

## LIMITATIONS ON GOVERNMENT DEBT AND DEFICITS

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### 1. Introduction

In our report we will focus on the budgetary process in the Netherlands, the different norms that are applicable in this process (amongst others the incorporation into Dutch law of the European 'golden rule') and their enforceability, both in the political arena and before the courts. We will confine ourselves to a brief description of these topics and where necessary we will mention some main features of the Dutch constitutional system. We will conclude by summarising very briefly the different issues we encountered

### 2. Revenues and expenditures

Article 105 of the Dutch Constitution (*Grondwet*, hereafter: Constitution) lays down the rules for the adoption and control<sup>1</sup> of the State budget. Further rules and details on the finances of the State, including the rules on the accountability of the revenues and the expenditures, are laid down in the Government Accounts Act 2001 (*Comptabiliteitswet 2001*, hereafter: GAA). Article 105 Constitution reads as follows:

1. *The estimates of the State's revenues and expenditures shall be laid down by Act of Parliament.*
2. *Bills containing general estimates shall be presented by or on behalf of the King every year on the date specified in Article 65.*
3. *A statement of the State's revenues and expenditures shall be presented to the States General in accordance with the provisions of the relevant Act of Parliament. The balance sheet approved by the Court of Audit shall be presented to the States General.*
4. *Rules relating to the management of the State's finances shall be prescribed by Act of Parliament.'*

<sup>1</sup> The usage and meaning of the word 'control' is ambiguous. In the English language the meaning of the term control, and in particular parliamentary control, lies in the field of exercising influence. In this chapter we will use the word control as it is used in the Dutch language. In Dutch, parliamentary control (*controle*), especially when used in the field of the budget, refers to repressive control. *Controle* means inspection, verification, checking against fixed standards and it refers to the process of auditing the expenditure. D. Coombes, 'Introduction', in: D. Coombes, *The Power of the Purse. The Role of European Parliaments in Budgetary Decisions*, London: George Allen & Unwin Ltd 1976, p. 15-16.

The annual<sup>2</sup> State budget is made up of several budget Acts, all separately adopted by Act of Parliament and accompanied by an explanatory memorandum.<sup>3</sup> The State budget as a whole comprises, as an expression of the principle of unity, the estimates of all commitments,<sup>4</sup> expenditures and revenues of the State<sup>5</sup> and thus 'covers the sum of the income and expenses of the State'.<sup>6</sup> With the adoption of the budget Acts, the States General, or Parliament, authorises the ministers to carry out the expenditures that are allocated among the various items in the budget Acts. Parliament comprises the House of Representatives (*Tweede Kamer*, literally: Second Chamber) and the Senate (*Eerste Kamer*, literally: First Chamber). The budget Act is a legislative Act on the basis of Article 81 of the Dutch Constitution, which means it is a co-production of government (formed by the King and the ministers according to Article 42 (1) Constitution) and Parliament.<sup>7</sup>

The revenues (i.e. the public funds yielded by levying taxes) are in contrast to the expenditures not authorised through parliamentary approval of the State budget. Taxes are authorised on the basis of underlying Acts of Parliament: Tax Acts (*Belastingwetten*). Tax Acts are not approved annually – most taxes are approved permanently until Parliament decides otherwise – but a Tax Scheme (*Belastingplan*) is presented annually to Parliament. This scheme presents an overview of the proposed amendments to existing Tax Acts in order to realise the necessary reforms or policy objectives (i.e. expenditure) of the government. The Tax Scheme and the State budget are presented to Parliament at the same time but are debated and approved separately.

### 3. The State budget

#### 3.1. Several budget Acts

The State budget that is presented annually to Parliament as mentioned in Article 105(1) Constitution currently<sup>8</sup> consists of twenty-three individual

<sup>2</sup> The State budget covers one calendar year: Article 2 (1) GAA.

<sup>3</sup> Article 1 (2)(3) GAA.

<sup>4</sup> These commitments stem from, among others, Acts of Parliament, previous resolutions, contracts and international obligations.

<sup>5</sup> Article 2 (3) GAA.

<sup>6</sup> J. Molinier, 'Parliament's Financial Powers: a comparison between France and Britain', in: D. Coombes (et al.) *The Power of the Purse. The Role of European Parliaments in Budgetary Decisions*, London: George Allen & Unwin Ltd 1976, p. 166.

<sup>7</sup> Article 81 Dutch Constitution: 'Acts of Parliament shall be enacted jointly by the Government and the States General.' (translation from <www.denederlandsegrondwet.nl> – last visited 14 February 2014). For the sake of clarity we also use the term Acts of Parliament, although, in the Dutch context, this is not completely correct.

<sup>8</sup> The State budget for 2014.

'budget chapters': thirteen departmental budgets,<sup>9</sup> four other budgets not related to the departments,<sup>10</sup> e.g. the budget for the King, and six budget funds.<sup>11</sup> Each budget is drafted, administered and executed under the responsibility of the corresponding departmental minister as head of the ministry. Budget funds or the 'other' budget chapters are drafted, administered and executed under the responsibility of the minister who is appointed by the legislator.<sup>12</sup>

#### 3.2. Ministerial accountability

The ministers are responsible for the management of the budgets they administer,<sup>13</sup> the effectiveness and efficiency of the policy that underlies the budgets<sup>14</sup> and the efficiency of the business operations of their ministry.<sup>15</sup> As treasurer,<sup>16</sup> it is the Minister of Finance who is responsible for the budget of national debt<sup>17</sup> and the (management of the) State's finances as a whole.<sup>18</sup>

<sup>9</sup> The budget for General Affairs, the budget for Defence, the budget for Economic Affairs, the budget for Finance and national debt, the budget for Foreign Affairs, the budget for Health, Welfare and Sport, the budget for Infrastructure and the Environment, the budget for Security and Justice, the budget for Social Affairs and Employment, the budget for the Interior and Kingdom Relation, the budget for Education, Culture and Science, the budget for Foreign Trade and Development Cooperation and the budget for Central Housing and the Government Sector. Ministers without portfolio administer the last two budgets. These ministers fall under the department of Foreign Affairs and Interior and Kingdom Affairs respectively, but do have an individual budget.

<sup>10</sup> These are: the budget for the King, the budget for the High Councils and the Cabinet of the Governors, the budget for the States-General, the budget for Kingdom Relations.

<sup>11</sup> These are: the Infrastructure Fund, the Municipality Fund, the Province Fund, the Animal Health Care Fund, the Delta Fund and the BES islands Fund. These BES islands are Bonaire, St. Eustatius and Saba. Since 2010 these islands are part of the Netherlands and receive the status of 'special municipalities'. The Netherlands form, together with Curaçao, Sint Maarten (Saint-Martin) and Aruba, the Kingdom of the Netherlands. Each of the countries is autonomous within the Kingdom.

Budget funds are established by Act of Parliament in order to separately manage the expenditures and revenues of the government in a particular area (Article 9 GAA).

<sup>12</sup> Article 19 GAA. The budget for the States General e.g. falls under the responsibility of the Minister of Interior and Kingdom relations and the Infrastructural Fund falls under the responsibility of the Minister of Infrastructure and the Environment. In the Act that establishes a budget fund it is mentioned which minister is responsible for the budget fund.

In exception to the rule that each budget is adopted by Act of Parliament, the departmental minister who is also responsible for a particular budget fund can decide that the budget fund and the departmental budget are adopted together in an Act of Parliament. See article 1(5) GAA.

<sup>13</sup> Article 19(1) GAA.

<sup>14</sup> Article 20(1) GAA.

<sup>15</sup> Article 21(1) GAA.

<sup>16</sup> Article 24 GAA.

<sup>17</sup> Article 19(2) GAA.

<sup>18</sup> Articles 20 ff. GAA.

Ministers are thus fully accountable to Parliament with regard to the budget they administer. Ministerial accountability though is not directly applicable to, first of all, the budget funds that contain a State contribution to the local governments, the provinces and the municipalities and, second, to the public funds that are received by autonomous public entities.

### 3.2.1. Local governments: provinces and municipalities

Local government units, such as the provinces (*provincies*) and municipalities (*gemeenten*) are, with due observance of the law, autonomous.<sup>19</sup> This means that the Minister of Interior and Kingdom Relations, under whose responsibility the budget funds of the provinces and municipalities rest, is only accountable for the *functioning* of these funds, and not for the realisation of the policy with regard to the State contribution.

### 3.2.2. Autonomous public entities

Indirect ministerial accountability is also applicable to autonomous public entities.<sup>20</sup> Autonomous public entities are established to perform a particular task that is best performed by an independent entity, not hierarchically subordinated to a minister.<sup>21</sup> In the Netherlands autonomous public entities come in a wide variety and complexity and therefore it is very difficult to give a general picture of all the ins and outs in this field. Some pertain to private law and perform a public task<sup>22</sup> and some pertain to public law. In the latter category another distinction can be made: some entities are part of (the legal entity) the State, whereas others are part of another legal entity. Furthermore, some of these autonomous public entities are wholly financed by the State, whereas others are only partly, or not at all, financed with public funds.

All autonomous public entities though, whether they pertain to private or public law, are part of the State or receive a State contribution, and fall under the authority of a departmental minister and therefore all are listed on

<sup>19</sup> In section 8 the relation between the central government and the local authorities will be amplified in more detail.

<sup>20</sup> Next to these autonomous public entities, the Government Accounts Act establishes 'legal persons with a legal task' (*Rechtspersonen met een wettelijke taak*) (Article 43). The two categories, autonomous public entities and legal persons with a legal task, largely correspond, but there are also important differences. The legal person with a legal task has to perform a public task that is explicitly stated in a statute which task is in whole or in part financed by statutory levies. Article 43 GAA establishes that the responsible minister can supervise the budget and the accounts of this legal person. Article 91 GAA established that the Court of Audit can, among other things, review the annual account. For more information: J.A. Hofman, *Blik op de Rijksoverheid*, Ars Aequi: Nijmegen 2007, p. 85 and 86.

<sup>21</sup> Article 1, under a, Framework Act on autonomous public entities.

<sup>22</sup> An example of such an entity is the Dutch Central Bank (*De Nederlandsche Bank*). This entity receives a State contribution.

a departmental budget. A large section of the autonomous public entities is however (partly) financed with public funds that stem from the departmental budget. The minister is, similar to the funds that are provided to the provinces and municipalities, not directly accountable for the policy that is realised by these autonomous public entities with the State contribution, but is accountable for the *functioning* of these entities.

The minister can, however, exercise financial supervision over all autonomous public entities. The extent of the financial supervision varies depending on the nature of the entity. In the most extensive form, with regard to public autonomous entities that pertain to public law and that are part of (the legal entity) the State, the annual budget has to be approved by the minister under whose responsibility the entity falls.<sup>23</sup>

As to the insolvency of the autonomous public entities, the Framework Act on autonomous public entities only entails rules with regard to entities that pertain to public law and that are not part of the State. These entities have to receive the consent of the Minister before they file a petition for bankruptcy or apply for a moratorium (Article 32(g) Framework Act on autonomous public entities).

### 3.3. Budget sectors

The State budget consists of general resources, e.g. taxes that are levied without a predetermined destination. Through the adoption of the budget Acts, Parliament determines the allocation of the general resources. The net amount of expenditure of the collective sector, however, not only includes the general resources, i.e. the State budget, but also includes the premium financed expenditures: the social security sector and the public health care sector (the so-called 'social funds'). The collective expenditure thus comprises three sectors: the State (in the strict sense), social security and health care.

Premium financed expenditures are, contrary to the general resources, predetermined levies. The social funds are administrated under special arrangements in which interested parties have direct representation and the policy is (partly) realised by autonomous public entities (as regards the social security) or the private sector (as regards the health sector with its privatised health care sector).<sup>24</sup> The social funds are not financed in whole through premiums but also receive a State contribution for which the ministers are fully accountable. Parliament only votes on and authorises those funds that are financed with general budget resources and thus appear on the departmental budgets. Therefore, the budgetary right of Parliament, and thus the State budget, does not comprehend the premium-financed resources.

<sup>23</sup> See chapter 4 of the Framework Act on autonomous public entities.

<sup>24</sup> R. van Putten, 'De financiën van de zorgsector', in: R. Brinks and T Witteveen, *Toegang tot de rijksbegroting*, Den Haag: SDU Uitgevers 2001, p. 75.

#### 4. Budget cycle

The State budget is prepared, adopted, executed, audited and scrutinised in a recurring cycle: the budget cycle. This recurring cycle constitutes the basis of the budgetary system in the Netherlands and consists of five phases:<sup>25</sup>

- Phase 1: The departmental preparation of the draft budgets. The Minister of Finance supervises and coordinates the preparation of the budgets that are prepared under the responsibility of the departmental ministers.<sup>26</sup>
- Phase 2: The Minister of Finance introduces the draft budgets to the House of Representatives. Subsequently the House and the Senate consider and adopt the budget Bills.
- Phase 3: The execution of the budget Acts. Parliament is informed about the implementation of the State budget via several budget memorandums (four times a year). In the spring and autumn these budgetary memorandums are accompanied by a supplementary budget:<sup>27</sup> this supplementary budget – when adopted by Parliament – provides the minister with the necessary funds that go beyond those authorised in the approved budget. During the execution of the State budget, the Minister of Finance is charged with the supervision of the financial management of the departmental budgets.<sup>28</sup>
- Phase 4: After the budgetary year – which runs from 1 January until 31 December<sup>29</sup> – the budgets are audited by the departmental accounting offices<sup>30</sup> and the Court of Audit (*Algemene Rekenkamer*).<sup>31</sup>
- Phase 5: Parliament scrutinises the budget on the basis of the approved account of the Court of Audit and the approved budget. Parliament subsequently adopts the account and accordingly discharges the ministers.<sup>32</sup>

#### 5. Preparation of the State Budget

In this report we will consider the first two phases of the budget cycle in more detail. We will first consider the preparation of the budget, the first

<sup>25</sup> H. Warmelink, *Parlement en begroting*, Groningen: Wolters Noordhoff 1993, p. 5 en M. Bonhof en C. Hogendoorn, 'De begrotingscyclus', in: R. Brinks en T. Witteveen, *Toegang tot de Rijksbegroting*, Den Haag: SDU Uitgevers 2001, p. 26.

<sup>26</sup> Article 12 and 18 GAA.

<sup>27</sup> Article 14 GAA.

<sup>28</sup> Articles 39-42 GAA.

<sup>29</sup> Article 2 (1) GAA.

<sup>30</sup> Article 66 and 67 GAA. Recently a Bill has been tabled to the House in which the departmental accountants offices are all accommodated under one centralised audit office: the audit office of the State.

<sup>31</sup> Article 82 and 83 GAA.

<sup>32</sup> Article 64 GAA.

phase of the budgetary cycle. In section 5 we will consider the adoption and consideration of the budget by the House of Representatives and the Senate.

##### 5.1. Departmental preparation

According to Article 105(2) Constitution the budget Bills containing the general estimates are presented annually 'by or on behalf of the King'. This means that, contrary to the introduction of other 'regular' Bills, the budget Bills can only be tabled to the House by the government and not by (a member of) the House of Representatives.<sup>33</sup>

Each budget is prepared under the administration and responsibility of the departmental minister who is accountable to Parliament for that particular budget. In practice, the individual budget is drawn up by the Financial and Economic Affairs department (*directie Financieel-Economische Zaken*) within the ministry. The preparation of the budget (of the year  $t + 1$ ) begins in January (of the year  $t$ ) and is concluded with the decision making on the definitive draft budget in August (of the year  $t$ ).

##### 5.2. Coordinating role of the Minister of Finance

The Minister of Finance, who plays a key role in the preparation of the budget and has to prohibit collective overspending by the departmental ministers, supervises and coordinates the preparation of the budgets. To this end the Minister of Finance draws up the annually renewed State Budget Regulations (*Rijksbegrotingsvoorschriften*).<sup>34</sup> These rather detailed State Budget Regulations prescribe, among others, procedural and technical instructions with regard to the manner that the departmental ministers should draw up their budget.<sup>35</sup> Next to these procedural and technical instructions, the content of the budget is strongly regulated by the coalition agreement (*Regeerakkoord*). This non-legally binding agreement is concluded between different parties in the House who form the coalition government. Incorporated in the agreement is a budgetary (long-range) framework as well as the rules of budgetary discipline that see to the enforcement of this predetermined budgetary framework. We will discuss these material rules in more detail in section 6.

After the departmental minister has prepared the initial draft budget, he sends the budget(s) to the Minister of Finance, usually around May (of the year  $t$ ).<sup>36</sup> The Minister of Finance, together with the Government Finance Inspectorate (*Inspectie voor de Rijksfinanciën*),<sup>37</sup> supervises and checks whether

<sup>33</sup> Article 82 (1) Constitution.

<sup>34</sup> Article 18 (1) (a) GAA. The State Budget Regulations can be found on: <[www.rbv.minfin.nl/](http://www.rbv.minfin.nl/)> (accessed on 27 January 2014).

<sup>35</sup> The State Budget Regulations also entail rules with regard to the accountability of the budget over the previous year and the execution of the budget of the current year.

<sup>36</sup> Article 12 (1) GAA.

<sup>37</sup> Which is itself part of the Ministry of Finance.

the initial draft budgets are conform the predetermined budgetary framework and if the initial draft budgets adhere to the State Budget Regulations. Although the Minister of Finance can make a formal objection to the draft budget that is drawn up by the departmental minister,<sup>38</sup> the final decision on the draft budget is reached in the Council of Ministers - where every minister has one vote - in August (of the year *t*).

### 5.3. Draft budgets and the state of the national economy

Each budget is divided into several budget items ('budget articles'), which each contain a basic amount of information about the estimates of the revenues for that year, the maximum gross amount that is available to enter into commitments and the maximum gross amount that is available for the expenditure.<sup>39</sup> Accordingly the draft budgets are all accompanied by a memorandum of understanding in which the budget items are expanded on in more detail - what are the policy goals behind the amounts and how, with what instruments, will this policy be realised?<sup>40</sup> The memorandum also contains an account of the long-term expenditure plans.

Accompanying the draft State budget is the Budget Memorandum (*Miljoenen nota*, literally: Memorandum of Millions)<sup>41</sup> which surveys the entire field of the State's finances and discusses the national economy in general. The Budget Memorandum also contains the long-term estimates for the general State's finances.<sup>42</sup> It does not have the status of a Bill and is thus not formally adopted in Parliament, though the Memorandum is considered to be extremely important as it comprehends explanatory notes on what policy choices the cabinet makes and what these plans cost.

Both the draft budgets and the draft Budget Memorandum are sent to the advisory division of the Council of State for advice. The Council of State has to provide the government with an independent advice on all Bills introduced in Parliament by the government.<sup>43</sup> The government is not obligated to ask the Council of State for advice on the Budget Memorandum. But on the basis of Article 17(2) Council of State Act the government can ask the advisory department to provide advice on any matter which the government deems necessary. The advisory department reviews the draft Bills on the basis of an assessment framework that comprises three elements: 1) policy analysis (are

<sup>38</sup> The Minister of Finance can make an objection if he considers that the draft budget runs against the overall financial policy or the efficient management of the State and if the stated amount is disproportionate to the objectives of the policy that underlies the budget. Article 12 (2) GAA.

<sup>39</sup> Article 4 GAA.

<sup>40</sup> Article 5 GAA.

<sup>41</sup> This memorandum was submitted for the first time to Parliament in 1906. The name of the memorandum therefore owes its name to that period. If taken literally the term *Miljoenen* is no longer applicable in this age, and should be replaced by *Billions*.

<sup>42</sup> Article 13 GAA.

<sup>43</sup> Article 73 (1) Constitution and article 17 (1) Council of State Act.

the proposed measures effective in achieving the proposed policy?), 2) legal issues (is the legislation in line with European and international law and other domestic legislation?) and 3) technical aspects.

The government considers the advice and writes a reaction (*Nader Rapport*). The government can only deviate from the advice with good reason. The advice and the written reaction of the government will be annexed to the budget Bills and the Budget Memorandum which are submitted to the House<sup>44</sup> and Parliament (that is House and Senate)<sup>45</sup> respectively on *Prinsjesdag* (Budget Day), the start of the parliamentary year which falls on the third Tuesday of September.<sup>46</sup>

## 6. The adoption of the State budget

After the government submits the draft budgets to the House, the budget Bills pass through Parliament like any other Bill. First the House, whose members can introduce amendments and motions, considers the budget Bills separately. The government in turn can introduce a memorandum of amendment (*Nota van Wijziging*) up till the moment the budget Bill is adopted in the House.<sup>47</sup> After approval by the House, the budget Bills are sent to the Senate, whose members can introduce motions, but do not have the power to introduce amendments.

Although the formal competences of Parliament with regard to the budget Bills are similar to other Bills, the nature of the State Budget and the accompanying Budget Memorandum ensure that the consideration of the budget Bills is approached slightly differently.

### 6.1. Consideration of the Bills in the House

#### 6.1.1. General debates

Budget Bills are in contrast to regular Bills, which are usually considered directly in a specialised committee of the House which prepares the Bill for consideration in the plenary debate, subject to two general debates together with the outlines of the Budget Memorandum. The first general debate, which gives the House the opportunity to generally debate the policy of the government and review the general political situation, is called the general

<sup>44</sup> Article 12(3) and (4) GAA.

<sup>45</sup> Article 13 GAA.

<sup>46</sup> Article 65 Constitution. *Prinsjesdag* is for the most part a ceremonial day. On this day the King pronounces, on behalf of the government, the *Troonrede* (King's speech or speech from the throne) in the presence of both the House and the Senate. The *Troonrede* is an explanation of the general policy for the coming year of the government. After the *Troonrede* the Minister of Finance will officially submit the State budget and the *Miljoenennota* to the House of Representatives, in which the costs of the plans that are pronounced in the *Troonrede* are amplified.

<sup>47</sup> Article 84 Constitution.

political debate. This debate lasts for three days and is considered to have great political importance. A week after the general political debate the financial specialists of the political parties debate the general financial side of the submitted draft State budget with the Minister and State Secretary of Finance in the general *financial* debate.

### 6.1.2. Amendments

Members of the House can express their views on the budget in two ways: by introducing specific amendments or by introducing motions.<sup>48</sup> After the budget Bills and the Budget Memorandum have been discussed in a plenary debate, the budget Bills are submitted to specialised committees corresponding to the ministries.<sup>49</sup> From that moment, all *individual* members of the House are allowed to introduce amendments on a particular budget article, up till the moment the budget Bill is adopted by the House.<sup>50</sup> The amendment, just like the budget Bill itself, is adopted by a majority vote.<sup>51</sup>

Both the estimates of the expenditures as well as the estimates of the revenues can be amended. However amending, either increasing or lowering, the estimates of the revenues does not constitute a legally binding effect (for the minister). The revenues are, after all, established on the basis of underlying Tax Acts. An amendment to the estimates of the revenues can only lead to a (more precise) adjustment of the estimates.<sup>52</sup> As regards an amendment to the estimated expenditures, the specific amendment can either increase or lower the estimated amount. Corresponding with an amendment of the estimated revenues, an increase in the expenditure does not constitute a legally binding effect. After all, with the approval of the budget, Parliament has authorised the minister not to exceed the allocated amount. The minister can thus decide to spend less. Although the minister is not obligated to spend the surplus, Parliamentary approval of an increase in the estimated expenditure does have a political significance, which the minister cannot (too) easily ignore.

<sup>48</sup> H. Daalder and S. Hubée-Boonzaaijer (1976) 'Parliament and the Budget: Procedures and Politics in the Netherlands', in: D. Coombes *et al.*, *The Power of the Purse. The Role of European Parliaments in Budgetary Decisions*. London: George Allen & Unwin Ltd., 1976, p. 280.

<sup>49</sup> A special role is attributed to the select committee of the State Expenditure (*Commissie voor de Rijksuitgaven*). This select committee is attributed with the task of monitoring the proper implementation of the budget by the government. The committee also advises other select committees regarding issues concerning the budget.

<sup>50</sup> Article 84 Constitution and Article 96 Rules of Procedure of the House of Representatives.

<sup>51</sup> Article 67(2) Constitution.

<sup>52</sup> The total amount of revenues, after all, can only be established at the end of the (coming) budget year, with the establishment of the account. Above all, the amount of revenue that will be collected is based on underlying Tax Acts. Thus in order to influence the amount of revenues that are collected the Tax Acts have to be amended.

In practice, though, an increase in expenditure will not lead to an overall increase in expenditure: the custom that an amendment that includes a rise in the expenditure must also include a proposal for a financial reserve<sup>53</sup> (i.e. provides for compensation elsewhere in that budget) prevents the total expenditure being exceeded. This is the so-called compensation rule.

Contrastingly when the estimates of the expenditures are lowered, this does have a legally binding effect on the minister. The House can also amend the budget item itself. It can remove, amend and split the item. But it can also introduce a new budget item.<sup>54</sup>

But there is one caveat: the leeway for members of the House to amend the expenditure is marginal in parliamentary practice. The so-called 'iron package' - which implies that more than 90% of the expenditures are fixed because they originate from previously established commitments - prevents members of the House from making substantial changes to the budget.<sup>55</sup> Amending expenditure that originates from pre-established commitments can only have a legally binding effect if the Act, agreement etc. which establishes the commitment is amended. Furthermore the 'curious nexus', which unites a cabinet with the majority of the House as a result of inter-party negotiations preceding the formation of the cabinet, limits even more the freedom to manoeuvre and make actual changes to the budget.<sup>56</sup> Above all, a lack of (financial) expertise, especially in comparison to the departmental expertise that is available to the government, makes the members of the House hesitant to introduce amendments.<sup>57</sup>

### 6.1.3. Motions

Another way members of the House can spell out their views on the budget, is to introduce motions from the moment that the budget Bills are introduced in the House.<sup>58</sup> Motions usually contain a wish, a proposal, a judgment or a request, which is often addressed to the government, an individual minister or State secretary. Motions can be introduced by an individual member, but must be co-signed by four other members in order to be put to a vote.<sup>59</sup> Because the memorandum accompanying the budget Bill cannot be amended, the members often use motions to try and influence the policy of the minister.

<sup>53</sup> The Instruction for the State budget also mentions this custom.

<sup>54</sup> H. Warmelink, *Parlement en begroting*. Groningen: Wolters Noordhoff 1993, p. 77.

<sup>55</sup> P.P.T. Bovend'Eert en H. Kummeling, *Het Nederlandse Parlement*, Deventer: Kluwer 2010, p. 336.

<sup>56</sup> H. Daalder and S. Hubée-Boonzaaijer (1976) 'Parliament and the Budget: Procedures and Politics in the Netherlands', in: D. Coombes *et al.*, *The Power of the Purse. The Role of European Parliaments in Budgetary Decisions*. London: George Allen & Unwin Ltd., 1976, p. 294-295.

<sup>57</sup> G.D. Minderman, *Tweede Kamer en de Rijksfinanciën. Een studie naar parlementaire sturing van rijksfinanciën in Nederland*, Den Haag: BJU 2000, p. 133.

<sup>58</sup> Though only during oral debates.

<sup>59</sup> Article 66 Rules of Procedure of the House of Representatives.

ter. In addition, the memorandum contains an account of the long-term expenditure plans. This long-term expenditure is becoming increasingly important to Parliament: the (annual) expenditure of the government has to be seen in relation to the long-term financial framework. Specific amendments to the estimated expenditure on a particular budget item have little effect on the long term. Motions can therefore be more effective.<sup>60</sup> But in contrast to certain amendments, the ministers are not compelled to honour such motions, at least for as long as they retain the general confidence of the House.<sup>61</sup>

#### 6.1.4. Alternative budgets

In practice there is little room for the House to (considerably) amend the budget, especially considering the 'iron package' and the custom that an increase in expenditure is compensated elsewhere in the budget. In parliamentary practice, though, there is another phenomenon worth mentioning: the introduction of the so-called 'alternative budget' (*tegenbegroting*). Different alternative budgets are usually, at least since the first time an alternative budget was introduced in 1965,<sup>62</sup> presented by several opposition parties in the House in reaction to the Budget Memorandum and the budget Bills. Through these alternative budgets, the opposition parties try to point out to the cabinet alternative ways to spend the budgetary means.<sup>63</sup> Even though the cabinet will only occasionally adopt (parts of) the alternative budgets, and an alternative budget only reflects the view of one political party, the introduction of alternative budgets provide Parliament with an extra tool to (try to) influence the allocation of the budgetary means.

After voting on the proposed amendments and the corresponding budgets, usually somewhere in December, the Bills are sent to the Senate for approval.

### 6.2. Consideration of the budget Bills in the Senate

#### 6.2.1. General debates

Before the Senate considers the budget Bills it will, similar to in the House, dedicate two general debates, one political and one financial, to the newly-presented policy plans of the cabinet and the financial consequences in the State budget. These general debates are usually held simultaneously with the individual budget debates in the House. The general debates in the Senate are politically looked upon as far less important than the general debates in

<sup>60</sup> G.D. Minderman, (2000) *Tweede Kamer en de Rijksfinancien. Een studie naar parlementaire sturing van rijksfinanciën in Nederland*. Den Haag: BJU, p. 150-155.

<sup>61</sup> Daalder and Hubeé-Boonzaaijer 1976, p. 280.

<sup>62</sup> *Dutch Parliamentary debates II (Handelingen II) 1965/66*, p. 242.

<sup>63</sup> But are of course also 'used' by the opposition parties to create more visibility.

the House – the political primacy is considered to rest with the (directly elected) House.

#### 6.2.2. Motions

From the moment the budget Bills are introduced in the Senate, the members of the Senate can introduce motions. Corresponding to the rules in the House, motions can be introduced by an individual member but must be co-signed by four other members in order to be put to a vote.<sup>64</sup> A motion is adopted if the majority approves the motion. The Senate is less inclined than the House to introduce motions, let alone approve the motions.<sup>65</sup>

#### 6.2.3. Budget Bills: a formality

Because the budget Bills are usually introduced in the Senate in December, just a few weeks before the new budgetary year, budget Bills are, with few exceptions,<sup>66</sup> dealt with as a formality in the Senate: without a written preparation in a specialised committee and a plenary debate dedicated to the budget Bill as would usually be the case with 'regular' Bills. The custom to deal with budget Bills as a formality exists since the 1970s. Before then it occasionally took more than three months into the new budgetary year to formally approve all the budget Bills. Since the introduction of the custom though, partly because the House was taking too long to debate the budget Bills, the Senate has not always managed to formally approve the budget before the 1st of January. In those cases Article 23 GAA provides for a revisionary budget procedure. This procedure ensures that that the government remains able to discharge its essential duties until the budget is formally adopted.<sup>67</sup>

<sup>64</sup> Article 93 Rules of Procedure of the Senate.

<sup>65</sup> Although the total number of introduced and approved motions has increased in the parliamentary year 2013-2014 (30 of the 67 introduced motions were approved) in comparison to 2012-2013 (20 of the 63 introduced motions were approved) according to the annual report of the Senate on 2013-2014. The report can be found on <[www.eerstekamer.nl/id/vjfmfz5gwxs7/document\\_extern/jaarbericht\\_2012\\_2013/f=/vjfmfzr4r1c6.pdf](http://www.eerstekamer.nl/id/vjfmfz5gwxs7/document_extern/jaarbericht_2012_2013/f=/vjfmfzr4r1c6.pdf)> (accessed on 8 January 2014).

<sup>66</sup> In 2013, only four budget Bills were discussed in plenary debate all in one session. And only one budget Bill was prepared in writing by a specialised committee. The rest of the Bills were voted on (and approved) in one session.

<sup>67</sup> This revisionary budget procedure ensures that the minister who is responsible for a certain budget is provided with an advance which, in case of entering into commitments, amounts to a certain percentage of the amount as was provided for in the budget for the previous year, and, in case of the expenditures, amounts to the total percentage that is provided for in the draft budget.

With the introduction of the so-called Two Pack,<sup>68</sup> which established a shared budgetary timeline for the euro zone countries, the Member States are required to have approval of the State budget before 31 December, or at least have a revisionary procedure in place if 'objective reasons beyond the control of the government prevent the timely approval of the State budget.'<sup>69</sup> Both the House and the Senate are, since the adoption of the Two Pack in May 2013, dedicated to ensuring that the budget Bills are approved on 31 December at the latest.<sup>70</sup> In 2013 the Senate managed to approve all budgets Bills before the end of the year.

#### 6.2.4. Policy debates

Since the Senate has no real opportunity to debate (all) the individual budgets (properly) due to time restraints, the Senate, in exchange, has reserved the right to seek the opportunity during the budgetary year to have a policy debate with a particular minister about their budget, at least if the Senate so desires.<sup>71</sup>

After the approval of the Senate, the (formal) ratification by the King<sup>72</sup> and publication of the budget Act in the Official Gazette, the budget Act is enacted.<sup>73</sup>

### 7. Budgetary rules

In section 4 and 5 we discussed the formal rules that apply to the preparation and the adoption of the budget. In addition to the formal rules the State budget is also subject to certain material rules.

These budgetary rules are laid down in different (legal) instruments: in the Sustainable Public Finances Act, in the coalition agreement and in European legislation, both in primary and secondary legislation as well as in an international treaty.

The Sustainable Public Finances Act constitutes the basic assumptions of the budgetary policy that is applicable to the State budget in the Netherlands, which should be enacted with due observance of the European budgetary limits (or EMU standards). In this section, therefore, we will discuss the

<sup>68</sup> Regulation (EU) No 473/2013 of the European Parliament and the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area [2013] OJ L140/11.

<sup>69</sup> Article 4, Regulation (EU) No 473/2013. It remains quite ambiguous what 'objective reasons beyond the control of the government' means. Does it for example also include the fact that Parliament has not been able to approve the budget Bills in time?

<sup>70</sup> See among others the written correspondence (as a result of an informal correspondence between the House, the Senate, the Prime Minister and the Minister of Finance) between the Senate and the Prime Minister: *Kamerstukken I* 2012/13, 33 181, no C.

<sup>71</sup> Overall policy debates will not be held more than three of four times during a parliamentary year of the Senate.

<sup>72</sup> Article 87 Constitution.

<sup>73</sup> Article 88 Constitution.

Sustainable Public Finances Act, the rules that are laid down in this Act and subsequently the rules that are based upon the general norms that are codified in the Sustainable Public Finances Act and that are laid down in the coalition agreement.

#### 7.1. *The Sustainable Public Finances Act*

With the adoption of the Sustainable Public Finances Act (*Wet Houdbare Overheidsfinanciën*, hereafter: SPFA) in December 2013 the Netherlands established a novelty: for the first time (material) budgetary rules were codified in Dutch legislation. This novelty though did not in fact really change the material budgetary landscape in the Netherlands: the Sustainable Public Finances Act codifies two sets of rules that were already adhered to during the preparation and execution of the budget.

To begin with, we will shortly explain what kind of rules are codified in the Sustainable Public Finances Act. Subsequently we will further elaborate on these rules.

First of all, the Sustainable Public Finances Act codifies the basic principles of the Dutch budgetary policy: the trend-based budgetary policy (*trendmatig begrotingsbeleid*). The principles of this policy, before codification, were concluded in the coalition agreement. The coalition agreement is concluded every four years (unless the cabinet collapses and there are premature elections for the House).

Since its introduction in 1994<sup>74</sup> by the then Minister of Finance Zalm, the trend-based budgetary policy (also referred to as the *Zalnorm*) was, at the proposal of the Minister of Finance, reaffirmed each year in the newly-concluded coalition agreement. The coalition parties in the House usually strictly adhere to this agreement. The cause for codification of the trend-based budgetary policy was not because the policy was (politically) not adhered to, quite the opposite,<sup>75</sup> but because the House adopted a motion in which they asked the government to codify these existing rules.<sup>76</sup>

The second set of rules that is codified in this Act are the European rules on limits on government debt and deficits. These European budgetary rules stem from, among others, the Treaty on the functioning of the EU, including Articles 121, 126 and 136 and the annexed Protocol no. 12 on the excessive deficit procedure, the Stability and Growth Pact (SGP)<sup>77</sup>, the Six

<sup>74</sup> The rules on budgetary discipline were actually introduced in 1987, but were comprehensively reviewed in 1994. These reviewed rules are still valid today.

<sup>75</sup> See section 7.2.

<sup>76</sup> *Kamerstukken II* 2010/11, 32 565, no. 4.

<sup>77</sup> Regulation (EU) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies and Regulation (EU) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure.

Pack<sup>78</sup>, the additional Two Pack<sup>79</sup>, the Euro Plus Pact<sup>80</sup> and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (also referred to as the Fiscal Compact)<sup>81</sup> which were concluded outside the EU framework and constitute an intergovernmental treaty between 25 Member States.<sup>82</sup>

The direct cause for codification in Dutch law of the European budgetary norms lies in the Fiscal Compact. The Fiscal Compact obliges the Member States, at least those that are part of the euro zone, to implement the balanced budget rule (the so-called 'golden rule') and a correction mechanism, as formulated in article 3 of the Fiscal Compact, into their national law, preferably at a constitutional level.

Next to budgetary rules for the national government, the Sustainable Public Finances Act also comprises rules with regard to the provinces and the municipalities. Hereafter, in section 8, we will elaborate on these rules for the provinces and the municipalities.

<sup>78</sup> Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area [2011] OJ L306/1; Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L306/12; Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure [2011] OJ L306/33; Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L306/25; Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct macroeconomic imbalances in the euro area [2011] OJ L306/8; Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States [2011] OJ L306/41, which were enacted pursuant to Articles 121, 126 and 136 TFEU.

<sup>79</sup> Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability [2013] OJ L140/1; Regulation (EU) No 473/2013 of the European Parliament and the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area [2013] OJ L140/11, which were enacted pursuant to Articles 121 and 136 TFEU.

<sup>80</sup> European Council, Conclusions 20 April 2011, Annex I <[www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/120296.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/120296.pdf)> (accessed on 16 September 2013).

<sup>81</sup> Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (the text of the Treaty is available via <[www.eurozone.europa.eu/media/304649/st00tscg26\\_en12.pdf](http://www.eurozone.europa.eu/media/304649/st00tscg26_en12.pdf)> (accessed on 16 September 2013).

<sup>82</sup> The United Kingdom and the Czech Republic did not sign the treaty.

## 7.2 Dutch budgetary rules: trend-based budget policy and the rules on budgetary discipline

The Dutch budgetary policy is codified in Article 2 SPFA. This article codifies the three basic principles of the trend-based budgetary policy:<sup>83</sup> 1) the expenditure frameworks and the non-tax revenues within the budget sectors are fixed in advance; 2) automatic stabilisation applies to tax revenues and social premiums, and 3) the trend-based policy is sought after on the basis of the long-range figures and macro-economic assessments of the Central Planning Bureau (*Centraal Planbureau*).

The trend-based budgetary policy, or *Zalmnorm*, aims to prevent an undesirable development in government spending and commitments. It focuses on concrete expenditure frameworks that are set for a cabinet period of four years and elaborated upon in the coalition agreement.<sup>84</sup> The coalition agreement sets expenditure (and corresponding revenue) frameworks for every budget sector separately and subsequently for all separate departmental budgets on the basis of the desirable burden of expenses for the whole collective sector.<sup>85</sup> Based upon this budgetary framework, the Council of Ministers annually concludes a budgetary framework for that specific budgetary year for the separate 'budget chapters'. After the expenditure framework is fixed, priorities will be set within the outer limits of the expenditure framework.<sup>86</sup>

The established budgetary framework is central to the budget process in the Netherlands and forms the basis of a long-term policy that prevents the need to react to short-term economic developments.<sup>87</sup> Because the revenue side of the budget will automatically be part of the economic cycle, the trend-based budgetary policy will make sure that an anti-cyclical policy is achieved.<sup>88</sup> Adjustment of the budgetary norms is only necessary when the revenues, which are carefully estimated, are less than expected.<sup>89</sup>

The rules on budgetary discipline subsequently try to ensure that the established budgetary framework is not exceeded.<sup>90</sup> The rules on budgetary discipline are supervised by the Minister of Finance<sup>91</sup> and are applied to the three budget sectors and to the individual departmental budgets as part of

<sup>83</sup> Further principles of the trend-based budget policy are elaborated upon in the memorandum of understanding. *Kamerstukken II 2012/13*, 33 416, no 3, p. 4.

<sup>84</sup> G.D. Minderman, (2000) *Tweede Kamer en de Rijksfinancien. Een studie naar parlementaire sturing van rijksfinanciën in Nederland*. Den Haag: BJU, p. 137.

<sup>85</sup> *Kamerstukken II 2012/13*, 33 416, no 3, p. 4.

<sup>86</sup> H. Korte, 'Het budgettair kader', in: R. Brinks en T. Witteveen, *Toegang tot de Rijksbegroting*, Den Haag: SDU Uitgevers 2001, p. 11.

<sup>87</sup> *Kamerstukken II 2012/13*, 33 416, no 3, p. 4.

<sup>88</sup> *Kamerstukken II 2012/13*, 33 416, no 3, p. 4-5.

<sup>89</sup> H. Korte (2001) 'Het budgettair kader', in: R. Brinks, R. and Witteveen, T., *Toegang tot de Rijksbegroting*. The Hague: SDU Uitgevers, p. 11.

<sup>90</sup> H. Korte (2001) 'Het budgettair kader', in: R. Brinks, R. and Witteveen, T., *Toegang tot de Rijksbegroting*. The Hague: SDU Uitgevers, p. 17.

<sup>91</sup> G.D. Minderman, (2000) *Tweede Kamer en de Rijksfinancien. Een studie naar parlementaire sturing van rijksfinanciën in Nederland*. Den Haag: BJU, p. 122 and 123.

the State budget. The rules on budgetary discipline entail rules on how to deal with overruns of the budget when unforeseen developments occur. The basic rule is: 'policy needs to be compensated with policy, windfalls can compensate setbacks'.<sup>92</sup>

In somewhat simplified terms the rules entail the following basic principles:<sup>93</sup> 1) every excess on the budget is compensated, in order to prevent the excess resulting in an increased level of government debt; 2) compensation will take place within the same budget where the excess has occurred (specific compensation); 3) if the Council of Ministers decides that a minister does not have to compensate an excess on his own budget, compensation of the excess takes place on several budgets together (general compensation); 4) a windfall may be used to compensate a setback on the minister's own budget, but cannot be used for compensation to execute new policy. If a windfall remains after the setback has been compensated, the windfall will benefit the budget deficit. If the windfall is insufficient to compensate the setback, then the minister will have to make a cutback. Cutbacks also have to be taken if a certain policy is enhanced or a new policy is enacted.

The rules on budgetary discipline are annexed to the coalition agreement and further expanded on in a separate document drawn up at the beginning of a cabinet period.<sup>94</sup> This document gives more detail about what 'budgetary rules of the game' apply to that cabinet period.<sup>95</sup> These rules (can) thus vary slightly with each cabinet period. In the current coalition agreement, for the first time the rules on budgetary discipline refer to the European budgetary norms. The rules on budgetary discipline include the rule that 'the European budgetary rules are leading'. We will turn next to these European norms.

### 7.3. European budgetary rules: medium-term objective, norms on deficits and debt<sup>96</sup>

Article 2(3) SPFA implements the applicable European budgetary rules that should be taken into account when fixing the budgetary framework. The Act does not duplicate the European budgetary rules, but merely refers to them. Article 2(3) SPFA establishes that the trend-based policy will be implemented

<sup>92</sup> G.D. Minderman, (2000) *Tweede Kamer en de Rijksfinanciën. Een studie naar parlementaire sturing van rijksfinanciën in Nederland*. Den Haag: BJU, p. 124.

<sup>93</sup> H. Korte (2001) 'Het budgettair kader', in: R. Brinks, R. and Witteveen, T., *Toegang tot de Rijksbegroting*. The Hague: SDU Uitgevers, p. 18 and G.D. Minderman, (2000) *Tweede Kamer en de Rijksfinanciën. Een studie naar parlementaire sturing van rijksfinanciën in Nederland*. Den Haag: BJU, p. 124.

<sup>94</sup> The so-called Start Memorandum (*Startnota*).

<sup>95</sup> <[www.rijksoverheid.nl/documenten-en-publicaties/richtlijnen/2013/01/14/nederlandse-begrotingsregels-2013-2017.html](http://www.rijksoverheid.nl/documenten-en-publicaties/richtlijnen/2013/01/14/nederlandse-begrotingsregels-2013-2017.html). *Kamerstukken II 2012/13*, 30 400, no 18, annex 1.

<sup>96</sup> This section is based on: M. Diamant & M.L. van Emmerik, 'Mandatory balanced budget in Dutch legislation following examples abroad?', in: *The Constitutionalization of European Budgetary Restraints*, Hart Publishing: Oxford 2014 (forthcoming).

with due regard to: 1) the medium-term objective (MTO) for a structural EMU balance that applies to the Netherlands, 2) with due regard to the applicable standards within the European Union for the actual EMU balance and 3) with due regard to the applicable standards within the European Union for the actual EMU debt.

According to the explanatory memorandum, the first reference in article 2 (3) SPFA to the 'MTO for a structural EMU balance' refers to both the standards for a structural balanced budget in the SGP<sup>97</sup> and to the standards for a structural balanced budget in article 3 of the Fiscal Compact. The current differentiated medium term objective for the Netherlands is set between -0.5% and 0.5% GDP. The reference to 'the applicable standards within the European Union', numbers 2 and 3, refers to the 3% and 60% standard laid down respectively in article 1 of Protocol no. 12 on the excessive deficit procedure annexed to the European Union Treaties and further elaborated upon in the Stability and Growth Pact (SGP) and the Fiscal Compact. These rules entail that the government deficit ratio cannot exceed 3% of GDP and that the government debt cannot exceed, or should at least be sufficiently declining towards, 60% of GDP.<sup>98</sup>

Because the EMU balance, the EMU deficit (a maximum of 3% GDP) and the EMU debt (a maximum of 60% GDP) are determined on the basis of all public finances, the Sustainable Public Finances Act also establishes that the municipalities, the provinces and the social funds need to adhere to these European budgetary rules. But because the trend-based policy is not applicable to local governments, the Sustainable Public Finances Act establishes that the local and regional authorities need to make sure they make an 'equivalent effort' to achieve sustainable public finances in the Netherlands (Article 3(1) SPFA). An elaboration on the rules that are applicable to the local authorities can be found in section 8.3.2.

### 8. Enforceability of the budgetary rules

It can be concluded from the previous section that the budgetary rules that are applicable to the State budget in the Netherlands are threefold. First, the State budget is established on the basic principles of the trend-based budgetary policy that are laid down in the Sustainable Public Finances Act. Second, based upon these basic principles, the coalition agreement establishes concrete budgetary norms. And third, the State budget, and thus the budgetary rules that stem from the Sustainable Public Finances Act and the coalition agreement, have to fit within, and take into account, the European budgetary rules.

<sup>97</sup> Article 2 bis Regulation (EU) No 1175/2011 amending Regulation (EU) No 1466/97.

<sup>98</sup> In the Fiscal Compact it is added that the Treaty calls into existence 'the obligation for those Contracting Parties whose general government debt exceeds the 60 % reference value to reduce it at an average rate of one twentieth per year as a benchmark'.

### 8.1. Judicial enforceability<sup>99</sup>

First of all the question arises whether these budgetary norms are judicially enforceable? Can a group or individual challenge a budget Act when this Act violates the budgetary norms that are applicable in the Netherlands?

#### 8.1.1. Sustainable Public Finances Act

To start with, in the Netherlands it is prohibited for all courts, thus including the Supreme Court (*Hoge Raad*), to review the constitutionality of Acts of Parliament. Dutch courts are therefore unable to assess a budget Act in light of article 105 Constitution.<sup>100</sup> However, in light of the judicial assessment of the budgetary norms, this is not considered to be problematic, whereas article 105 'only' comprehends formal rules on the adoption and control of the State's finances. More material rules are not considered to be part of article 105 Constitution, but can be found in the Sustainable Public Finances Act.

The Dutch government has not opted to incorporate the golden rule (and other European budgetary norms) in the Dutch Constitution. This would have had the advantage that the golden rule would be more difficult to amend, in view of the complicated amendment procedure of the Constitution.<sup>101</sup> Now the golden rule, as incorporated in the Sustainable Public Finances Act, can be cancelled by a subsequent legislative Act.<sup>102</sup> Even if the golden rule had been enshrined in the Constitution, however, courts would not have been able to assess a breach of the golden rule because of the prohibition of judicial review of the constitutionality of Acts of Parliament. A breach of the golden rule at national level will, after all, usually be the result of a legislative Act, namely the (regular) budget Act or a supplementary budget Act established by Parliament and the government. Breaches of the golden rule as a result of local authority budgets would not be affected by the prohibition of judicial review.

Besides, the Sustainable Public Finances Act only lays down certain basic principles and norms that serve as guidelines to set a concrete budgetary framework. Budget Acts (Acts adopted by the Parliament and the government jointly) apply above all between the government and Parliament; citizens cannot derive rights from them directly.<sup>103</sup> This makes it quite difficult for the courts to consider whether a budget Act violates the trend-based

<sup>99</sup> This section is largely based on Diamant and Van Emmerik 2014.

<sup>100</sup> See Article 120 of the Dutch Constitution: 'The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts.' (translation from [www.denederlandsegrondwet.nl](http://www.denederlandsegrondwet.nl) - accessed 14 February 2014).

<sup>101</sup> See Article 137 of the Dutch Constitution: two readings, dissolution of the Lower House and new elections, two thirds majority in second reading.

<sup>102</sup> See also the plea made by Geerten Boogaard to quickly incorporate the golden rule in the Constitution, <[www.publiekrechtropolitiek.nl/begrotingsregels-in-de-grondwet](http://www.publiekrechtropolitiek.nl/begrotingsregels-in-de-grondwet)> - last visited 16 September 2013 and 'Europe speaking German' (n 19).

<sup>103</sup> *Hoge Raad* (Supreme Court of the Netherlands) 5 October 1869, W 1058.

policy. This entails that the issue of the legitimacy of budget Acts is predominantly a political issue about which the (ordinary) courts do not want to adjudicate, notwithstanding the question of whether such matters can even be put before these courts. Within the political arena, a judgment will have to be passed on the legitimacy of the budget in light of the balanced budget rule. In its role as independent advisor to the government and Parliament, the Council of State will review whether the budget Act is in line with the European budgetary rules (article 2(8) SPFA).

#### 8.1.2. European and international law<sup>104</sup>

Though it will be difficult for an individual or group to challenge a budgetary Act in light of the Sustainable Public Finances Act, a direct appeal on European and/or international law might also be considered. The European budgetary norms that are laid down in primary and secondary legislation have direct effect and enjoy a superior status in the Dutch legal order.<sup>105</sup> The European budgetary norms are however strengthened in the Fiscal Compact, and thus the European budgetary norms enjoy the status of intergovernmental international law. In the Dutch legal system though - according to Articles 93 en 94 Constitution - provisions of ratified international treaties<sup>106</sup> also have direct effect within the Dutch legal order and enjoy a superior status over Acts of Parliament.

This means that the provisions of the ratified treaty directly bind all branches of government (legislature, administration, judiciary) in the Netherlands. On the other hand, national courts are only competent to review the compliance of Acts of Parliament (here: budget Acts) with international treaties when the provisions 'may be binding on all persons by virtue of their contents'. In essence, this is a matter of justiciability: does the text of the provision provide the courts with judicially manageable standards to decide the case? According to a landmark decision of the Supreme Court of the Netherlands, the justiciability is decided upon in two steps. First: is the legislature obligated to incorporate this specific provision into national law, which will further elaborate on the content and purpose of the provision? Second: is the provision sufficiently clear as to its objective and can the national courts directly apply it?<sup>107</sup> There is extensive case law in which the national courts have judged that provisions of human rights treaties, in particular protecting civil and political rights (the European Convention on Human Rights is an

<sup>104</sup> Duplicated from Diamant and Van Emmerik 2014.

<sup>105</sup> ECJ judgment of 5 February 1963, Case 26/62 (*Van Gend & Loos*) and ECJ judgment of 15 June 1964 (*Costa/ENEL*).

<sup>106</sup> The Fiscal Compact has been ratified in October 2013.

<sup>107</sup> *Hoge Raad* (Supreme Court of the Netherlands) 30 May 1986, NJ 1986, 688 (*Spoorwegstaking*).

important example), are eligible to bind all persons, or to use a different term, are 'self-executing'.<sup>108</sup>

It can, first of all, be argued that the substantive balanced budget rule as laid down in Article 3(1) Fiscal Compact can be separated from the institutional obligation to incorporate the rule into national law as laid down in Article 3(2) Fiscal Compact. Therefore it can be defended that the substantive balanced budget rule as such does not entail the obligation to incorporate the provision into national law (the first requirement to be self-executing). As to the second requirement: is the provision in Article 3(1) Fiscal Compact sufficiently clear as to its objective and can it be directly applied by the national courts? It is arguable that this requirement is also met, because Article 3(1) Fiscal Compact contains clear requirements as to what the balanced budget rule is and how these requirements are met. The requirements therefore do not have to be further elaborated upon by the national legislature and can be directly applied by the national courts – it is 'objective law'.

Yet another question is whether the national court will find the action admissible and whether the applicant has standing. How can someone demonstrate that it is in his or her own interest to maintain a balanced budget? Consider the case in which an individual applicant might complain of a violation of the balanced budget rule at a local level (as the SPFA also binds local authorities to the European balanced budget rule) where a municipal council decides to finance a soccer stadium without the necessary budgetary resources. The applicant will encounter all kinds of legal difficulties, like the requirement of relativity (the so-called 'Schutz-norm': is the norm intended to protect the interests of the applicant?). Moreover, it is very unlikely that the national courts will even burn its fingers on questions regarding the enforcement of fiscal provisions and the review of budgetary Acts.

## 8.2. Political enforceability

The fact that it is rather unlikely that an individual or group can judicially enforce a violation of the budgetary norms in the Netherlands, does not mean that the budgetary norms are not adhered to – quite the contrary. Political enforcement and a strong sense of political commitment to budgetary and fiscal norms are firmly rooted in the Netherlands.

### 8.2.1. Cabinet and the Minister of Finance

The Netherlands has demonstrated in the past that the budgetary norms, since the introduction of the *Zalmnorm*, are strictly adhered to politically.<sup>109</sup> In

<sup>108</sup> Cf. J. Uzman, T. Barkhuysen & M.L. van Emmerik, *The Dutch Supreme Court: a reluctant positive legislator?*, in: J.H.M. van Erp & L.P.W. van Vliet (eds.), *Netherlands Reports to the Eighteenth International Congress of Comparative Law*, Washington 2010 Antwerp: Intersentia, 2010, p. 423-462.

practice the responsibility to determine the specific budgetary rules, the determination of the financial goals and the financial policy, lie with the cabinet as a whole.<sup>110</sup> The Sustainable Public Finances Act only lays down certain basic principles and norms on the basis of which a concrete budgetary framework is fixed – for the long term in the coalition agreement, and annually by the Council of Ministers. Subsequently the Minister of Finance, as the treasurer, has a special supervising role with regard to the overall financial management of the State's finances and the budgetary framework. The Minister of Finance has, first of all, several legal responsibilities to supervise the draft budgets<sup>111</sup> and the execution of the budgets by the individual ministers.<sup>112</sup> Secondly, the Minister of Finance is responsible for the application of the rules on budgetary discipline.<sup>113</sup> It is not without reason that the Minister of Finance is also referred to as the 'scourge of Finance'.

### 8.2.2. Parliament

It is not required that Parliament applies an extraordinary majority vote to a budget that violates the budgetary norms.<sup>114</sup> In parliamentary practice, however, it is rather unlikely that Parliament (in practice: the House) shall (largely) depart from the budget that is submitted to it and is established under the responsibility of the government. The House imposes upon itself certain (political) constraints that support prudent fiscal policy.<sup>115</sup>

<sup>109</sup> I. Lienert and M. Jung (eds.), 'The Legal Framework for Budget Systems. An International Comparison', *OECD Journal on budgeting* (3) 2004, p. 45: 'By voluntarily adhering to the rules [of budgetary discipline], the general government deficit was turned to a surplus in the 1990s.' The case of the Netherlands also supports the claim of Wehner. He argues, on the basis of case studies in Sweden and South Africa, that, what he calls, top-down budgeting ('a binding political decision about the total level of expenditures at the beginning of the budget process'), can be a possible way to strengthen fiscal discipline. He claims that although many are 'skeptical about the ability of politicians to impose effective fiscal constraints upon themselves', the case studies performed by him 'suggests that this possibility is not entirely utopian', although, he adds, it may be rare. J. Wehner, *Legislatures and the Budget Process. The myth of Fiscal Control*, Houndmills: Palgrave Macmillan 2010, p. 103 and 127-128.

<sup>110</sup> *Dutch Parliamentary Papers (Kamerstukken II) 2012/13*, 33 416, no 3, p. 5.

<sup>111</sup> See section 4.2.

<sup>112</sup> See section 3.

<sup>113</sup> See section 6.2.

<sup>114</sup> The first two authors however made the suggestion that if a budget Act violates the golden rule as it is enshrined in the Fiscal Compact, an increased majority should approve this budget Act. If this is a bridge too far – in the Dutch case the Constitution will have to be amended which is not likely to happen – the budget legislator should at least face an extra strict obligation to motivate the deviation. Diamant and Van Emmerik 2014.

<sup>115</sup> J. Wehner, *Legislatures and the Budget Process. The Myth of Fiscal Control*. Houndmills: Palgrave Macmillan 2010, p. 128.

First of all (the majority of) the House is politically tied to the coalition agreement and the extensive budgetary framework contained in it.<sup>116</sup> Above all, before the budget has been submitted to Parliament it has come a long way: it has already been subject to interdepartmental consideration and a cabinet<sup>117</sup> decision.<sup>118</sup> In practice, the commitment of the House to the predetermined budgetary framework comes to the fore with the parliamentary custom of the compensation rule with regard to amendments. This rule ensures that, although the expenditure can be increased with the adoption of an amendment, the predetermined budgetary framework is preserved by compensating the expenditure with a lowering of the expenditure elsewhere in the budget.<sup>119</sup>

### 8.3. High Councils of State

Besides the enforceability in the political arena, there are two independent advisory bodies that also fulfil a role in the supervision of the budgetary norms.

#### 8.3.1. Council of State

First of all the independent Council of State, specifically the advisory division, plays an important role in the supervision of the legality of a budget Act. As already stated in section 4.3, the Council of State reviews whether the budget Act is in line with European and international budgetary norms and with budgetary norms that are laid down in domestic legislation. The independent advice of the Council of State is usually considered with authority by the government and in Parliament. Above all, the government can only deviate from the advice with good reason. Furthermore Parliament, the

<sup>116</sup> Because the Senate is likely to vote with the (parties in the) House and because the Senate used to have the same majority as the House this resulted in practice the Senate voted according to the coalition agreement. Currently though, as a consequence of the new cabinet formation in December 2012, the cabinet does not have a majority in the Senate. On several occasions in 2013 this has caused fierce political debate between the cabinet and the Senate. Especially because the Dutch government was deemed to make severe budgetary cuts that could obviously count on resistance from the opposition. This while the support of (part of) the opposition was necessary to adopt the necessary budgetary cuts. This has caused the cabinet to make, besides the coalition agreement, several different (budget) agreements with opposition parties in order to ensure a necessary majority.

<sup>117</sup> The cabinet consists of the ministers and their state secretaries.

<sup>118</sup> G.D. Minderman, (2000) *Tweede Kamer en de Rijksfinanciën. Een studie naar parlementaire sturing van rijksfinanciën in Nederland*. Den Haag: BJU, p. 133. See section 4.2.

<sup>119</sup> See section 5.1.2.

House and the Senate individually, can ask the Council for advice on matters concerning legislation and governance.<sup>120</sup>

#### 8.3.2. Court of Audit

In addition to the Council of State, the Court of Audit plays a key role in the process of auditing the State's expenditures.<sup>121</sup> The Court of Audit is not a judicial entity, but like the Council of State is a high council of State that provides the government and Parliament with independent advice. As regards the State's finances, the Court of Audit controls whether the ministers' expenditures are in accordance with the adopted budgets and the intended policy.

Each year the Court of Audit reviews the annual departmental financial reports, the annual departmental trial balance, the annual non-departmental financial reports and the annual non-departmental trial balance. Accordingly the Court of Audit also reviews the annual general financial report of the State's finances as a whole and the annual trial balance of the State's finances that are both drawn up by the Minister of Finance.<sup>122</sup> The Court of Audit reviews these documents on the basis of the audits of the departmental budgets produced by the departmental accounting offices. The framework of review primarily sees to the legality, the orderliness and the verifiability of the financial management. This audit results in a report which is presented each year to Parliament on the Day of Accountability (*Verantwoordingsdag*): the third Tuesday of May when the government is held accountable by Parliament for the past fiscal year.<sup>123</sup>

The Court of Audit sees to it that Parliament is provided with the necessary information on the basis of which Parliament scrutinises the budget and can discharge the ministers. The Court of Audit subsequently draws up a statement of approval on the financial report of the State's finances, including all revenues and expenditures of the departments, and the trial balance of the State. According to Article 105 (3) Constitution, the Court can only present to Parliament the approved account. Therefore if the Court of Audit detects any irregularities in government spending and makes a formal objection, the objection has to be legitimised by an Act of Parliament before Parliament can discharge the ministers.<sup>124</sup>

Besides the obligatory annual legality audit, the Court of Audit can perform value-for-money audits.<sup>125</sup> This means that the Court of Audit can

<sup>120</sup> Article 21a Act on the Council of State. For example, the Senate asked the Council's advice on the matter of national parliamentary and democratic control with regard to the economic governance in the EMU. *Dutch Parliamentary Papers I (Kamerstukken I)*, 2012/13, 33 454, no AB.

<sup>121</sup> Article 76 Constitution and chapter VII of the Government Accounts Act.

<sup>122</sup> Articles 82 and 83 GAA.

<sup>123</sup> Article 83(2) GAA and Article 84 GAA.

<sup>124</sup> Articles 88 and 89 and Articles 64 and 83 GAA.

<sup>125</sup> Article 85 GAA.

review whether the departmental minister responsible for the administration of the particular funds, administers the State funds efficiently and economically. These value-for-money audits are not obligatory but can be performed on the initiative of the Court of Audit itself. Members of Parliament and departments<sup>126</sup> can also request a value-for-money audit. On the basis of Article 87 GAA, the Court of Audit can access all information that it needs to perform the inquiry. The Court of Audit subsequently has discretionary power when it comes to publishing the inquiry.<sup>127</sup>

Furthermore, both chambers of Parliament<sup>128</sup> as well as the departments can request the Court of Audit to perform an inquiry when an independent expert opinion is sought on a particular subject. The Court of Audit has discretionary power as to which inquiry it will perform.<sup>129</sup> The select committee on State's Finances in the House functions as the contact between the Court of Audit and the House of Representatives.

#### 8.4. Codification of budgetary rules: added value?

It can thus be concluded that the recent codification of the budgetary rules is not expected to bring changes within the political arena or to increase the possibility of judicially enforcing these rules. Nonetheless, codification may enhance the status of the budget rules in the (political) debate. Non-compliance with the budgetary rules not only constitutes a violation of a political agreement, but also constitutes a violation of the law.

### 9. Local government limits on debt and deficits

#### 9.1. Local government in the Netherlands

Government tasks are not solely carried out by the national government, but are also part of the responsibilities of local government units. In the context of decentralisation in the Netherlands, two types of local authorities with general legislative and administrative powers can be distinguished: the provinces and the municipalities. The provinces and municipalities have been allocated tasks that they can fulfil autonomously (*autonomie*) and tasks for which they are jointly responsible with the national government (*medebewind*). This implies that the provinces and municipalities are, to a certain extent, autonomous public entities. The autonomous position of the provinces and municipalities has also been entrenched in the Dutch Constitution, which provides in Article 124(1) that the regulation and administration

<sup>126</sup> The departments are also responsible for periodic inquiries into the efficiency and effectiveness of the policy underlying the budget and the efficiency of the management of the departments. Article 21(1) GAA.

<sup>127</sup> Article 87(5) GAA.

<sup>128</sup> Article 90 GAA.

<sup>129</sup> Information about the inquiries performed by the Court of Audit can be found on <[www.rekenkamer.nl](http://www.rekenkamer.nl)> (also available in English).

of their autonomous tasks (*regeling en bestuur inzake hun huishouding*) shall be left up to them. This suggests that the provinces and municipalities are not subordinated to the national government. However, this is not completely true, as the functioning of the provinces and municipalities is to a large extent subject to various control mechanisms by the national government.<sup>130</sup> For this reason, it has been argued that the relationship between the national government and local authorities should, despite the autonomous position of provinces and municipalities, be considered as purely hierarchical.<sup>131</sup> Moreover, the legislature of the national government is authorised to change this constitutional provision without consulting the (legislature of the) provinces and municipalities. Lastly, the definition of the 'autonomous tasks' is rather vague, which entails that the national government can, to a large extent, ultimately decide which tasks should be carried out in co-operation with the national government and, concomitantly, which tasks provinces and municipalities can fulfil autonomously.<sup>132</sup> Besides the provinces and municipalities, other decentralised authorities with more *specific* tasks can be distinguished, such as the water boards that are responsible for matters in the area of water management.<sup>133</sup> This report, however, will mainly focus on the limits that apply to the budget of the provinces and municipalities, as these authorities have a great number of responsibilities and thus have a relatively substantial sum of money at their disposal.<sup>134</sup> The other decentral authorities have fewer, more fixed, tasks and therefore less money at their disposal.<sup>135</sup>

#### 9.2. The budget authority of provinces and municipalities

The formally autonomous position of the provinces and municipalities entails that they have their own budget authority: under Dutch law, provinces and municipalities are, within certain limitations, authorised to impose taxes on their own citizens. However, a significant part of the budget of the provinces and municipalities is funded by the national government and therefore subject to central government control.<sup>136</sup> The allowances from the national

<sup>130</sup> P.P.T. Bovend'eert and C.A.J.M. Kortmann, *Constitutional Law of the Netherlands*, The Hague: Kluwer Law International 2007, p. 42.

<sup>131</sup> See eg S.E. Zijlstra, *Bestuurlijk organisatierecht*, Deventer: Kluwer 2009, p. 64.

<sup>132</sup> See eg W. van der Woude, 'Houdbare overheidsfinanciën en gemeentelijke autonomie', *Ars Aequi* 2013, 61(12), p. 919.

<sup>133</sup> See more extensively on the differences between these two types of local authorities, P.P.T. Bovend'eert and C.A.J.M. Kortmann (2007) *Constitutional Law of the Netherlands*, The Hague: Kluwer Law International, p. 42-56.

<sup>134</sup> See eg A.H.M. Dölle & D.J. Elzinga, *Handboek van het Nederlandse gemeenterecht*, Deventer: Kluwer 2004, p. 532.

<sup>135</sup> As to the position of the water boards in relation to the national government, see eg C. Hoeben, 'Financiële verhouding tussen waterschappen en rijk', *Tijdschrift voor Openbare Financiën* 2012, 44(1), p. 58-65.

<sup>136</sup> In 2008, for instance, the national government funded 72% of the budget of the provinces and 79% of the budget of the municipalities, see *Dutch Parliamentary Papers II (Kamerstukken II)* 2009/10, 32 249, no 2, p. 7-8.

government can be divided into the *general* allowances from the Province Fund (*Provinciefonds*) for the provinces and the Municipality Fund (*Gemeentefonds*) for the municipalities. The Dutch Financial Relations Act (*Financiële-verhoudingswet*; hereafter FRA) stipulates that the amount of money that provinces and municipalities receive from the national government must be determined on the basis of some particular characteristics of the provinces and municipalities, such as the population and surface area of the territory (Article 8), taking the differences between the various provinces and municipalities into account (Article 7). If the costs of municipalities exceed this allowance considerably for a substantial period, they can request an additional allowance (*aanvullende uitkering*).<sup>137</sup> The FRA provides that local authorities can only receive such an allowance as long as their own tax revenues are at a reasonable level (Article 12). The question whether a municipality qualifies for such an additional allowance is merely a matter of policy and has to be decided upon on the basis of the municipality's long-term budget.<sup>138</sup>

Additionally, municipalities and provinces can receive specific allowances (*specifieke uitkeringen*), which have to be spent in accordance with particular objectives. These allowances can only be allocated to the extent that the objectives are not covered by the standards on the basis of which the general allowances are allocated (Articles 15 and 16 FRA). For this reason, specific allowances have been considered to be quite controversial, as the national government has a strong hold over how local authorities can spend these allowances. It has been argued that the specific allowances, in this way, enable the national government increasingly to dominate the provinces and municipalities, which would endanger their autonomous position.<sup>139</sup> Hence, the allocation of specific allowances has to be governed by or pursuant to an Act of Parliament or, in the case of a specific allowance that is allocated temporarily, by an Order in Council (*bij algemene maatregel van bestuur*) (Article 17 FRA). Recently, in light of the objections concerning the specific allowances, the national government has been reducing these allowances successfully by consolidating a great number of them into so-called 'collected allowances' (*verzameluitkeringen*), which are to a lesser extent linked to specific objectives (article 16a FRA), and by terminating many others.<sup>140</sup> Additionally, in the context of the local authorities' budget, it should also be noted that provinces and municipalities might receive subsidies from the European Union. These allowances may also be linked to particular objectives. Finally, another limitation on the budget authority of local authorities, which has been recently enacted, involves the obligation to save its surplus funds in the National Treasury instead of their own bank accounts (Article 2(1) Financing of Decen-

<sup>137</sup> This provision does not apply to the provinces.

<sup>138</sup> A.H.M. Dölle and D.J. Elzinga (2004) *Handboek van het Nederlandse gemeenterecht*. Deventer: Kluwer, p. 535.

<sup>139</sup> *Ibid.*, p. 536.

<sup>140</sup> W. van der Woude, *Financiële controle in het gemeenterecht*, Deventer: Kluwer 2011, p. 258.

tralised Authorities Act (*Wet financiering decentrale overheden*), hereafter FDAA).

### 9.3. Budget control by the national government

Generally, provinces and municipalities have, except for the money they receive from the specific allowances, full discretion as to the way they spend their money. However, the national government can steer and, to a certain extent, control the budget of provinces and municipalities in various ways. In this regard, three national government control mechanisms may impact the budget policy of local authorities: general control mechanisms on the functioning of local authorities, control mechanisms that concern the budget of local authorities and, lastly, control mechanisms that concern the spending of specific components of the budget of the provinces and municipalities.

#### 9.3.1. Control on the functioning of local authorities in general

Provinces and municipalities may be submitted to *general* control mechanisms from a superior body of government: provinces can be subjected to control by the Minister of Interior and Kingdom Relations, whereas the Provincial Executive can control the decisions of municipalities. First, the superior body of government has the general competence to annul or suspend the decisions by provinces and municipalities that are unlawful or harm the public interest (Article 132(4) Constitution; Articles 261 and 266 Province Act (*Provinciewet*), hereafter PA; Articles 268 and 273 Municipality Act (*Gemeentewet*), hereafter MA). This power may affect all decisions by local authorities with financial implications and thus the budget of these authorities.<sup>141</sup> Second, the superior body of government can also submit individual decisions of local government for approval (*preventieve goedkeuring*). This control mechanism may also affect decisions by local government with financial implications, such as the foundation or financial participation of a corporate body (Article 158(2) PA and Article 160(3) MA). Lastly, in the case of the neglect of duties (*taakverwaarlozing*), the superior authority can completely *take over* the duties that have been neglected (this applies to duties that are fulfilled in co-operation with the central government) or seriously neglected (this applies to the duties that are fulfilled autonomously) (Article 132(5) Constitution; Article 121 PA and Article 124 MA).<sup>142</sup>

#### 9.3.2. Control on the budget of local authorities

The national government also has at its disposal control mechanisms that specifically concern the budget of local authorities. The legal framework as to the budget of local governments can be found in the Financing of Decentral-

<sup>141</sup> *Ibid.*, 247.

<sup>142</sup> See more extensively *ibid.*, 253-258.

ised Authorities Act (*Wet financiering decentrale overheden*, hereafter FDAA). This Act limits the competence of provinces and municipalities to contract loans, to put out public resources and to offer guarantees (Article 2 FDAA). Additionally, the FDAA limits the ability of local authorities to incur deficits by stipulating that their 'purse' should contain at least € 300,000 (Article 3(2) FDAA). This is the so-called cash limit (*kasgeldlimiet*). Moreover, the FDAA also provides that the ministers of the central government can enact additional limitations on the ability of local authorities to incur deficits (article 3(1)). As for the issuance of debt, the FDAA prescribes that local government debt may not exceed the cash limit (Article 4(1)) and also provides for the enactment of additional rules by the ministers of the central government to incur debt (Article 4(2)). Lastly, the FDAA also contains the so-called rent risk standard (*renterisiconorm*), which limits the risk that local authorities may bear when contracting loans (Articles 5 and 6). The superior authority under the PA and the MA<sup>143</sup> has the power to control the compliance of provinces and the municipalities with the debt limitations and the rent risk standard (Article 1(1)(j) FDAA). Under the FDAA, there is no separate control mechanism as to the compliance with the limitations to incur deficits. However, the superior authority may have recourse in this matter to submission of the budget of provinces and municipalities to the superior body of government for approval (*voorafgaande goedkeuring*). The budget of the local government should be structurally balanced, or a structural balance in the budget should at least be attainable within a reasonable amount of time, otherwise the superior body *has* to subject the budget of the local authority to approval (Article 207(1) PA and Article 203(1) MA). Moreover, the superior body *can* subject the budget of a province or municipality to approval in case it does not comply with the rules concerning the timely enactment of the budget and the annual account (Article 207(2) PA and article 203(2) MA). In the event the budget has been subjected to approval, the superior authority can only refuse its consent if the budget is unlawful or harms the public interest (Article 210 PA and Article 206 MA). Arguably, there is sufficient legal basis for the national government to refuse its consent to the budget if the budget appears to have a structural deficit under the FDAA.

In addition to the national rules on the budget of local authorities, the provinces and municipalities also have to adhere to the EMU standards. The obligation to maintain balance in the national budget is not the sole responsibility of the national government. The Sustainable Public Finances Act (hereafter SPFA), which has recently been enacted, renders the national government and the decentralised authorities jointly responsible for adhering to the balanced budget rule (Article 3(1) SPFA). Although the local authorities have to be consulted in this respect, it is the Minister of Finance who ultimately decides what financial effort by the local authorities is needed (Article 3(3) SPFA). If the European Commission imposes a fine on the Netherlands for not having satisfied the European budget rules, then the national govern-

<sup>143</sup> See section 8.3.1.

ment may deduct this, to the extent that it can be ascribed to them, from the allowances that they allocate to the provinces and municipalities (Article 7 SPFA). Even if the Commission is not planning to impose a fine on the national government, the budget of the provinces and municipalities can be reduced. The local authorities then get the chance to balance their budget within three years after which the national government may reimburse the provinces and municipalities (Article 6(3) SPFA). In both scenarios, it is the Minister of Finance who ultimately decides to what extent the allowances of the decentralised authorities may be deducted. Strikingly, the SPFA holds the provinces *as a whole* and the municipalities *as a whole* responsible for adhering to the EMU standards (Article 6(2) SPFA). This means that provinces and municipalities can be held responsible for defects in the budget policies of *other* provinces and municipalities. According to Van der Woude, this is highly problematic as provinces and municipalities do not have the power to influence the decision-making processes outside their territory.<sup>144</sup> Hence, the SPFA has rendered provinces and municipalities responsible for the decisions of other local authorities that they cannot influence.

### 9.3.3. Control on the spending of specific components of the local authorities' budget

Some components of the budget of provinces and municipalities, such as the specific and additional allowances, are linked to particular objectives. Hence, it has to be verified whether these 'labelled' components of the local authorities' budget have been spent lawfully. For instance, the way in which local authorities spend their additional and specific allowances is subject to relatively strict control by the Dutch Minister of Interior and Kingdom Relations.<sup>145</sup> As to the additional allowance, various measures can be imposed on municipalities that receive such an allowance. These measures include the obligation to set up a debt restructuring plan, the requirement of a recruitment freeze and the requirement of an expenditure ceiling.<sup>146</sup> As to the specific allowances, the Dutch Minister of Interior and Kingdom Relations checks on the basis of the annual statement of the local authorities, firstly, whether the provinces and municipalities have spent these allowances in accordance with the objectives for which these were intended and, secondly, whether these allowances were spent in accordance with the specific rules that were set up for spending these allowances (Article 17 FRA). The control regime of the minister is considered to be relatively strict. In case the specific allowances have not been fully spent or have not been spent lawfully, the minister can re-claim the allowances, depending on the applicable rules. This also applies

<sup>144</sup> Van der Woude 2013, p. 919.

<sup>145</sup> Van der Woude 2011, p. 261.

<sup>146</sup> Dutch Ministry of the Interior and Kingdom Relations, *Instructions for the application of article 12 FRA* [Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, *Handleiding art. 12 Fow*], The Hague, 2013, p. 15.

to the control on the timely provision of the relevant information as to the spending of the specific allowances by provinces and municipalities. If the provinces and municipalities do not fulfil this obligation, the minister may stipulate that the allocation of *general* allowances from the Province Fund and the Municipality Fund to the local authority concerned will be suspended for six months.<sup>147</sup> Lastly, under the Compliance of Local Authorities with European Union Law Act (*Wet Naleving Europees recht door publieke entiteiten*) the ministers of the central government have the competence to control whether local authorities satisfy their legal duties under European Union law. These duties involve, for instance, the spending of European subsidies by local authorities in accordance with the objectives for which they were intended.<sup>148</sup>

## 10. Summary

In the introduction to this contribution we promised to briefly summarise our findings and in doing so attend to the questions posed by the general reporter.

Until recently there were no legal or constitutional limits for the national government to incur deficits in its annual budget, nor on its ability to borrow money or incur debt. With the adoption of the Sustainable Public Finances Act in December 2013 the Netherlands has established a novelty: for the first time two sets of (material) budgetary rules have been codified in Dutch legislation. On the one hand the trend-based budgetary policy and on the other hand (a general reference to) the European golden rule and other European budgetary norms that apply to the Netherlands. This novelty in fact did not really change the material budgetary landscape in the Netherlands: the SPFA codifies two sets of rules that were already adhered to during the preparation and execution of the budget. The specific budgetary framework is elaborated upon in the non-legally binding coalition agreement. This detailed budgetary framework is subject to the rules on budgetary discipline that should ensure that the budgetary framework is adhered to during the coalition period. The Minister of Finance supervises the rules on budgetary discipline.

At the local level certain legal limitations exist on government debts and deficits. The superior administrative authority has the power to control the compliance of the local authorities with these limitations. According to the SPFA the local authorities also have to adhere to the European budgetary norms. Ultimately, though, it is the national government that can be held accountable at the European level for the non-compliance of the European budgetary norms by the local authorities.

<sup>147</sup> See, eg. Van der Woude 2011, p. 260.

<sup>148</sup> See more extensively on the legal aspects of the spending of European subsidies by local authorities, C. de Kruif, *Onderlinge overheidsaansprakelijkheid voor schendingen van Europees recht*, Deventer, Kluwer, 2012 and J.E. van den Brink, *De uitvoering van Europese subsidieregelingen in Nederland*, Deventer, Kluwer, 2012.

The fact that it is rather unlikely that an individual or group could judicially enforce a violation of the budgetary norms in the Netherlands does not mean that the budgetary norms are not adhered to –quite the contrary. Political enforcement and a strong sense of political commitment to budgetary and fiscal norms are firmly rooted in the Netherlands. Nonetheless, codification may enhance the status of the budget rules in the (political) debate. Non-compliance with the budgetary rules not only constitutes a violation of a political agreement, but also constitutes a violation of the law. Codification also provides a framework that ensures that politicians do not exceed the financial limitations too easily. The codification of the budgetary rules can above all be beneficial for stability in the financial markets and faith in them. In any case, it will become easier for the financial markets to predict what the reaction of governments will be.<sup>149</sup>

<sup>149</sup> Diamant en Van Emmerik 2014 and L.P. Feld and T. Baskaran, 'Federalism, Budget Deficits and Public Debt: On the Reform of Germany's Fiscal Constitution', (2010) 6 *Review of Law and Economics*, p. 387.