee on Banking Supervision, for example, sets international banking standards. EU laws based on those standards to regulate the banking sector can determine most of the national financial law through EU 'directives' while EU 'regulations' are directly applicable to member states.

Successful lobbying by banks at international and EU level, therefore, can influence national legislation.

chain of lobbying Some of the Dutch banks lobby at EU and international level, but most of that lobbying happens through membership of financial industry associations. In order to have a full insight of the lobbying of the Dutch banks and its potential impact on Dutch financial legislation, this chapter looks at the way they lobby through multiple memberships.

The role of European and international financial industry associations

various financial industry associations Dutch banks are members of many different European and international financial industry associations. Most of these financial industry associations focus on specific areas of banking or the financial markets, such as asset management or issuing bonds. They ensure that their members' interests are promoted and protected in proposed international standards or EU legislation, by responding to official consultations and by a range of lobbying activities. Some associations also facilitate the exchange of information and expertise among members. The lobbying can take place both formally and informally using letters, face-to-face meetings with civil servants and parliamentarians, etc. Being a member of such an association, therefore, enables banks to influence policy, standard setting and law at international and EU national level.

associations' membership of associations The large Dutch banks are also member of some national banking associations in other EU countries. These national associations often not only lobby at national level but also at EU level, as is the case with the DBA/NVB. Moreover, each of the national banking associations is member of the European Banking Federation, which is a very active intervener at the EU institutions. Remarkably, some financial industry associations are also member of other financial industry associations.²

Banks' invisible membership of industry associations

no full oversight While information about membership of industry associations is listed in the six Dutch banks' 2015 annual reports and websites, not all memberships are mentioned by the banks, with some more transparent than others (see graph 1). Research of the industry associations that responded to official EC and international consultations reveals that Dutch banks are also member of some of those associations (see graph 2 and Annexes), which mention on their website details about which banks are members or associate members. The European Transparency Register requires banks to list 'membership of any associations/(con)federations/networks or other bodies', but the information submitted by the Dutch banks now appears incomplete based on the research for this report.³

GRI reporting Although the six Dutch banks report according to the Global Reporting Initiative (GRI), they do not reveal all memberships when fulfilling the requirement of the GRI's G 4-16 guideline to list memberships of (industry) associations and national or international advocacy organisations.⁴

Without knowing all the industry associations to which the Dutch banks belong, and how actively involved they are in the association, it is impossible to know what position on a range of banking or

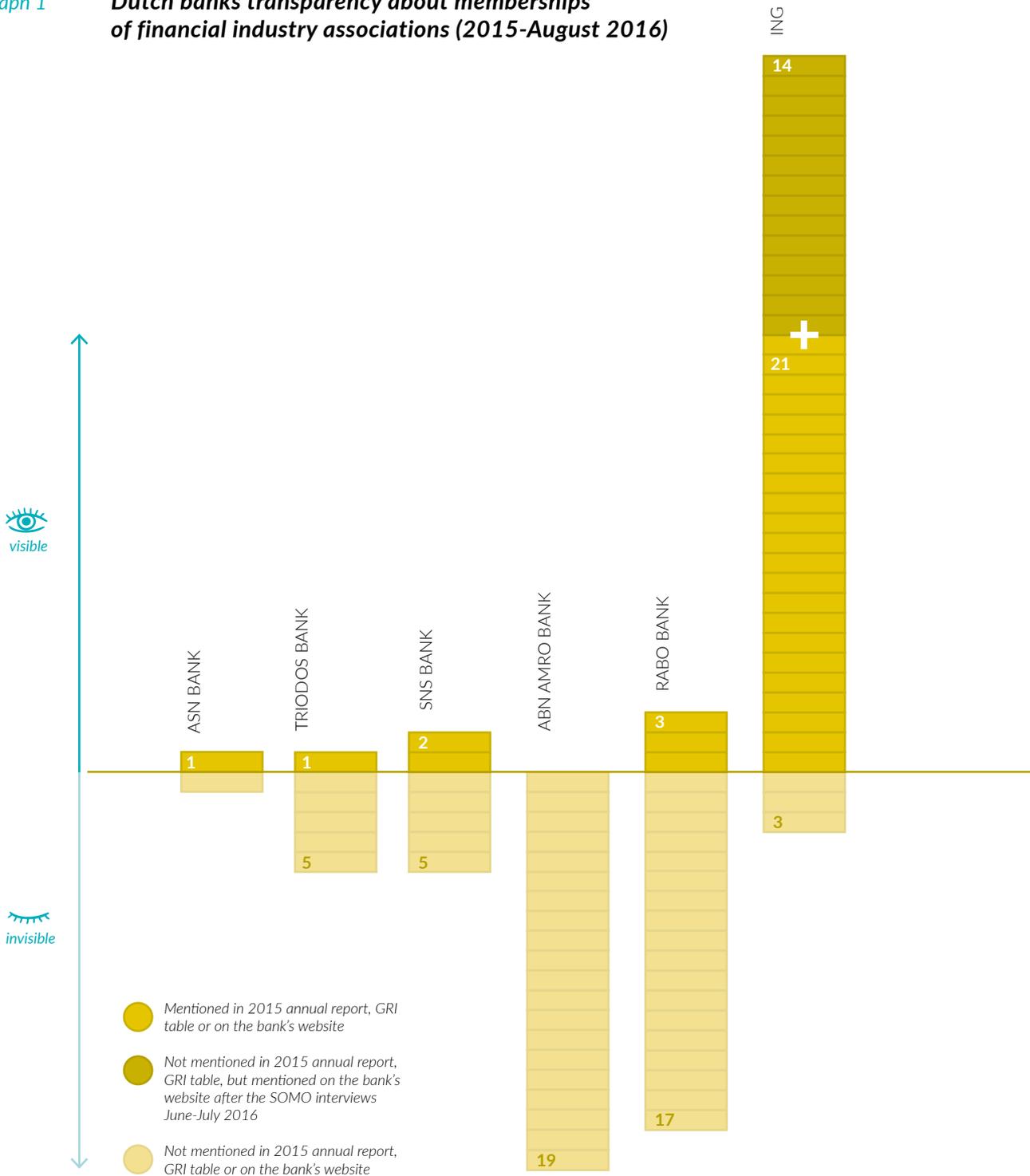
impact not known

financial legislative issues are being promoted in their name and how that might ultimately impact on Dutch rules and society.

The graph below shows the number of industry associations the six Dutch banks under review in this report belong to respectively, and whether they are transparent about this membership on their websites and in their 2015 annual reports.

graph 1

Dutch banks transparency about memberships of financial industry associations (2015-August 2016)



Sources: Official websites of consultations on financial legislative proposals, websites of financial industry associations and related organizations (in EU and international), the banks' 2015 annual reports, 2015 GRI indexes (G4-16) and websites (see Annexes to this report on SOMO's website)

ASN Bank is 100% owned by SNS Bank but has an independent bank permit and operates an independent lobby strategy. From 1 January 2017 onwards, SNS and ASN Bank will each operate under one bank permit, called the Volksbank N.V.

Unaccountable membership of industry associations

unaware of
all member-
ships

The lack of transparency about all banks' membership of industry associations was not necessarily down to a reluctance to share information but rather a lack of awareness about all their memberships of such organisations, and even, sometimes, their existence.⁵ Following SOMO's research, all banks said they would investigate these memberships further with a view to providing more public information. Subsequently, ING updated, on the Regulation and Supervision page of its website, its disclosure of membership of those industry associations that it finds relevant to its lobbying activities (see the dark oker bar in graph 1).⁶

different
goals and
opinions

Bank representatives also stated that they were not always actively engaged with all industry associations - even if they were a member - and that influencing public policy was not necessarily the goal of membership anyway. Membership of the British Banking Association (BBA), for example, is a requirement for banks engaging in banking activity in the UK. However, the BBA is also heavily involved in lobbying.⁷ ING states that standpoints of the industry associations it is member of are not necessarily identical to those of ING as these associations themselves weigh up the various interests of their members and other stakeholders.⁸

level of en-
gagement

Importantly, it is not clear - to public and government - to what degree members actively develop and sign on to the associations' positions. The Dutch Ministry of Finance considers associations to speak in the name of their members.⁹ It might not always be clear to the CEO who is responsible and accountable for the lobbying positions of the bank, what is being said in the bank's name.

The case about STS securitisation: the industry associations' responses to the EC consultation

indirect re-
sponses

A closer look at the 2015 EC consultation on new EU legislation for simple, transparent and standardised (STS) securitisation (see also chapters one and two)¹⁰ reveals how active industry associations are in lobbying at EU level. In this consultation the EC sought 'to gather information and views from stakeholders on the current functioning of European securitisation markets and how the EU legal framework can be improved to create a sustainable market for high-quality securitisation'.¹¹

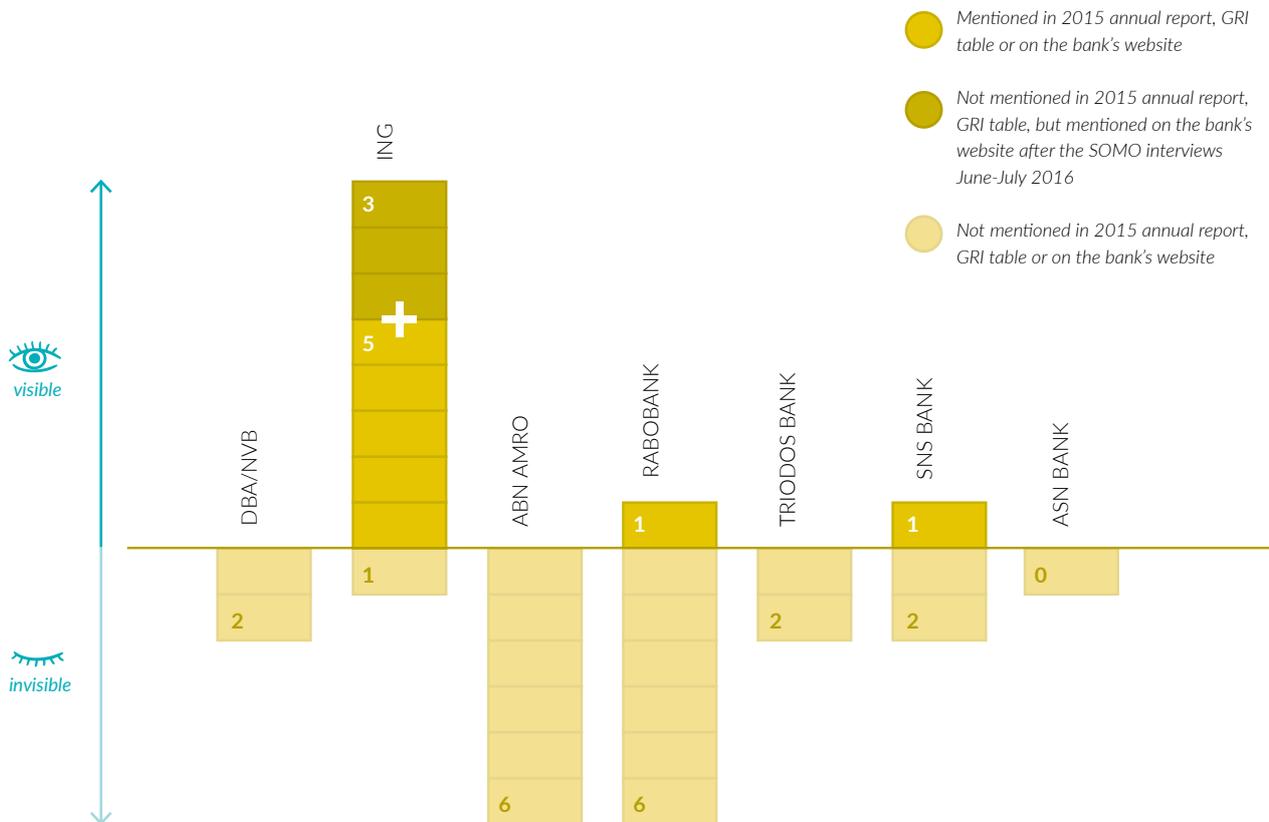
Dutch banks were members of many of the industry associations that responded. An overview of these memberships is shown in graph 2.

multiple lob-
bying chan-
nels

Because of their membership of several industry associations, some Dutch banks were able to respond multiple times to this consultation. Rabobank for example, belongs to seven financial industry associations that separately responded to the consultation, and ABN AMRO is member of six such organisations. Through these organisations, ING responded nine times. In total, Dutch banks (either individually, via the DBA/NVB or through industry associations) were represented for more than ten per cent of all consultation responses. SNS Bank for instance did not know how it was indirectly lobbying on STS securitisation.¹²

graph 2

Responses to the 2015 EC consultation on STS securitisation by industry associations of which Dutch banks and DBA/NVB are member



Source: http://ec.europa.eu/finance/consultations/2015/securitisation/index_en.htm and websites of the associations mentioned.

box 5

INDIRECT POSITIONING ABOUT STS SECURITISATION, THE EXAMPLE OF ABN AMRO

According to ABN AMRO¹³, the position of ABN AMRO related to simple, transparent and standardised (STS) securitisation has been provided by the Dutch Securitisation Association (DSA) and the Association for Financial Markets in Europe (AFME). Both organisations published the response to the EC’s consultation on its website.¹⁴

According to SOMO’s research of ABN AMRO’s memberships and all the responses to the EC consultation¹⁵, ABN AMRO also responded through the British Banking Association (BBA), the International Capital Markets Association (ICMA), the Luxembourg Bankers’ Association (LBA), and even more indirectly for instance through the European Mortgage Federation (EMF) of which the DBA/NVB is member¹⁶ and the German Banking Industry Committee (GBIC) which is the voice of the leading German banking-sector associations, including the Association of German Banks (Bundesverband deutscher Banken (BdB))¹⁷ of which ABN AMRO is member.

ABN AMRO provided input to the Basel Committee on Banking Supervision’s second consultation on securitisation¹⁸ via its membership of the DBA/NVB¹⁹, which is itself a member of the European Banking Federation (EBF) which also submitted a response to the consultation.²⁰ The EBF is, in turn, a member of the International Banking Federation²¹ which responded to the consultation too.

ABN AMRO also contributed indirectly through its membership of IACPM (International Association of Credit Portfolio Managers)²², and in a joint letter from many associations²³, including some (AFME, IIF, and ISDA) of which ABN AMRO is a member.²⁴

This means that ABN AMRO has the capacity to exercise strong influence on the consultation through many different organisations without that being visible to the EC, the Ministry of Finance, the public and probably even the CEO of the bank.

hearing the same voices

The EC claims that consultations allow it to hear the concerns of citizens and stakeholders at the beginning of the legislative process, but the evidence suggests it is listening to the same voices over and over again. Moreover, this was not fully transparent because the Dutch banks were not mentioning all their memberships of these associations at the time of the consultation. Following the responses, the EC stated that on the whole, ‘the consultation indicated that the priority should be to develop an EU-wide framework for simple, transparent and standardised securitization’.²⁵

Conclusion and comments

There is insufficient public information available to trace the chain of influence exerted by Dutch banks on national legislation through lobbying at EU and international level. While the banks have some direct representation at EU level (see chapter three), they are also members of industry associations that lobby on their behalf at EU and international level. Not all of these memberships are mentioned publicly by the banks.

It is of concern that banks are often unaware of some of their membership of such industry associations, the lobbying work undertaken by these associations and whether their response(s) to EC consultations are in line with the bank’s own position and weighing of different interests.

This lack of transparency and awareness raises questions about the level of representativeness and accountability – both by the industry associations lobbying at EU level claiming to represent their members, and the CEOs of the banks who take ultimate responsibility for lobbying positions developed and acted on in their name.

Notes

- 1 If not mentioned specifically, all information is based on research and interviews with each of the six Dutch banks covered by this report, which are reflected in the Annexes published on the SOMO website accompanying the publication of the report.
- 2 See p. 65 of this report: List of abbreviations of financial industry associations.
- 3 See Annexes to this report and each of the banks' submission to the EU Transparency Register, last viewed on 7 October 2016: <http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>.
- 4 GRI, G4 Sustainability reporting guidelines, 2013 and updated August 2015, p.28: Principle G4-16.
- 5 This became apparent in June and July 2016 during the interviews by SOMO of bank representatives in charge of lobbying and contact with financial legislators.
- 6 Compare the two webpages: <https://www.ing.com/ING-in-Society/Sustainability/Stakeholder-engagement/Regulation-and-Supervision.htm> and <https://www.ing.com/ING-in-Society/Sustainability/Stakeholder-engagement.htm> (last viewed 26 September 2016): The former webpage does not link to the GRI table included in the 2015 ING annual report nor correctly categorises all lobbying associations.
- 7 See for instance: <https://www.bba.org.uk/policy/bba-consultation-responses/> (viewed 7 October 2016).
- 8 <https://www.ing.com/ING-in-Society/Sustainability/Stakeholder-engagement/Regulation-and-Supervision.htm>.
- 9 Ministry of Finance, Response to questions for SOMO research regarding transparency and weighing of interests related to financial legislative processes and lobbying by banks, email received by SOMO on 19 July 2016: Response to question nr.10: The Ministry considers associations to speak in the name of their members.
- 10 http://ec.europa.eu/finance/securities/securitisation/index_en.htm : Securitisation regulation was intended to apply to all securitisations and included issues such as due diligence, risk retention and transparency rules together with criteria for Simple, Transparent and Standardised (STS) Securitisations.
- 11 http://ec.europa.eu/finance/consultations/2015/securitisation/index_en.htm.
- 12 Annex SNS Bank, box on STS Securitisation.
- 13 D. Tuijnman, Government Affairs Manager, ABN AMRO, email to SOMO, 17 August 2016.
- 14 [https://www.dutchsecuritisation.nl/sites/default/files/documents/DSA%20responses%20to%20EC%20consultation%20on%20STS%20securitisation%20\(final\).pdf](https://www.dutchsecuritisation.nl/sites/default/files/documents/DSA%20responses%20to%20EC%20consultation%20on%20STS%20securitisation%20(final).pdf) (viewed 19 August 2016); <http://www.afme.eu/en/divisions-and-committees/securitisation/> (viewed 19 August 2016).
- 15 <https://ec.europa.eu/eusurvey/publication/securitisation-2015?surveylanguage=en> (viewed 5 May 2016).
- 16 <http://www.hypo.org/Content/default.asp?PageID=407> (viewed 19 August 2016).
- 17 <https://die-dk.de/en/about-us/> (viewed 19 August 2016).
- 18 <http://www.bis.org/publ/bcbs269/comments.htm>
- 19 <http://www.bis.org/publ/bcbs269/duba.pdf>.
- 20 <http://www.bis.org/publ/bcbs269/europeanbanking.pdf>.
- 21 <http://www.bis.org/publ/bcbs269/internationalba.pdf>.
- 22 <http://www.bis.org/publ/bcbs269/iaocpm.pdf>.
- 23 <http://www.bis.org/publ/bcbs269/jtagcceiisas.pdf>
- 24 All viewed on 19 August 2016.
- 25 http://ec.europa.eu/finance/securities/securitisation/index_en.htm#maincontentSec2.

Chapter 5

CONCLUSIONS WITH COMMENTARIES

unsatisfactory voluntary measures

In the Netherlands, the lessons learnt from the financial crisis about the way financial legislation was influenced through regulatory capture and lead to financial instability at the expense of the public interest, were not followed up with lasting and effective measures. Voluntary measures and initiatives, promised or put in place following the publication of the SOMO report in 2013, have not improved the situation. The interaction with, and lobbying of the Ministry of Finance, by Dutch banks (as it is for other sectors towards other ministries), remains unregulated.

inadequate decision-making process

By researching the financial legislative process in the Netherlands and the influencing or lobbying activities undertaken by six Dutch banks, this report exposes the inadequate transparency, accessibility, balance and accountability of the law-making process and the attendant risk of regulatory capture. Moreover, there has been little awareness about tackling the challenges of lobbying both by the banks and by the Dutch government. The Ministry of Finance has produced guidelines on dealing with external contacts but these were issued only at the end of August 2016.

Transparency of the financial legislative process

the usefulness of more transparency

The purpose of incorporating transparency into the legislative process is to allow stakeholders and the public to know not only when future laws are being deliberated but also whether decision-makers are receiving input from all stakeholders or being subject to excessive lobbying from particular interest groups. Having access to such information makes it easier to hold the Minister of Finance and the responsible CEO's of the banks publicly accountable for the choices he/she has made to propose respectively influence a new financial law.

Lack of easy access to information prevents monitoring and critical views

information versus transparency

Information on new financial legislation at national and EU level is not easily accessible to citizens and civil society organisations. Technical and lengthy documents are available to view on various government and parliamentary websites but there is no simple or accessible overview available of upcoming financial laws and what issues may be at stake in such laws, including those that affect public interests and citizens.

Lack of transparency compounds the difficulty for citizens wishing to acquire informed opinions, prepare and provide input, balance or argue against the financial lobby, and stimulate public debates for instance, all behaviours and activities which help prevent regulatory capture.

Financial legislative processes at EU level are not transparent to the public

importance of transparent EU decisions

EU financial laws play a determining role in national laws that regulate banks but it is hard for citizens to know what and when decisions on future EU laws are made by the Minister of Finance who co-decides on such laws within the EU Council of Ministers of Finance (ECOFIN)). For instance, no consultations are organised by the Ministry of Finance on EU legislative proposals, which could alert citizens and civil society about ongoing financial reforms. As the case of STS securitisation shows, the Ministry is not transparent about decision-making at EU level and does not provide adequate information to the public. This prevents citizens and civil society organisations to make contributions to the EU decision-making process although it is crucial to regulation of the Dutch financial sector.

Monitoring capacity by banks underreported

preparing
lobbying posi-
tions

The large Dutch banks, in particular, are not transparent about their capacity to monitor upcoming legislation at national and EU level. Banks have this ability via their own staff and/or collectively through their (many) memberships of financial industry associations. Knowing about legislation in advance gives them time to assess any possible impacts of such legislation that harm their interests, interact with colleagues inside and outside the bank, interact with ministry officials, prepare for official consultations, and develop lobby strategies. Citizens and civil society organisations are far from having the same capacity to monitor and prepare.

Lobbying by banks hardly made public by the Ministry of Finance

missing
information
about
informal
contact

There is little to no public information made available by the Ministry of Finance on its interactions with, and the lobbying activities by, the six banks researched for this report.

Some details of banks' positions are available when the Ministry publishes responses to its public internet consultations and when the final legislative proposals are sent to parliament. Although the Ministry of Finance is more transparent than other Dutch ministries regarding external contacts (i.e. the Minister's diary and speeches are partly published, and social media (Twitter) is used to inform about his activities), the information on interactions which may influence legislation is not complete. For example, there is nothing public on meetings at the Ministry that have taken place with interested parties, sometimes at the request of the Ministry, nor what was discussed at such meetings with which persons. In the case of STS securitisation there was no public information – including that shared with parliament – about meetings held with different financial stakeholders which the Ministry revealed to SOMO for this report.

Because of this lacuna, the importance of the issues being discussed between the Ministry and the banks, and/or the effects of lobbying cannot be assessed and made part of the discussions about accountability.

Banks little transparent about their lobbying

lack of
published
information

Even less information is provided by the banks about their lobbying and contacts – direct or indirect via industry associations – with the Ministry. There is hardly any public information made available by the banks themselves about their concrete lobby positions, including their responses to official consultations, though some general easy-to-understand viewpoints are published for instance by ING and Rabobank. Detailed responses to public consultations are made public by the banks on the website of the body which has issued the consultation but are difficult to find without knowing what consultations are taking place and which banks are members of which industry association, and which industry associations have responded. The smaller Dutch banks such as SNS bank and its subsidiary ASN Bank argue that they undertake little or no lobbying on legislative processes but, without transparency, it is not clear whether their voice is heard less at the Ministry than that of the large banks.

Since the 2013 SOMO report, *Taking Lobbying Public*¹, the banks have become less transparent, despite their expressions in 2013 of willingness to improve lobbying transparency. Guidance on transparency issued by the Global Reporting Initiative (GRI) also requires much less voluntary requirements to be transparent about lobbying positions and activities.

Information about weighing of external inputs not complete

balancing
interests

Though the Ministry of Finance states in the *Memorie van Toelichting*, an explanatory document that accompanies the final legislative proposals, how it has taken into account external inputs, it mainly refers to public consultation and not informal input. Without information on informal inputs, citizens and parliamentarians cannot see how the Ministry has weighed the value of all input, if

the public interest has been sufficiently taken into account and/or whether regulatory capture has taken place.

Remedies for better transparency not adequate

the challenges of lobbying not addressed Overall, there is still a serious lack of transparency both by the Ministry and the banks that lobby, but no binding obligations to remedy that deficiency. The Ministry of Finance new guidelines on external contacts will not fully address the problems. The voluntary measures and reporting standards for banks have even been weakened. Although there is some preparedness to improve transparency about lobbying on both sides, there is too little comprehensive acknowledgment of the constitutional right to have access to information in order to have a balanced and integer decision-making process with regard to financial legislation, and help avoid compromise of the public interest.

Limited access to the legislative process undermines citizens' right to be heard

Limited access via public consultations

consultations too little visible and accessible Public official website consultations on future financial laws issued by the Ministry of Finance have not been announced in a very visible way and have received little response from citizens and civil society when compared to that from the financial sector. Not all proposals on domestic financial legislation have been subject to public consultations though this should change from September 2016. Until then, consultations have been on already elaborated, and complex, draft proposals giving little leeway to fundamentally question the proposal (e.g. whether STS securitisation will spread too many risks while not achieving the stated aims of financing SMEs). The Ministry has especially been seeking to make laws more effective.

Other channels for citizens and civil society to give input to proposed legislation are available but there is no guarantee that views expressed in this way will be taken into account. This limited way for citizens prevents sufficient stakeholders providing official inputs throughout the decision-making process in the same way as large banks have the capacity to do.

No official national consultation on EU laws

influencing EU legislation There are no official national public internet consultations issued by the Ministry of Finance on upcoming EU financial laws despite the crucial impact such legislation has on the national financial regulatory framework. The Ministry does not make public when consultations for such proposals take place at EU level though this is responded to extensively by the industry associations to which Dutch banks belong. This makes it even more difficult for citizens to directly influence and be heard by the Ministry on the Dutch position in the ECOFIN.

Privileged access by the financial sector

Many channels of input

all levels involved Due to their expertise and lobbying capacity, directly and through industry associations, banks have been able to provide inputs to the Ministry, sometimes at the request of the latter, through many channels such as meetings, emails, phone calls and events. These contacts take place for different purposes (from information exchange to lobbying) at all levels of decision-making in the Ministry and the banks, from the bank expert who meets the civil servant, to the CEO calling the Minister (or vice versa).

This closed network, with experts often having regular contact with one another, is difficult to ac-

diversity and integrity at stake

cess, and may not represent the diversity of stakeholders. The overall government code of conduct for integrity (*Gedragcode Integriteit Rijk* (2015)) which applies to all civil servants, contains no specific guidelines on dealing with lobbyists. This decision-making process has resulted in the Ministry receiving imbalanced inputs and the banking sector having privileged access to the Ministry. The Ministry's new guidelines for external contacts (*Gedraglijn externe contacten*) proposed no concrete procedures to address this imbalance but provided more concrete processes to deal with lobbyists.

The DBA/NVB: A strong coordinating body

unequal capacity

The DBA/NVB is the preferred point of contact for the Ministry of Finance when dealing with banks. Because it is an umbrella organisation, it very often presents a compromise of the views of its members. It plays an important role in preparing and coordinating the lobbying positions of its members in the Netherlands and uses its significant human and financial resources (ca. 55 staff, estimated € 14m budget) to lobby and liaise with the Ministry of Finance, as well as other government ministries, authorities and organisations. Citizens, civil society organisations and even other industry sectors such as SMEs are not able to organise themselves in a similar fashion. Moreover, small banks such as Triodos Bank and SNS Bank have too little means to actively engage in industry associations. ASN Bank has no wish to involve itself in a top-down approach to upcoming legislation and so its views on sustainability issues are seldom heard in those discussions.

The ability of the DBA/NVB to coordinate and engage in lobbying the views of its members towards the Ministry could arguably give the Ministry of Finance a one-sided view of the issues.

Poor management of lobbying by the banks

no overview and assessment

The three largest banks are organised and resourced to lobby both individually and collectively, channelling their expertise and political power. None, however, have an overview of all the lobbying and interactions conducted by all members of staff or management board, nor the industry associations to which they belong. Consequently, no-one (including the Ministry, the public, the banks themselves) can fully assess the impact of their lobbying activities and consequently take measures to redress imbalanced and privileged access to the Ministry, and reduce the risks of excessive and undue lobbying or regulatory capture.

The public interest at stake during weighing of interests

Lack of clarity

diversity versus exposure

Notwithstanding the ability of the major banks to monitor, interact and lobby the Ministry of Finance, they nonetheless believe that the Ministry does not always decide in their favour and takes other economic and political considerations into account. The Ministry is interested to weigh different aspects in order to have effective and politically endorsed laws, and endeavour to have an independent and balanced view. Even so, explanations by the Ministry in the *Memorie van Toelichting* show how its weighing of different interests, and its assessment of potential impacts of proposed legislation on citizens, are not well developed or defined.

Given that the Ministry is much more exposed to the positions put forward by banks at national and EU level – compared to the views of citizens, civil society organisations and academics – there is no guarantee the Ministry can fully understand public, societal and citizens interests, let alone prioritise them.

Lobbying not subject to bank CSR policy

The large Dutch banks argue that their lobbying positions take into account sustainability issues, clients, the interests of different stakeholders, and the economy. Still, they do not consider lob-

impact on society underestimated

bying to be part of their corporate social responsibility (CSR) policy notwithstanding its impact on regulation and the banks' functioning in society. The large banks' overall strategies and positions remain driven by competitiveness and profitability, which they might even argue to be in their client's interests. In contrast, for Triodos Bank, ASN Bank and increasingly SNS Bank, sustainability is central to their business and any lobbying they undertake is to promote sustainability or protect their sustainable banking operations. ASN Bank's investment policy prohibits investments in companies that lobby against its values, such as denial of climate change.

comprehensive approach missing

None of the Dutch banks has a comprehensive policy on lobbying which cover aspects such as transparency, expenses, behaviour, membership of industry associations, positions taken directly and indirectly, accountability, revolving doors, payments, protecting public interest etc. In practice, some measures and principles are applied, such as subscribing to voluntary codes of conduct as well as adhering to the bank's behavioural codes. How effective these measures are to protect the public interest against undue lobbying, is not clear.

Accountability not fully practiced or developed

Accountability of the Minister of Finance

missing information

The Minister of Finance, Mr Dijsselbloem, has claimed over recent years that he is responsible and accountable for all decisions taken regarding national financial legislative proposals. If this is the case, he should also be accountable for allowing any imbalances in the influence from the Ministry's external contacts. It is hard, however, to hold him accountable on this when not all information on external inputs and lobbying is available. This is demonstrated in the so-called 'coco-gate' case, where banks were allowed to incorporate their wording in the draft law though this was neither explained to parliamentarians nor discussed by them around the time of voting.

There is also little public accountability on co-decisions the Minister makes at the European Council of Finance Ministers (ECOFIN), even though he presents his views to parliament.

Accountability of bank CEOs

unaware of all lobbying

The final responsibility and accountability for lobbying positions taken by banks lies with the chair of the management board, also referred to as the CEO, though the decisions may actually be taken at lower management or expert level. This does not apply to the CEO of Triodos bank who takes positions in the DBA/NVB which represent those of the smaller banks, not his own bank.

Given the lack of overview of the bank's lobbying activities and positions, it is highly possible that CEOs are in principle accountable for positions and activities conducted on behalf of the bank of which they are unaware. Except for the DBA/NVB where the CEOs of the main banks in the Netherlands take final lobbying positions, CEOs might also be very well unaware of all activities conducted and positions taken by some of the industry associations of which the bank is a member. This means that in case of excessive or undue lobbying, or corporate capture, those responsible are not aware of any problems and, therefore, may not take action to redress them.

Overall assessment

risks of public interest being left unattended

Based on its findings, this report's overall conclusion is that there is a risk of regulatory capture of financial legislative processes in the Netherlands that is hardly visible and that is subject to little awareness. This results in indirect influence and difficult to measure impacts of the banks' lobbying and their interaction with the Ministry of Finance. There are too little measures in place to monitor transparency, accessibility, balanced access and weighing of diverse interests, and accountability so as to protect citizens and the public interest and to address cases of unbalanced lobbying and undue influence from the Dutch banking sector.

RECOMMENDATIONS TO INCREASE TRANSPARENCY AND ACCOUNTABILITY OF LOBBYING

Based on the findings of this report, the following recommendations aim to address the risks and practices of too little transparency about interaction and lobbying undertaken by banks at the Ministry of Finance during the legislative decision making process. They also address the current conditions that favour large banks and the industry associations that represent them, while citizens and civil society have only limited access to the means of protecting their interests. Because voluntary measures failed to uphold and improve standards that should prevent regulatory capture, bold steps are now required if progress is to be made.

The recommendations attempt to address particular challenges posed by the context in the Netherlands in which the current government's search to find a compromise among different stakeholders increasingly results in promoting the business sector, including the financial sector, to ensure the Netherlands remains economically competitive in a globalised, open European and world economy.

In addition, the complexity of current banking operations and financial legislation – much of which takes place at EU level – means that involving citizens and civil society and diverse stakeholders during the legislative process will require additional efforts to the attempts and proposals made so far.

The recommendations in this report are made in the context of:

- Existing parliamentary proposals calling for increased transparency and greater openness to diverse interests during policy-making and legislative decision-making, issued by the *Initiatiefnota Lobby in daglicht: luisteren en laten zien* (December 2015, by MPs Bouwmeester and Oosenbrug).¹ The banks interviewed for this report are in favour of this initiative.
- A parliamentary motion to create a 'legislative footprint' for all legislative proposals (March 2016, by MPs Van Gerven en Oosenbrug).²
- New 'guidelines on external contacts' issued by the Ministry of Finance (29 August 2016).³
- New European Commission proposals to increase the stringency of its EU Transparency Register (28 September 2016⁴) and the transparency of lobbying.

The above initiatives and proposals indicate that decision-makers recognise somewhat the level of concern and mistrust among citizens at the influence exerted by the financial sector, and business in general, and the threat to the public interest from undue or excessive lobbying and regulatory capture. The following recommendations aim to contribute to discussions on ways of maintaining the integrity of democratic legislative processes and the role of the financial sector.

Recommendations to the government

Legally binding regulations

In order to ensure equity among different stakeholders and citizens who want to influence the legislative processes and in order to constantly uphold the standards, legally binding regulations should be introduced by national law. Any new binding regulations should themselves be the subject of a transparent and balanced consultation process, and should include:

- the creation of a mandatory **Transparency Register** with a code of conduct,
- the implementation of a comprehensive **legislative footprint** (*lobby paragraaf*),
- the establishing of **guidelines** for all civil servants and ministers on dealing with lobbyists,
- transparency about Ministers' official **diary**,
- guidance for improving the **balanced weighing** of different interest with special attention to the public interest and the interests of citizens.

Such legislation should strive to at least equal the rules applied by the European Commission and requirements included in the EU Transparency register.⁵ There is also much to learn from the experiences of other countries such as Austria and France, and especially Canada⁶ where institutional enforcement through a Commissioner for lobbying has been accompanied by special efforts to encourage more citizen involvement in the legislative process and better weighing of stakeholder interests.

The following recommendations spell out the above proposals in more detail.

Be transparent in order to protect the right to know, by:

- **Introducing a mandatory and comprehensive 'legislative footprint' that:**
 - is included in the *Memorie van Toelichting* (explanatory note) which accompanies the official internet consultation and clarifies the external inputs that have been received *before* the period of official consultation;
 - is comprehensive when sent by the Ministry to Parliament with the policy papers and final legislative proposals and includes information about all formal and informal inputs, i.e. not restricted to mentioning the responses to the consultation;
 - explains how the Ministry has taken into account (or not) all the formal and informal interaction and inputs it received, and how the range of interests were balanced, including the interests of those who were underrepresented in the consultation process;
 - is based on renewed guidelines for legislation (*aanwijzingen*) that ensure the fullest possible transparency without compromising access to the process for whistle-blowers.
- **Making public announcements about legislation as it is being developed**

A number of methods are available for publicising upcoming legislation, such as a dedicated webpage on the website of the Ministry developing the legislative proposals. Any announcements of forthcoming legislation should include a short summary about the aim of the proposed legislation and information updated monthly on the external inputs received, including before, during and after the website consultation. By making such information public – along with all links to submissions made to the internet consultation from industry associations, companies, organisations etc. – the 'legislative footprint' would be transparent from the very beginning ('living legislative footprint').
- **Openness about the diaries ('agenda') of decision-makers**

Transparency of interaction with external contacts and lobbyists by Ministers, Deputy Ministers, Director-Generals and senior officials who are responsible for particular areas of policy or regulation, can be increased by:

 - Publishing diaries that announce as many meetings/events as possible a week ahead.

- Maintaining a detailed archive on the website of the professional meetings/events undertaken with external parties, and publishing in very short (as is the case at the European Commission):
 - the date of the meeting;
 - the organisation/company represented at the meeting and/or the individuals who attended;
 - the subjects covered at the meeting and any documents received in connection with the discussion before, during and after the meeting;
 - where the meeting took place;
 - links to speeches made by the Minister at events;
 - ensuring all speeches made by Ministers, Deputy Ministers and Director-Generals are available on the Ministry's website;
 - using social media to inform the public about the Minister's activities and press conferences (cf. tweets made by the Minister of Finance).

Protect the right to be heard

It can be made easier for citizens, civil society organisations and other diverse groups who work in the public interest to provide input to the legislative process through:

- **Improving public internet consultations on EU and national legislative proposals, by:**
 - Including questions that are accessible and comprehensible to citizens and non-profit organisations, and can be easily answered;
 - Asking questions related to the aim and desired effect of the legislation, and not only focusing on the technicalities;
 - Ensuring widespread and targeted publicity of consultations which reach diverse potential interest groups. Resources will need to be allocated for this.
- **Making input easier for citizens outside the internet consultations, by:**
 - Ensuring information is easier to find by citizens about upcoming legislation;
 - Being more accessible for citizens to ask questions pertaining to upcoming legislation;
 - Providing more interactive channels for citizens to give input;
 - Dedicating more staff, e.g. a Ministry spokesperson, to relations with non-financial stakeholders and citizens.

Protect the integrity of the democratic legislative decision-making process

Undue and excessive lobbying can be prevented by:

- **Introducing a comprehensive mandatory Transparency Register** to be used jointly by ministries and parliament, in line with the EU Transparency Register, as follows:
 - Companies and organisations that regularly interact and lobby government or parliament would be obliged to subscribe to the Transparency Register. Such companies and organisations that do not subscribe would be unable to lobby officials, though waivers would exist for occasional visits and citizens.
 - Those who subscribe to the Transparency Register would automatically subscribe to a code of conduct, as defined by the government and based on consultations with stakeholders.
 - The Transparency Register would include details of all in-house and external lobbyists used by companies and organisations, the (voluntary) lobby codes that cover the behaviour of these lobbyists, information about persons who have a parliamentary pass, the issues that particular lobbyists/organisations are likely to focus on, the estimated costs of each company's/organisation's lobbying activities (staff, housing, travel, office costs, membership fees of organisations that lobby on their behalf), details of the individual or individuals with legal/management responsibility for lobbying positions within a company or organisation.
 - Companies and organisations should update their details annually and include a short overview of lobbying activities undertaken at Dutch level during the previous year.

- The introduction of a Transparency Register should not obstruct the easy access by citizens and small organisations or companies to policy makers in parliament and ministries.
 - The implementation of the Register should be monitored by an independent and well-resourced authority, inspired by the practice in Canada.
- **Adapting the code of conduct for integrity** (*Gedragcode Integriteit Rijk* (2015)) which applies to all civil servants, by adding new guidelines on dealing with lobbyists (e.g. as included in the recent Ministry of Finance *Gedraglijn Externe contacten*), such as:
 - Clear standards and procedures regarding communications between public officials and interest groups, how meetings are agreed upon and organised with clarity about the topics to be discussed.
 - The establishment of a registration mechanism for meetings conducted with lobbyists. This record can be used for the legislative footprint.
 - Having a definition of lobbying that makes clear to civil servants in what different ways undue influence can be exerted.
 - Guidance on how to guarantee diversity among stakeholders and experts, including those from civil society, and how to organise invitations for stakeholder meetings.

Ensure that the public interest is weighed fairly against all other interests and information, by:

- Putting more efforts into identifying the diverse stakeholders affected by each legislative proposal and improving assessment of the impact of such proposals on citizens and non-profit interests. This can be developed and described in the guidelines for the *Memorie van Toelichting*.
- Clarifying the benefits and risks of legislation to the public interest.
- Ensuring that there are sufficient human resources to process diverse inputs and all responses to official consultations so that such responses do not delay or undermine legislation (as in the US where numerous and lengthy responses are used by the financial industry to delay legislation).
- Establishing clear and practical guidelines on balancing inputs from different stakeholders in order, for example, to avoid a situation where the interest group with most responses to consultations has a dominating influence.
- Ensuring the *Memorie van Toelichting* sent to the parliament explains how all formal and informal inputs have been assessed, and how any underrepresented interests were considered.
- Asking questions, by civil servants and policy makers who meet representatives or lobbyists of an industry association and deal with consultation responses, which members of the association are supporting the presented position, the lobby paper or consultation response. This would avoid the industry association being captured by a small group of members.

Exercise more accountability about lobbying activities

An improved *Memorie van Toelichting* and especially its comprehensive legislative footprint, a new mandatory transparency register, enhanced openness to citizens, an up to date BNC-fiche and improved weighing of interests by decision-makers, should provide reasonable information for debates in parliament, the media and amongst different stakeholders and citizens about the choices made by a Ministry and its responsible Minister when presenting a final legislative proposals to parliament.

Accountability discussions should clarify how the public interest has been taken into account if at all, who is impacted in what way and whether the weighing of diverse interests has resulted in an outcome that unduly benefits a particular stakeholder. The outcome should be more integer decision-making at the parliament, which is trusted by citizens.

Recommendations to the Ministry of Finance

The Minister of Finance, Mr Dijsselbloem, has taken specific additional action to increase transparency of his Ministry regarding external contacts, for example by publishing part of his diary. As a result, the Ministry of Finance has shown that all ministries in the government can be more open. Given, however, the complex nature of financial legislation and the resources available to the banking sector, there are still further specific improvements in addition to those listed above, which the Ministry of Finance can make to its decision-making.

A comprehensive transparency policy

The Ministry's own transparency policy can be enhanced by:

- **Publishing a comprehensive version of the Minister of Finance's diary**, as happens at the European Commission, which would include information about:
 - the Minister's meetings with external parties inside as well as outside the Ministry,
 - topics discussed at meetings (e.g. a specific EU or national legislative proposal),
 - attendees at agreed meetings (not during events or large meetings).
- **Improving information about upcoming EU financial legislation** (legislative proposals and reviews, white papers, etc.), namely:
 - A list of all current EU legislative processes which involve the Minister in EU co-decision making should be published on a webpage of the website of the Ministry of Finance, and not only as part of the government's website. Each EU financial legislative proposal on the list should have a link to the BNC-fiche as well as EC websites including those about EC consultations, the European Parliament, and the Council of Ministers of Finance where information about the ongoing process can also be found.
 - The BNC-fiche should start with a short easy to understand summary for non-experts.
 - The BNC-fiche should be regularly updated in line with any changes in the Minister's position or compromises reached in the EU Council of the Ministers of Finance.
 - Public official internet consultations should be organised in due time by the Ministry about EU financial legislative proposals and the position held by the Minister of Finance on such proposals.

Better access for citizens, civil society organisations and diverse stakeholders to give input to the legislative processes, by:

- **Improving access to official public internet consultations:**
 - Announce public consultations on the home page of the Ministry.
 - Use a range of means to attract responses from academics, stakeholders and citizens.
 - Include in the *Memorie van Toelichting* details of external contacts made by the Ministry prior to the website consultation.
- **Increasing in house capacity and adding human resources:**

In order to identify and attract different non-financial interests and their representatives into the decision-making process to advise on particular upcoming legislation, more human resources and networking by the Ministry's civil servants will be needed. This would implement the Ministry's new guidelines on external contacts which require more attention and a broad perspective (*opletpunt, brede blik*) from the heads of departments of the Ministry.

Ensure all interests are weighed seriously

Given the dominance of experts, inputs, interaction and lobbying by the banks, along with the continued complexity of the issues, specific efforts need to be made to weigh different interests when deciding on a banking legislative proposal, by:

- **Analysing the balance of the interests and powers** (*krachtenveldanalyse*) that are represented in responses to consultations, at expert and consultation meetings, in meetings with the Minister, and other external inputs. When imbalances of represented interests are identified, pro-active search and research for missing stakeholder views and public interest positions have to be undertaken.
- **Developing and improving the impact and risks analysis** of potential financial legislation on social, environmental, citizens' and public interests. This should also be included in renewed guidelines for the *Memorie van Toelichting*.

Recommendations to the banks

The banks' internal and external transparency about direct and indirect lobbying activities and positions has shown to be deficient to raise awareness about their impact and to allow scrutiny by policy makers and citizens. There are different ways by which banks can be more open and accountable.

Public information is to be improved and enhanced about lobbying activities undertaken and the positions held by the bank on financial legislative proposals, by:

- **Informing more fully the public about lobbying activities and interaction with legislators and decision-makers**
Information about lobbying should be available on the website and, at the very least, in the bank's annual report, as well as potentially in a Dutch transparency register as proposed above, by:
 - Giving details of all the legislative proposals on which the bank has been active, either directly or indirectly via industry associations.
 - Giving details of the bank's lobbying activities on the bank's website under easy-to-understand headings (not *maatschappelijk gesprekken* (social conversations) as SNS Bank does, or 'principles' as Rabobank has been doing⁷) with an easy-to-read short overview (position taken, which legislators approached, main lobbying activities, etc.).
 - Defining what the bank means by the term 'lobbying'.
- **Publishing all lobby papers and consultation responses:**
 - Make this information easy to find on the website, as did the DBA/NVB.⁸
 - List the significant issues covered in submissions made to consultations with a link to a short summary (e.g. a 'viewpoint' by ING, or 'position paper' by Rabobank) along with all related submissions and position papers, preferably with details of relevant lobbying activities.⁹
- **Listing all memberships of industry associations, by:**
 - Publishing all memberships of financial industry associations in the annual report, even if such membership is not active, and refer in the GRI index on the annual reports under guideline G4-16 to the exact webpage such memberships are listed.
 - Submitting a complete list of memberships to the EU Transparency Register and any future Dutch transparency register.
 - Ensuring an overview of memberships is available to all bank staff and provide the management board with information on the lobbying position of each industry association to which the bank belongs.
 - Publishing information about the bank's level of engagement with these associations (board member, working groups, committees, etc.).
- **Improving transparency on the lobbying budget**, by calculating the following information for inclusion in own publications (annual report, website, accounts) and transparency registers:
 - personnel budget and operating costs for the unit or department that lobbies, and/or develops and presents the bank's position on legislation, including lobbying by external lobbyists,

- costs of membership of all financial industry organisations that represent or lobby on behalf of banks (regardless of whether the bank is actively involved in such activity),
- cost of membership of lobby industry associations (often referred to as public affairs associations) to which in-house lobbyists belong as members,
- estimated costs of activities conducted by bank representations – from experts to members of the management board – in relation to contact with legislative authorities.

Ensure integrity of the bank's interactions with, and lobbying of, legislative authorities, by:

- Developing a code of conduct for those involved in lobbying, expertise sharing and representation, which could be incorporated into the current Dutch bankers' oath.¹⁰ Otherwise, ensure that all are subject to (voluntary but preferably mandatory or statutory) codes of conduct.
- Making lobbying a corporate responsibility issue to reflect the impact such activity has on society. All lobbying activity would then need to be in line with the bank's sustainability statements and goals, or an explanation required when that is not the case.¹¹
- Ensuring that the industry associations to which the banks belong, have strong codes of conduct for those who lobby on their behalf.
- Disclosing the names of the lobbyists who represent the bank at public institutions.

Develop a comprehensive policy on interaction and lobbying on legislative proposals

The awareness, responsibility and accountability by each bank for its interactions, lobbying activities and positions could be increased by adopting a comprehensive policy with guidelines for each bank, or collectively by all Dutch banks, that cover amongst others:

- transparency (of lobbying position, lobbying activities, costs, memberships, etc.),
- integrity (which codes of conduct are being followed, for example),
- CSR (no contradiction to sustainability objectives, no harm to society and the public interest),
- coordination and supervision of all lobbying positions,
- defining who is finally responsible and therefore accountable for lobbying positions and activities, and if appropriate, for (redressing) excessive or undue behaviour,
- the level of engagement in and responsibility for positions and lobbying activities of financial industry associations, to avoid abuses of representation and excessive lobbying.

Notes

- 1 Tweede Kamer, Initiatiefnota van de leden Bouwmeester en Oosenbrug: "Lobby in dagicht: luisteren en laten zien", Kamerstuk 34 376, blg-650569, 24 December 2015.
- 2 Tweede Kamer, Gewijzigde motie van de leden Van Gerven en Oosenbrug (t.v.v. 32637, nr. 229) over toevoegen van een lobbyparagraaf, Kamerstuk 32 637, nr. 232, 1 March 2016.
- 3 Ministry of Finance, Gedragslijn Externe contacten, 29 August 2016.
- 4 European Commission, Proposal for a Interinstitutional Agreement on a mandatory Transparency Register, 28 September 2016, <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-627-EN-F1-1.PDF> (viewed 29 September 2016).
- 5 See: <http://ec.europa.eu/transparencyregister/public/consultation/search.do?reset=&locale=en#en>.
- 6 See: Office of the Commissioner of Lobbying of Canada, https://lobbycanada.gc.ca/eic/site/O12.nsf/eng/h_00000.html.
- 7 <https://www.rabobank.com/en/about-rabobank/in-society/principles/index.html> (last viewed 7 October 2016).
- 8 <https://www.nvb.nl/publicaties-standpunten/100/publicaties.html>.
- 9 See also existing voluntary requirements: GRI, G4 Sustainability Reporting Guidelines – Implementation Manual, August 2015, p. 209: 'Describe the significant issues that are the focus of the organization's participation in public policy development and lobbying. This refers to participation at the level of the entire organization, rather than individual operations. Provide the organization's core position for each of the identified issues, and describe any significant differences between lobbying positions and stated policies, sustainability goals, or other public positions.'

- 10 Transparency International - Nederland, Lifting the lid on lobbying – Enhancing the trust in public decision-making in the Netherlands, 2015, p. 41, note 194: ‘note that this self-regulating banker’s oath is based on the statutory stemming from the *Wijzigingwet financiële markten 2013*, the *Wijzigingwet financiële markten 2015* and the *Regeling eed of belofte financiële sector*’.
- 11 See GRI, G4 Sustainability Reporting Guidelines – Implementation Manual, August 2015, p. 209: ‘Provide the organization’s core position for each of the identified issues, and describe any significant differences between lobbying positions and stated policies, sustainability goals, or other public positions.’

Abbreviations of financial industry associations

ABA

Austrian Banking Association (Bankenverband) | <https://www.bankenverband.at/> | ABA is a member of EBF

ABB

Association of Banks in Bulgaria | <http://abanksb.bg/>

AFME

Association for Financial Markets in Europe | <http://www.afme.eu/> | AFME is a member of ECMI, GFMA and an observer member of PCS

AGB

Association of German Banks (Bankenverband) | <http://en.bankenverband.de/> | AGB is a member of EBF and EPC

AmCham

American Chamber of Commerce in the Netherlands | <http://www.amcham.nl/>

BBA

British Banking Association | <https://www.bba.org.uk/> | BBA is a member of EBF

BEAMA

Belgian Asset Managers Association | <http://www.beama.be/> | BEAMA is a member of EFAMA

BPFI

Banking and Payments Federation Ireland | <http://www.bpfi.ie/> | BPFI is a member of EBF and the EPC

Bruegel

European think tank in economics | <http://bruegel.org/>

CBA

Czech Banking Association (Ceska Bankovni Asociace) | <https://www.czech-ba.cz/> | CBA is a member of EBF and EPC

CEPS

Centre for European Policy Studies | <https://www.ceps.eu/>

DACB

Dutch Association of Covered Bonds Issuers | <https://www.dacb.nl/> | DACB is a member of ECBC

DBA /NVB

Dutch Banking Association (Nederlandse Vereniging van Banken (NVB)) | <https://www.nvb.nl/> | DBA is a member of EBF, ECBC and EPFSF

DGZ

De Groene Zaak | <http://degroenezaak.com/>

DSA

Dutch Securitization Association | <https://www.dutch-securitisation.nl/> | DSA is an observer member of PCS

DUFAS

Dutch Fund and Asset Management Association | <http://www.dufas.nl/> | DUFAS is a member of EFAMA and VNO-NCW / CNIE

EACB

The European Association of Co-operative Banks | <http://www.eacb.coop/>

EBA

Euro Banking Association | <https://www.abe-eba.eu/>

EBF

European Banking Federation | <http://www.ebf-fbe.eu/> | the EBF is a member of IbFed, EPC and ECMI

ECBC

European Covered Bonds Council | <http://ecbc.hypo.org/>

ECMI

European Capital Markets Institute | <http://www.euro-capitalmarkets.org> | ECMI is hosted by CEPS

EFAMA

European Financial Assets Management Association | <http://www.efama.org/> | EFAMA is a member of ECMI, and observer member of PCS

EFR

The European Financial Services Round Table | <http://www.efr.be/> | EFR is an observer member of PCS

EMF

European Mortgage Federation | <http://www.hypo.org/>

EPC

European Payments Council | <http://www.european-paymentscouncil.eu/>

EPFS

The European Parliamentary Financial Services Forum | <http://www.epfsf.org/>

ERFF

European Retail Financial Forum | <http://www.erff.eu/>

ESBG/ WSBI

European Savings and Retail Banking Group / World Savings and Retail Banking Institute | <http://www.savings-banks.com/> ESBG is a member of EPC

EUROFI

<http://www.eurofi.net/>

EVPA

European Venture Philanthropy Association | <http://evpa.eu.com/>

FBF

French Banking Association (Fédération Bancaire Française) | <http://www.fbf.fr/> | FBF is a member of EBF and EPC

Febelfin

Belgian Financial Sector Federation (Belgische Federatie van de Financiële Sector) | <https://www.febelfin.be/> | FebelFin is a member of EBF and EPC

GFMA

Global Financial Markets Association | <http://www.gfma.org/>

IACPM

International Association of Credit Portfolio Managers | <http://web.iacpm.org/>

IBA

Italian Banking Association (Associazione bancaria italiana) | <https://www.abi.it/> | IBA is a member of EBF and EPC

IbFed

International Banking Federation | <http://www.ibfed.org/>

ICA

International Cooperative Alliance | <https://ica.coop/>

ICMA

International Capital Markets Association | <http://www.icmagroup.org/> ICMA is a member of ECMI

IIF

Institute of International Finance | <https://www.iif.com/>

ISDA

International Swaps and Derivatives Association | <http://www2.isda.org/> ISDA is a member of ECMI

LBA

Luxembourg Bankers' Association (Luxemburger Bankervereinigung) | <http://www.abbl.lu/> | LBA is a member of EBF, ECBC and EPC

LMA

Loan Market Association | <http://www.lma.eu.com/>

PBA

Polish Banking Association (Związku Banków Polskich) | <https://zbp.pl/> | PBA is a member of EBF

PCS

Prime Collateralized Securities | <http://pcsmarket.org/> PCS is member of ECMI

RBA

Romanian Banking Association (Asociația Română a Bancilor) | <http://www.arb.ro/> | RBA is a member of EBF and EPC

SBA

Spanish Banking Association (Asociación Española de Banca) | <https://www.aebanca.es/> | SBA is a member of EBF and EPC

SFIG

Structured Finance Industry Group | <http://www.sfindustry.org/>

SIF

Social Investment Forum | <http://www.socialinvestmentforum.org.uk/>

SvBA

Slovakian Banking Association (Slovenská Banková Asociácia) | <http://www.sbaonline.sk/> | SvBA is a member of EBF and EPC

TheCityUK

<https://www.thecityuk.com/>

VNO-NCW / CNIE

Verbond van Nederlandse Ondernemingen en het Nederlands Christelijk Werkgeversverbond (VNO-NCW) / The Confederation of Netherlands Industry and Employers <https://www.vno-ncw.nl/> VNO-NCW / CNIE is member of CEPS

This report focuses on financial legislative processes in the Netherlands and whether measures have been or should be - taken to improve the transparency and accountability of the lobbying processes by Dutch banks. The aim is to prevent regulatory capture that is a major cause of financial crises, and guarantee that financial law making is democratic, open, balanced and in the public interest.

- Chapter one examines how transparent the Ministry of Finance is to citizens wishing to know about, and influence, upcoming financial legislation.
- Chapter two provides an insight into the interaction between the Ministry and six Dutch banks regarding financial legislative proposals, and related lobbying by the banks.
- Chapter three explains how the banks operationalise their lobbying activities.
- Chapter four highlights how multiple memberships of industry associations is not well managed by the banks.

The report concludes with commentaries on existing shortcomings and risks, and recommendations to concretely redress imbalances and lack of awareness about the impact of lobbying by banks.