**TRANSPARENCY OF MEDIA OWNERSHIP – THE LEGAL FRAMEWORK**

**NETHERLANDS**



**1. Media-Specific Disclosure Requirements I : *Disclosure to a Media Authority or other Public Body***

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **QUESTIONS** |  |  | **YES/** |  | **COMMENTS** |  |
|  |  |  | **NO** |  |  |  |  |  |  |
| 1.1 Who is required | a) | Are media organisations which disseminate information |  |  |  |  |  |  |  |
| to disclose |  | or those who have interests in such media organisations |  |  |  |  |  |  |  |
| information, when |  | specifically required to report ownership information to a | Y |  |  |  |  |  |  |
| and to whom? |  | media authority or other public body or bodies? |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |
|  | b) | If YES, what is the legal basis of this requirement? |  |  | Regulation of Dutch media policy is contained in the Media Act 2008 | 1 | and its |  |  |
|  |  |  |  |  | accompanying Media Decree 20082. Article 3.1 Media Act 2008 states that a licence is |  |
|  |  |  |  |  | required to offer a broadcasting service. Para 4 of this Article says that further |  |
|  |  |  |  |  | conditions for the application procedure will be laid down in a ministerial regulation. |  |
|  |  |  |  |  | This is done by Article 15 of the Media Regulation 20083 which contains the |  |
|  |  |  |  |  | implementation rules for the Media Act 2008. |  |
|  | c) | Who exactly is covered by this requirement, |  |  | **Broadcast media / some online media** |  |
|  |  |  |  |  | This covers the applicant for a broadcasting service licence which is the commercial |  |
|  |  |  |  |  | media service provider. The commercial media service provider is defined in Article |  |
|  |  |  |  |  | 1.1, para 1 of the Media Act as the natural or legal person who provides a commercial |  |
|  |  |  |  |  | media service and who as far as the application of the Media Act 2008 is concerned |  |
|  |  |  |  |  | falls under jurisdiction of the Netherlands. |  |
|  |  |  |  |  | As far as online media are concerned, those providing a linear broadcasting service, as |  |
|  |  |  |  |  | defined in Article 1.1, para 1 of the Media Act 2008, would also need a licence. Hence |  |
|  |  |  |  |  | the same regime would apply as for traditional broadcasting. |  |
|  |  |  |  |  | In practice many audiovisual services offered online will not be linear by nature but |  |
|  |  |  |  |  | will be distributed on demand (eg film VOD sites or catch-up services). A licence is not |  |
|  |  |  |  |  | required for broadcasting such services; under Article 3.29b, para 1 of the Media Act |  |
|  |  |  |  | 1 |  |
| **Name of Country:** Netherlands |  |  |  |  |  |  |  |  |
| **Source of information:** Marcel Betzel |  |  |  |  |  |  |  |

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|  |  |  | 2008 only a registration with the CvdM (see 1.1(d) below) is required. So it is |  |
|  |  |  | important to notice that in the case of on-demand media services there is no check on |  |
|  |  |  | ownership whatsoever. |  |
|  | d) To whom must the information be reported? |  | The information must be reported to the Dutch Media Authority4 (CvdM) which is the |  |
|  |  |  | body responsible for issuing broadcasting licences. It is governed by Chapter 7 of the |  |
|  |  |  | Media Act 2008 and is an independent administrative body, responsible for |  |
|  |  |  | enforcement of the Media Act and the Media Decree in the Netherlands. The CvdM |  |
|  |  |  | upholds the rules which are formulated in the Media Act as well as in the regulations |  |
|  |  |  | based on this act, for example the Media Decree. The CvdM controls, for instance, |  |
|  |  |  | compliance with advertising and sponsoring rules and programme quota obligations |  |
|  |  |  | by media service providers as well as issuing broadcasting licences. The activities of |  |
|  |  |  | the CvdM cover public service, commercial broadcasters and cable operators. The |  |
|  |  |  | CvdM was founded on 1 January 1988, coinciding with the date of commencement of |  |
|  |  |  | the Dutch Media Act. |  |
|  | e) Who must report the information? |  | The media service provider (licence applicant) itself. The legal requirement for a media |  |
|  |  |  | service provider when applying for a broadcasting service licence to submit |  |
|  |  |  | information to the CvdM is – as a general principle – laid down in Article 3.1 of the |  |
|  |  |  | Media Act 2008 and further elaborated in Article 15 of the Media Regulation 2008. |  |
|  | f) Where notification is by those with an interest, is this |  |  |  |
|  | dependent on the size or scale of the interest, e.g. only |  |  |  |
|  | where a shareholding exceeds a certain size or | N |  |  |
|  | percentage? |  |  |
|  |  |  |  |
|  | If YES, what is the required threshold? |  |  |  |
|  | g) Are foreign as well as domestic media organisations | Y | According to Article 1.2 para. 1 of the Media Act 2008, this obligation only applies to |  |
|  | covered by these requirements? |  | media service providers which fall under Dutch jurisdiction under the terms of Article |  |
|  |  |  | 2 of the European Audiovisual Directive (AVMS Directive).5 Usually this means that: |  |
|  | If YES, do these requirements apply to EU as well as non- | Y | the editorial responsibility for the media service provider lies within the Netherlands |  |
|  | EU foreign organisations? |  | because its head office is in the Netherlands; a significant part of the workforce is |  |
|  |  |  | located in the Netherlands; and the editorial decisions are taken in the Netherlands. |  |
|  |  |  | This interpretation is taken directly from the wording of the AVMS Directive. |  |
|  |  |  | Article 2.1, paragraph 2 of the Media Act 2008 sets out the same jurisdiction criteria |  |
|  |  |  | (from Article 2 AVMS Directive) for providers of a radio broadcasting service. In |  |
|  |  |  | addition they also fall under jurisdiction of the Netherlands when they use a terrestrial |  |
|  |  |  | frequency appertaining to the Netherlands. |  |
|  |  |  | 2 |  |
| **Name of Country:** Netherlands |  |  |  |
| **Source of information:** Marcel Betzel |  |  |  |

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|  | h) When is information to be notified? |  | The information must be submitted when a natural or legal person applies for a |  |
|  |  |  |  |  | broadcasting licence (Article 3.1 of the Media Act 2008 and further elaborated in |  |
|  |  |  |  |  | Article 15 of the Media Regulation 2008). |  |
|  |  |  |  |  | According to Article 3.2 of the Media Act 2008, a licence/permission for broadcasting |  |
|  |  |  |  |  | expires after 5 years. So after this period the application procedure will start over |  |
|  |  |  |  |  | again and only then do ownership and shareholder information have to be reported to |  |
|  |  |  |  |  | the CvdM. **For most broadcasters there is no obligation therefore to send a regular** |  |
|  |  |  |  |  | **update on ownership/shareholders before the licence has expired.** |  |
|  |  |  |  |  | There is only one exception to this: radio stations that have obtained an FM frequency |  |
|  |  |  |  |  | (in practice this affects only about 25 licencees). Article 6.24 of the Media Act 2008 |  |
|  |  |  |  |  | states that for distribution of a radio broadcasting service only one FM frequency or |  |
|  |  |  |  |  | combination of smaller FM frequencies may be used by the same licencee.6 In order to |  |
|  |  |  |  |  | check whether, behind the scenes, a legal or natural person is controlling more than |  |
|  |  |  |  |  | one radio station holding a FM frequency, the licencees have to report ownership and |  |
|  |  |  |  |  | shareholder information for the respective company to the CvdM about every 18 |  |
|  |  |  |  |  | months. This term is not defined in a specific article of the Media Act but decided by |  |
|  |  |  |  |  | CvdM when carrying out its policy. |  |
|  |  |  |  |  |  |  |
| 1.2 What | a) |  | Name and contact details of media organisation? |  |  |  |
| information is to be |  |  |  | Y |  |  |
| provided? |  |  |  |  |  |  |
|  | b) Name and contact details of owner? | Y |  |  |
|  | c) |  | Country of domicile of company with an interest? | N |  |  |
|  | d) |  | Citizenship/residence status of individual with an | N |  |  |
|  |  |  | interest? |  |  |
|  |  |  |  |  |  |
|  | e) |  | Size of shareholding? |  | The applicant should inform the CvdM about all parties holding capital or voting rights |  |
|  |  |  |  | Y | in the company and the size or percentage involved. (Article 15 of the Media |  |
|  |  |  | If YES, please provide details |  | Regulation). |  |
|  | f) | If shares are held on behalf of another, e.g. through |  |  |  |
|  |  |  | brokerage, must the name of the beneficial owner be | Y |  |  |
|  |  |  | disclosed? |  |  |  |
|  | g) | Details of companies or individuals with an indirect | N |  |  |
|  |  |  | controlling or significant interest? |  |  |  |
|  |  |  |  |  |  |  |
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| **Name of Country:** Netherlands |  |  |  |  |
| **Source of information:** Marcel Betzel |  |  |  |

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|  |  | If YES, please explain. |  |  |  |
|  | h) | Political, religious or other affiliations of shareholder / | N |  |  |
|  |  | owner? |  |  |
|  |  |  |  |  |
|  | i) | Interests by owners in other media organisations? |  |  |  |
|  |  |  | N |  |  |
|  |  | If YES, please explain. |  |  |  |
|  | j) | Interests by owners in non-media businesses? |  |  |  |
|  |  |  | N |  |  |
|  |  | If YES, please explain. |  |  |  |
|  | k) | Interests in the media organisation by individuals (e.g. |  |  |  |
|  |  | family members or organisations) affiliated to the |  |  |  |
|  |  | owner? | N |  |  |
|  |  |  |  |  |
|  |  | If YES, how is ‘affiliation’ defined in the relevant |  |  |  |
|  |  | instruments and what details are to be disclosed? |  |  |  |
|  | l) | Management details: for example, directors (if a |  | Members of the Board of Directors should be named (Article 15, Media Regulation). If |  |
|  |  | company), key executive officers, managing editor? | Y | this information is not submitted, the licence application will be refused (Media Act, |  |
|  |  |  |  | Article 3.3, para 2). |  |
|  | m) Subsequent changes in ownership (resulting from a | N |  |  |
|  |  | merger or acquisition by other entities, etc.)? |  |  |
|  |  |  |  |  |
|  | n) | Sources of media revenue? |  | If an applicant is intending to broadcast advertisements, it should be affiliated to the |  |
|  |  |  |  | Netherlands Advertising Code and should submit a declaration of membership (Article |  |
|  |  | If YES, please explain. |  | 3.6, para 1 and 2, Media Act 2008). |  |
|  | o) | Other. |  |  |  |
|  | p) | Are these obligations sufficient to establish who the legal | N | There are two key obstacles: |  |
|  |  | or natural persons are who effectively own and |  |  |  |
|  |  | ultimately control the media organisations? |  | 1. The basic data required to establish ownership is not required; for example, there |  |
|  |  |  |  | is no disclosure of those with significant interest or indirect control and changes in |  |
|  |  |  |  | the size of shareholdings only have to be disclosed once every five years (except |  |
|  |  |  |  | for radio stations with an FM frequency). |  |
|  |  |  |  | In general the CvdM can always ask for additional information regarding |  |
|  |  |  |  | ownership/shareholders. For instance if there is any doubt about the reliability of |  |
|  |  |  |  | information submitted by an applicant, the CvdM can require additional and more |  |
|  |  |  |  | detailed information which it deems necessary for performing its legal task in |  |
|  |  |  |  | adequate way.7 |  |
|  |  |  |  | 4 |  |
| **Name of Country:** Netherlands |  |  |  |  |
| **Source of information:** Marcel Betzel |  |  |  |

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|  |  |  |  |  |  |  | But since the percentage of ownership is not a decisive criterion for granting a |  |
|  |  |  |  |  |  |  | licence or not (with the exception of FM frequency holders) it is not something |  |
|  |  |  |  |  |  |  | that will be checked on regular basis by the CvdM. |  |
|  |  |  |  |  |  |  | 2. The obligation to report information only happens every 5 years when a licence |  |
|  |  |  |  |  |  |  | expires. |  |
|  |  |  |  |  |  |  |  |
|  | 1.3 Effectiveness of | a) | Are there any sanctions for non-reporting? |  | If the CvdM is of the opinion it has not received not all information it can refuse to |  |
|  | the | disclosure |  |  |  | grant the Licence (Article 3.3 of the Media Act 2008). |  |
|  | regime |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  | The CvdM may refuse an application if: |  |
|  |  |  |  |  |  | Y | a. the data submitted by the applicant during the application procedure is incorrect or |  |
|  |  |  |  |  |  |  | incomplete; or |  |
|  |  |  |  |  |  |  | b. it can reasonably be expected that the applicant will not comply with the provisions |  |
|  |  |  |  |  |  |  | of the Media Act 2008. |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  | i. If YES, have they have been applied in practice? | N | In practice sanctions are not imposed for this failure because applicants usually |  |
|  |  |  |  |  | ii. If NO, why not? | provide all required information regarding ownership. |  |
|  |  |  |  |  |  |  |
|  |  |  |  | b) Can the public obtain access to this information? |  | The information can be accessed by checking the decisions of the CvdM online and/or |  |
|  |  |  |  |  |  | Y | requesting a copy in writing under the Open Government Act (WOB)8 (Dutch freedom |  |
|  |  |  |  |  | If YES, how? | of information law). The CvdM has not established a general public register of |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  | licensed broadcasters which can be accessed online. |  |
|  |  |  |  | c) | Is this information required to be made available to any | N | However, since 2000 the Media Monitor section of the CvdM has published an annual |  |
|  |  |  |  |  | other body, for instance, parliament? |  | report about trends and developments in the media market (written press, TV, radio |  |
|  |  |  |  |  |  |  | and new media).9 The report covers aspects like media ownership, market shares, |  |
|  |  |  |  |  | If YES, please specify. |  | ongoing trends and specific issues related to media pluralism. **There is no legal** |  |
|  |  |  |  |  |  |  | **obligation for media companies to submit information to the CvdM** which collects its |  |
|  |  |  |  |  |  |  | information mainly by using public sources of information like annual reports, press |  |
|  |  |  |  |  |  |  | releases, information provided through the websites of media companies, the |  |
|  |  |  |  |  |  |  | information filed in the Trade Register of the Chamber of Commerce and press |  |
|  |  |  |  |  |  |  | publications. The CvdM also asks the media companies covered in the reports to verify |  |
|  |  |  |  |  |  |  | and check the information which it intends to publish. |  |
|  |  |  |  |  |  |  |  |  |
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|  | **Name of Country:** Netherlands |  |  |  |  |
|  | **Source of information:** Marcel Betzel |  |  |  |

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|  |  |  |  |  |  |  |  | The report is sent to the Minister of Media Affairs as well as the Parliament. It is also |  |
|  |  |  |  |  |  |  |  | available for all interested parties (press, industry and public) and published on the |  |
|  |  |  |  |  |  |  |  | website. The observations of the CvdM could give the legislature grounds for adapting |  |
|  |  |  |  |  |  |  |  | new media (ownership) legislation. It is expected that in near future the publication |  |
|  |  |  |  |  |  |  |  | of the yearly reports by the Media Monitor section of the CvdM will obtain a legal |  |
|  |  |  |  |  |  |  |  | basis in the Media Act but it is not expected this legal provision will be accompanied |  |
|  |  |  |  |  |  |  |  | by a legal requirement for media companies to submit specific (ownership) |  |
|  |  |  |  |  |  |  |  | information to the CvdM. |  |
|  |  |  | d) Can certain information be withheld, for instance on |  |  | Information cannot be withheld by applicants when they submit information to the |  |
|  |  |  |  | grounds of commercial sensitivity? |  |  | CvdM. |  |
|  |  |  |  | If YES, please specify | Y | However, when a citizen requests copies of licence decisions and other documents |  |
|  |  |  |  |  |  | from the CvdM, confidential business information which could affect competition |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  | between companies does not have to be disclosed (Article 10 WOB). The same goes |  |
|  |  |  |  |  |  |  |  | for private details of persons involved which could harm their privacy (like private |  |
|  |  |  |  |  |  |  |  | addresses). |  |
|  |  |  | e) | Are there any bureaucratic or other constraints, for |  |  |  |  |  |
|  |  |  |  | instance charges, on public access? | N |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  | If YES, please specify |  |  |  |  |  |
|  |  |  | f) Would a reasonable, nontechnical individual be able to |  |  | The basic data required to establish ownership is not required; for example, there is |  |
|  |  |  |  | ascertain who effectively owns and ultimately controls |  |  | no disclosure of those with significant interest or indirect control and changes in the |  |
|  |  |  |  | the media organisation concerned from the | N | size of shareholdings only have to be disclosed once every five years (except for radio |  |
|  |  |  |  | information available? | stations with an FM frequency). |  |
|  |  |  |  |  |  |  |
|  |  |  |  | If NO, please explain. |  |  |  |  |  |
|  |  |  | g) | Has the public made use of this facility in practice? |  |  |  |  |  |
|  |  |  |  |  |  | Y |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  | i. If YES, is it common practice? Do the media pick up |  |  | It is rare for the public to request this information. It is usually parties with a |  |
|  |  |  |  | the information? |  |  | professional interest, such as journalists or competitors, who approach the CvdM with |  |
|  |  |  |  | ii. If NO, why not? |  |  | a request to provide a copy of a licence decision or other written information. |  |
|  |  |  |  |  |  |  |  |
|  | **2. Media-Specific Disclosure Requirements II: *Disclosure Directly to the Public*** |  |  |  |
| **QUESTIONS** |  |  |  | **YES/** |  | **COMMENTS** |  |  |
|  |  |  |  |  |  |  |  | 6 |  |  |

**Name of Country:** Netherlands

**Source of information:** Marcel Betzel

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| --- | --- | --- | --- | --- |
|  |  |  | **NO** |  |
| 2.1 Who has to | a) | Are media organisations and/or their owners specifically | N |  |
| disclose |  | required to disclose ownership details directly to the |  |  |
| information and |  | public? |  |  |
| when? |  |  |  |  |
|  | b) | If YES, please specify the legal basis for this requirement |  |  |
|  | c) | Who exactly is covered by this requirement? |  |  |
|  | d) | Does the duty apply to foreign as well as domestic media |  |  |
|  |  | organisations? |  |  |
|  | e) | Are there are any differences in the requirements that |  |  |
|  |  | apply to European and non-European organisations. |  |  |
|  | f) | Where exactly is the information to be disclosed? |  |  |
|  | g) | When is information to be made available to the public? |  |  |
|  |  |  |  |
| 2.2 What | a) Name of owner? |  |  |
| information must |  |  |  |  |
| be disclosed? |  |  |  |  |
|  | b) | Country of domicile if a company? / |  |  |
|  |  | Citizenship/residence status if an individual? |  |  |
|  | c) | Size of shareholding? |  |  |
|  |  | If YES, please provide details |  |  |
|  | d) | If shares are held on behalf of another, e.g. through |  |  |
|  |  | brokerage, must the name of the beneficial owner be |  |  |
|  |  | disclosed? |  |  |
|  | e) | Details of companies or individuals with an indirect |  |  |
|  |  | controlling or significant interest? |  |  |
|  |  | If YES, explain. |  |  |
|  | f) | Political, religious or other affiliations of shareholder / |  |  |
|  |  | owner? |  |  |
|  | g) | Interests by owners in other media organisations? |  |  |
|  |  | If YES, explain. |  |  |
|  |  |  |  |  |
|  | h) | Management details: for example, directors (if a |  |  |

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**Name of Country:** Netherlands **Source of information:** Marcel Betzel

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|  |  | company), key executive officers, managing editor? |  |  |
|  | i) | Sources of media revenue? |  |  |
|  | j) | Other. |  |  |
|  | k) | Are these obligations sufficient to establish who the legal |  |  |
|  |  | or natural persons are who effectively own and |  |  |
|  |  | ultimately control the media organisations? |  |  |
|  |  |  |  |  |
| 2.3 Effectiveness of | a) | Are there any sanctions for non-reporting? |  |  |
| the disclosure |  |  |  |  |
| regime |  | If YES, what is the range of potential sanctions and who |  |  |
|  |  | has power to impose them? |  |  |
|  | b) Are sanctions, if available, applied in practice? |  |  |
|  |  | If NO, why not? |  |  |
|  | c) | Can certain information be withheld, for instance on |  |  |
|  |  | grounds of commercial sensitivity? |  |  |
|  |  | If YES, please specify |  |  |
|  | d) | Are there any bureaucratic or other constraints, for |  |  |
|  |  | instance charges, on public access? |  |  |
|  |  | If YES, please specify |  |  |
|  | e) | Would a reasonable, nontechnical individual be able to |  |  |
|  |  | ascertain who effectively owns and ultimately controls |  |  |
|  |  | the media organisation concerned from the information |  |  |
|  |  | available? |  |  |
|  |  | If NO, please explain. |  |  |
|  | f) | Has the public made use of this facility in practice? |  |  |
|  |  | If NO, why not? |  |  |

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**Name of Country:** Netherlands **Source of information:** Marcel Betzel

**3A. Non Media-Specific Transparency Requirements (ie laws applying to companies)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **QUESTIONS** |  | **YES/** | **COMMENTS** |  |
|  |  | **NO** |  |  |
| 3A.1 Who is | a) Are there non media-specific transparency requirements |  |  |  |
| required to disclose | that require media organisations to disclose ownership | Y |  |  |
| what, to whom and | information? |  |  |
|  |  |  |
| when? |  |  |  |  |
|  | b) What is the relevant legal basis for disclosure? |  | According to Article 2 of the Trade Register Act 200710 (Hrw), along with the Trade |  |
|  |  |  | Register Decree 200811 (Hrb), Dutch companies and legal entities must register with |  |
|  |  |  | the Dutch Trade Register. This applies to companies which are established in the |  |
|  |  |  | Netherlands, even if they are foreign by origin. |  |
|  | c) To whom do the disclosure requirements apply (e.g., |  | This requirement addresses all companies and legal persons/entities active in the |  |
|  | companies) and, In particular, where companies are |  | Netherlands. The definition of ‘company’ used by the Chamber of Commerce, which |  |
|  | required to provide ownership details, which types of |  | manages the Trade Register, is based on jurisprudence and is very broad. It goes |  |
|  | companies are covered? |  | beyond what would normally be considered as a company (for example, it is much |  |
|  |  |  | broader than the definition used for the Inland Revenue). Article 5 of the Trade |  |
|  |  |  | Register Act 2007 lists the types of companies which must register: |  |
|  |  |  | a. a company based in the Netherlands and owned by a limited company, a private |  |
|  |  |  | limited company, a partnership, a limited partnership, a partnership, a company, a |  |
|  |  |  | cooperative, a mutual insurance association, an association, a foundation, a church or |  |
|  |  |  | a public corporation; |  |
|  |  |  | b. a company located in the Netherlands and owned by a natural person; |  |
|  |  |  | c. a company belonging to a European company, a European Cooperative Society, a |  |
|  |  |  | European limited partnership or a European Economic cooperative association which |  |
|  |  |  | it has its registered office in the Netherlands; |  |
|  |  |  | d. a company belonging to a foreign legal entity with a principal or a branch office in |  |
|  |  |  | the Netherlands; |  |
|  |  |  | e. a company based in the Netherlands and owned by a person other than specified |  |
|  |  |  | in paragraph a. to d. |  |
|  |  |  | *In practice this means that more or less all companies will be covered by the* |  |
|  |  |  | *obligation, and definitely media companies.* |  |
|  | d) To whom is the information to be disclosed? |  | Under Article 3 of the Trade Register Act, information must be disclosed to the |  |
|  |  |  | Netherlands Chamber of Commerce which is in charge of managing the Trade Register. |  |
|  |  |  | 9 |  |

**Name of Country:** Netherlands

**Source of information:** Marcel Betzel

The Netherlands Chamber of Commerce is incorporated under public law and is supervised by the Ministry of Economic Affairs on the government's behalf.

There are 12 regional autonomous Chambers of Commerce in the Netherlands. Registration should take place at the Chamber of Commerce in the respective area where the company or legal person has its business. If a company has more than one place of business, the location of the head office determines the place of registration or, in the case of a legal entity such as an association or society, the registered office (set out in the legal deed) determines the place of registration.

e) When is the information to be notified? According to Article 20 of the Trade Register Act 2007, the general registration with the Trade Register must be carried out within a period of one week preceding and one week following the commencement of business activities.

In Book 2 (Legal Persons), Title 2.9 (Annual accounts and annual report) of the Dutch Civil Code, there is the requirement for legal persons to publish their annual accounts and annual reports (which include information on ownership) at the Trade Register within 13 months of the end of the financial year.

f) What information must be disclosed? The Trade Register contains a wide range of information about companies and legal entities. The exact information to be disclosed varies depending on the type of company and is set out in Chapter 4 of the Trade Register Decree 2008: Articles 9-42.

1. The main source of information is the *business extract* which contains the following elements: business name and address; Chamber of Commerce registration number; names of all managers (e.g. directors), including the extent of their authority; supervisory directors of private companies with limited liability12 (BV) or public limited liability companies13 (NV); all other registered officers (those with power of attorney) together with the extent of their authority; sole shareholder (if there is one); and any trustee (in the case of insolvency).

Other information that must be disclosed as part of the business extract includes, in the case of a BV or NV, information about capital, for example which parties have a share in the capital. The specific percentages are not listed so it does not provide a full insight into who has how much share in ownership or control.

2. Another key source of information is the *group structure* which is an overview of the structure of the group to which the company belongs, including information

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**Name of Country:** Netherlands **Source of information:** Marcel Betzel

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  | about the shareholders or liable parties. It contains information on: organisations |  |
|  |  |  |  | that fully control other organisations in the group; organisations that are 100% |  |
|  |  |  |  | shareholders of other organisations in the group; organisations that are liable (ie |  |
|  |  |  |  | fully responsible) for other organisations in the group. It does not list the |  |
|  |  |  |  | percentages involved and thus does not provide full insight into how much control |  |
|  |  |  |  | each shareholder has. |  |
|  |  |  | 3. | All companies established in the Netherlands, also those foreign by origin, must |  |
|  |  |  |  | file *annual accounts* with the Trade Register within 13 months of the end of the |  |
|  |  |  |  | accounting year in question (Article 379, Book 2 Civil Code). The annual report and |  |
|  |  |  |  | accounts of a foreign legal entity must also be filed at the Trade Register, provided |  |
|  |  |  |  | the obligation to publish also applies under the law of the country of formation of |  |
|  |  |  |  | the foreign legal entity. |  |
|  |  |  |  | Under Article 379 Book 2 Civil Code the annual accounts should disclose share |  |
|  |  |  |  | capitals of 20% or more that the entity concerned has in other companies (alone |  |
|  |  |  |  | or together with his subsidiaries). So it does NOT tell which company has a share |  |
|  |  |  |  | in or even owns the entity concerned. |  |
|  |  |  |  | These annual accounts do not therefore include information regarding ownership |  |
|  |  |  |  | in or control **over** the respective company; they only include information on other |  |
|  |  |  |  | companies for which the company concerned owns shares. In theory information |  |
|  |  |  |  | about share ownership of the company concerned should be disclosed in the |  |
|  |  |  |  | accounts of those that own the shares. Ownership of the entity concerned by |  |
|  |  |  |  | other companies will be disclosed indirectly via the annual account filed by the |  |
|  |  |  |  | other companies. |  |
|  | g) Do these obligations enable the public to obtain | N | There is not adequate reporting of the size of shareholdings to identify ownership. |  |
|  | sufficient information to establish which legal or natural |  | The only information available in the Trade Register information (Group structure) is:. |  |
|  | persons effectively own or ultimately control media |  |  |  |  |
|  | organisations? |  |  | Organisations that manage (fully control) other organisations in the group |  |
|  | If NO, please explain. |  |  | Organisations that are 100% shareholders of other organisations in the group |  |
|  |  |  | Organisations that are liable (fully responsible) for other organisations in the |  |
|  |  |  |  | group |  |
|  |  |  | Thus, if there are more shareholders involved (which is often the case in practice), the |  |
|  |  |  | register might not provide all information necessary to assess the degree of control |  |
|  |  |  |  | 11 |  |
| **Name of Country:** Netherlands |  |  |  |  |
| **Source of information:** Marcel Betzel |  |  |  |  |

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| --- | --- | --- | --- | --- | --- |
|  |  |  |  | and impact of other shareholders involved. |  |
|  |  |  |  | In addition, if a foreign company which is not established in the Netherlands has a |  |
|  |  |  |  | share of less than 20% in a Dutch company, the Dutch system does not apply to them |  |
|  |  |  |  | and they will not have to disclose their stake in the Dutch company under Article 379 |  |
|  |  |  |  | Book 2 Civil Code in (f) above. |  |
|  |  |  |  | There is a potential gap in the system of annual accounts filed at the Chamber of |  |
|  |  |  |  | Commerce when it comes to providing complete information about |  |
|  |  |  |  | shareholders/owners. |  |
|  |  |  |  |  |  |
| 3A.2 Effectiveness | a) | Where is the information recorded? |  | The information is filed in the Trade Register managed by the Dutch Chamber of |  |
|  |  |  |  | Commerce. |  |
|  | b) Are there any sanctions for non-reporting? |  | Failure to submit the annual accounts to the Trade Register or to comply with other |  |
|  |  |  |  | disclosure requirements is a violation of Articles 27 and 47 of the Trade Register Act |  |
|  |  | If YES, what form do they take and who applies them? |  | and, therefore, according to Article 1, para 4 of the Economic Offences Act14 |  |
|  |  |  |  | constitutes an economic offence. |  |
|  |  |  | Y | The supervision of this requirement is carried out by the FIOD/ECD15, the Fiscal |  |
|  |  |  |  |  |
|  |  |  |  | Information and Investigation Service which is the inspection service of the Dutch Tax |  |
|  |  |  |  | and Customs Administration. This service can submit a case to the Public Prosecutor |  |
|  |  |  |  | who can decide to start a procedure to impose a financial sanction. The maximum |  |
|  |  |  |  | sanction which can be imposed is currently €19,000. |  |
|  | c) Are any applicable sanctions for violations applied in |  | In recent years, there have not been many sanctions imposed, in part because the |  |
|  |  | practice? |  | FIOS/ECD has been understaffed and has set other priorities. |  |
|  |  |  | Y |  |  |
|  |  | If NO, why not? |  | Nevertheless, over the past few years or so, there has been a renewed focus on |  |
|  |  |  |  | enforcement and in 2010, 156 companies were prosecuted for non-compliance |  |
|  | d) Can the public obtain access to this information? |  | They can consult the Trade Register of the Chamber of Commerce electronically |  |
|  |  |  | Y | through the website www.kvk.nl. |  |
|  |  | If YES, how? |  |  |  |
|  | e) | Are there any practical conditions or charges that could | Y | Searching the Trade Register is free, but the Chamber of Commerce charges fees for |  |
|  |  | serve to restrict public access? |  | the business extracts, accounts and any additional information ranging from € 0.30 up |  |
|  |  |  |  | to €7.50 for a certified business extract. This is not based on any regulation or law but |  |
|  |  | If YES, please specify, |  | on the business policy of the Chamber of Commerce regarding the sale of its |  |
|  |  |  |  | commercial information products. |  |
|  |  |  |  | 12 |  |
| **Name of Country:** Netherlands |  |  |  |
| **Source of information:** Marcel Betzel |  |  |  |

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|  |  |  | In addition to these costs, there is also a restriction on the disclosure of the addresses |  |
|  |  |  | of natural persons involved. This is in order to protect the privacy of the private |  |
|  |  |  | persons involved. Following Article 51 of Trade Register Decree only lawyers, bailiffs, |  |
|  |  |  | notaries and members and employees of public authorities have access to the private |  |
|  |  |  | addresses. |  |
|  | f) Would a reasonable, nontechnical individual be able |  | Taking into account the nature of the information and the way it is structured, it could |  |
|  | to understand who effectively owns and ultimately |  | be assumed that an “average” person would be able to understand the information in |  |
|  | controls the media organisations using the | N | the Trade Register. However, due to the lack of information on shareholdings (see |  |
|  | information indicated in this section? | 3.1(g) above), it is not possible to be sure of identifying ownership through the Trade |  |
|  |  |  |
|  |  |  | Register. |  |
|  | If NO, why not? |  |  |  |
|  | g) Have the public made use of this facility to establish |  | In practice it’s mostly professionals who consult and use the information in the Trade |  |
|  | media ownership information in practice? |  | Register. In general this means companies who want to obtain reliable and objective |  |
|  |  |  | information about their business partners and journalists looking for more in-depth |  |
|  | If NO, or limited, use has been made, why not? |  | information regarding companies they cover in their Articles or reports. |  |

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**Name of Country:** Netherlands **Source of information:** Marcel Betzel

**3B. Non Media-Specific Transparency Requirements (ie laws applying to companies)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **QUESTIONS** |  | **YES/** | **COMMENTS** |  |
|  |  | **NO** |  |  |
| 3B.1 Who is | a) Are there non media-specific transparency requirements |  |  |  |
| required to disclose | that require media organisations to disclose ownership | Y |  |  |
| what, to whom and | information? |  |  |
|  |  |  |
| when? |  |  |  |  |
|  | b) What is the relevant legal basis for disclosure? |  | The Act on Financial Supervision16 (Wft) entered into force on 1 January 2007. Chapter |  |
|  |  |  | 5.3 of the Wft contains the rules for notifying voting rights, share capital, control and |  |
|  |  |  | share capital interest in issuing institutions (companies whose shares are admitted to |  |
|  |  |  | trading on regulated markets, including media companies).17 |  |
|  |  |  | The Decree on the Disclosure of Major Holdings and Capital Interests in Issuing |  |
|  |  |  | Institutions18, which was based on the above-mentioned Act, also entered into force |  |
|  |  |  | on 1 January 2007. The aim of the rules regarding the disclosure of major holdings and |  |
|  |  |  | capital interests in issuing institutions is to increase the transparency of major |  |
|  |  |  | holdings and capital interests in issuing institutions and to simplify the disclosure |  |
|  |  |  | process for parties that have a duty to disclose. |  |
|  | c) To whom do the disclosure requirements apply (e.g., |  | The disclosure requirements apply to so-called “issuers”: These are public limited |  |
|  | companies) and, In particular, where companies are |  | companies19 (NV) incorporated under Dutch law whose shares are admitted to trading |  |
|  | required to provide ownership details, which types of |  | on a regulated market, or legal persons incorporated under the law of a state which is |  |
|  | companies are covered? |  | not an EU Member State whose shares are admitted to trading on regulated market in |  |
|  |  |  | the Netherlands (Article 5.47, Wft). |  |
|  | d) To whom is the information to be disclosed? |  | The information is to be disclosed to the Netherlands Authority for the Financial |  |
|  |  |  | Markets20 (AFM) which is the financial services regulatory authority for the |  |
|  |  |  | Netherlands. |  |
|  | e) When is the information to be notified? |  | The AFM must be informed in the event of a change at the issuer, which changes the |  |
|  |  |  | capital or the voting rights of a person to such an extent that the relevant percentage |  |
|  |  |  | reaches, exceeds or falls below a threshold. The thresholds are 5%, 10%, 15%, 20%, |  |
|  |  |  | 25%, 30%, 40%, 50%, 60%, 75% and 95%. This must be done as soon it is known (or |  |
|  |  |  | should be known21) that the percentage holding in the capital and/or voting rights |  |
|  |  |  | reaches, exceeds or falls below the relevant threshold (Article 5:38, Wft). |  |
|  |  |  | The AFM is very strict in its verification of whether the notification was made without |  |
|  |  |  | delay. This is also in order to prevent possible effects of the notification on the share |  |
|  |  |  | 14 |  |
| **Name of Country:** Netherlands |  |  |  |
| **Source of information:** Marcel Betzel |  |  |  |

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| --- | --- | --- | --- | --- |
|  |  |  | price and the risk of abuse of inside information. |  |
|  | f) What information must be disclosed? |  | The size of shareholding or voting rights of the legal or natural person involved, after |  |
|  |  |  | this size - stated in percentage - has reached, exceed or fall below a threshold, as set |  |
|  |  |  | out in 3B1.1(k) above. |  |
|  | g) Do these obligations enable the public to obtain |  | Yes but following Article 5.47 of the Act on Financial Supervision the disclosure |  |
|  | sufficient information to establish which legal or natural |  | requirements in relation to the AFM only apply to “issuing companies” |  |
|  | persons effectively own or ultimately control media | Y |  |  |
|  | organisations? | Only a few media organisations in the Netherlands can be considered as an public |  |
|  |  |  |
|  |  |  | limited companies and are therefore subject to the regime of notifying to AFM. |  |
|  | If NO, please explain. |  |  |  |
|  |  |  |  |  |
| 3B.2 Effectiveness | a) Where is the information recorded? |  | The AFM maintains, pursuant to the Wft, three public databases containing the |  |
|  |  |  | notified data: |  |
|  |  |  | 1. the public database of issue capital; |  |
|  |  |  | 2. the public database of substantial holdings; and |  |
|  |  |  | 3. the public database of directors and supervisory directors. |  |
|  | b) Are there any sanctions for non-reporting? | Y | The AFM can oblige a person who submitted incorrect notification or who failed to |  |
|  |  |  | submit a notification to submit a correct notification within a reasonable term. If this |  |
|  | If YES, what form do they take and who applies them? |  | is not complied with, the AFM can include the data it considers to be correct in the |  |
|  |  |  | public database, after it has informed the relevant issuer and the person who is |  |
|  |  |  | obliged to make the notification. |  |
|  |  |  | In addition there are criminal law sanctions (imposed by the AFM) and civil law |  |
|  |  |  | sanctions (claimed by shareholders): |  |
|  |  |  | *- Criminal-law sanctions* |  |
|  |  |  | If a person or an issuer fails to comply with certain provisions of the Wft, this will |  |
|  |  |  | constitute a punishable act under the Economic Offences Act, Article 1, para 3. The |  |
|  |  |  | possible sanctions for a violation of the Wft include imprisonment of up to six months, |  |
|  |  |  | a community punishment order or a monetary fine of € 18,500 (€ 74,000 for legal |  |
|  |  |  | persons). If the punishable act was committed intentionally, this will constitute a |  |
|  |  |  | crime which is liable to punishment with imprisonment of up to two years, a |  |
|  |  |  | community punishment order or a monetary fine of € 18,500 (€ 74,000). |  |
|  |  |  | *- Civil-law sanctions* |  |
|  |  |  | 15 |  |
| **Name of Country:** Netherlands |  |  |  |
| **Source of information:** Marcel Betzel |  |  |  |

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| --- | --- | --- | --- | --- | --- |
|  |  |  |  | If a notification is not made in accordance with the Wft, the civil courts can impose |  |
|  |  |  |  | measures and the responsible directors can be held liable for damage caused by this. |  |
|  |  |  |  | Based on civil law two types of liability should be distinguished: internal and external |  |
|  |  |  |  | liability. |  |
|  |  |  |  | i. Internal liability of directors (or those who failed to notify) towards the company or |  |
|  |  |  |  | own shareholders under Article 9 Book 2 Civil Code: |  |
|  |  |  |  | ii. External liability of directors (or those who failed to notify) towards third parties like |  |
|  |  |  |  | customers or suppliers under Article 162 Book 6 Civil Code (tort). |  |
|  | c) Are any applicable sanctions for violations applied in |  | The AFM has imposed sanctions up to €196,000 because the companies involved |  |
|  | practice? | Y | failed to submit a notification to AFM. On average three fines per year are imposed. |  |
|  |  |  |  |  |
|  | If NO, why not? |  |  |  |
|  | d) Can the public obtain access to this information? |  | The public databases maintained by the AFM can be consulted free of charge via the |  |
|  |  |  |  | AFM website. The substantial holdings public database will include the name, address |  |
|  | If YES, how? |  | details and place of residence of the person obliged to notify, the name of the issuer, |  |
|  |  |  |  | the total share capital interest and/or voting rights percentage disposed of, as well as |  |
|  |  |  |  | the composition of this percentage. The date on which the notification obligation |  |
|  |  |  |  | arose will also be published. If it concerns an indirect interest, the names of the |  |
|  |  |  |  | relevant subsidiaries will have to be reported as well and these will, possibly with an |  |
|  |  |  | Y | attached organisational chart, be published on the AFM website. |  |
|  |  |  |  | Those who access the registers of AFM can also subscribe to an alert service by email |  |
|  |  |  |  | to be updated when shares of particular issuing companies change. |  |
|  |  |  |  | Article 1:107, paragraph 3 of the Act on Financial Supervision states that the |  |
|  |  |  |  | addresses of natural persons will not be included in the public database, in order to |  |
|  |  |  |  | protect privacy. |  |
|  | e) Are there any practical conditions or charges that could |  |  |  |
|  | serve to restrict public access? | N |  |  |
|  |  |  |  |  |
|  | If YES, please specify, |  |  |  |
|  | f) | Would a reasonable, nontechnical individual be able | Y |  |  |
|  |  | to understand who effectively owns and ultimately |  |  |  |
|  |  | controls the media organisations using the |  |  |  |
|  |  | information indicated in this section? |  |  |  |
|  |  |  |  | 16 |  |
| **Name of Country:** Netherlands |  |  |  |  |
| **Source of information:** Marcel Betzel |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | If NO, why not? |  |  |  |
|  | g) Have the public made use of this facility to establish |  | Around 1500 people make use of the alert service mentioned in 3B.2(d) above. |  |
|  | media ownership information in practice? | Y | In addition to these email alerts the register is consulted approximately 1200 times a |  |
|  |  | year. |  |
|  |  |  |  |
|  | If NO, or limited, use has been made, why not? |  |  |  |
| **ENDNOTES** |  |  |  |

17

**Name of Country:** Netherlands **Source of information:** Marcel Betzel

6 This is done for reasons of scarcity; despite digital developments FM frequencies remain limited.

7 This general obligation is stated in Article 5:20 of the General Administrative Law Act (June 4, 1992 Awb), laying down

general rules of administrative law - in Dutch - *Wet van 4 juni 1992, houdende algemene regels van bestuursrecht (Algemene wet* *bestuursrecht)*. In order to enable regulatory authorities to obtain all necessary information Article 5:20 Awb includes an obligationfor citizens and companies to cooperate, for example to provide information. Within a reasonable period of time the supervisory authority can impose any obligation to cooperate fully with the supervisor in case of reasonable need. This cooperation requirement to provide applies only if it relates to the exercise of (granted legal) control powers.

8 Act of 32 October 1991, containing regulations governing public access to government (Open Government Act) - in Dutch - *Wet* *van 31 oktober 1991, houdende regelen betreffende de openbaarheid van bestuur (Wet openbaarheid van bestuur)(WOB).*

9 This resulted from the Ministry of Education, Culture and Science asking the CvdM to monitor closely the impact of media concentration on media diversity and independence.

10 Trade Register Act: Act of 22 March 2007, containing rules regarding a basic register of companies and legal entities (Trade Register Act 2007) - in Dutch *- Handelsregisterwet: Wet van 22 maart 2007, houdende regels omtrent een basisregister van* *ondernemingen en rechtspersonen (Handelsregisterwet 2007)*

11 Trade Register Decree: Decree of 18 June 2008, regarding assessing a new Trade Register Decree 2008 (Trade Register Decree 2008) - in Dutch - *Handelsregisterbesluit; Besluit van 18 juni 2008, houdende de vaststelling van een nieuw Handelsregisterbesluit* *2008 (Handelsregisterbesluit 2008)*

12 In Dutch - *Besloten vennootschap*

13 In Dutch - *Naamloze vennootschap*

14 Economic Offences Act: Act of June 22, 1950, laying down rules for the detection, prosecution and trial of Economic Offences – in Dutch, *Wet Economische Delicten: Wet van 22 juni 1950, houdende vaststelling van regelen voor de opsporing, de vervolging en* *de berechting van economische delicten*

15 In Dutch - *Fiscale inlichtingen- en opsporingsdienst* (FIOD/ECD)

16 Act of 28 September 2006, establishing rules relating to the financial markets and their supervision (Act on Financial Supervision) - in Dutch - *Wet van 28 september 2006, houdende regels met betrekking tot de financiële markten en het toezicht daarop (Wet op* *het financieel toezicht)*

17 It implements the EU Transparency Directive (Directive 2004/109/EC) which sets requirements with respect to the information on issuers whose shares are admitted to trading on a regulated market.

18 Decision of 12 October 2006, containing rules for the application of Section 5.3 of the Act on Financial Supervision for reporting votes, capital holdings and capital interests in issuing institutions (Decision major holdings and capital interests in issuing institutions) - in Dutch - *Besluit van 12 oktober 2006, houdende regels ter uitvoering van hoofdstuk 5.3 van de Wet op het financieel* *toezicht voor het melden van stemmen, kapitaal, zeggenschap en kapitaalbelang in uitgevende instellingen (Besluit melding zeggenschap en kapitaalbelang in uitgevende instellingen).*

19 In Dutch - *Naamloze vennootschap*