



Exclusion System Summary

Netherlands

I. Government-Wide Legal and Institutional Framework:

Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are made on a contract-by-contract basis as governed by national legislation or centralized regulations. Exclusions apply only to the procurement at issue.

Governing Policy:

- Arts. 2.86-2.89 (Div. 2.3.5) of the [Public Procurement Act of 2012](#), as amended, which transposes Art. 57 of Directive 2014/24/EU of the European Parliament.

Primary Legal Foundation:

- Civil/Tort Law.

Decision-Maker: Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- Individual contracting authorities make exclusion decisions within each procurement procedure (contract-by-contract exclusion).

Qualification:

- None stated in the legal framework.

Independence:

- Not functionally independent from senior procurement officials. The procurement process, including any exclusion decision, is conducted by the relevant Purchase Executive Centers.

II. Functioning and Enforcement of the Government-Wide Exclusion System:

General Provisions:

Type of Procedures: Administrative and Civil.

- The initial exclusion decision is made as part of the procurement process, which is an administrative process.
- Any subsequent proceedings are governed by private contract law, which governs public procurement in the Netherlands.

Decision Deadline: No stated deadline for decision-maker to make a final determination.

Provisional Exclusions: None.

Initial Procurement Decision: Grounds for exclusion are reviewed by the contracting authority as part of the procurement decision on a contract-by-contract basis.

- Decision-maker can make an exclusion decision without a prior referral.
- Non-governmental parties can submit complaints and/or evidence to the decision-maker.

Notice Requirements & Opportunity to be Heard: Yes & Yes.

Notice:

- Suppliers receive notice when the decision-maker decides that grounds exist.
- Decision-maker must provide the grounds and reasoning for exclusion upon request.
- Decision-maker is not required to make reasoning available to the public. Contracting authorities are, however, required to provide a procurement report (including any suppliers excluded from the procurement) to the European Commission upon request. (Arts. 2.103(1), 2.132(d), 2.133 of the Public Procurement Act)

Opportunity to be Heard:

- Suppliers are entitled to an opportunity to prove that they have taken sufficient measures to demonstrate their reliability and may make a written submission to the decision-maker.

Appellate Review of Exclusion Decisions: Yes.

Nature and Forum of Review: Administrative and Judicial.

- Complaints related to a procurement process are submitted to the Civil Courts.
- As an alternative to the judicial system, suppliers can submit complaints to the Committee of Public Procurement Experts, a forum that acts as a mediator and issues non-binding advice on claims resolutions.

Means Available to the Supplier: As part of appellate review, suppliers may:

- Obtain the evidentiary record.
- Make a written submission to the appellate body.
- Request an in-person hearing with the appellate body.
- Request to call witnesses to testify on the supplier's behalf.

Duration of Appeal Process: Depends on the circumstances of each case, but the Committee of Public Procurement Experts generally takes less than one year, while the Civil Courts can take up to two years.

Legal Representation:

- A supplier **may** be represented by counsel.

Subsequent Modification of Exclusion Decision: Yes ("Self-Cleaning").

- Except through an appeal to a judicial authority, a supplier is not entitled to seek a modification of any decision to exclude it from a procurement process after it goes into effect.
- A supplier **may**, however, include evidence of sufficient measures to demonstrate its reliability (*i.e.*, "self-cleaning") with any subsequent bids submitted to a contracting authority.

III. Substantive Grounds for Government-Wide Exclusion:

Automatic Exclusion: Yes.

Based on a supplier's criminal or civil judgement for the following:

- Corruption;
- Fraud;
- Money laundering;
- Tax-related offenses (based on a court judgement);
- Labor-related offenses;
- Terrorist offenses or offenses linked to terrorism;
- Other:
 - Member of criminal organization;
 - Not paying social security contributions (proven by judicial decision).

Discretionary Exclusion: Yes.

Based on a finding by the decision-maker that the supplier engaged in the following:

- Collusion and/or infringing competition;
- Obstruction of an investigation;
- Tax-related offenses (based on findings other than a court judgement);
- Poor performance, non-performance, and/or failure to perform on public contracts;
- Other:
 - Not paying social security contribution (without a judicial decision);
 - Environmental violations;
 - Serious fault in procedural activities that undermine the supplier's integrity;
 - Conflict of interest;
 - Influencing the procurement authority;
 - Prior involvement in preparation of the procurement procedure harming competition;
 - False statements to procurement authority;
 - Any act that shows that the supplier made a serious fault in the execution of the project which questions the integrity of the suppliers.

Decision-maker may not exclude the supplier when there are:

- Remedial measures – supplier has presented evidence of sufficient measures to demonstrate its reliability;
- Government interest;
- Other:
 - If exclusion is not proportional due to the nature of the procurement; and
 - Mandatory reasons of public interest.

Exclusion based on Bankruptcy and Cross-Debarment: Discretionary & None.

IV. Scope and Effect of Government-Wide Exclusion:

Types of Excluded Suppliers:

- Limited to Corporate Suppliers.

Scope of Exclusion:

Extension to Other Agencies and Organizations:

- Exclusions do **not** prohibit the supplier from contracting with any other agency (exclusion decisions are contract-by-contract). However, the same facts could constitute an exclusion ground in every subsequent tender process.
- Exclusions do **not** automatically extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from the Netherlands.

Effect on Ongoing Contracts:

- Ongoing contracts are **not** automatically cancelled.
- Subsequent modifications to ongoing contracts are subject to the restrictions set forth in Arts. 2.163a-g of the Public Procurement Act and are **not** affected by a supplier's exclusion.

Effect on Subcontracting:

- Excluded suppliers **can** technically serve as subcontractors, but contracting authorities may have chosen in contract documents to evaluate, or may sometimes be required by the law to evaluate, whether any potential exclusion grounds apply to a bidder's proposed subcontractors. If any grounds exist, the contracting authority can ask or sometimes must ask to replace the subcontractor.

Effect on Affiliates:

- Exclusions do **not** extend to the supplier's affiliated companies.

Duration of Exclusions:

Duration Specified in Legal Framework:

- Exclusions must be based only on grounds that occurred in the previous three or five years.

Duration Depends on Applicable Exclusion Ground? Yes, per Arts. 2.86 and 2.87 of the Public Procurement Act.

- Five years maximum for automatic grounds (from the date of final conviction).
- Three years maximum for discretionary grounds (from the ground's occurrence).

Discretion to Deviate?

- No. The decision-maker does not have discretion to consider any grounds that fall outside the above time limitations as a basis for exclusion.

Exceptions/Waivers to Exclusions:

- Yes. A contract may still be awarded to a supplier notwithstanding the existence of an exclusion ground if in the government's or the public's interest.

Other Sanctions: Not addressed.

V. Government-Wide Transparency and Exclusion List:

Official List of Excluded Suppliers? No.

Procurement Checks: No. Procuring entities are not required to check a list of excluded suppliers before awarding a contract.

Reporting on Exclusions:

Number of Exclusions: Figures unknown.

Regular Reporting: No requirement for regular reporting on exclusions.

Other Transparency Mechanisms: None.

VI. Limited Scope Exclusion Systems:

Entity-Wide (e.g., Single-Agency) Exclusion? No.

Contract-By-Contract (e.g., Single-Tender) Exclusion? Yes. See above.

Subnational Exclusions:

- Exclusions exist at the Provincial/State and Municipal/Local levels, which are also subject to the Public Procurement Act.
- Exclusion decisions of one subnational body do not extend to other subnational bodies.